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19 AAC 10.590. NONCOMPLIANCE. The commission will, in its discretion, waive compliance with the regulations of this chapter if substantial rights of interested parties are not prejudiced by the waiver. A deviation from the procedures set forth in this chapter is waived by the commission unless the commission or a party objects. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.590 is based on a former version of 19 AAC 10.150.

19 AAC 10.600. DETERMINATION OF PROCEDURE. If there are alternative procedures for effecting a boundary change, the commission will select the procedure which it considers most appropriate under the circumstances. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.600 is based on a former version of 19 AAC 10.160.

19 AAC 10.610. CERTIFICATION OF BOUNDARY CHANGES. Within 30 days after a boundary change becomes effective, the department will prepare a certificate of the new boundaries. The department will transmit duplicate originals of the certificate to the municipality or municipalities whose boundaries have been changed. The department will also record a copy of the certificate in the recording district in which the boundary change has taken place. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.610 is based on a former version of 19 AAC 10.170.

19 AAC 10.620. PUBLIC MEETINGS. The commission will, in its discretion, and before considering a petition requesting a boundary change, require municipalities whose boundaries are proposed to be changed to conduct meetings or hearings in the area to acquaint residents with the purposes sought to be accomplished and the benefits which are expected to be derived by residents should the boundary change be made and to solicit public opinions on the proposed boundary change. The commission will, in its discretion, require that tran-

scripts or minutes be taken of the meetings or hearings for the commission's use and require that the municipality certify to the commission that such meetings or hearings were conducted as directed by the commission. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.620 is based on a former version of 19 AAC 10.180.

Article 14. Procedures for Boundary Changes by Local Action

Section
630. Application of provisions
640. Filing of petition
642. Department review of petition
645. Review by local boundary commission
650. Annexation without election
660. Annexation or detachment by election
670. Notice of election
680. Conduct of election
690. Form of ballot
700. Canvassing of election
710. Effective date of boundary change
720. Annexation of municipally owned property
730. Timeliness

19 AAC 10.630. APPLICATION OF PROVISIONS. The provisions of 19 AAC 10.460 — 19 AAC 10.530 apply to boundary changes under 19 AAC 10.630 — 19 AAC 10.730. However, at least 25 percent of the registered voters of the territory must petition for a boundary change under 19 AAC 10.630 — 19 AAC 10.730, rather than the 10-percent requirement provided by 19 AAC 10.470(3). The provisions of 19 AAC 10.630 — 19 AAC 10.730 apply to local boundary changes authorized under AS 29.68.040(b). (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.630 is based on former versions of 19 AAC 15.010, 19 AAC 15.020, 19 AAC 15.030, 19 AAC 15.170, 19 AAC 15.180 and 19 AAC 15.190.

19 AAC 10.640. FILING OF PETITION. A petition initiated by 25 percent or more of the registered voters of the territory shall be filed with the clerk of the municipality affected by the proposed boundary change. Within 14 calendar days of the receipt of the petition, the governing body of the municipality shall conduct a public review of the petition. Within 14 calendar days following the public review, the municipality shall forward the petition, exhibits, and related materials, together with a report of its findings and recommendations concerning the petition, to the department. A petition initiated by the governing body of a municipality shall be forwarded, along

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Authority: Art. X, S
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Authority: Art. X, Sec
AS 44.47.56

with other required materials, directly to the department. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.640 is based on former versions of 19 AAC 15.050 and 19 AAC 15.210.

19 AAC 10.642. DEPARTMENT REVIEW OF PETIT. ON. (a) The department shall review the petition and brief and determine whether they are in substantially the proper form and contain the factual information required by 19 AAC 10.630 — 19 AAC 10.730. If the department determines that the petition is deficient as to form or content, it will return the defective petition for correction or completion. If the department determines that the petition is deficient as to form or content, it will return the defective petition for correction or completion. If the department determines that the petition is in substantial compliance with these regulations, it will so notify the petitioner.

(b) The action required by the department in (a) of this section will be accomplished in no more than 30 working days from the date the department receives the petition. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.642 is based on former versions of 19 AAC 15.060 and 19 AAC 15.220.

19 AAC 10.645. REVIEW BY LOCAL BOUNDARY COMMISSION. (a) A decision of the commission on a petition submitted under 19 AAC 10.630 — 19 AAC 10.730 will be rendered within 30 days of receipt of the petition from the department. The commission will, in its discretion, act by telephone or mail. However, noncompliance with the time limit established in this subsection for commission action will not affect the validity of a resulting boundary change.

(b) Notwithstanding other provisions of this chapter, if the commission determines that a proposed boundary change is of compelling public importance or if the interests of an individual or organization may not be properly protected the commission will, in its discretion and without limitation, require that the petition be acted upon pursuant to 19 AAC 10.450 — 19 AAC 10.620. If the determination is made, the commission will schedule public hearings within 45 days, and will notify the petitioner of its determination. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.645 is based on former versions of 19 AAC 15.070 and 19 AAC 15.230.

19 AAC 10.650. ANNEXATION WITHOUT ELECTION. (a) Notwithstanding the provisions of 19 AAC 10.660 — 19 AAC 10.710, an area adjoining a municipality may be annexed by ordinance of the municipality if all property owners and registered voters within the area petition the assembly or council for annexation.

(b) If an annexation petition is submitted pursuant to AS 29.68.010(b)(3) and this chapter, the department will determine whether the requisite signatures have been obtained. The department shall notify the assembly or council whether the petition is in accordance with this section and if it is in accordance with this section and the commission does not object to the annexation within 30 days, the annexation is effective upon the date of the notification.

(c) For the purposes of this section, "property owners" means all persons or entities necessary to convey fee title to the real property in question but does not include mortgagees, trustees, beneficiaries under deeds of trust, or the federal, state, or any municipal government. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.650 is based on a former version of 19 AAC 15.140.

19 AAC 10.660. ANNEXATION OR DETACHMENT BY ELECTION. Not less than 60 nor more than 90 days after the notification required by 19 AAC 10.670, the assembly or council shall submit the proposition to the voters in the area proposed to be annexed or detached. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.660 is based on former versions of 19 AAC 15.080 and 19 AAC 15.240.

19 AAC 10.670. NOTICE OF ELECTION. The assembly or council of a municipality which receives a petition for a boundary change under 19 AAC 10.660 — 19 AAC 10.710 shall give notice of an election by publication in a newspaper of general circulation in the territory proposed to be annexed or detached once each week for a

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(1) the proposition to be submitted;

(2) the boundaries of the territory to be annexed or detached; and

(3) any provision or agreement governing distribution of liabilities or assets. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.670 is based on a former version of 19 AAC 15.090.

19 AAC 10.680. CONDUCT OF ELECTION. Except as otherwise provided in this chapter, the assembly or council of the municipality affected by the proposed boundary change shall conduct the election in the manner prescribed by its election code. The municipality whose boundaries would be affected shall pay the election costs. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.680 is based on former versions of 19 AAC 15.100 and 19 AAC 15.260.

19 AAC 10.690. FORM OF BALLOT. The assembly or council shall place upon the ballot the following proposition: "Shall the following described territory be annexed (detached) to (from) the (name of municipality) .....? Yes or No." (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.690 is based on former versions of 19 AAC 15.110 and 19 AAC 15.270.

19 AAC 10.700. CANVASSING OF ELECTION. The assembly or council shall meet within 10 days of the election and canvass the votes cast. The assembly or council shall issue a certificate showing the number of votes cast in favor of the proposal and the number of

votes cast against. The certificate, together with the ballots cast, shall immediately be filed with the clerk of the municipality and a copy forwarded to the department. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.700 is based on former versions of 19 AAC 15.120 and 19 AAC 15.280.

19 AAC 10.710. EFFECTIVE DATE OF BOUNDARY CHANGE. A boundary change is effective upon the approval by a majority of the voters voting on the question residing within the territory and upon the subsequent filing of the certificate required by 19 AAC 10.700. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.710 is based on former versions of 19 AAC 15.130 and 19 AAC 15.290.

19 AAC 10.720. ANNEXATION OF MUNICIPALLY OWNED PROPERTY. (a) Notwithstanding other provisions of this chapter, municipally owned property adjoining the municipality may be annexed by ordinance without voter approval.

(b) Within five days of adoption of an ordinance annexing territory pursuant to (a) of this section, one certified copy of the ordinance, giving the date of adoption, shall be filed with the department. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.720 is based on a former version of 19 AAC 15.150.

19 AAC 10.730. TIMELINESS. A proposal under this chapter which is defeated in an election may not be included in a like proposal covered by a subsequent petition under this chapter filed within one year after the first petition. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.730 is based on former versions of 19 AAC 15.160 and 19 AAC 15.300.

Article 15. Procedures for Step Annexation

Section	Section
735. Applicability	770. Voting
740. Petition	780. Ordinances
750. Local election	790. Borough services
760. Taxes	

19 AAC 10.735. APPLICABILITY. The provisions of 19 AAC 10.740 — 19 AAC 10.790 apply to annexation proceedings initiated pursuant to AS 44.47.567(a)(4). (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

19 AAC 10.740. PETITION. An annexation petition submitted to the commission may request that during each of not more than five full fiscal years after the annexation takes effect, the rate of taxation for city services on the annexed properties shall be at a specified percentage of the full city tax rate. The proposal shall provide an increase from fiscal year to fiscal year until the percentage equals 100 percent of the full city tax rate. The city may not tax annexed property at a rate other than the percentage authorized for that year; however, the city pursuant to AS 29.53.405 may levy taxes on the annexed area at a different percentage from that authorized for the year in question, if the difference is attributed to the cost of provision in the territory of a special service not supported by the general city levy. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.740 is based on a former version of 19 AAC 10.190.

19 AAC 10.750. LOCAL ELECTION. The commission will require the governing body of the city to which annexation is sought to submit the proposal to the voters in the area to be annexed. The city shall bear the expenses of the election and shall submit to the department or commission the information and reports that either may require before, during, or after the election. The election is not valid unless the notices pertaining to the election, the way in which the proposal is phrased on the ballot, and the timing of the election have been approved by the commissioner. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.750 is based on a former version of 19 AAC 10.200.

19 AAC 10.760. TAXES. The percentage of city taxes on newly annexed properties is determined as follows:

(1) city services to be provided during each year are scheduled by the petitioners or the commission in consultation with city officials;

(2) the cost of each service as a percentage of the gross general fund expenditure for the fiscal year immediately preceding the annexation is computed;

(3) newly annexed residents pay a percentage of the full city property tax rate equal to the total percentage cost of all services provided. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.760 is based on a former version of 19 AAC 10.210.

19 AAC 10.770. VOTING. Residents in the newly annexed territory have the same voting privileges as other city residents. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.770 is based on a former version of 19 AAC 10.220.

19 AAC 10.780. ORDINANCES. City sales-tax ordinances and all other city ordinances except those applicable to city services not yet provided in the territory are immediately effective in the annexed territory. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.780 is based on a former version of 19 AAC 10.230.

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19 AAC 10.790. BOROUGH SERVICES. The city must accept immediate responsibility for non-areawide borough services currently provided in the annexed territory. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.790 is based on a former version of 19 AAC 10.240.

Article 16. Procedures for Merger or Consolidation of Municipalities

Section
800. Procedure for merger or consolidation
810. Effective date of merger or consolidation

19 AAC 10.800. PROCEDURE FOR MERGER OR CONSOLIDATION. (a) In considering a merger or consolidation petition, the commission will use the same process as set out in 19 AAC 10.630 — 19 AAC 10.700 for considering local action annexations except that the election on the question of merger or consolidation shall be counted in the following two categories:

(1) votes cast within cities; and

(2) votes cast outside cities.

