

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990
5788 HOUSE JUDICIARY

8672

SS

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act providing criminal penalties
 for negligent operation of a tank vessel..."
 Sponsor: House Rules/Governor
 Requestor: House Judiciary

Agency Affected: Department of Law
 BRU: Prosecution
 Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director
 Division: Administrative Services
 Approved by Commissioner: Douglas B. Bailly, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: January 17, 1990
 Date: January 17, 1990

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 315

This bill amends AS 46.03 by adding a new section that provides criminal penalties for negligent operation of a tank vessel, when a person with criminal negligence actually endangers another person or property through operating, navigating or piloting a tank vessel. Tank vessel means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue. Criminal negligence has the meaning given in AS 11.81.900. The bill establishes the penalty for negligent operation of a tank vessel as class C felony. By establishing this new crime, the bill seeks to set an appropriate penalty for negligent acts that can cause major damage to other persons and the environment. The actual number of such acts is expected to be small. Because of the small number of expected offenses, fiscal note costs are not being requested.

This bill also amends AS 46.03.790 by adding a new subsection that provides criminal penalties for negligent oil discharges and for a person who negligently discharges oil in violation of AS 46.03.740, or who fails to comply with the provisions of an oil discharge contingency plan required under AS 46.04, or who fails to adequately clean up a discharge of oil as defined by regulation, is guilty of a class C felony if the discharge is 10,000 barrels or more, or guilty of a class A misdemeanor if the discharge is less than 10,000 barrels. By establishing these crimes, the bill seeks to set appropriate criminal penalties for the negligent discharge of oil, failure to comply with the provisions of an oil discharge contingency plan, and failure to adequately clean up a discharge of oil. The actual number of offenses is expected to be small and, consequently, fiscal note costs are not being requested.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: HB 315
Negligent Operation of a Tanker, etc.
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Environmental Conservation
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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)

The FY 90 effect would also be a zero impact.

Prepared by: Gail Garton
Division: Administrative Services

Phone: 465-2600
Date: 1/22/90

Approved by Commissioner: [Signature]
Agency: Department of Environmental Conservation

Date: January 22, 1990

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Alaska Court System
 Title: An Act providing for criminal penalties for negligent operation of vessel... BRU: Trial Courts
 Sponsor: Rules Committee Components: _____
 Requestor: House Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Jan Strandberg, General Counsel
 Division: Alaska Court System

Phone: 284-6228
 Date: 02/16/90

Approved by: Annur H. Snowden, II, Administrative Director
 Agency: Alaska Court System

Date: 02/16/90

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

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act providing criminal penalties
 for negligent operation of a tank vessel..."
 Sponsor: House Rules/Governor
 Requestor: House Judiciary

Agency Affected: Department of Law
 BRU: Prosecution
 Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues
 Richard I. Pegues, Director
 Division: Administrative Services
 Approved by Commissioner: Douglas B. Baily, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: January 17, 1990
 Date: January 17, 1990

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 315

This bill amends AS 46.03 by adding a new section that provides criminal penalties for negligent operation of a tank vessel, when a person with criminal negligence actually endangers another person or property through operating, navigating or piloting a tank vessel. Tank vessel means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue. Criminal negligence has the meaning given in AS 11.81.900. The bill establishes the penalty for negligent operation of a tank vessel as class C felony. By establishing this new crime, the bill seeks to set an appropriate penalty for negligent acts that can cause major damage to other persons and the environment. The actual number of such acts is expected to be small. Because of the small number of expected offenses, fiscal note costs are not being requested.

This bill also amends AS 46.03.790 by adding a new subsection that provides criminal penalties for negligent oil discharges and for a person who negligently discharges oil in violation of AS 46.03.740, or who fails to comply with the provisions of an oil discharge contingency plan required under AS 46.04, or who fails to adequately clean up a discharge of oil as defined by regulation, is guilty of a class C felony if the discharge is 10,000 barrels or more, or guilty of a class A misdemeanor if the discharge is less than 10,000 barrels. By establishing these crimes, the bill seeks to set appropriate criminal penalties for the negligent discharge of oil, failure to comply with the provisions of an oil discharge contingency plan, and failure to adequately clean up a discharge of oil. The actual number of offenses is expected to be small and, consequently, fiscal note costs are not being requested.

FISCAL NOTE

REQUEST:

Revision Date:	Agency Affected:	<u>Alaska Court System</u>
Title: <u>An Act providing for criminal penalties for negligent operation of vessel...</u>	BRU:	<u>Trial Courts</u>
Sponsor: <u>Rules Committee</u>	Components:	
Requestor: <u>House Judiciary</u>		

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Jan Strandberg, General Counsel
 Division: Alaska Court System
 Approved by: Arthur H. Snowden, II, Administrative Director
 Agency: Alaska Court System

Phone: 284-8228

Date: 02/16/90

Date: 02/16/90

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

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

cc
JHB 3/15

April 26, 1989

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to criminal penalties for negligent operation of a tank vessel, for negligent oil discharges, for failure to comply with an oil discharge contingency plan, and for failure to adequately clean up an oil spill.

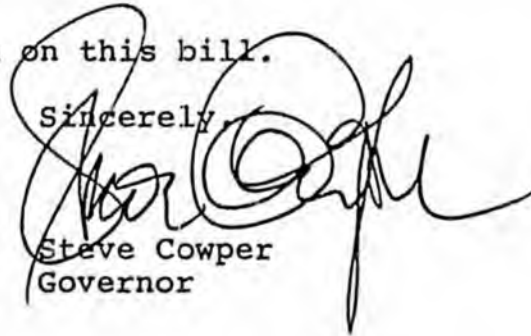
This bill increases the penalty for a negligent oil spill to a class A misdemeanor if the spill is less than 10,000 barrels, and to a class C felony if the spill is 10,000 barrels or more. In addition, the bill makes clear that criminal penalties will be imposed for failure to comply with an oil discharge contingency plan and for failure to adequately clean up an oil spill. Finally, the bill makes it a class C felony to actually endanger a person or property through negligently operating, navigating, or piloting a tank vessel. The need for this legislation arises from our review of criminal statutes in light of the Prince William Sound oil spill.

The class B misdemeanor penalty imposed under current law for negligent oil discharges, or for failure to comply with administrative regulations requiring adequate clean up of a discharge, does not accurately reflect the seriousness of the societal interests that are violated when a criminally negligent act causes extensive damage. Under the bill, felony penalties are imposed for negligent spills of 10,000 barrels or more (420,000 gallons), or for failure to respond appropriately to any spill of this magnitude.

The new crime of negligent operation of a tank vessel is similar in definition to the crime of negligent operation of a motor vehicle. However, given the extent of the possible damage from negligent operation of a tank vessel, the crime is designated a class C felony. The purpose of imposing felony penalties in this context is to provide a strong incentive for operators, navigators, and pilots of tank vessels to exercise an appropriate level of care to protect the lives and property of Alaskans.

I urge your favorable action on this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the word "Sincerely,".

Steve Cowper
Governor

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 315
PUBLISH DATE: HOUSE 4/26/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act providing criminal penalties for negligent oil discharges..."
Sponsor: Rules/By Req. of the Governor
Requestor: Governor's Office/OMB

Agency Affected: Department of Law
BRU: Prosecution
Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director
Division: Administrative Services

Phone: 465-3672
Date: April 24, 1989

Approved by Commissioner: Douglas B. Bailly, Attorney General
Agency: Department of Law

Date: April 24, 1989

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

CONTINUATION of FISCAL NOTE ANALYSIS

No. 1
HB 315
HOUSE 4/26/89

For Bill/Resolution No. _____

This bill amends AS 46.03.790 by adding a new subsection that provides criminal penalties for negligent oil discharges and for inadequate cleanup of oil discharges. The new subsection provides that a person who negligently discharges oil in violation of AS 46.03.740, or who fails to comply with the provisions of an oil discharge contingency plan required under AS 46.04.030, or who fails to adequately clean up a discharge of oil as defined by regulation, is guilty of a class C felony if the discharge is 10,000 barrels or more, or guilty of a class A misdemeanor if the discharge is less than 10,000 barrels. By establishing these crimes, the bill seeks to set appropriate criminal penalties for the negligent discharge of oil, failure to comply with the provisions of an oil discharge contingency plan, and failure to adequately clean up a discharge of oil. The actual number of offenses is expected to be small and, consequently, fiscal note costs are not being requested.

This bill also amends AS 46.03 by adding a new section that provides criminal penalties for negligent operation of a tank vessel, when a person with criminal negligence actually endangers another person or property through operating, navigating or piloting a tank vessel. Tank vessel means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue. Criminal negligence has the meaning given in AS 11.81.900. The bill establishes the penalty for negligent operation of a tank vessel as class C felony. By establishing this new crime, the bill seeks to set an appropriate penalty for negligent acts that can cause major damage to other persons and the environment. The actual number of such acts is expected to be small. Because of the small number of expected offenses, fiscal note costs are not being requested.

HOUSE COMMITTEE REPORT

(9)

Date Referred: April 26, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 5-3-89

The RESOURCES Committee considered:

HB 315

HOUSE BILL NO. 315

[NEGLIGENT OPERATION OF TANKER, ETC.]

"An Act providing criminal penalties for negligent operation of a tank vessel, negligent oil discharges, failure to comply with an oil discharge contingency plan, and failure to adequately clean up an oil discharge."

RECOMMENDATIONS:

- be replaced with _____ the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis LAW 4-26-89

SIGNING DO PASS:

Carl Wickham

Carl Davidson

~~_____~~

~~_____~~

Mike Dem

Richard Joseph

White

SIGNING:

(Check approp. column)

	Do Not PASS	No Rec	Amend
<i>Carl Wickham</i>		<input checked="" type="checkbox"/>	
<i>Carl Davidson</i>			
<i>White</i>		<input checked="" type="checkbox"/>	

Carl Wickham

Chairman's Signature

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 4, 1989

SUBJECT: House Bill 315

TO: Representative Cliff Davidson, Co-Chair
Representative Curt Menard, Co-Chair
House Resources Committee

FROM: Jack Chenoweth
Legislative Counsel 

As you consider the bill, please also consider the following:

(1) On page 1, line 22, the term "hazardous material" appears. "Hazardous material" is not a term that is used in Title 46. Elsewhere in the chapter, the reference throughout is to a "hazardous substance." The latter term is defined (see AS 46.03.826(4)), albeit not for purposes of this new section. If the committee intends to keep "hazardous material," it should provide a definition. (A suggested definition of "hazardous material" appears in AS 29.35.590, the municipal code.) If the committee wants to shift to "hazardous substance," it should likewise direct that a definition be provided.

(2) On page 2, at line 2, note that the bill section adds "subsections" (g) and (h), not just "a subsection" as the lead sentence states.

JC:lmb
L7/084

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 315 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to criminal liability of an indi-
7 vidual for the conduct of an organization and to
8 criminal penalties for negligent operation of a tank
9 vessel, for negligent oil discharge, for failure to
10 comply with an oil discharge contingency plan, for
11 negligent performance or failure to perform a re-
12 quired act relating to the handling of a hazardous
13 waste, and for failure to provide information or
14 providing false information about oil or a hazardous
15 substance when required by law."

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

17 * Section 1. AS 11.16 is amended by adding a new section to read:

18 Sec. 11.16.140. CRIMINAL LIABILITY OF AN INDIVIDUAL FOR ORGAN-
19 IZATION CONDUCT. (a) A person is criminally liable for conduct that
20 the person performs or causes to be performed in the name of, or in
21 behalf of, an organization to the same extent as if that conduct were
22 performed in the person's own name or behalf.

23 (b) Whenever a duty to act is imposed by law upon an organiza-
24 tion, any agent of the organization who has primary responsibility for
25 the discharge of the duty is legally accountable for an omission to
26 perform the required act to the same extent as if the duty were im-
27 posed by law directly upon the agent.

28 (c) When a person is liable for an offense under this section,
29 the person is subject to any sentence authorized by law, including

1 imprisonment.

2 * Sec. 2. AS 46.03 is amended by adding a new section to read:

3 Sec. 46.03.742. NEGLIGENT OPERATION OF TANK VESSEL. (a) A
4 person commits the crime of negligent operation of a tank vessel when,
5 by operating, navigating, or piloting a tank vessel with criminal
6 negligence, the person creates a risk of a release of a hazardous
7 substance and the release could cause serious physical injury to
8 another person or damage to the property of another.

9 (b) Negligent operation of a tank vessel is a class C felony.

10 (c) In this section,

11 (1) "criminal negligence" has the meaning given in AS 11.-
12 81.900;

13 (2) "hazardous substance" has the meaning given in AS 46.-
14 03.026;

15 (3) "tank vessel" means

16 (A) a vessel that is constructed or adapted to
17 carry, or that carries, as a means of transportation by water, a
18 hazardous substance in bulk as cargo or cargo residue;

19 (B) the vessel that propels the tank vessel if the
20 tank vessel is a barge or other vessel that is not self-propel-
21 led.

22 * Sec. 3. AS 46.03.790(a) is amended to read:

23 (a) Except as provided in (d) [(d) - (f)] of this section, a
24 person is guilty of a class A misdemeanor if the person with criminal
25 negligence

26 (1) [WHO NEGLIGENTLY] violates a provision of this chapter,
27 AS 46.04, or AS 46.09, [OR OF] a regulation or [, LAWFUL] order of the
28 department, or a permit, approval, or acceptance, or a term or condi-
29 tion of a permit, approval, or acceptance issued under this chapter,

1 AS 46.04, or AS 46.09;

2 (2) fails to provide information or provides false informa-
3 tion required by AS 46.03.755, AS 46.04, or AS 46.09, or by a regula-
4 tion adopted by the department under AS 46.03.755, AS 46.04, or
5 AS 46.09; or

6 (3) makes a false statement or representation in an appli-
7 cation, label, manifest, record, report, permit, or other document
8 filed, maintained, or used for purposes of compliance with AS 46.03.-
9 250 - 46.03.314 applicable to hazardous wastes or a regulation adopted
10 by the department under AS 46.03.250 - 46.03.314 [IS GUILTY OF A CLASS
11 B MISDEMEANOR].

12 * Sec. 4. AS 46.03.790(b) is amended to read:

13 (b) A [EXCEPT AS PROVIDED IN (d) - (f) OF THIS SECTION, A]
14 person is guilty of a class C felony if the person [WHO] knowingly

15 (1) violates' a provision of this chapter, AS 46.04, or
16 AS 46.09, [OR OF] a regulation or [, LAWFUL] order of the department,
17 or a permit, approval, or acceptance, or a term or condition of a
18 permit, approval, or acceptance issued under this chapter, AS 46.04,
19 or AS 46.09;

20 (2) transports hazardous waste to a facility without a
21 permit required by AS 46.03.250 - 46.03.314; or

22 (3) treats, stores, or disposes of hazardous waste without
23 a permit required by AS 46.03.250 - 46.03.314 [IS GUILTY OF A CLASS A
24 MISDEMEANOR].