(b) To pass, the merger or consolidation proposal must be approved in both categories set out in (1) and (2) of this section. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

19 AAC 10.810. EFFECTIVE DATE OF MERGER OR CONSOLIDATION. If the proposal to consolidate or merge two or more municipalities is approved as required by 19 AAC 10.800, the merger or consolidation is effective 90 days from the filing of the certificate of election results with the commissioner. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Article 17. Miscellaneous Provisions

Section
820. Severability of parts of regulations
830. General provisions
840. Definitions

19 AAC 10.820. SEVERABILITY OF PARTS OF REGULATIONS. The provisions of this chapter are severable, and if any provision of this chapter is declared invalid by a court of competent jurisdiction, the invalidity does not affect the remaining provisions of this chapter. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.820 is based on a former version of 19 AAC 20.010.

19 AAC 10.830. GENERAL PROVISIONS. (a) Nothing in this chapter may be construed to require the commission to approve a boundary change which the commission determines not to be in the best interest of sound local government.

(b) The enumeration in this chapter of standards or factors for consideration may not be construed as exclusive of other factors which, in the view of the commission, are relevant to the decision in question.

(c) Before incorporation of a borough located wholly or partially within an existing borough or of a city located wholly or partially within an existing city may become effective, the commission will submit the proposed incorporation to the legislature in the manner provided for boundary changes. In addition, the commission will, in its discretion, condition the incorporation on approval by a majority of the voters of the existing borough or city. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.830 is based on a former version of 19 AAC 20.020.

19 AAC 10.835. COMPETING PETITIONS. (a) The commission will, in its discretion, act concurrently upon separate petitions filed under this chapter which embrace some or all of the same territory.

(b) Notwithstanding other provisions of this chapter, the commission will, in its discretion, postpone proceedings on a petition filed under this chapter in order to allow concurrent action on another existing or anticipated petition that will embrace some or all of the same territory. Except as provided in (c) of this section, in order to be considered concurrently, a competing petition must be received by the department within 90 days after the date of receipt of an earlier petition that embraces some or all of the same territory.

(c) In addition to the 90-day filing period specified in (b) of this section, the commission will, in its discretion, allow a 60-day or less

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extension for receipt of a competing petition to be considered concurrently with an earlier petition. An extension under this subsection will not be granted by the commission if it will delay legislative action under art. X, sec. 12 of the Alaska Constitution on the earlier petition if the earlier petition is approved by the commission under this chapter.

(d) In considering competing petitions concurrently, the commission will give precedence to the petition that, in the judgment of the commission, serves the best interest of the state. In determining the best interest of the state, the commission will consider, but is not limited to, the following factors:

(1) an existing or prospective municipality's ability to better serve the territory embraced by the competing petitions;

(2) the extent to which approval of a petition would affect the financial viability of the existing or prospective municipalities that have filed competing petitions; and

(3) the extent to which each competing petition satisfies the standards required under this chapter for the action proposed by the competing petitions.

(e) The provisions of this section supersede the common law relating to the doctrine of prior jurisdiction to control competing petitions submitted under this chapter. (Eff. 8/19/88, Reg. 107)

Authority: Art. X, Sec. 12, Ak. Const.
AS 29.06.040

19 AAC 10.840. DEFINITIONS. (1) "annexation" means an alteration of municipal boundaries which adds territory;

(2) "commission" means the Local Boundary Commission;

(3) "commissioner" means the Commissioner of the Department of Community and Regional Affairs;

(4) "contiguous" means territory which is immediately adjacent to or which is separated only by natural or artificial barriers which do not disrupt or impede the supplying or receiving of municipal services;

(5) "date of annexation, detachment, merger or dissolution" means the day on which the proposed boundary change becomes effective pursuant to Article X, Section 12, of the Alaska Constitution;

(6) "department" means the Department of Community and Regional Affairs;

(7) "detachment" means an alteration of municipal boundaries which deletes territory;

(8) "differential taxation zone" means an area within the boundaries of a city which receives a different level of service than that

provided generally within the city and in which property is taxed at a rate proportionate to the level of service provided;

(9) "full municipal services" means all of the services that a municipality is providing to its residents with revenues raised from the municipality's general mill levy or sales or use taxes;

(10) "general mill levy" means the highest rate at which property in the municipality is taxed but does not include special assessments;

(11) "legislature" means a regular session of the Alaska State Legislature;

(12) "mandatory powers" means those powers required to be exercised by a municipality under AS 29;

(13) "municipality" means an organized borough, including a unified local government, or an incorporated city of any class;

(14) "non-areawide power" means a power exercised by an organized borough in all areas within the borough outside cities, but does not mean a power exercised on a service-area basis if the service area does not include the entire borough area outside cities;

(15) "party" means a petitioner or a respondent who files an answering brief;

(16) "territory" means the area or areas affected by the proposed boundary change. (Eff. 2/21/82, Register 81)

Authority: Art X, Sec. 12, Ak. Const.
AS 44.47.567
AS 44.47.980

Editor's notes. — 19 AAC 10.840 is based on a former version of 19 AAC 20.030.

CHAPTER 15. BOUNDARY CHANGES BY LOCAL ACTION

Editor's notes. — As of 2/21/82, 19 AAC 05, 19 AAC 10, 19 AAC 15 and 19 AAC 20 have been reorganized under 19 AAC 10. The history notes for sections within the old chapters have not been carried forward in the reorganization.

CHAPTER 20. MISCELLANEOUS PROVISIONS

Editor's notes. — As of 2/21/82, 19 AAC 05, 19 AAC 10, 19 AAC 15, and 19 AAC 20 have been reorganized under 19 AAC 10. The history notes for sections within the old chapters have not been carried forward in the reorganization.

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40. Legal Assistance
42. Coastal Energy I
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CHAPTER 3
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Section
10. (Repealed)
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Involuntary Unemployment Insurance
Fact Sheet

Involuntary unemployment insurance (IUI) is a coverage that provides protection for the borrower against loss of employment during the term of the loan due. Coverage arises if unemployment is due to lay-off, termination, lockout, labor dispute, or strike. If the borrower becomes unemployed as a result of one of the foregoing, IUI steps in to make payments on the customer's loan. It offers protection similiar to credit disability insurance. Coverage is not provided for voluntary unemployment, retirement, accident or sickness, discharge for misconduct and some other exclusions.

IUI reduces the risk to both the lender and the borrower. It reduces the risk to the lender of credit losses where the customer is unemployed involuntarily. It also permits the customer to continue making his or her loan payments while involuntarily unemployed, keeping the customer out of default and with credit intact. IUI is an additional protection for the customer as well as the lender.

Most policies contain eligibility requirements such as

1) the borrower must be employed by salary or wages for at least 30 hours per week,
2) the borrower cannot be self employed or
3) the borrower must have been employed for 12 consecutive months prior to the effective date of the coverage.

Many policies also contain a schedule of benefits which provide a maximum number of monthly benefits ranging from four on a 12 month loan to twelve on a 60 month loan.

IUI is usually limited to loans which have an equal monthly payment of $500 or less. In these instances, there is no limit to the loan term. Other IUI loans, with equal monthly payments of $750 or less, have terms of sixty (60) months or less.

IUI is a coverage which cannot be required of any borrower; it is strictly an optional insurance coverage, but one for which there is a growing demand. Five years ago IUI was virtually an unknown product in the consumer finance industry, but today Norwest Financial has the program available in twenty-one states. Many Western states, including California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah and Washington, already permit companies to offer IUI to their customers.

Premiums for IUI, based on rates used in other states where the program is available, are about 3.5% of the coverage amount. The following examples demonstrate typical situations and charges:

* Jack Green has been a full-time laborer for an Alaskan pipeline company for three years. Last year, he took out a $2,500 loan from his local finance company. The loan term is for 24 months with monthly payments of $124.81. Since Mr. Green's employment situation is somewhat tenuous, he also purchased IUI. His total premium is 3.5% x $2,500 or $87.50. Mr. Green recently became involuntarily unemployed due to a labor dispute and IUI coverage stepped in to make his loan payments.

* A local fish processing company in Anchorage employs Mary Harrison. She has worked 30-35 hours per week there for over a year. Mary has a $1,500 loan with ABC Finance Co. of Anchorage. The term of the loan is 24 months with a monthly premium of $74.16. Due to the seasonal nature of the fisheries business, she also purchased IUI on her loan as a precaution. Ms. Harrison's total IUI payment equals 3.5% x $1,500, or $52.50. When the company laid off some of its employees, Mary was one of them. She would not have been able to continue her loan payments had it not been for the IUI coverage.

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(9) may convert from a mutual bank to a capital stock bank under a plan approved by the department. (§ 15 a ch 132 SLA 1960; am § 3 ch 47 SLA 1980)

Sec. 06.15.360. Additional powers. The enumeration of powers in AS 06.15.350 does not exclude other powers appropriate for the achievement of the objects and purposes of a mutual bank under this chapter. With the approval of the department, a mutual bank may provide for the exercise of other powers in its bylaws, rules or regulations. (§ 15 b ch 132 SLA 1960)

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Sec. 06.15.370. Definitions. In this chapter

(1) "conventional loan" means a loan secured by a first mortgage on unencumbered real property or leasehold estate other than a loan guaranteed or insured by a federal agency;

(2) "department" means the Department of Commerce and Economic Development;

(3) "financial institution" means a thrift institution, a commercial bank, a trust company, or an insurance company;

(4) "mutual bank" means a mutual savings bank chartered under this chapter;

(5) "thrift institution" means a cooperative bank, a homestead association, a mutual savings and loan association, or a mutual bank. (§ 3 ch 132 SLA 1960; am § 22 ch 218 SLA 1976)

Revisor's notes. — Reorganized in 1988 to alphabetize the defined terms.

Sec. 06.15.380. Short title. This chapter may be cited as the Mutual Savings Bank Act. (§ 1 ch 132 SLA 1960)

Chapter 20. Alaska Small Loans Act.

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Sec. 06.20.010. License required. A person may not engage in the business of making loans of money, credit, goods, or things in action in the amount or of the value of $25,000 or less and charge, contract for, or receive on the loan a greater rate of interest, discount, or consideration than the lender would be permitted by law to charge if the person were not a licensee under this chapter, except as authorized by this chapter and without first obtaining a license from the department. (§ 2 ch 73 SLA 1955; am § 5 ch 94 SLA 1969; am § 23 ch 218 SLA 1976; am § 1 ch 71 SLA 1978; am § 1 ch 63 SLA 1980)

Cross references. — For the legal rate of interest in Alaska, see AS 45.45.010.

Opinions of attorney general. — This chapter licenses only persons engaging in "the business of making loans of money, credit, goods, or things in action in the amount or of the value of $1,000 (now $25,000) or less . . ." and who wish to charge a greater rate of interest than that otherwise provided by law. 1963 Op. Atty. Gen. No. 16.

Those required to be licensees under this chapter are "lenders of money." 1963 Op. Atty. Gen. No. 16.

Collateral references. — 54 Am. Jur 2d, Moneylenders and Pawnbrokers, §§ 8-12, 17.

9 C.J.S. Banks and Banking § 1045.

Statutes regulating business of making small loans. 69 ALR 581; 125 ALR 743; 149 ALR 1428.

Discrimination in taxation of business of small loans. 93 ALR 209.

Statutory limit on period of small loans. 58 ALR2d 1263.