25 * Sec. 5. AS 46.03.790(d) is amended to read:

26 (d) Notwithstanding (a) [AND (b)] of this section, a person who
27 with criminal negligence discharges oil in violation of AS 46.03.740
28 or who, when required by an oil discharge to comply with the pro-
29 visions of an oil discharge contingency plan approved under

1 AS 46.04.030, with criminal negligence fails to comply with the plan
2 is guilty of

3 (1) a class C felony if the oil discharge is 10,000 barrels
4 or more;

5 (2) a class A misdemeanor if the oil discharge is less than
6 10,000 barrels [FAILS TO PROVIDE OR FALSELY STATES INFORMATION RE-
7 QUIRED UNDER AS 46.03.755, AS 46.04, OR AS 46.09 IS GUILTY OF A MISDE-
8 MEANOR AND, UPON CONVICTION, IS PUNISHABLE BY A FINE OF NOT MORE THAN
9 \$25,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH.
10 EACH UNLAWFUL ACT CONSTITUTES A SEPARATE OFFENSE].

11 * Sec. 6. AS 46.03.790 is amended by adding a new subsection to read:

12 (g) In this section,

13 (1) "barrel" has the meaning given in AS 46.04.900;

14 (2) "criminal negligence" has the meaning given in AS 11.-
15 81.900;

16 (3) "knowingly" has the meaning given in AS 11.81.900.

17 * Sec. 7. AS 46.03.790(e) and 46.03.790(f) are repealed.
18
19
20
21
22
23

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 315 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to criminal liability of an indi-
7 vidual for the conduct of an organization and to
8 criminal penalties for negligent operation of a tank
9 vessel, for negligent oil discharge, for failure to
10 comply with an oil discharge contingency plan, for
11 negligent performance or failure to perform a re-
12 quired act relating to the handling of a hazardous
13 waste, and for failure to provide information or
14 providing false information about oil or a hazardous
15 substance when required by law."

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

17 * Section 1. AS 11.16 is amended by adding a new section to read:

18 Sec. 11.16.140. CRIMINAL LIABILITY OF AN INDIVIDUAL FOR ORGAN-
19 IZATION CONDUCT. (a) A person is criminally liable for conduct that
20 the person performs or causes to be performed in the name of, or in
21 behalf of, an organization to the same extent as if that conduct were
22 performed in the person's own name or behalf.

23 (b) Whenever a duty to act is imposed by law upon an organiza-
24 tion, any agent of the organization who has primary responsibility for
25 the discharge of the duty is legally accountable for an omission to
26 perform the required act to the same extent as if the duty were im-
27 posed by law directly upon the agent.

28 (c) When a person is liable for an offense under this section,
29 the person is subject to any sentence authorized by law, including

1 imprisonment.

2 * Sec. 2. AS 46.03 is amended by adding a new section to read:

3 Sec. 46.03.742. NEGLIGENT OPERATION OF TANK VESSEL. (a) A
4 person commits the crime of negligent operation of a tank vessel when,
5 by operating, navigating, or piloting a tank vessel with criminal
6 negligence, the person creates a risk of a release of a hazardous
7 substance and the release could cause serious physical injury to
8 another person or damage to property of another.

9 (b) Negligent operation of a tank vessel is a class C felony.

10 (c) In this section,

11 (1) "criminal negligence" has the meaning given in AS 11.-
12 81.900;

13 (2) "hazardous substance" has the meaning given in AS 43.-
14 03.826;

15 (3) "tank vessel" means

16 (A) a vessel that is constructed or adapted to
17 carry, or that carries, as a means of transportation by water, a
18 hazardous substance in bulk as cargo or cargo residue;

19 (B) the vessel that propels the tank vessel if the
20 tank vessel is a barge or other vessel that is not self-propel-
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28 department, or a permit, approval, or acceptance, or a term or condi-
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10 by the department under AS 46.03.250 - 46.03.314 [IS GUILTY OF A CLASS
11 B MISDEMEANOR].

12 * Sec. 4. AS 46.03.790(b) is amended to read:

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12 (g) In this section,

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15 81.900;

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go1239hE
Chenoweth
2/23/90

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 315 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to criminal liability of an indi-
7 vidual for the conduct of an organization and to
8 criminal penalties for negligent operation of a tank
9 vessel, for negligent oil discharge, for failure to
10 comply with an oil discharge contingency plan, for
11 negligent performance or failure to perform a re-
12 quired act relating to the handling of a hazardous
13 waste, and for failure to provide information or
14 providing false information about oil or a hazardous
15 substance when required by law."

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

17 * Section 1. AS 11.16 is amended by adding a new section to read:

18 Sec. 11.16.140. CRIMINAL LIABILITY OF AN INDIVIDUAL FOR ORGAN-
19 IZATION CONDUCT. (a) A person is criminally liable for conduct that
20 the person performs or causes to be performed in the name of, or in
21 behalf of, an organization to the same extent as if that conduct were
22 performed in the person's own name or behalf.

23 (b) Whenever a duty to act is imposed by law upon an organiza-
24 tion, any agent of the organization who has primary responsibility for
25 the discharge of the duty is legally accountable for an omission to
26 perform the required act to the same extent as if the duty were im-
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28 (c) When a person is liable for an offense under this section,
29 the person is subject to any sentence authorized by law, including

1 imprisonment.

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5 by operating, navigating, or piloting a tank vessel with criminal
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7 hazardous substance and the release could cause serious physical
8 injury to another person or damage in an amount exceeding \$100,000 to
9 property of another.

10 (b) Negligent operation of a tank vessel is a class C felony.

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A M E N D M E N T # _____

IN THE HOUSE

TO: CS HB 315 (JUD) [Chenowith 2/5/90 #1239hE]

Page 1, line 6 - 7:

Delete "to liability and penalties under state criminal
law,"

Page 1, line 8:

Delete ", "

Page 1, line 11:

Delete "and"

Page 1, line 13:

Delete "of oil or"

Page 1, line 14, after "hazardous waste":

Insert

"and for failure to provide information or
providing false information about oil or a
hazardous substance when required by law"

A M E N D M E N T #___

IN THE HOUSE

TO: CS HB 315 (JUD) [Chenowith 2/5/90 #1239hE]

Page 2, lines 4 - 5:

delete all material and insert

"by operating, navigating, or piloting a tank vessel with criminal negligence, the person creates a substantial risk of a release of a hazardous substance and the release could cause serious physical injury to another person or damage in an amount exceeding \$100,000 to property of another."

A M E N D M E N T # _____

OFFERED IN THE HOUSE

BY REP. MILLER

TO: CS HB 315 (JUD) [Chenowith 2/5/90 #1239hE]

Page 2, line 14, after "carries,":

Insert "as a means of transportation on water,"

A M E N D M E N T #___

IN THE HOUSE

TO: CS HB 315 (JUD) [Chenowith 2/5/90 #1239hE]

Page 3, line 10, after "(b)":

Delete all material, and insert "A"

Page 3, line 23:

Delete "and (b)"

A M E N D M E N T # _____

IN THE HOUSE

TO: CS HB 315 (JUD) [Chenowith 2/5/90 #1239hE]

Page 3, line 24, following "AS 46.03.740,":

Delete "," and insert "or"

Page 3, lines 27 - 29, following "plan":

Delete all material

Page 4, line 1:

Delete "chapter, AS 46.04, or AS 46.09,"

go1239hE
Chenoweth
2/23/90

Original sponsor(s): Rules/Governor

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STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3810


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 1, 1990

SUBJECT: Draft CSHB 315 (Judiciary)

TO: Representative Peter Goll, Co-Chair
House Judiciary Committee
Attn: Hayden Kaden

FROM: Jack Chenoweth
Legislative Counsel 

The draft requested is enclosed.

The change of the penalty in AS 46.03.790(b) from a misdemeanor to a class C felony for a criminal activity that has "knowingly" as a culpability factor, an intentional violation, suggests that the committee should also give some attention to AS 46.03.800(b) and 46.03.810(b). There, a refusal to abate--another crime that requires proof of knowledge, an intentional violation--retains the misdemeanor penalty, albeit with a continuing cross-reference to this section that is being amended. Conforming amendments should be made to AS 46.03.800(b) and 46.03.810(b) to make those crimes that are intentional violations into felonies.

In AS 46.03.790(d), bill section 5, the second of the three criminal elements did not require the activity under an oil discharge contingency plan to be tied to an actual discharge of oil. Absent the connection, since the crime is defined by the magnitude of the spill, one could not be sure which penalty--the misdemeanor or the felony--applied. I drafted to incorporate a discharge provision.

On page 1, at line 16: the text from the Department of Law speaks of "any agent . . . who has primary responsibility." Is it conceivable that more than one agent could be said to have primary responsibility? I think not, and would prefer "the agent . . . who has primary responsibility" if there were only one person, or "an agent . . . who has responsibility" if the provision were intended to be applicable to more than one person.

JC:pl
WKP1/082

Enclosure

go1239hE
Chenoweth
2/5/90

Original sponsor(s): Rules/Governor

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6 For an Act entitled: "An Act relating to liability and penalties under
7 state criminal law."

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

9 * Section 1. AS 11.16 is amended by adding a new section to read:

10 Sec. 11.16.140. CRIMINAL LIABILITY OF AN INDIVIDUAL FOR ORGAN-
11 IZATION CONDUCT. (a) A person is criminally liable for conduct that
12 the person performs or causes to be performed in the name of, or in
13 behalf of, an organization to the same extent as if that conduct were
14 performed in the person's own name or behalf.

15 (b) Whenever a duty to act is imposed by law upon an organiza-
16 tion, any agent of the organization who has primary responsibility for
17 the discharge of the duty is legally accountable for an omission to
18 perform the required act to the same extent as if the duty were im-
19 posed by law directly upon the agent.

20 (c) When a person is liable for an offense under this section,
21 the person is subject to any sentence authorized by law, including
22 imprisonment.

23 * Sec. 2. AS 46.03 is amended by adding a new section to read:

24 Sec. 46.03.742. NEGLIGENT OPERATION OF TANK VESSEL. (a) A
25 person commits the crime of negligent operation of a tank vessel when,
26 with criminal negligence, the person endangers a person or property by
27 operating, navigating, or piloting a tank vessel.

28 (b) Negligent operation of a tank vessel is a class C felony.

29 (c) In this section,

1 (1) "criminal negligence" has the meaning given in AS 11.-
2 81.900;

3 (2) "hazardous substance" has the meaning given in AS 46.-
4 03.826;

5 (3) "tank vessel" means

6 (A) a vessel that is constructed or adapted to
7 carry, or that carries, a hazardous substance in bulk as cargo or
8 cargo residue;

9 (B) the vessel that propels the tank vessel if the
10 tank vessel is a barge or other vessel that is not self-propel-
11 led.

12 * Sec. 3. AS 46.03.790(a) is amended to read:

13 (a) Except as provided in (d) [(d) - (f)] of this section, a
14 person is guilty of a class A misdemeanor if the person with criminal
15 negligence

16 (1) [WHO NEGLIGENTLY] violates a provision of this chapter,
17 AS 46.04, or AS 46.09, [OR OF] a regulation or [, LAWFUL] order of the
18 department, or a permit, approval, or acceptance, or a term or condi-
19 tion of a permit, approval, or acceptance issued under this chapter,
20 AS 46.04, or AS 46.09;

21 (2) fails to provide information or provides false informa-
22 tion required by AS 46.03.755, AS 46.04, or AS 46.09, or by a regula-
23 tion adopted by the department under AS 46.03.755, AS 46.04, or AS 46.-
24 09; or

25 (3) makes a false statement or representation in an appli-
26 cation, label, manifest, record, report, permit, or other document
27 filed, maintained, or used for purposes of compliance with AS 46.03.-
28 250 - 46.03.314 applicable to hazardous wastes or a regulation adopted
29 by the department under AS 46.03.250 - 46.03.314 [IS GUILTY OF A CLASS

1 B MISDEMEANOR].

2 * Sec. 4. AS 46.03.790(b) is amended to read:

3 (b) Except as provided in (d) [(d) - (f)] of this section, a
4 person is guilty of a class C felony if the person [WHO] knowingly

5 (1) violates a provision of this chapter, AS 46.04, or
6 AS 46.09, [OR OF] a regulation or [, LAWFUL] order of the department,
7 or a permit, approval, or acceptance, or a term or condition of a
8 permit, approval, or acceptance issued under this chapter, AS 46.04,
9 or AS 46.09;

10 (2) transports hazardous waste to a facility without a
11 permit required by AS 46.03.250 - 46.03.314; or

12 (3) treats, stores, or disposes of hazardous waste without
13 a permit required by AS 46.03.250 - 46.03.314 [IS GUILTY OF A CLASS A
14 MISDEMEANOR].

15 * Sec. 5. AS 46.03.790(d) is amended to read:

16 (d) Notwithstanding (a) and (b) of this section, a person who
17 with criminal negligence discharges oil in violation of AS 46.03.740,
18 who, when required by an oil discharge to comply with the provisions
19 of an oil discharge contingency plan approved under AS 46.04.030,
20 fails to comply with the plan, or who fails to adequately clean up a
21 discharge of oil when required to do so by a regulation adopted by the
22 department under this chapter, AS 46.04, or AS 46.09, is guilty of

23 (1) a class C felony if the oil discharge is 100,000 bar-
24 rels or more;

25 (2) a class A misdemeanor if the oil discharge is less than
26 100,000 barrels [FAILS TO PROVIDE OR FALSELY STATES INFORMATION RE-
27 QUIRED UNDER AS 46.03.755, AS 46.04, OR AS 46.09 IS GUILTY OF A MISDE-
28 MEANOR AND, UPON CONVICTION, IS PUNISHABLE BY A FINE OF NOT MORE THAN
29 \$25,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH.

1 EACH UNLAWFUL ACT CONSTITUTES A SEPARATE OFFENSE].

2 * Sec. 6. AS 46.03.790 is amended by adding a new subsection to read:

3 (g) In this section,

4 (1) "barrel" has the meaning given in AS 46.04.900;

5 (2) "criminal negligence" has the meaning given in AS 11.-
6 81.900;

7 (3) "knowingly" has the meaning given in AS 11.81.900.

8 * Sec. 7. AS 46.03.790(e) and 46.03.790(f) are repealed.
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A M E N D M E N T # _____

IN THE HOUSE

TO: CS HB 315 (JUD) [Chenowith 2/5/90 #1239hE]

Page 2, lines 4 - 5:

Delete all material and insert

"by operating, navigating, or piloting a tank vessel with criminal negligence, the person creates a substantial risk of a release of a hazardous substance and the release could cause serious physical injury to another person or damage in an amount exceeding \$100,000 to property of another."

A M E N D M E N T # ____

OFFERED IN THE HOUSE

BY REP. MILLER

TO: CS HB 315 (JUD) [Chenowith 2/5/90 #1239hE]

Page 2, line 14, after "carries,":

Insert "as a means of transportation on water,"

A M E N D M E N T # _____

IN THE HOUSE

TO: CS HB 315 (JUD) [Chenowith 2/5/90 #1239hE]

Page 3, line 10, after "(b)":

Delete all material, and insert "A"

Page 3, line 23:

Delete "and (b)"

A M E N D M E N T #___

IN THE HOUSE

TO: CS HB 315 (JUD) [Chenowith 2/5/90 #1239hE]

Page 3, line 24, following "AS 46.03.740,":

Delete "," and insert "or"

Page 3, lines 27 - 29, following "plan":

Delete all material

Page 4, line 1:

Delete "chapter, AS 46.04, or AS 46.09,"

AMENDMENT

To: CSHB 327 (SA)

By: Rep. Martin

On page 2, line 27,28, delete "a year" and insert in its place:

"per campaign"

On page 3, line 1, delete "a year" and insert in its place:

"per campaign"

On page 3, line 13, delete "a year" and insert in its place:

"per campaign"

AMENDMENT

To: CSHB 327 (SA)

By: Rep. Martin

On page 2, line 29, following "A group", insert
"or individual"

On page 3, line 1, following "more than" insert
"an aggregate total of"

On page 3, line 1, following "party", delete "and" and insert
", including all of"

AMENDMENT

To: CSHB 327 (SA)

By: Rep. Martin

On Page 3, line 3, following the word "campaign", insert:

"A candidate may not accept more than an aggregate total of \$5,000 per campaign from the members of a professional or trade association, group or organization."