Sec. 06.20.020. Application for license. Application for a license shall be in writing under oath, and in the form prescribed by the department, and must contain the name and the residence and business address of the applicant, the district and municipality with street and number, if any, where the business is to be conducted and other information as the department may require. If the applicant is a copartnership or association, the application must contain the residence and business address of each member; if the applicant is a corporation, the application must contain the residence and business address of each officer and director. (§ 3 ch 73 SLA 1955)

Sec. 06.20.030. Fees and charges. (a) Investigation expenses incurred by the department in processing an application for licensure shall be charged to and paid by the applicant under AS 06.01.010. At the time of submitting the application to the commissioner, the applicant shall pay to the department $400 in partial payment of those investigation expenses incurred by the department. If the investigation expenses incurred by the department do not exceed $400, the remainder shall be promptly refunded to the applicant.

(b) An applicant shall pay to the department at the time of submitting an application a sum, in addition to that specified in (a) of this section, of $200 as an annual license fee for a period terminating on the last day of the current calendar year. If the application is filed after June 30, the additional sum is $100.

(c) The license fee required by this section is in place of the fee under AS 43.70 (Alaska Business License Act). (§ 3 ch 73 SLA 1955; am § 44 ch 169 SLA 1978)

Revisor's notes. — The word "fee" was substituted for "tax levied" in (c) of this section in 1988 to conform the language to changes in AS 43.70 in 1978 and 1984.

Sec. 06.20.040. Liquid assets required. An applicant shall prove, in form satisfactory to the department, that the applicant has available for the operation of the business at the location specified in the application, liquid assets of at least $20,000. (§ 3 ch 73 SLA 1955; am § 2 ch 71 SLA 1978)

Sec. 06.20.050. Bond. The applicant shall file with the application a bond to be approved by the department in which the applicant shall be the obligor, in the sum of $5,000 with one or more sureties. The bond shall be for the use of the state and any person who may have a cause of action against the obligor under this chapter. The bond must state that the obligor will faithfully conform to and abide by the provisions of this chapter and of all regulations lawfully adopted by the department, and will pay to the state and to any person all money that may become due or owing to the state or to the person from the applicant under this chapter. (§ 4 ch 73 SLA 1955; am § 3 ch 71 SLA 1978)

Sec. 06.20.060. Issuance of license. Upon the filing of the application, the payment of the fees and the approval of the bond, the department shall issue a license to the applicant if it finds upon investigation that (1) the financial responsibility, experience, character, and general fitness of the applicant and of its members if the applicant is a copartnership or association, and of its officers and directors if the applicant is a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chap-

ter, and (2) allowing the applicant to engage in business will promote the convenience and advantage of the community in which the business is to be conducted, and (3) the applicant has available for the operation of the business at the specific location liquid assets of at least $20,000. The foregoing facts are conditions precedent to the issuance of a license under this chapter. The license permits the applicant to make loans in accordance with this chapter at the location specified in the application. The license remains in full force and effect until it is surrendered by the licensee or revoked or suspended. If the department denies the application, it shall notify the applicant of the denial, bill the applicant for any outstanding expenses incurred by the department during the investigation and return the bond if those expenses have been paid. The department shall approve or deny every application for license within 60 days from the filing of the application with the fees and the approved bond. If the application is denied, the department shall, within 20 days thereafter, serve upon the applicant a copy of the written decision and findings. The decision and findings may be reviewed in the manner provided in AS 44.62.560 and 44.62.570 (Administrative Procedure Act). (§ 5 ch 73 SLA 1955; am § 4 ch 71 SLA 1978; am § 45 ch 169 SLA 1978)

Sec. 06.20.070. Form, posting, and transfer of license. The license must state the address at which the business is to be conducted and the full name of the licensee. If the licensee is a copartnership or association, the license must state the names of its members, and if a corporation, the date and place of its incorporation. The license shall be conspicuously posted in the place of business of the licensee. The license is not transferable or assignable. (§ 6 ch 73 SLA 1955)

Sec. 06.20.080. Additional bond. If at any time the department finds that the bond is unsatisfactory for any reason, it may require the licensee to file, within 10 days after the receipt of a written demand therefor, an additional bond complying with the provisions of AS 06.20.050. (§ 7 ch 73 SLA 1955)

Sec. 06.20.090. Places of business. (a) A licensee may maintain only one place of business under the license. The department may issue more than one license to the same licensee upon compliance with the provisions of this chapter governing the original issuance of a license.

(b) If a licensee changes the place of business to another location within the same municipality, the licensee shall give written notice to the department in advance. The department shall attach the written notice of the change to the license together with the date. Thereafter the licensee may operate the business under the license at the new location. A licensee may not change the place of business to a location

outside the municipality in which the licensee is authorized to do business. (§ 8 ch 73 SLA 1955; am § 5 ch 71 SLA 1978)

Sec. 06.20.100. New bond. On or before December 20 of each year, each licensee shall file a new bond that complies with AS 06.20.050. (§ 9 ch 73 SLA 1955; am § 46 ch 169 SLA 1978)

Sec. 06.20.110. Grounds for revocation of license. The department shall, under the Administrative Procedure Act (AS 44.62), revoke any license issued under this chapter if it finds that

(1) the licensee has failed to pay the annual license fee or to maintain the required bond in effect or has failed to comply with any lawful demand, ruling, or requirement of the department made under and within the authority of this chapter;

(2) the licensee has violated a provision of this chapter or a regulation lawfully adopted by the department under and within the authority of this chapter; or

(3) any fact or condition exists that, if it had existed at the time of the original application for the license, clearly would have constituted ground for denial of the issuance of the license. (§ 10 ch 73 SLA 1955)

Opinions of attorney general. — The act of charging an interest rate in excess of that prescribed in AS 45.45.080(b) on a loan in excess of $1,000 (now $25,000) is grounds for revocation of the lender's small loan license, regardless of whether the loan is consummated or administered in the same place of business. 1963 Op. Atty. Gen. No. 16.

Sec. 06.20.120. Revocation or suspension where licensee has branches. Where a licensee holds more than one license, the department may revoke or suspend any license for which grounds for the action exist. (§ 10 ch 73 SLA 1955)

Sec. 06.20.130. Surrender. A licensee may surrender a license by delivering written notice of the surrender to the department. The surrender does not affect the licensee's civil or criminal liability for acts committed before the surrender. (§ 10 ch 73 SLA 1955)

Sec. 06.20.140. Effect of revocation. A revocation, suspension or surrender of a license does not impair or affect the legally enforceable obligation of any pre-existing contract between the licensee and any borrower. (§ 10 ch 73 SLA 1955)

Sec. 06.20.150. Status of license; reinstatement. Every license remains in force and effect until it is surrendered, revoked, or suspended as provided in this chapter. The department may reinstate, suspend licenses, or issue new licenses to a licensee whose license has been revoked if no fact or condition exists that clearly would have

constituted ground for denial of the issuance of the license by the department. (§ 10 ch 73 SLA 1955)

Sec. 06.20.160. Inspection and examination of licensees. For the purpose of discovering violations of this chapter or securing information required by it under this chapter, the department or its duly designated representative may investigate at any time the loans and business and examine the books, accounts, records, and files used in the business, of every licensee and of every person engaging in the business described in AS 06.20.010, whether the person acts or claims to act as principal or agent, or under or without the authority of this chapter. For that purpose the department and its duly designated representative have free access to the office and place of business, books, accounts, papers, records, files, safes, and vaults of all such persons. The department and all persons duly designated by it may require the attendance and examination under oath of all persons whose testimony it may require relative to the business. (§ 11(b) ch 73 SLA 1955)

Sec. 06.20.170. Annual examination. The department shall examine the affairs, business, office, and records of each licensee at least once each year. Examination fees are to be charged to and paid by the licensee in accordance with AS 06.01.010. The department may maintain an action for the recovery of the costs in any court of competent jurisdiction, with recourse to the bonds referred to in AS 06.20.050 and 06.20.080. (§ 11(c) ch 73 SLA 1955; am § 47 ch 169 SLA 1978)

Sec. 06.20.180. Books and records of licensees. Each licensee shall keep and use in the licensed business those books, accounts, and records that will enable the department to determine whether the licensee is complying with this chapter and with the regulations lawfully adopted by the department under this chapter. The licensee shall preserve the books, accounts, and records, including cards used in the card system, if any, for two years after making the final entry on any recorded loan. (§ 12 ch 73 SLA 1955)

Sec. 06.20.190. Annual reports of licensees. Each licensee shall, on or before March 15 of each year, file a report with the department containing information as the department may reasonably require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by the licensee inside the state. The report shall be made under oath and shall be in the form prescribed by the department, and shall be kept available as a public record. (§§ 11(a), 12 ch 73 SLA 1955)

Sec. 06.20.200. Advertising of misleading statements prohibited. (a) A person may not advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner any statement or representation with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action in the amount or of the value of $25,000 or less, which is false, misleading, or deceptive. The department may order a licensee to desist from conduct that it finds to be in violation of this section.

(b) The department may require rates of charge stated by a licensee to be stated fully and clearly in the manner considered necessary to prevent misunderstanding by prospective borrowers. (§ 13 ch 73 SLA 1955; am § 5 ch 94 SLA 1969; am § 6 ch 71 SLA 1978; am § 2 ch 63 SLA 1980)

Sec. 06.20.210. Use of premises restricted. A licensee may not conduct the business of making loans under this chapter within an office, room, or place of business in which another business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the department upon its finding that the character of the other business is such that the granting of authority would not facilitate evasions of this chapter or the regulations lawfully adopted under this chapter. (§ 14 ch 73 SLA 1955)

Opinions of attorney general. — Neither the purchase of contracts nor the making of loans in excess of $1,000 (now $25,000) may be carried on within the place of business of the licensee without the express permission of the Department of Commerce and Economic Development. 1963 Op. Atty. Gen. No. 16.

Sec. 06.20.220. Transactions limited to licensed premises. A licensee may not transact business or make any loan under this chapter under any name or at any place of business other than that named in the license. (§ 15 ch 73 SLA 1955)

Sec. 06.20.230. Maximum interest permitted. (a) A licensee may lend any sum of money not exceeding $25,000 and may charge, contract for, and receive on the loan interest at a rate not exceeding three percent a month on that part of the unpaid principal balance of a loan not in excess of $850; two percent a month on the unpaid principal balance exceeding $850 but not exceeding $10,000; and at a rate agreed by contract on the remainder of any unpaid principal balance exceeding $10,000 but not exceeding $25,000.

(b) Notwithstanding the provisions of (a) of this section, a licensee who makes open-end loans under this chapter may charge, contract for, and receive interest at a rate not exceeding three percent a month on that part of the unpaid principal balance of a loan not in excess of $850; two percent a month on the unpaid principal balance exceeding

$850 but not exceeding $10,000; and at a rate agreed by contract on the remainder of any unpaid principal balance exceeding $10,000 but not exceeding $25,000.

(c) Interest on loans under (b) of this section shall be computed according to the actuarial method on the entire unpaid principal balance as determined under AS 06.20.285(b). (§ 16(a) ch 73 SLA 1955; am § 5 ch 94 SLA 1969; am § 7 ch 71 SLA 1978; am § 2 ch 84 SLA 1979; am § 3 ch 63 SLA 1980; am §§ 1, 2 ch 99 SLA 1982)

Sec. 06.20.240. Loans for purpose of obtaining higher interest. A licensee may not induce or permit a borrower to split up or divide a loan. A licensee may not induce or permit a person, or a husband and wife jointly or severally, to become obligated, directly or contingently or both, under more than one loan contract at the same time, for the purpose or with the result of obtaining a higher rate of interest than would otherwise be permitted by AS 06.20.230. (§ 16(b) ch 73 SLA 1955)

Sec. 06.20.250. Computation and payment of interest. (a) Interest may not be paid, deducted, or received in advance. Except for open-end loans made under AS 06.20.285, interest shall be computed and paid only on unpaid principal balances and may not be compounded; however, if part or all of the consideration for a loan contract is the unpaid principal balance of a prior loan, the principal amount payable under the loan contract may include any unpaid charges on the prior loan that have accrued within 60 days before the making of the loan contract. The maximum interest permitted on loans made under this chapter shall be computed on the basis of the number of days actually elapsed. For the purpose of these computations a month is any period of 30 consecutive days.