A M E N D M E N T #___

IN THE HOUSE

TO: CS HB 315 (JUD) [Chenowith 2/5/90 #1239hE]

Page 1, line 6 - 7:

Delete "to liability and penalties under state criminal
law,"

A M E N D M E N T # _____

OFFERED IN THE HOUSE

BY REP. MILLER

TO: CS HB 315 (JUD) [Chenowith 2/5/90 #1239hE]

Page 2, line 14, after "carries,":

Insert "as a means of transportation on water,"

A M E N D M E N T # ___

IN THE HOUSE

TO: CS HB 315 (JUD) [Chenowith 2/5/90 #1239hE]

Page 3, line 10, after "(b)":

Delete all material, and insert "A"

Page 3, line 23:

Delete "and (b)"

A M E N D M E N T # _____

IN THE HOUSE

TO: CS HB 315 (JUD) [Chenowith 2/5/90 #1239hE]

Page 3, line 24, following "AS 46.03.740,":

Insert "or"

Page 3, lines 27 - 29, following "plan":

Delete all material

Page 4, line 1:

Delete "chapter, AS 46.04, or AS 46.09"

A M E N D M E N T #___

IN THE HOUSE

TO: CS HB 315 (JUD) [Chenowith 2/5/90 #1239hE]

Page 2, line 4:

Delete "endangers a person or property"

Page 2, line 5, after "tank vessel":

Insert:

"creates a substantial risk of of a
release of a hazardous substance and the
release could cause serious physical
injury to another person, or damage in an
amount exceeding \$100,000 to property of
another"

H B

3/6

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 26, 1989

FURTHER REFERRALS:

Date of Committee Action: 1/26/90

The JUDICIARY Committee considered:

HB 316

HOUSE BILL NO. 316

[CRIMINAL FINES FOR ORGANIZATIONS]

"An Act relating to fines imposed in criminal cases against organizations."

RECOMMENDATIONS:

- [] be replaced with _____ [] the same title
- [] be replaced with _____ [] a new title
- [] have attached amendment(s)
- [X] do pass
- [] do not pass
- [] no recommendation
- [] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- [] fiscal impact _____
- [] zero fiscal note _____
- [X] zero with analysis LAW

- [] fiscal note(s) _____
- [] zero fiscal note(s) _____
- [] zero fn/analysis _____

SIGNING DO PASS:

Neil Gunberg

Mike D...

H. Ellis

M. K. Miller

Cliff Davidson

Peter J...

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend
<i>Terry Martin</i>		<input checked="" type="checkbox"/>	

Neil Gunberg *Peter J...*
 Chairman's Signature

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

cc
94B 316

April 26, 1989

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to fines imposed in criminal cases against organizations.

This bill is intended to increase the maximum fine that a court may impose against a corporate defendant convicted of violating a criminal law of the State of Alaska. The need for this legislation arises from our review of criminal statutes in light of the Prince William Sound oil spill.

Under current law, when a defendant that is an organization is convicted of a criminal offense, the court may impose a fine not exceeding the greater of \$100,000, or three times the pecuniary gain realized by a defendant as a result of an offense. In other words, in cases where a defendant has not realized pecuniary gain, the maximum possible fine is \$100,000. I believe that a fine of \$100,000 is insufficient to deter organizations from engaging in criminal activity that poses a significant risk of damage to persons or property, yet does not involve pecuniary gain.

This bill allows a court to assess a fine equal to two times the damage or loss caused by the defendant to another, or to the property of another, as a result of a criminal offense. Since it is unlikely, in most situations, that an organization could be sentenced to serve time in jail, the intent of the bill is to provide a significant financial penalty for organizations that violate the criminal laws of this state and in so doing cause damage to Alaskans. A fine imposed under this section would not limit a victim's ability to obtain restitution under AS 12.55.045.

I urge your favorable action on this bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steve Cowper".

Steve Cowper
Governor

FISCAL NOTE

REQUEST:

Revision Date: January 11, 1990
 Title: "An Act relating to fines imposed in criminal cases against organizations."
 Sponsor: House Rules/Governor
 Requestor: House Judiciary

Agency Affected: Department of Law
 BRU: Prosecution
 Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: January 11, 1990
 Approved by Commissioner: Douglas B. Baily, Attorney General Date: January 11, 1990
 Agency: Department of Law

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 316

This bill amends AS 12.55.035(c) by adding a new paragraph, which provides that upon a criminal conviction that includes a fine, a defendant that is an organization may be sentenced to pay a fine in an amount which is two times the damage or loss caused by the defendant to another or to the property of another as a result of the offense. This is a change in a sentencing provision, which occurs after a conviction, and it should not have a direct fiscal impact on the Department of Law.

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to fines... in criminal cases against organizations."
 Sponsor: Rules/By Req. of the Governor
 Requestor: Governor's Office/OMB

Agency Affected: Department of Law
 BRU: Prosecution
 Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director
 Division: Administrative Services

Phone: 464-3672
 Date: April 24, 1989

Approved by Commissioner: Douglas B. Bailly, Attorney General
 Agency: Department of Law

Date: April 24, 1989

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

This bill amends AS 12.55.035(c) by adding a new paragraph, which provides that upon a criminal conviction that includes a fine, a defendant that is an organization may be sentenced to pay a fine in an amount which is two times that damage or loss caused by the defendant to another or to the property of another as a result of the offense. This is a change in a sentencing provision and it should not have a direct fiscal impact on the Department of Law.

H B

3 1 7

HOUSE COMMITTEE REPORT

(5)

Date Referred: April 26, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 2/15/90

The TRANSPORTATION Committee considered:

HB 317

HOUSE BILL NO. 317 [DWI/COMMERCIAL SHIP/PLANE/VEHICLE/TRAIN]
"An Act relating to operating a commercial motor vehicle carrying a cargo of hazardous substances, a vessel or an aircraft for compensation, or a train, while under the influence of an intoxicating substance; and relating to the duties of the operator immediately after an accident or unlawful discharge of oil or another hazardous substance."

RECOMMENDATIONS:

- be replaced with CS HB 317 the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: House Transportation letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Date/Dept)

- fiscal impact _____ fiscal note(s) _____
- zero fiscal note _____ zero fiscal note(s) _____
- zero with analysis how _____ zero fn/analysis _____

SIGNING DO PASS:

Richard J. Weber
Bill Hinds
Drew D. Roman
Ernie Kukura

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
<u>Richard J. Weber</u> with letter of intent			

Richard J. Weber
Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: March 2, 1990
Title: "An Act relating to operating a motor vehicle... hazardous substance."
Sponsor: House Transportation
Requestor: House Judiciary

Agency Affected: Department of Law
BRU: Prosecution
Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Peques, Director

Division: Administrative Services

Approved by Commissioner: Douglas B. Bailly, Attorney General

Agency: Department of Law

Phone: 465-3672

Date: March 2, 1990

Date: March 2, 1990

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 317 (TRANS)

The Transportation Committee substitute for HB 317 makes several amendments to AS 28.35 to provide criminal penalties for operating a commercial vehicle under the influence of an intoxicating or a controlled substance. The bill provides that a person operating a commercial vehicle shall be presumed to be under the influence of an intoxicating substance if that person has a blood alcohol reading of 0.04 percent or more, determined by a chemical test taken within six hours after the alleged offense was committed.