(b) A licensee may compute interest for a loan as provided in this chapter on an interest-bearing or actuarial basis either at the rates stated in AS 06.20.230 or at the single annual percentage rate that would earn the same finance charge as the rates stated in AS 06.20.230 when the debt is paid according to the agreed terms and the calculations made according to the actuarial method.

(c) Except for open-end loans under AS 06.20.285, a licensee may not enter into a contract for a loan that provides for a scheduled repayment of principal over more than the maximum terms set out below opposite the respective size of loans.

Principal amount of loan	Maximum term
up to $1,000	24 and ½ months
Over $1,000 to $2,500	48 and ½ months
Over $2,500 to $5,000	60 and ½ months
Over $5,000 to $25,000	as agreed to by the parties

(§ 16(c) ch 73 SLA 1955; am § 8 ch 71 SLA 1978; am §§ 3, 4 ch 84 SLA 1979; am § 4 ch 63 SLA 1980)

NOTES TO DECISIONS

The basis for determining the accrual of interest is governed by law. Douglas v. Beneficial Fin. Co., 334 F. Supp. 1166 (D. Alaska 1971), rev'd on other grounds, 469 F.2d 453 (9th Cir. 1972).

Sec. 06.20.260. Charges prohibited. (a) A further or other charge or amount for an examination, service, brokerage commission, expense, fee, or bonus or other thing or otherwise may not be directly or indirectly charged, contracted for or received except

(1) lawful fees actually paid out by the licensee to a public officer for filing, recording, or releasing any instrument securing the loan, or for transferring certificate of title to a motor vehicle securing the lien or noting a lien on that certificate;

(2) premiums actually paid out for insurance on any one or combination of the following: pledged property of the borrower, credit life insurance on the life of one or more borrowers, or credit disability insurance to provide indemnity for payments becoming due on the indebtedness;

(3) taxable costs and expenses to which the licensee becomes entitled under general law in any court proceedings to collect a loan or to realize on the security after default;

(4) *[Repealed, § 16 ch 71 SLA 1978.]*

(5) reasonable fees paid by a licensee for appraisals, surveys, and title insurance or reports if the loan is secured by an interest in real estate;

(6) a late payment fee of not more than 10 percent of the payment that is due or $15, whichever is less.

(b) A licensee may collect the charges permitted under (a) of this section at the time when the loan is made or at any time thereafter. If any interest, consideration or charges in excess of those permitted by AS 06.20.230 are charged, contracted for or received, except as the result of an accidental and bona fide error in computation, the contract of loan is modified as follows: all interest, consideration or charges involved are voided and a like amount credited to the debtor on the principal of the loan. If the unpaid principal is less than the total of the interest, consideration and charges, the difference shall be refunded by the lender to the borrower. (§ 16(d) ch 73 SLA 1955; am §§ 9, 16 ch 71 SLA 1978; am § 5 ch 84 SLA 1979; am § 3 ch 99 SLA 1982)

Opinions of attorney general. — "Service charges," being also consideration for the use of money, should be included in calculating the rate of interest, except those fees excluded by this section. 1963 Op. Atty. Gen. No. 16.

NOTES TO DECISIONS

Cited in Douglas v. Beneficial Fin. Co., 469 F.2d 453 (9th Cir. 1972).

Sec. 06.20.270. Requirements for making and payment of loans. Except as provided in AS 06.20.285 for open-end loans, every licensee shall

(1) deliver to the borrower at the time a loan is made a statement containing a printed copy of AS 06.20.230 — 06.20.260 in the English language and showing in clear and distinct terms the amount and date of the loan and its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and the licensee, and the agreed rate of charge;

(2) give to the borrower a plain and complete receipt for all payments made on account of the loan at the time payments are made, specifying the amount applied to interest and the amount, if any, applied to principal, and stating the unpaid principal balance, if any, of the loan;

(3) permit payment to be made in advance in any amount on a contract of loan at any time, but the licensee may apply the advance payment first to all interest in full at the agreed rate up to the date of payment;

(4) upon repayment of the loan in full, mark indelibly every obligation and security signed by the borrower with the word "Paid" or "Cancelled," and release any mortgage, restore any pledge, cancel and return any note, and cancel and return any assignment given to the licensee by the borrower;

(5) display prominently in each licensed place of business a full and accurate schedule, approved by the department, of the charges to be made and the method of computing them. (§ 17 ch 73 SLA 1955; am § 6 ch 84 SLA 1979)

Sec. 06.20.280. Maximum charge by licensee. A licensee may not directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than that which the licensee would be permitted by law to charge if the person were not a licensee under this chapter, upon the loan, use or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit, of the amount or value of more than $25,000. This section applies to any licensee who permits any person, as borrower or endorser, guarantor, or surety for any borrower, or otherwise, to owe directly or contingently or both to the licensee at any time a sum of more than $25,000 on principal.

(§ 18 ch 73 SLA 1955; am § 5 ch 94 SLA 1969; am § 10 ch 71 SLA 1978; am § 5 ch 63 SLA 1980)

Cross references. — For legal rate of interest, see AS 45.45.010.

Opinions of attorney general. — The act of charging an interest rate in excess of that prescribed in AS 45.45.080(b) is grounds for revocation of the lender's small loan license, regardless of whether the loan is consummated or administered in the same place of business. 1963 Op. Atty. Gen. No. 16.

"Service charges," being also consideration for the use of money should be included in calculating the rate of interest except those fees excluded by AS 06.20.260. 1963 Op. Atty. Gen. No. 16.

The bona fide purchase of installment contract paper is an activity distinct from the lending of money, and a discount at any rate is not usurious unless the transfer is merely a cloak for a usurious loan. 1963 Op. Atty. Gen. No. 16.

If the installment contract paper discounted is usurious on its face, then the licensee is in violation of this section in that it is "receiving" the usurious interest, even though it did not directly contract for it. 1963 Op. Atty. Gen. No. 16.

Sec. 06.20.285. Open-end loans. (a) A licensee may make open-end loans not exceeding an aggregate total of $25,000 and may contract for and receive interest on open-end loans as provided in AS 06.20.230, and for other charges permitted under this chapter. Interest on open-end loans may be computed daily or monthly on the unpaid principal balance or the average unpaid principal balance if the interest charged as a result of these computations does not exceed the rates stated in AS 06.20.230 when the interest is computed according to the interest-bearing or actuarial method.

(b) The billing cycle for open-end loans is monthly, and the unpaid principal balance on a certain day is computed by adding to the balance unpaid on the beginning of that day, or the average unpaid daily balance for that billing cycle, all advances and other permissible amounts charged to the borrower and deducting all payments and other credits made or received that day.

(c) A licensee may secure the payment of an open-end loan in the same manner as other loans under this chapter may be secured.

(d) The licensee shall deliver a copy of the open-end loan agreement to the borrower at the time the open-end loan account is opened. The open-end loan agreement must contain the name and address of the licensee and the borrower and must contain disclosures of finance charges and agreed terms as may be required by regulations adopted by the department and the Board of Governors of the Federal Reserve System.

(e) At the end of each billing cycle in which there is an outstanding balance in the account for which a finance charge is imposed, the licensee shall deliver to the borrower a statement in the form required by regulations adopted by the department and the Board of Governors of the Federal Reserve System. This subsection does not apply to accounts that the licensee considers uncollectible or for which an action to collect past due amounts has been filed. (§ 1 ch 84 SLA 1979; am § 6 ch 63 SLA 1980)

Sec. 06.20.287. Credit insurance on open-end loans. (a) A licensee may obtain credit life, credit disability, and property insurance on open-end loans under this chapter. The credit life and credit disability insurance obtained by a licensee shall satisfy the requirements of AS 21.57. The property insurance obtained by a licensee shall satisfy the requirements of AS 21.39 and AS 21.42. The licensee shall comply with AS 21.36.160 and 21.36.165 during all transactions with borrowers involving credit life, credit disability and property insurance.

(b) The licensee shall calculate the charge for credit life or disability insurance in each billing cycle by adding to the unpaid balance in the borrower's account the current monthly premium rate for the coverage required at the rate set under AS 21.57, using the method specified in the loan agreement for determining the unpaid balance.

(c) A licensee may not cancel credit life or disability insurance obtained for an open-end loan if the borrower is delinquent in paying the monthly installments unless an installment is delinquent for 90 days or longer. The licensee shall advance to the insurer amounts necessary to keep the policy in force until the 90-day delinquency period has elapsed, and the borrower's account may be charged for the amounts advanced to the insurer. (§ 1 ch 84 SLA 1979)

Sec. 06.20.290. Purchase of wages for $25,000 or less. For purposes of this chapter, the payment of $25,000 or less in money, credit, goods, or things in action, as consideration for the sale or assignment of, or order for, the payment of wages, salary, commissions, or other compensation for services whether earned or to be earned is considered a loan, and the difference between the payment and the amount of the compensation sold or assigned is considered interest or a charge upon the loan from the date of payment to the date the compensation is payable. Such a transaction is governed by this chapter. (§ 19 ch 73 SLA 1955; am § 5 ch 94 SLA 1969; am § 11 ch 71 SLA 1978; am § 7 ch 63 SLA 1980)

Sec. 06.20.300. Maximum charges by nonlicensee on loans. (a) Except as authorized in this chapter, a person may not directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than that which the person would be permitted by law to charge if the person were not a licensee, upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit of the amount or value of $25,000 or less.

(b) The provisions of (a) of this section apply to any person who, by any device, subterfuge or pretense whatsoever charges, contracts for or receives greater interest, consideration or charges than are authorized by this chapter. (§ 20(a) (b) ch 73 SLA 1955; am § 5 ch 94 SLA 1969; am § 12 ch 71 SLA 1978; am § 8 ch 63 SLA 1980)

Sec. 06.20.310. Effect of illegal interest rate. A loan of the amount or value of $25,000 or less for which a greater rate of interest, consideration or charge than is permitted by this chapter has been charged, contracted for or received, wherever made, may not be enforced in the state, and every person participating in such a loan in the state is subject to this chapter. This section does not apply to loans legally made in a state or territory of the United States that has in effect a regulatory small loan law similar in principle to this chapter. (§ 20(c) ch 73 SLA 1955; am § 5 ch 94 SLA 1969; am § 13 ch 71 SLA 1978; am § 9 ch 63 SLA 1980)

Sec. 06.20.320. Civil and criminal penalties. (a) A licensee or lender who, in the making or collection of a loan contract, does any act that violates AS 06.20.230 — 06.20.260 or 06.20.280 — 06.20.310 shall at the option of the commissioner reimburse the portion of the interest and charges in excess of that provided in those sections, or, in the case of repeated violations of those sections by the licensee, the commissioner may, upon a hearing, require the licensee to adjust the loan contract interest or other charges down to the contract interest limitation specified in AS 45.45.010(a).

(b) Any person, copartnership, association, or corporation, and its members, officers, directors, agents, and employees, who violates or participates in a violation of the provisions of AS 06.20.010, 06.20.180 — 06.20.200, 06.20.230 — 06.20.290, 06.20.300 or 06.20.310 is guilty of a misdemeanor.

(c) If a penalty for failure to comply with financing disclosure requirements under regulations adopted by the Board of Governors of the Federal Reserve System is imposed by the federal authorities, the department may not impose a civil penalty under this section for the same act or omission. (§ 21 ch 73 SLA 1955; am § 14 ch 71 SLA 1978; am § 7 ch 84 SLA 1979)

Sec. 06.20.330. Exemptions. (a) This chapter does not apply to a person doing business under and as permitted by any law of the state or of the United States relating to banks, savings banks, trust companies, building and loan associations, or credit unions.

(b) This chapter does not apply to individual loans by pawnbrokers or loan shops where separate and individual loans do not exceed $200. (§ 22 ch 73 SLA 1955; am § 1 ch 49 SLA 1981)

Sec. 06.20.340. Regulations, findings, and orders; service of notice. (a) The department may adopt general regulations and make specific rulings, demands and findings consistent with this chapter as may be necessary for the proper conduct of business and the enforcement of this chapter.

(b) All notices required or authorized by this chapter to be given or served by the department may be given or served by registered mail and service is considered complete when a true copy is deposited in the post office properly addressed and stamped. (§ 23 ch 73 SLA 1955)

Sec. 06.20.350. Amendment or repeal of chapter. This chapter may be modified, amended, or repealed so as to effect a cancellation or alteration of a license or right of a licensee hereunder, but the cancellation or alteration may not impair or affect the obligation of a preexisting lawful contract between a licensee and a borrower. (§ 24 ch 73 SLA 1955)

Sec. 06.20.360. [Renumbered as AS 06.20.920.]

Sec. 06.20.900. Definitions. In this chapter, unless the context otherwise requires,

(1) "commissioner" means the commissioner of commerce and economic development or a designee of the commissioner;

(2) "department" means the Department of Commerce and Economic Development;

(3) "open-end loan" means a loan made by a licensee under this chapter under an agreement between the licensee and a borrower which provides that

(A) the borrower may obtain advances of money from the licensee from time to time or the licensee may advance money on behalf of the borrower from time to time as directed by the borrower;

(B) the amount of each advance and interest and charges will be added to the borrower's open-end loan account and payments and other credits are deducted from that account;

(C) interest will be computed on the unpaid principal balance or the average unpaid principal balance of the open-end loan account;

(D) the borrower may pay all or any part of the unpaid principal balance of the borrower's open-end loan account or, if the account is not in default, in monthly installments of fixed amounts as provided in the loan agreement; and

(E) the agreement covers open-end loans under this chapter. (§ 15 ch 71 SLA 1978; am § 8 ch 84 SLA 1979)

Sec. 06.20.920. Short title. This chapter may be cited as the Alaska Small Loans Act. (§ 1 ch 73 SLA 1955)

Revisor's notes. — Formerly AS 06.20.360. Renumbered in 1978.

Sec. 45.45.010. Legal rate of interest. (a) The rate of interest in the state is 10.5 percent a year and no more on money after it is due except as provided in (b) of this section.

(b) Interest may not be charged by express agreement of the parties in a contract or loan commitment that is more than five percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District on the day on which the contract or loan commitment is made. A contract or loan commitment in which the principal amount exceeds $25,000 is exempt from the limitation of this subsection.

(c) *[Repealed, § 3 ch 84 SLA 1973.]*

(d) *[Repealed, § 2 ch 94 SLA 1981.]*

(e) *[Repealed, § 4 ch 146 SLA 1974.]*

(f) A bank, credit union, savings and loan institution, pension fund, insurance company or mortgage company may not require or accept any percent of ownership or profits above its interest rate. This subsection does not apply to a loan if the principal amount of the loan is $1,000,000 or more and the term of the loan is five years or more.

(g) Loan contracts and commitments covering one- to four-family dwellings may be prepaid without penalty, except federally insured loans that require a prepayment penalty.

(h) If the limitations on interest rates provided for in this section are inconsistent with the provisions of any other statute covering maximum interest, service charges or discount rates then the provisions of the other statute prevail. (§ 25-1-1 ACLA 1949; am § 20 ch 143 SLA 1968; am § 2 ch 69 SLA 1969; am §§ 1, 2 ch 94 SLA 1969; am §§ 1, 2 ch 239 SLA 1970; am §§ 1 — 3 ch 84 SLA 1973; am §§ 1 — 4 ch 146 SLA 1974; am § 1 ch 110 SLA 1976; am § 1 ch 159 SLA 1976; am § 2 ch 107 SLA 1980; am §§ 1, 2 ch 94 SLA 1981; am § 1 ch 56 SLA 1982)

Cross references. — For maximum rates of interest applicable to: bank credit cards, see AS 06.05.209; bank revolving credit plans, see AS 06.05.208; credit unions, see AS 06.45.060; judgments, see AS 09.30.070; life insurance policy loans, see AS 21.45.080; premium finance agreements, see AS 06.40.120; retail installment contracts, see AS 45.10.120; small loan companies, see AS 06.20.230.

Effect of amendments. — The 1982 amendment, in subsection (f), inserted "credit union" in the first sentence and added the present second sentence.

Legislative history reports. — For report on ch. 84, SLA 1973 (FCCS HCSSB 37), see 1973 Senate Journal Supplement 16, pp. 1 and 2, following p. 766 of the 1973 Senate Journal.

Opinions of attorney general. — It is unlawful for a bank to charge or collect "points" which, when in combination with the interest charged for a loan, would exceed the usury ceiling established by subsection (b). 1979 Ops. Atty Gen. No. 6.

Department of Commerce & Economic Development / POSITION PAPER

SB 322: "An Act authorizing loss of income insurance under the Alaska Small Loans Act."

The department has reviewed SB 322 and makes the following comments:

Consumer lenders licensed under the Alaska Small Loan Act have statutory limitations on the products they can charge for in conjunction with their lending activity. Alaska Statute 06.20.260(a)(2) sets out what premiums for insurance can be included in the loan charges. Consumer finance companies are now asking for the authority to offer, for a fee, an insurance policy for involuntary unemployment. This policy would protect borrowers from loan default if they should lose their job and be unable to continue to make loan payments.

There are prohibitions that would require the insurance as a condition for the loan which provides protection from abuse. Examinations by the department assures compliance. The department has contacted other states where this insurance is offered and can find no incidence of abuse. Many borrowers who use consumer finance companies for a source of funds are subject to job turnover through no fault of their own, thus, could be protected by this type of insurance.

The department does not oppose the passage of HB 322.

Larry Merculieff, Commissioner

Date: 6/2/90

LM/LW/dg16257D
2590a

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SB 322
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:
Title: Authorizing loss of income insurance under the Alaska Small Loans Act
Sponsor: Rodey
Requestor: Senate Judiciary

Agency Affected: Commerce & Economic Dev.
BRU: Banking, Securities and Corporations
Components: Banking

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
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) No fiscal impact for FY 90.

Prepared by: Willis F. Kirkpatrick, Director
Division: Banking, Securities and Corporations
Phone: 465-2521
Date:

Approved by Commissioner: Larry Merculieff
Agency: Department of Commerce & Economic Development
Date: 6-Feb-90

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

LW/dg14403D-1/2590b

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 322
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Authorizing loss of income insurance under the Alaska Small Loans Act
Sponsor: Rodey
Requester: _____

Agency Affected: Commerce & Economic Dev.
BRU: Banking, Securities and Corporations
Components: Banking

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	0	0	0	0	0	0
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.)

Prepared by: Willis F. Kirkpatrick, Director
Division: Banking, Securities and Corporations
Phone: 465-2521
Date: 6-6-89

Approved by Commissioner: Larry Merculieff /w/Sub, for
Agency: Department of Commerce & Economic Development
Phone: 465-2500
Date: 6/6/89

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

4403D-1/060589a

SB 324

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

February 14, 1990

The Honorable Rick Halford
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

Re: Department of Law's comments on SB 324 -- Establishing a medicaid fraud and patient abuse investigation program

Dear Senator Halford:

You have requested the Department of Law's comments on SB 324, which establishes a medicaid provider fraud and patient abuse investigation program. We understand that the bill has been drafted to gain the 90 percent federal match available for allowable services through the federal Office of the Inspector General.

Presently the Department of Health and Social Services (DHSS) conducts a provider abuse and surveillance program and utilizes a new medicaid claim processing computer system to identify cases. DHSS's program is eligible for 50 percent federal match. The Department of Law currently does not have the resources to pursue fraud referrals from DHSS on a priority basis.

The Department of Law agrees with the bill's overall goal that medicaid fraud and patient abuse should be investigated and appropriate legal actions taken. While the Department of Law is always interested in ways to increase its capacity to timely prosecute fraud cases, the department believes that new legislation is not needed to operate a successful medicaid fraud prosecution program in this state.

Existing criminal laws and civil remedies provide ample opportunities to address these issues. Also, new legislation is not necessary for the Department of Law to qualify for federal monies available for such programs at the 90 percent match level. These monies could be utilized by simply including them through the budget process in the Department of Law's FY 91 budget.

FEB 1 . 1990

If the state were to accept the new federal monies at the 90 percent match level, the federal government would place additional restrictions on the design of a fraud program for Alaska. In our research regarding this bill, we found several concerns regarding the desirability of acceptance of those 90 percent federal match monies that we wanted to bring to your attention in your deliberations on this bill. They are as follows:

A. Nonparticipation of Some Western States - Even though the federal government allows 90 percent federal funding for the first three years of operation of approved programs, not all states have opted to participate in the program. Four western states (Idaho, Montana, North Dakota, and Wyoming) with similar populations to Alaska do not presently participate. 1/ Montana had a program which it later dropped when the program was found to be not cost effective. Idaho also had a program but discontinued it approximately three years ago for similar reasons. North Dakota did an administrative study and found that it did not have a sufficient fraud caseload to justify even the minimum federal staffing requirement of three full-time professional people. Even though 38 or 39 states do have a program, we have similar concerns whether a program that meets the requirements for 90 percent federal match funding can be operated on a cost-effective basis in Alaska. Likewise, Oregon, a state with a population several times Alaska's, can only presently justify the minimum staff of three full-time professionals.

B. Stringent Federal Requirements - Federal regulations require a minimum staffing of three full-time upper range positions (attorney, auditor, senior investigator) regardless of caseload. See 42 C.F.R. § 1002.313. Also, we understand that the federal government is currently debating raising the minimum staffing requirements to seven or eight positions. 2/ We have been informed that using part-time positions or assigning unit staff to other duties will not meet the federal requirements for a full-time staff for the unit and

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1/ Several of the nonparticipating states do offer state designed provider fraud and patient abuse investigation programs through 50 percent federal match dollars provided through the medicaid state agency.

2/ Discussions have included the possibility of "grandfathering" in programs at their existing staffing level.

would not be eligible for reimbursement, even though there may be insufficient caseload to keep the staff busy on a full-time basis. See 42 C.F.R. § 1002.319(e)(4). Contracting for these services on an as-needed basis will not meet federal requirements either.

C. Functions That Make Sense for Alaska are Specifically Denied the 90 percent Match - Ninety percent federal match monies are specifically limited to address medicaid provider fraud and patient abuse in health facilities. The 90 percent match monies are not available to assist in investigation or prosecution of claims based on provider abuse or misuse of the system, where fraudulent intent cannot be shown. Any expenditure is subject to audit and could be disallowed "if these cases do not involve substantial allegations or other indications of fraud." See 42 C.F.R. § 1002.319(e)(1). Thus, the state could be in the situation of expending monies on an investigation assuming that 90 percent match would be available, only to be later disallowed, if the "substantial allegations or other indications of fraud" were not shown to the federal government's satisfaction.

Although there are debates about the amount of undiscovered cases of medicaid provider fraud in Alaska, most professionals agree that the potential for undiscovered cases of medicaid provider abuse and misuse of the system, as opposed to actual fraud, is substantially greater, because fraudulent intent need not be shown. Yet, these new federal 90 percent match monies cannot be used to add to the state's prosecution or collection efforts, even though they appear to be a more likely area to yield recoveries for the dollars spent.