The normal blood alcohol level for a presumption that a person is under the influence of an intoxicating substance is 0.10 percent. Under the bills' provisions, a person commits the crime of operating a commercial vehicle under the influence of an intoxicating substance if the person operates or drives a commercial motor vehicle, or operates a vessel or an aircraft for compensation, or operates a train with a blood alcohol level of 0.04 percent or more. Such persons shall be considered to have given consent to a chemical test or tests for the purpose of determining the alcohol and controlled substance content of the person's blood or breath, if the aircraft, commercial motor vehicle, train or vessel causes damage to a person or property, or unlawfully discharges a hazardous substance.

The bill also provides that the operator of a commercial vehicle, which is involved in an accident resulting in damage to person or property, or that unlawfully discharges a hazardous substance, shall give immediate notice of the accident to law enforcement authorities, remain at the scene until a police officer arrives, and may not consume an alcoholic beverage or controlled substance during the six hours following the accident. Knowingly operating a commercial vehicle while under the influence of an intoxicating substance and failure to comply with the reporting requirements would become class A misdemeanors, under the bill.

The number of prosecutions of this new offense is expected to be small and would usually be based upon the results of a chemical test taken after an incident or accident involving a commercial vehicle. For this reason, fiscal note costs are not being requested.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
 Title: DWI/commercial ship/plane/ BRU: Alaska State Troopers
vehicle/train
 Sponsor: House Rules Component: Detachments
 Requestor: House Transportation

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER/PROG RCPT						
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 additional fiscal impact upon the Department of Public Safety is expected in connection with the investigation of accidents involving commercial vehicle, planes, and trains because the Alaska State Troopers currently responds to and investigates most of these accidents now. The impact of investigations of commercial vessel accidents is not known at this time.

Prepared by: Francis C. Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 02/14/90

Approved by Commissioner: Arthur English Date: 2-14-90
 Agency: Department of Public Safety Page 1 of 1

JAL
2/14/90

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Dept. of Administration
 Title: "An Act relating to operating a motor vehicle, vessel, ...to the open container law..." BRU: Public Defender Agency
 Sponsor: Rules/Governor Components: Third Judicial District
 Requestor: Transportation Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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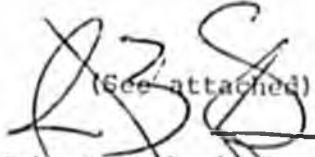
FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
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) FY 90 impact is zero.


 (See attached)

Prepared by: John B. Salemi, Public Defender Phone: 279-7541
 Division: Public Defender Agency Date: 3/5/90
 Approved by Commissioner: Frank Baxter Date: 3/6/90
 Agency: Department of Administration

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 317

This bill appears to be an outgrowth of the Exxon Valdez accident. Although it changes various aspects of the laws governing driving/operating a vehicle, aircraft, etc. while intoxicated, the most provocative provision is found in Section 6, which lowers the percent of alcohol that must be found in a person's blood to trigger the presumption of being under the influence of an intoxicating substance. This new presumption applies only to an individual who is alleged to have operated a train, commercial vehicle, aircraft or vessel while intoxicated. It does not apply to the standard driving offense as we know it (driving one's personal vehicle). As such, no fiscal impact is contemplated on this agency.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Corrections
 Title: "An Act relating to operating a motor vehicle, vessel, aircraft or train..." BRU: _____
 Sponsor: Rules Components: _____
 Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND						
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)

Susan E. Knighton

Prepared by: Susan E. Knighton, Director Phone: 465-3376
 Division: Administrative Services Date: 03-06-90

Approved by Commissioner: J. Humphrey-Barnett Date: 03-06-90
 Agency: Department of Corrections

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

go1269hE-
Ford
2/14/90

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE TRANSPORTATION COMMITTEE

2 CS FOR HOUSE BILL NO. 317 (Transportation)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to operating a motor vehicle, ves-
7 sel, aircraft, or train; to the open container law;
8 and to the duties of a commercial motor vehicle
9 operator immediately after an accident or unlawful
10 discharge of a hazardous substance."

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

12 * Section 1. AS 28.35.030(a) is amended to read:

13 (a) Except as provided in AS 28.35.039, a [A] person commits the
14 crime of driving while intoxicated if the person operates or drives a
15 motor vehicle or operates an aircraft or a watercraft

16 (1) while under the influence of intoxicating liquor, or
17 any controlled substance [LISTED IN AS 11.71.140 - 11.71.190];

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

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

26 * Sec. 2. AS 28.35.031(a) is amended to read:

27 (a) Except as provided in (g) of this section, a [A] person who
28 operates or drives a motor vehicle in this state or who operates an
29 aircraft as defined in AS 28.35.030(h)(1) or who operates a watercraft

1 as defined in AS 28.35.030(h)(2) shall be considered to have given
2 consent to a chemical test or tests of the person's breath for the
3 purpose of determining the alcoholic content of the person's blood or
4 breath if lawfully arrested for an offense arising out of acts alleged
5 to have been committed while the person was operating or driving a
6 motor vehicle or operating an aircraft or a watercraft while intox-
7 icated. The test or tests shall be administered at the direction of a
8 law enforcement officer who has reasonable grounds to believe that the
9 person was operating or driving a motor vehicle or operating an air-
10 craft or a watercraft in this state while intoxicated.

11 * Sec. 3. AS 28.35.031 is amended by adding a new subsection to read:

12 (g) A person who operates an aircraft, commercial motor vehicle,
13 train, or vessel is considered to have given consent to a chemical
14 test or tests for the purpose of determining the alcohol and con-
15 trolled substance content of the person's blood or breath if lawfully
16 arrested for a violation of AS 28.35.039, or if the aircraft, commer-
17 cial motor vehicle, train, or vessel causes damage to a person or
18 property or unlawfully discharges a hazardous substance. The test or
19 tests shall be administered at the direction of a law enforcement
20 officer who has reasonable grounds to believe that the aircraft,
21 commercial motor vehicle, train, or vessel caused damage to a person
22 or property or unlawfully discharged a hazardous substance, or that
23 the person violated AS 28.35.039.

24 * Sec. 4. AS 28.35.032(f) is amended to read:

25 (f) Refusal to submit to the chemical test of breath authorized
26 by AS 28.35.031(a) or (g) is a class A misdemeanor.

27 * Sec. 5. AS 28.35.033(c) is amended to read:

28 (c) The provisions of (a) and (g) of this section may not be
29 construed to limit the introduction of any other competent evidence

1 bearing upon the question of whether the person was or was not under
2 the influence of intoxicating liquor.

3 * Sec. 6. AS 28.35.033 is amended by adding a new subsection to read:

4 (g) Upon the trial of a civil or criminal action or proceeding
5 arising out of acts alleged to have been committed by a person in
6 violation of AS 28.35.039, the following rules apply with regard to
7 the amount of alcohol in the person's blood or breath at the time
8 alleged:

9 (1) if there was less than 0.04 percent by weight of alco-
10 hol in the person's blood, or less than 40 milligrams of alcohol per
11 100 milliliters of the person's blood, or less than 0.04 grams of
12 alcohol per 210 liters of the person's breath, that fact does not give
13 rise to any presumption that the person was or was not under the
14 influence of an intoxicating substance, but that fact may be con-
15 sidered with other competent evidence in determining whether the
16 person was under the influence of an intoxicating substance;

17 (2) if there was 0.04 percent or more by weight of alcohol
18 in the person's blood, or 40 milligrams or more of alcohol per 100
19 milliliters of the person's blood, or 0.04 grams or more of alcohol
20 per 210 liters of the person's breath, it is presumed that the person
21 was under the influence of an intoxicating substance.

22 * Sec. 7. AS 28.35.035(a) is amended to read:

23 (a) If a person is under arrest for an offense arising out of
24 acts alleged to have been committed while the person was driving a
25 motor vehicle while intoxicated, or in violation of AS 28.35.039, and
26 that arrest results from an accident that causes death or physical
27 injury to another person, a chemical test may be administered without
28 the consent of the person arrested to determine the amount of alcohol
29 or controlled substance in that person's breath or blood.