Also, due to federal restrictions, key services to the unit's success, such as coordination and utilization of the services of the Alaska State Troopers in the Department of Public Safety, could not be reimbursed by the new 90 percent federal fraud unit monies.

D. Duplication of Efforts - 42 C.F.R. § 1002.311(b) requires the unit to screen and investigate medicaid patient abuse complaints in health care facilities and refer them to appropriate investigative or prosecutive authority. If the claim has no substantial potential for criminal prosecution, the unit would be required to refer the complaint to the DHSS. This practice duplicates efforts now mandated to be done by DHSS to investigate and to screen medicaid patient abuse complaints in health care facilities in Alaska. DHSS makes appropriate referrals for criminal investigation. The 90 percent federal match monies would not be available to review allegations of

patient abuse in non-health facility settings, such as in a doctor's office or in a patient's home care program which DHSS has also identified as a potential problem. In any case, the responsibility for patient abuse investigations could divert the unit resources from reviewing for suspected "white collar" type crimes of providers.

Also, with the unit providing the screening and investigation, as well as prosecuting patient complaints, the Department of Law would be assuming new duties which have been traditionally reserved for state agencies with investigatory personnel or law enforcement responsibilities. Under current practice, the Department of Law has relied on the expertise of these agencies to investigate claims and to refer claims with merit for appropriate action. The federal model for the 90 percent monies requires the Department of Law to handle these claims or complaints differently than it handles other referrals. Also, the requirement would mandate costly attorney involvement at earlier stages, even before a prosecutable case was shown.

E. Federal Funding Participation (FFP) is Limited - For the first three years of an eligible program, the state could receive 90 percent for covered expenditures for a quarter not to exceed the greater of $125,000 or "one quarter of one percent" of the sums expended in the previous quarter in carrying out the medicaid program. 42 C.F.R. § 1002.319(c). At current funding levels, this would amount to a cap of $500,000 per year. The 90 percent federal match automatically drops to 75 percent federal match after three years of operation of the program. Thus, the state's long-term cost for the program may be greater than seen on first analysis. Also, federal funding must be earned by time actually spent on services eligible for the enhanced 90 percent federal funding. As discussed above, the state could be subject to a disallowance if the federal government determined after the expenditure was made that the state did not meet the requirements of the program, while the Department of Law must maintain the same minimum staff to have a potentially qualifying program.

As you can see, the Department of Law has serious reservations about recommending that the legislature pass SB 324 into law. However, if you decide to pursue this legislation, we would like to discuss with you a number of concerns we have about the prosecution aspects of the bill. For example, we believe that the investigative powers given to the department are too narrowly drawn and that the relationship between the procedures set up for administrative hearings and criminal prosecutions needs to be more clearly defined. In addition, the Commissioner of Public Safety currently has the general power to issue special police commissions. As a result, we do not believe it is

necessary for the statute to specifically provide for the designation of Department of Law investigators as peace officers.

Moreover, as we pointed out above, if a policy decision were to be made to undertake a medicaid provider fraud program and pursue available federal funding at the 90 percent match level, we believe all that is necessary is to incorporate funding for that purpose in the Department of Law's operating budget. In this regard, since the federal government's program is focused on criminal prosecutions of "white collar" crime, it would seem most appropriate to place funds in the Office of Special Prosecutions and Appeals in the Criminal Division's budget.

Alternatively, the legislature may wish to consider that if an expanded medicaid provider fraud program is desired, a state program could be designed to meet many of the problems addressed above and still receive 50 percent federal matching monies through DHSS. An additional benefit of a state designed program could be to investigate patient abuse claims in non-health facility settings, which cannot be included at the 90 percent match level. Such a program could be created without a bill. The Department of Law would be supportive of increased capacity in this area, given that the state medicaid budget is estimated to be over $214.5 million in federal and state monies in FY 91.

If you have additional questions or concerns about our comments, please let us know.

Sincerely yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: Ronald W. Lorensen
Deputy Attorney General

RWL:DEB:jh

cc: Hon. Jan Faiks, Chair
Senate Judiciary

Bob Evans
Deputy Chief of Staff/Legislative Liaison
Office of the Governor

Hon. Myra Munson
Commissioner
Department of Health and Social Services

Jeffrey W. Bush
Assistant Attorney General

S B

327

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

MEMORANDUM

DATE: February 23, 1990

TO: Senator Jan Faiks
Chairman Judiciary Committee

FROM: Senator Jack Coghill

SUBJECT: Amendment to SB 327

When the Judiciary Committee considers SB 327, we would appreciate it if they amend part of the bill to address the problem of DWI convictions. We have received a number of questions by people in the district as to why it requires a fifth conviction before it is a felony. Our amendment would make it a felony on the fourth conviction.

It seems to me that after the third conviction, it should be a felony. The penalty for the fourth DWI conviction would be a Class B Felony.

I would appreciate the committee considering my amendment when SB 327 is discussed. We have noticed that no hearings have been scheduled for this bill. Perhaps with our amendment, holding a hearing on this bill may seem more appealing.

6-1379Ab
Ford

A M E N D M E N T

OFFERED IN THE SENATE BY SEN. COGHILL

TO: SB 327

Page 1, after line 25:

Insert a new bill section to read:

"* Sec. 3. AS 28.35.030(b) is amended to read:

(b) Except as provided in (j) of this section, a person convicted of driving [DRIVING] while intoxicated is guilty of a class A misdemeanor."

Renumber the following bill sections accordingly.

Page 4, after line 27:

Insert a new subsection to read:

"(j) A person convicted of driving while intoxicated is guilty of a class B felony if the person has been previously convicted three or more times of driving while intoxicated under this section or another law or ordinance with substantially similar elements."

S B
333

American Civil Liberties Union

Alaska Civil Liberties Union -Legislative Committee-217 Second St. #204-Juneau, Alaska 99801

POSITION PAPER ON SB 333

THE ALASKA CIVIL LIBERTIES UNION OPPOSES ANY FORM OF LEGISLATION BANNING FLAG DESECRATION. SUCH LEGISLATION IS AN UNCONSTITUTIONAL INFRINGEMENT OF ONE OF OUR MOST VALUABLE FIRST AMENDMENT FREEDOMS, THE RIGHT TO CRITICIZE THE GOVERNMENT.

Every legislative session seems to produce one bill that is totally offensive to civil liberties. This year, a very strong contender for the most obnoxious bill, without question, is the flag desecration bill, SB 333.

The American flag flies the proudest and strongest in the world precisely because the government does not mandate that its citizens revere it. Reverence by force is nothing more than obedience. There are only a handful of citizens who would consider burning a flag. Yet our tolerance for these few makes the rest of us free. In choosing to grant our flag respect, we exercise exactly the same rights that Gregory Johnson did when he contemptuously burned the symbol of America's liberty. A government which thinks that it can order people to respect it, rather than earning their respect, is doomed to fail.

Lest anyone question the power of the flag as a symbolic impetus for government change, it is worth recalling the powerful images we recently witnessed of thousands of Rumanian citizens carrying flags from the centers of which the hammer and sickle of communism had been torn. We happen to agree with their symbolic statement that the yoke of oppression represented by that flag should be lifted, and so we view the action they took against their flag with approval. We cannot have it both ways. The people of Rumania earned their freedom by dissent and protest. The values they expressed by their symbolic use of the flag are the very values this legislation would suppress.

This is a cynical and hypocritical bill. Flag burning is not exactly a rampant social problem in Alaska, certainly not one which deserves the level of effort that the legislature has put into this bill. There are much worse problems to worry about. We do predict that if the bill passes, it will incite many incidents of flag burning. The legislation is exactly the kind of repressive, oppressive government action that invites protest.

The legislation arises from a hysterical response to a decision of the United States Supreme Court affirming our most basic liberty, the freedom to criticize government. It is hard to understand how the self-appointed defenders of our

flag, (and presumably of our freedom), can justify such a basic infringement on the First Amendment. We would like to quote from that decision:

> " . . . According to Texas, if one physically treats the flag in such a way that would tend to cast doubt on the idea that nationhood and national unity are the flag's referents, or that national unity actually exists, the message conveyed is a harmful one and therefor may be prohibited. . .If there is a bedrock principle underlying the First Amendment, it is that Government may not prohibit the expression of an idea simply because Society finds the idea itself offensive or disagreeable. "

The idea that the First Amendment needs fixing is a dangerous fallacy. If our liberty perishes, it will bleed to death from nicks and cuts inflicted by those who will not tolerate dissent. A pathetic group of radicals, so at a loss for words that they burn flags, poses no comparable threat to our freedom.

This bill will put Alaska in the ignominious company of countries like the Soviet Union, Iran, China and other nations which routinely put people in prison for expression of ideas with which the government disagrees. If we travel down this road, our freedom to tell the government to go to hell will depend on the whims of politicians playing for a political advantage.

Without question the most basic civil liberty, in the absence of which all other liberties are defenseless, is the right to criticize the government. If we cannot criticize government, we cannot change it and we cannot prevent its abuses. We know from our painful experiences with McCarthyism and Vietnam the pitfalls of the "America right or wrong" philosophy. The most important way in which we can celebrate our liberty is to allow even the most obnoxious protesters to present their ideas for consideration. As Senator Dellenger of Nebraska, a man who lost a leg fighting for his country in Vietnam put it, legislation like this is actually an ultimate victory for flag burners, making America "look just a little silly, and a little less brave and little less free."

10441 Birch Road
Anchorage, AK 99516

February 4, 1990

Matt

188

Hon. Jay Kerttula
Alaska Senate
Juneau, Alaska

Dear Sen.Kerttula:

In regard to S.B.333 which would make a crime of flag burning, I'd like to suggest another provision to what I understand is being proposed.

The worst of abuses to our flag seems to me to be to use it for commercial purposes, as in the case of making it part of a garment to be sold -- like "Pepsi" or "Coke" garments -- or advertising the flag to sell a product, like showing the upraised arm of the Statue of Liberty to advertise an underarm deodorant.

I have no quarrel with someone trying to make a buck, but using our flag for that purpose seems to me to be its ultimate degradation. At least burning the flag reflects the expression of the political rights our tradition holds sacred ...

If we must have such a bill, let's make sure it covers all the bases.

Respectfully,
Charles Konigsberg
Charles Konigsberg

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SB 333
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:
Title: Public Destruction of U.S. or Alaska Flags
Sponsor: Senator Kerttula, etc.
Requestor: Senate Judiciary

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

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-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

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 fiscal impact anticipated.

Prepared by: Francis C. Allan
Division: Alaska State Troopers
Phone: 269-5691
Date: 01/12/90

1/12/90

Approved by Commissioner: Arthur English
Agency: Department of Public Safety
Date: 1-12-90

M E M O R A N D U M November 20, 1989

SUBJECT: Desecration of certain flags
(Work Order No. 6-1551)

TO: Senator Jalmar M. Kerttula

FROM: Richard A. Bradley
Legislative Counsel

I have prepared for you a bill regarding the issue of flag burning. I have given the question some thought over the past few months. Recently, when the office received a CSG "Backgrounder" on flag desecration, I thought that you might be interested in it; a copy is enclosed.

The information is useful and, I think, generally accurate but one significant aspect of the analysis is in error and it is a common error concerning Texas v. Johnson, ___U.S.___ , 57 U.S.L.W. 4770, one that I did not catch until recently. CSG makes the suggestion that with the Johnson ruling, "the Texas law became unconstitutional, as did the provisions in forty-seven other states . . . ."

A careful reading of the Johnson case suggests that the Court did not declare the law unconstitutional; in fact, in the Johnson case and three of the cases that prefigured the Johnson case in the U.S. Supreme Court, the Court has not declared the underlying subject law unconstitutional. It is not the law but the conduct involving speech or communication protected by the First Amendment that requires that the conviction be reversed. In footnote 3 of the Johnson opinion, Justice Brennan notes:

> Although Johnson has raised a facial challenge to Texas' flag-desecration statute, we choose to resolve this case on the basis of his claim that the statute as applied to him violates the First Amendment. Section 42.09 regulates only physical conduct with respect to the flag, not the written or spoken word, and although one violates the statute only if one "knows" that one's

> physical treatment of the flag "will seriously offend one or more persons likely to observe or discover his action," Tex. Penal Code Ann. Sec. 42.09(b) (1989), this fact does not necessarily mean that the statute applies only to expressive conduct protected by the First Amendment. * * * A tired person might, for example, drag the flag through the mud, knowing that this conduct is likely to offend others, and yet have no thought of expressing any idea; . . ." (Emphasis in original.)

Johnson was thus consistent with the earlier cases where the Court reverses the conviction but does not seek to invalidate the law. In Street v. New York, 394 U.S. 576 (1969), the appellant was charged with violating a statute that made it a misdemeanor to "publicly mutilate, deface, defile, or defy, trample upon, or cast contempt upon, either by words or act, [any flag of the United States]". The defendant was also charged with (and acquitted of) disorderly conduct. After hearing on the radio that James Meredith was shot in Mississippi, appellant took a flag he owned to the streets and burned it, saying: "If they can do that to Meredith, we don't need a flag."

> [W]e hold that [the law] was unconstitutionally applied in appellant's case because it permitted him to be punished merely for speaking defiant or contemptuous words about the American flag.
>
> * * *
>
> The State argues that appellant's words were at most used to establish his unlawful intent in burning the flag. However, after a careful examination of the comparatively brief trial record, we find ourselves unable to say with certainty that appellant's words were not an independent cause for his conviction. While it is true that at trial greater emphasis was placed on appellant's action in burning the flag than upon his words, a police officer did testify to the utterance of the words. The state never announced that it was relying exclusively upon the burning. 394 U.S. at 589 - 590.

In Smith v. Goguen, 415 U.S. 566 (1973), the Supreme Court addressed the wearing of the flag. "Appellant wore a small cloth version of the United States flag sewn to the seat of his trousers. The flag was approximately four by six inches and was displayed to the left rear of Goguen's blue jeans. On January 30, 1970, two police officers saw Goguen bedecked in that fashion." He was charged with violating a law that provides: "Whoever publicly mutilates, tramples upon, defaces, or treats contemptously the flag of the United States, whether the flag is public or private property, shall be punished . . . ."

The phrase relied upon in the state court conviction was "treats contemptuously". He was convicted and sentence to prison; the U.S. District Court granted habeas corpus because of the constitutional issues involved.

The Supreme Court said:

> [W]e see the force of the District Court's observation that the flag has become "an object of youth fashion and high camp." 343 F.Supp, at 164. As both courts below noted, casual treatment of the flag in many contexts has become a wide-spread contemporary phenomenon. Id. at 164, 167; 471 F.2d at 96. Flag wearing in a day of relaxed clothing styles may simply be an adornment or a ploy to attract attention. * * * Yet in a time of widely varying attitudes and tastes for displaying something as ubiquitous as the United States flag or representations of it, it could hardly be the purpose of the Massachusetts Legislature to make criminal every informal use of the flag. 415 U.S. at 573 - 574.
>
> The language at issue is void for vagueness as applied to Goguen because it subjected him to criminal liability under a standard so indefinite that police, court, and jury were free to react to nothing more than their preferences for treatment of the flag.

One other case is useful to review.

Spence v. Washington, 418 U.S. 405 (1974) involved the display of a flag with material attached. The appellant displayed a United States flag that he owned upside down from a window of his apartment. Affixed to both surfaces of the flag was a large peace symbol, the circle enclosing a trident. The symbol was formed from tape that could be

removed without permanently damaging the flag. There was no crowd; police officers came to the apartment. Appellant stated " I suppose you are here about the flag. I didn't know there was anything wrong with it. I will take it down." The appellant was convicted under a Washington statute that forbade the exhibit of the U.S. flag "to which is attached or superimposed figures, symbols, or other extraneous material."

The Supreme Court reversed the state court conviction: "as applied to appellant's activity, the Washington statute impermissibly infringed protected expression."

> In this case, appellant's activity was roughly simultaneous with and concededly triggered by the Cambodian incursion and the Kent State tragedy, also issues of great public moment. * * * A flag bearing a peace symbol and displayed upside down might be interpreted as nothing more than bizarre behavior, but it would have been difficult for the great majority of citizens to miss the drift of appellant's point at the time he made it. It may be noted, further, that this was not an act of mindless nihilism. Rather it was a pointed expression of anguish by appellant about the then-current domestic and foreign affairs of his government. An intent to convey a particularized message was present. * * * The statute is nonetheless unconstitutional as applied to appellant's activity.

And for the reasons suggested, any questions that I may have raised about the constitutionality of the bill have been alleviated; I believe that the bill would be constitutional.

If I may be of further assistance, please advise.

RAB:lmb:mi
L8/053

Enclosure

CSG Backgrounder

078902

States Information Center
The Council of State Governments
Iron Works Pike
P.O. Box 11910
Lexington, KY 40578
(606) 252-2291

Date: July, 1989

Topic: FLAG DESECRATION LAWS

Infokey: State Government
(NT) Symbols and Awards

BURNING "OLD GLORY"
FLAG DESECRATION

The United States flag and state flags are endearing symbols of our country's freedoms and heritage. The June 21 ruling by the United States Supreme Court in Texas v. Johnson has left some Americans feeling that these symbols and the freedoms they represent are at odds with one another. This ruling affects the states because many have laws prohibiting desecrating the U.S. flag, the state flag, or both. At issue is respect for the flag and limits on free expression. Desecrating our national flag is the ultimate political gesture to some, a punishable crime to others.

Anybody Got A Match?

At the 1984 Republican National Convention in Dallas, a group of activists demonstrated against the policies of the Reagan Administration and several Dallas-based corporations. As a part of this demonstration, one of the protesters burned the U.S. flag.[1] Local police officials arrested the protester for violating a Texas statute prohibiting desecration of the national flag. He was subsequently convicted of the crime in the Texas judicial system.

The demonstrator and his attorneys contend, however, that burning the national flag is the expression of an idea, and that such expressions are protected by the First Amendment to the Constitution. The case was eventually appealed to the United States Supreme Court, and by a 5-4 decision the Court agreed that the protester should not have been convicted of a crime.

The Court's majority ruled that burning the U.S. flag is indeed a form of expression protected by the First Amendment. In outlining the majority opinion, Justice Brennan wrote, "We do not consecrate the flag by punishing its desecration, for in doing so we dilute the freedom that the cherished emblem represents."[2]

With this ruling the Texas law became unconstitutional, as did provisions of similar statutes in forty-seven other states.(Alaska and Wyoming are the only

---

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> The Congress and the states shall have the power to prohibit the physical desecration of the flag of the United States.

For the amendment to become a part of the Constitution it would have to be approved by two-thirds majorities in each house of Congress, and ratified by thirty-eight states.[5] Thus, the legislatures of the states would play an important role in determining the future of such an amendment.

Most analysts assume that if the proposed amendment were to be approved by Congress, it would quickly be ratified by the states. However, some state officials have shown concern that the amendment in its present form may still leave the flags of the states subject to the Supreme Court ruling. Thus, it has been suggested that the words "or any state" be added to the end of the amendment.

Senate Leader Robert Dole is sponsoring a bill (S607) to broaden the definition of desecrating the American flag to include knowingly displaying it on the floor or ground. The bill passed the Senate and is pending in the House Judiciary Subcommittee on Civil and Constitutional Rights.[6]

"On June 23 the Senate adopted an amendment to child-care legislation that rewrites the federal anti-desecration law in an effort to reverse the court's ruling."[7] On June 22 the Senate also passed S Res 151 "expressing its profound disappointment" with the court decision.[8]

Conclusion

The flag desecration controversy is being debated at the federal, state, and local levels. Some say that restricting flag desecration only serves to publicize and legitimize the actions of people who use this form of protest... perhaps encouraging more of the behavior. Others believe that the unique symbolism of the flag demands protection. And finally, some believe that while the act itself is significant (whether punishable or not), this behavior is not widespread enough to be a problem. For the moment, the court decision imparts a new perspective on this old argument.

NOTES

1. Biskupic, Joan, "Flag-Burning, 'Dial-a-Porn' Acts Struck Down by Justices," Congressional Quarterly, June 24, 1989, p.1547.

2. Ibid, p.1548.

3. Ibid, p.1547.

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Idaho	18-3401	*
Illinois	1-3351	*
Indiana	---------	35-45-1-4
Iowa	32.1	*
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Kentucky	525.110	*
Louisiana	14-116	*
Maine	1-254	*
Maryland	27-87	*
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CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

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states without such prohibitions)[3] (See table). As one federal official put it, "demonstrators may roll Old Glory and fire her up like a Marlboro if they want."[4]

State Flags

Currently, forty-two states have laws prohibiting the desecration of the state flag. For example, Illinois law states:

> Any person who publicly mutilates, defaces, defiles or defies, tramples or casts contempt upon, whether by words or act, any such flag, standard, color or ensign shall be guilty of a Class 4 felony.

In this statute, flag is defined as being the United States flag or the flag of the state. Most states use the same statute to include the national and state flag. However, six states (Delaware, Hawaii, Indiana, North Dakota, Oklahoma and Rhode Island) have laws concerning the national flag, but not the flag of the state. For example, Delaware law reads:

> A person is guilty of desecration if he intentionally defaces, damages, pollutes, or otherwise physically mistreats...the national flag.

Although violations are considered a felony in Illinois, the majority of states consider it a misdemeanor. Such is the case in New Hampshire, where:

> A person is guilty of a misdemeanor if he:...
> IV. Purposely or knowingly mutilates or defiles any such flag...

A Constitutional Amendment and Other Federal Action

The federal government has enacted numerous laws regulating misuse of the American flag. However, the most commonly referred to is Title 18 U.S.C. Section 700(a) which provides:

> Whoever knowingly casts contempt upon any flag of the United States by publicly mutilating, defacing, defiling, burning, or trampling upon it shall be fined not more than $1000 or imprisoned for not more than one year, or both.

Public opinion and politicians alike have voiced opposition to the Supreme Court's decision. Government officials are calling for action to circumvent the ruling, including a constitutional amendment to prohibit desecrating the national flag.

President Bush and Republican leaders have proposed an amendment which reads:

> The Congress and the states shall have the power to prohibit the physical desecration of the flag of the United States.

For the amendment to become a part of the Constitution it would have to be approved by two-thirds majorities in each house of Congress, and ratified by thirty-eight states.[5] Thus, the legislatures of the states would play an important role in determining the future of such an amendment.

Most analysts assume that if the proposed amendment were to be approved by Congress, it would quickly be ratified by the states. However, some state officials have shown concern that the amendment in its present form may still leave the flags of the states subject to the Supreme Court ruling. Thus, it has been suggested that the words "or any state" be added to the end of the amendment.

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Price -- $5.00

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STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SSSB 333
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to public desecration of the flag of the U.S...."
Sponsor: Senator Kerttula
Requestor: Senator Kerttula

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.