1 * Sec. 8. AS 28.35.035(b) is amended to read:

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

9 * Sec. 9. AS 28.35 is amended by adding a new section to article 2 to
10 read:

11 Sec. 28.35.039. OPERATING A TRAIN, COMMERCIAL VEHICLE, AIRCRAFT
12 OR VESSEL WHILE INTOXICATED. (a) A person commits the crime of
13 operating a commercial vehicle while intoxicated if the person oper-
14 ates or drives a commercial motor vehicle, operates a vessel or an
15 aircraft for compensation, or operates a train

16 (1) while under the influence of intoxicating liquor, or a
17 controlled substance;

18 (2) when, as determined by a chemical test taken within six
19 hours after the alleged offense was committed, there is 0.04 percent
20 or more by weight of alcohol in the person's blood or 40 milligrams or
21 more of alcohol per 100 milliliters of blood, or when there is 0.04
22 grams or more of alcohol per 210 liters of the person's breath; or

23 (3) while under the combined influence of intoxicating
24 liquor and a controlled substance.

25 (b) Operating a commercial vehicle while intoxicated is a class
26 A misdemeanor.

27 (c) If a person refuses the request of a law enforcement officer
28 to submit to a chemical test under AS 28.35.031(g), after being advis-
29 ed by the officer that the refusal may be used against the person in a

1 civil or criminal action or proceeding arising out of an act alleged
2 to have been committed by the person in violation of (a) of this
3 section, and that the refusal is a misdemeanor, a chemical test may
4 not be given, except as provided by AS 28.35.035.

5 (d) The refusal of a person to submit to a chemical test under
6 (c) of this section is admissible evidence in a civil or criminal
7 action or proceeding arising out of an act alleged to have been com-
8 mitted by the person in violation of (a) of this section.

9 * Sec. 10. AS 28.35 is amended by adding a new section to read:

10 Sec. 28.35.055. ACTION OF OPERATOR OF COMMERCIAL VEHICLE IMMEDI-
11 ATELY AFTER ACCIDENT. (a) A person who operates a commercial motor
12 vehicle, or who operates a vessel or an aircraft for compensation, or
13 who operates a train, that is involved in an accident resulting in
14 damage to a person or property, or that unlawfully discharges a haz-
15 ardous substance

16 (1) shall immediately stop the vehicle, vessel, aircraft,
17 or train at the scene of the accident or unlawful discharge, and shall
18 remain at the scene of the accident or unlawful discharge until a
19 peace officer arrives at the scene;

20 (2) shall immediately, by the quickest means of communica-
21 tion, give notice of the accident or unlawful discharge to the local
22 police department if the accident or unlawful discharge occurs within
23 a municipality, or if the accident does not occur within a municipali-
24 ty, to the Department of Public Safety; and

25 (3) may not consume an alcoholic beverage or controlled
26 substance during the six hours following the accident or unlawful
27 discharge unless the person has first submitted to a chemical test or
28 tests of the person's blood or breath as required under AS 28.35.-
29 031(g).

1 (b) A person who knowingly violates this section is guilty of a
2 class A misdemeanor.

3 (c) This section does not relieve the operator of a commercial
4 motor vehicle from the obligations and penalties imposed under AS 28.-
5 35.060 - 28.35.130.

6 * Sec. 11. AS 28.35 is amended by adding a new section to read:

7 ARTICLE 6. GENERAL PROVISIONS.

8 Sec. 28.35.900. DEFINITIONS. In this chapter, except as other-
9 wise provided,

10 (1) "alcoholic beverage" means spirituous, vinous, malt, or
11 other fermented or distilled liquids, whatever the origin, that are
12 intended for human consumption as a beverage and that contain alcohol,
13 whether produced commercially or privately;

14 *should include*
15 *Taxis* (2) "commercial motor vehicle" means a motor vehicle or a
16 combination of a motor vehicle and one or more other vehicles used to
17 transport passengers or property on a highway, vehicular way or area,
18 that (A) has a gross vehicle weight rating or gross combination weight
19 rating greater than 10,000 pounds; (B) is designed to transport more
20 than 15 passengers, including the driver; or (C) is used in the trans-
21 portation of hazardous substances; "commercial motor vehicle" does not
22 include an emergency or fire vehicle that is necessary to the preser-
23 vation of life or property, a farm vehicle, or a recreational vehicle
24 used exclusively for noncommercial purposes;

25 (3) "commercial purposes" means an activity for which a
26 person receives direct monetary compensation or an activity for which
27 a person receives no direct monetary compensation but is incidental to
28 and done in furtherance of the person's primary business;

29 (4) "compensation" means payment for services including
wages or other remuneration but not including reimbursement for actual

1 expenses;

2 (5) "controlled substance" has the meaning given in AS 11.-
3 71.900;

4 (6) "discharge" means spilling, leaking, pumping, pouring,
5 emitting, emptying, or dumping;

6 (7) "farm vehicle" means a vehicle owned and operated by a
7 farmer and used to transport agricultural products, farm machinery, or
8 farm supplies a distance of not more than 150 miles to or from the
9 vehicle owner's farm; "farm vehicle" does not include a vehicle used
10 as a common or contract motor carrier;

11 (8) "gross combination weight rating" means the value
12 specified by the manufacturer as the loaded weight of a combination
13 vehicle, except that, if a value has not been specified by the man-
14 ufacturer, the gross combination weight rating is determined by adding
15 the gross vehicle weight rating of the power unit and the total weight
16 of the towed unit and the load on the towed unit;

17 (9) "gross vehicle weight rating" means the value specified
18 by the manufacturer as the loaded weight of a single vehicle;

19 (10) "hazardous substance" has the meaning given in AS 46.-
20 03.826;

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

24 (12) "operate a train" means to be employed as an engineer,
25 a conductor, or a brakeman and to be on a train under power inside
26 this state;

27 (13) "operate a vessel" means to be employed as a pilot,
28 master, or crewmember on a vessel in any water, fresh or salt, inland
29 or coastal, inside the territorial limits or under the jurisdiction of

1 this state;

2 (14) "vessel" means all foreign or domestic vessels, except

3 (A) a cannery tender, fishing tender, or fishing
4 vessel of not more than 500 gross tons, when actually engaged in
5 the fishing industry; and

6 (B) a vessel of not more than 5,000 gross tons used in
7 processing and assembling fishery products, when not carrying
8 flammable or combustible liquid cargo in bulk.

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Amendment #1

HB 317

Page 6, line 3, following "scene":

"or authorizes the person to leave the scene, unless leaving the scene of the accident or unlawful discharge is necessary to avoid property damage, personal injury, or further discharge"

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 317

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to operating a commercial motor
7 vehicle ~~carrying a cargo of hazardous substances~~, a
8 vessel or an aircraft for compensation, or a train,
9 while under the influence of an intoxicating sub-
10 stance; and relating to the duties of the operator
11 immediately after an accident or unlawful discharge
12 of oil or another hazardous substance."

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

14 * Section 1. AS 28.35.030(a) is amended to read:

15 (a) Except as provided in AS 28.35.039, a [A] person commits the
16 crime of driving while intoxicated if the person operates or drives a
17 motor vehicle or operates an aircraft or a watercraft

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

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

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

28 * Sec. 2. AS 28.35.031(a) is amended to read:

29 (a) Except as provided in (g) of this section, a [A] person who

1 operates or drives a motor vehicle in this state or who operates an
2 aircraft as defined in AS 28.35.030(g)(1) or who operates a watercraft
3 as defined in AS 28.35.030(g)(2) shall be considered to have given
4 consent to a chemical test or tests of the person's breath for the
5 purpose of determining the alcoholic content of the person's blood or
6 breath if lawfully arrested for an offense arising out of acts alleged
7 to have been committed while the person was operating or driving a
8 motor vehicle or operating an aircraft or a watercraft while intox-
9 icated. The test or tests shall be administered at the direction of a
10 law enforcement officer who has reasonable grounds to believe that the
11 person was operating or driving a motor vehicle or operating an air-
12 craft or a watercraft in this state while intoxicated.

13 * Sec. 3. AS 28.35.031 is amended by adding a new subsection to read:

14 (g) A person who operates an aircraft, commercial motor vehicle
15 carrying a cargo of hazardous substances, train, or vessel as defined
16 in AS 28.35.900 is considered to have given consent to a chemical test
17 or tests for the purpose of determining the alcohol and controlled
18 substance content of the person's blood or breath* if the aircraft, *insert*
19 commercial motor vehicle, train, or vessel causes damage to person or
20 property or unlawfully discharges oil or another hazardous substance.
21 The test or tests shall be administered at the direction of a law
22 enforcement officer who has reasonable grounds to believe that the
23 aircraft, commercial motor vehicle, train, or vessel caused damage to
24 person or property or unlawfully discharged oil or ^a another hazardous
25 substance, or that the person was operating a commercial vehicle while
26 under the influence of an intoxicating substance as described in
27 AS 28.35.039. As used in this subsection, ^{hazardous substance} "oil" has the meaning given
28 in AS 46.04.120. *46.04.120*

29 * Sec. 4. AS 28.35.033(c) is amended to read:

1 (c) The provisions of (a) and (e) of this section may not be
2 construed to limit the introduction of any other competent evidence
3 bearing upon the question of whether the person was or was not under
4 the influence of intoxicating liquor.

5 * Sec. 5. AS 28.35.033 is amended by adding a new subsection to read:

6 (e) Upon the trial of a civil or criminal action or proceeding
7 arising out of acts alleged to have been committed by a person while
8 operating a commercial vehicle while under the influence of an intoxic-
9 icating substance as described in AS 28.35.039, the following rules
10 apply with regard to the amount of alcohol in the person's blood or
11 breath at the time alleged:

12 (1) if there was less than ^{0.04} 0.01 percent by weight of alco-
13 hol in the person's blood, or less than ⁴⁰ 1 milligram of alcohol per 100
14 milliliters of the person's blood, or less than ^{0.04} 0.01 grams of alcohol
15 per 210 liters of the person's breath, that fact does not give rise to
16 any presumption that the person was or was not under the influence of
17 an intoxicating substance, but that fact may be considered with other
18 competent evidence in determining whether the person was under the
19 influence of an intoxicating substance;

20 (2) if there was ^{0.04} 0.01 percent or more by weight of alcohol
21 in the person's blood, or ⁴⁰ 1 milligram or more of alcohol per 100
22 milliliters of the person's blood, or ^{0.04} 0.01 grams or more of alcohol
23 per 210 liters of the person's breath, it is presumed that the person
24 was under the influence of an intoxicating substance.

25 * Sec. 6. AS 28.35.035(a) is amended to read:

26 (a) If a person is under arrest for an offense arising out of
27 acts alleged to have been committed while the person was driving a
28 motor vehicle while intoxicated, or while the person was operating a
29 commercial vehicle under the influence of an intoxicating substance as

1 described in AS 28.35.039, and that arrest results from an accident
2 that causes death or physical injury to another person, a chemical
3 test may be administered without the consent of the person arrested to
4 determine the amount of alcohol or controlled substance in that per-
5 son's breath or blood.

6 * Sec. 7. AS 28.35.035(b) is amended to read:

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

14 * Sec. 8. AS 28.35 is amended by adding a new section to Article 2 to
15 read:

16 Sec. 28.35.039. OPERATING COMMERCIAL VEHICLE WHILE UNDER INFLU-
17 ENCE OF INTOXICATING SUBSTANCE. (a) A person commits the crime of
18 operating a commercial vehicle while under the influence of an intox-
19 icating substance if the person operates or drives a commercial motor
20 vehicle carrying a cargo of hazardous substances, or operates a vessel
21 or an aircraft for compensation, or operates a train

22 (1) while under the influence of intoxicating liquor, or
23 any controlled substance listed in AS 11.71.140 - 11.71.190; *as defined in*
AS 11.71.900

24 (2) when, as determined by a chemical test taken within six
25 hours after the alleged offense was committed, there is ^{0.04} 0.01 percent
26 or more by weight of alcohol in the person's blood or ²⁰ 1 milligram or
27 more of alcohol per 100 milliliters of blood, or when there is ^{0.04} 0.01
28 grams or more of alcohol per 210 liters of the person's breath; *or*

29 (3) when the person has consumed an alcoholic beverage or

*1/11
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Once identified
Jaguar*

controlled substance within the preceding 12 hours; or

(4) while under the combined influence of intoxicating liquor and another substance. *a controlled substance as defined in AS 11-71-900*

(b) Operating a commercial vehicle while under the influence of an intoxicating substance is a class A misdemeanor.

(c) If a person refuses the request of a law enforcement officer to submit to a chemical test under AS 28.35.031(g), after being advised by the officer that the refusal may be used against the person in a civil or criminal action or proceeding arising out of an act alleged to have been committed by the person while operating a commercial vehicle under the influence of an intoxicating substance under (a) of this section, and that the refusal is a misdemeanor, a chemical test may not be given, except as provided by AS 28.35.035.

(d) The refusal of a person to submit to a chemical test under (c) of this section is admissible evidence in a civil or criminal action or proceeding arising out of an act alleged to have been committed by the person while operating a commercial vehicle under the influence of an intoxicating substance as described in (a) of this section.

(e) Refusal to submit to a chemical test authorized by AS 28.35.031(g) is a class A misdemeanor.

* Sec. 9. AS 28.35 is amended by adding new sections to read:

Sec. 28.35.055. ACTION OF OPERATOR OF COMMERCIAL VEHICLE IMMEDIATELY AFTER ACCIDENT. (a) A person who operates a commercial motor vehicle carrying a cargo of hazardous substances, or who operates a vessel or an aircraft for compensation, or who operates a train, that is involved in an accident resulting in damage to person or property, or that unlawfully discharges oil or another hazardous substance

(1) shall immediately stop the vehicle, vessel, aircraft,

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1 or train at the scene of the accident or unlawful discharge, and shall
2 remain at the scene of the accident or unlawful discharge until a
3 peace officer arrives at the scene;

4 (2) shall immediately, by the quickest means of communica-
5 tion give notice of the accident or unlawful discharge to the local
6 police department if the accident occurs within a municipality, other-
7 wise to the Department of Public Safety; and

8 (3) may not consume an alcoholic beverage or controlled
9 substance during the 12 hours following the accident unless the person
10 has submitted to a chemical test or tests of the person's blood or
11 breath as required under AS 28.35.031(g).

12 (b) A person who knowingly violates this section is guilty of a
13 class A misdemeanor.

14 (c) This section does not relieve the operator of a commercial
15 motor vehicle from the obligations and penalties imposed under AS 28.-
16 35.060 - 28.35.130.

17 ARTICLE 6. GENERAL PROVISIONS.

18 Sec. 28.35.900. DEFINITIONS. In this chapter,

19 (1) "alcoholic beverage" means spirituous, vinous, malt, or
20 other fermented or distilled liquids, whatever the origin, that are
21 intended for human consumption as a beverage and that contain alcohol,
22 whether produced commercially or privately;

23 (2) "commercial motor vehicle" means a motor vehicle or a
24 combination of a motor vehicle and one or more other vehicles

25 (A) used in commerce to transport passengers or prop-
26 erty upon a highway or vehicular way in the state; and

27 (B) which has a gross vehicle weight rating or gross
28 combination weight rating greater than 10,000 pounds;

29 (3) "compensation" means payment for services including

Handwritten note:
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