Richard L. Pegues

Prepared by: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services
Date: January 12, 1990

Richard L. Pegues /FOR

Approved by Commissioner: Douglas B. Baily, Attorney General
Date: January 12, 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. SSSB 333

This bill adds a new section to AS 11.76, which would make intentional public desecration of the flag of the United States or of the state a class B misdemeanor. The bill defines desecration as an instance when, within 100 feet of a displayed flag of the United States or of the state, a person defaces, damages, or otherwise physically mistreats the flag of the United States or of the state.

The department does not believe the bill will have a fiscal impact because flag desecration occurs so rarely in Alaska. Where it does occur, it is usually an isolated incident involving an individual making a political or social statement. In other words, this is not a situation where some widespread social activity is being criminalized.

To the extent that someone might test the proposed law, in view of the United States Supreme Court's decision in Texas v. Johnson, only one prosecution and one appeal would probably occur. This additional work can be handled by existing staff and, consequently, there will not be a fiscal impact on the Department of Law.

Introduced: 1/9/90
Referred: Judiciary

6-1551E

BY SEN. KERTTULA, Kelly, Faiks

IN THE SENATE

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 333

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the public desecration of the flag of the United States or of the state; and providing for an effective date."

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

* Section 1. AS 11.76 is amended by adding a new section to read:

Sec. 11.76.150. PUBLIC DESECRATION OF A FLAG. (a) A person commits the crime of public desecration of a flag who intentionally desecrates the flag of the United States or of the state.

(b) A person desecrates the flag of the United States or of the state when, ~~within 100 feet of a displayed flag of the United States or of the state,~~ the person defaces, damages, or otherwise physically mistreats the flag of the United States or of the state.

(c) Desecration of the flag of the United States or of the state is a ~~class B~~ misdemeanor.

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

SPONSOR STATEMENT

SENATE BILL 333

JANUARY 16, 1990

I introduced Senate Bill 333 in response to many Alaskans concern with last summer's flag desecration activities. A large number of my constituents believe that the public mistreatment of a flag is not a permissible way of expressing a political viewpoint, but is instead a criminal act.

Sponsor Substitute for Senate Bill 333 would make it a class B misdemeanor for anyone to desecrate a flag within 100 feet of a displayed flag of the United States or Alaska.

The original version of Senate Bill 333 would have made it a felony to mistreat a flag in a way that the person knows will seriously offend someone. Legislative Counsel issued an opinion in support of the constitutionality of this bill. However, I had the sponsor substitute for Senate Bill 333 drafted in response to concerns expressed by others. The concern was that even <u>if</u> the original bill was constitutional as it was written, any arrests under that bill would be unconstitutional since how does a policeman determine that a person <u>knew</u> his conduct was going to seriously offend someone? It is difficult to legislate subjective perceptions of conduct.

I think Sponsor Substitute for Senate Bill 333 is a rational way to meet both the concerns of those Alaskans who believe that desecration of a flag should be a crime and the constitutional concerns. With the sponsor substitute, we would apply an objective standard of conduct, rather than the subjective standard of the original version of the bill. Alaskans would know exactly what kind of conduct is illegal. It also makes good sense that we should legislate against conduct which has the potential for inciting violence, and the public desecration of a flag within 100 feet of a displayed flag which is often in a public area certainly has the potential of inciting violence.

Senator Jay Kerttula

Section 1. AS 11.61.100 is amended to read:

Sec. 11.61.100. RIOT. (a) A person commits the crime of riot if, while participating with five or more others, the person engages in tumultuous and violent conduct in a public place and thereby causes, or creates a substantial risk of causing damage to property or physical injury to a person; or

THIS IS THE STANDARD THAT THE U.S SUPREME COURT HAS SET FOR LAWS RESTRICTING FREE SPEECH

(b) with intent to incite or produce imminent violent conduct, the person publicly desecrates the flag of the United States or of the state under circumstances likely to incite or produce imminent violent conduct.

(c) Riot is a class C felony.

Section 2. AS 11.76 is amended by adding a new section to read:

Sec. 11.76.150. DESECRATION OF A FLAG. (a) A person commits the crime of desecration of a flag who knowingly desecrates the flag of the United States or of the state.

"KNOWINGLY" RATHER THAN "INTENTIONALLY" SINCE THIS IS CONDUCT, NOT A RESULT.

NEW

(b) This section does not prohibit any conduct consisting of the disposal of a flag when it has become worn or soiled.

NEW PENALTY

(c) Desecration of the flag of the United States or of the state is a class B misdemeanor punishable by 100 hours of community service; for purposes of this paragraph, "community service" has the meaning given in AS 33.30.901.

Section 3. 11.31.430 is amended to read:

Sec. 11.81.430. JUSTIFICATION: USE OF FORCE, SPECIAL RELATIONSHIPS. (a) The use of force upon another person that would otherwise constitute an offense is justified under any of the following circumstances:

(1) When and to the extent reasonably necessary and appropriate to prevent the desecration of the flag of the United States or of the state, a private person may use reasonable and appropriate nondeadly force;

(renumber subsequent sections accordingly)

Section 4. 11.81.900 is amended to read:

Sec. 11.81.900. DEFINITIONS. (a) For purposes of this title, unless the context requires otherwise,

DEFINITIONS MOVED FROM 11.81.40 TO 11.81.900 SINCE THEY APPLY TO 3 DIFFERENT SECTIONS

* * *

NEW

(15) "desecrate" means to deface, damage, (maintain upon the floor or ground) or otherwise mistreat physically;

* * *

NEW

(22) "flag" means any flag of the United States or of the state, or any part thereof, made of fabric, of any size, in a form that is commonly displayed upon a flagstaff or stick;

* * *

(renumber sections accordingly)

Draft Judiciary CS - SB 333

NEW

Section 1. AS 11.61.100 is amended to read:

Sec. 11.61.100. RIOT. (a) A person commits the crime of riot if, while participating with five or more others, the person engages in tumultuous and violent conduct in a public place and thereby causes, or creates a substantial risk of causing damage to property or physical injury to a person; or

THIS IS THE STANDARD USED BY THE U.S. SUPREME COURT TO TEST LAWS RESTRICTING SPEECH

(b) with intent to incite or produce imminent violent conduct, the person desecrates the flag of the United States or of the state under circumstances likely to incite or produce imminent violent conduct.

(c) Riot is a class C felony.

Section 2. AS 11.76 is amended by adding a new section to read:

REVISED

Sec. 11.76.150. DESECRATION OF A FLAG. (a) A person commits the crime of desecration of a flag who intentionally desecrates the flag of the United States or of the state.

NEW

(b) In a prosecution under (a) of this section, it is an affirmative defense that the conduct consisted of the disposal of a flag because it was worn or soiled.

(c) Desecration of the flag of the United States or of the state is a class B misdemeanor.

REVISED PENALTY

(d) Upon conviction under this section the court shall impose a sentence of 100 hours of community work if the person has not previously been convicted in this or another jurisdiction under this section, AS 11.61.100(b), or another law or ordinance with substantially similar elements.

Section 3. 11.81.900 is amended to read:

Sec. 11.81.900. DEFINITIONS. (a) For purposes of this title, unless the context requires otherwise,

* * *

REVISED

(15) "desecrate" means to deface, damage, physically defile, burn, use as a floor or ground covering, or trample;

* * *

NEW

(22) "flag" means any flag of the United States or of the state, or any part thereof, made of fabric, of any size, in a form that is commonly displayed upon a pole, staff or stick;

* * *

(renumber sections accordingly)

AS 11.81 is amended by adding a new section to read:

Sec. 11.81.435. Justification: Use of force to prevent the desecration of the flag. When and to the extent reasonably necessary and appropriate to prevent the desecration of the flag of the United States or of the state, a person may use reasonable and appropriate nondeadly force.

PROPOSED JUDICIARY CS - SSSB 333

The proposed Judiciary CS makes the following changes to SSSB 333:

Section 1: The CS adds a new section 1, which expands current AS 11.61.100 relating to riot. It provides that a person commits the crime of riot if, with the intent to incite or produce imminent violent conduct, the person desecrates the flag under circumstances likely to incite or produce imminent violent conduct. Note that the person must actually intend to produce imminent violence by his or her actions, and that the actions must be taken under circumstances likely to produce such conduct. This is the standard set by the U.S. Supreme Court for laws that have the effect of restricting speech. The First Amendment does not give a person the right to intentionally attempt to incite imminent violence under circumstances likely to do so.

Section 2: This section corresponds to section 1 of SSSB 333. It amends that section in three major ways: first, it provides an affirmative defense to charges of flag desecration if the conduct consisted of the disposal of a flag because it had become worn or soiled. Second, it provides that a first offender shall be given a sentence consisting of 100 hours of community service. A person convicted of subsequent acts of flag desecration would face a maximum sentence of up to 90 days in jail or a $1000 fine. Third, it deletes the requirement that the desecration take place publicly within 100 feet of a displayed flag.

Section 3: This section contains definitions. "Desecrate," is defined in a way similar to the definition contained in the new federal flag desecration law. Only specified acts are prohibited; the phrase "or otherwise physically mistreats" contained in the SSSB 333 definition has been deleted for being overly vague.

"Flag" is defined in a way to include only those objects that are ordinarily thought of as flags; the definition clearly excludes items such as patches, reproductions of flags in a non-fabric medium such as pictures or cakes, or flag clothing.

6-1551H
Bradley
2/6/90

Original sponsor(s): SEN. KERTTULA, Kelly, Faiks

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 333 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the desecration of the flag of the United States or of the state; and providing for an effective date."

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

* Section 1. AS 11.61.100(a) is amended to read:

Sec. 11.61.100. RIOT. (a) A person commits the crime of riot if,

(1) while participating with five or more others, the person engages in tumultuous and violent conduct in a public place and thereby causes, or creates a substantial risk of causing damage to property or physical injury to a person; or

(2) with intent to incite or produce imminent violent conduct, the person desecrates the flag of the United States or of the state under circumstances likely to incite or produce imminent violent conduct.

* Sec. 2. AS 11.76 is amended by adding a new section to read:

Sec. 11.76.150. DESECRATION OF A FLAG. (a) A person commits the crime of desecration of a flag who intentionally and desecrates the flag of the United States or of the state.

(b) In a prosecution under (a) of this section, it is an affirmative defense that the conduct consisted of the disposal of a flag because it was worn or soiled.

(c) Desecration of the flag of the United States or of the state is a class B misdemeanor.

(d) Upon conviction under this section the court shall impose a sentence of 100 hours of community work if the person has not previously been convicted in this or another jurisdiction under this section, AS 11.61.100(a)(2), or another law or ordinance with substantially similar elements.

* Sec. 3. AS 11.81.900(b) is amended by adding new paragraphs to read:

(58) "desecrate" means to deface, damage, physically defile, burn, use as a floor or ground covering, sit upon, or trample;

(59) "flag" means a flag of the United States or of the state, or a part of the flag, made of fabric, of any size, in a form that is commonly displayed upon a pole, staff, or stick.

* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

Introduced: 1/9/90
Referred: Judiciary

6-1551E

BY SEN. KERTTULA, Kelly, Faiks

IN THE SENATE

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 333

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the public desecration of the flag of the United States or of the state; and providing for an effective date."

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

* Section 1. AS 11.76 is amended by adding a new section to read:

Sec. 11.76.150. PUBLIC DESECRATION OF A FLAG. (a) A person commits the crime of public desecration of a flag who intentionally desecrates the flag of the United States or of the state.

(b) A person desecrates the flag of the United States or of the state when, within 100 feet of a displayed flag of the United States or of the state, the person defaces, damages, or otherwise physically mistreats the flag of the United States or of the state.

(c) Desecration of the flag of the United States or of the state is a class B misdemeanor.

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

define flag to be a flag

6-1551H
Bradley
2/21/90

Original sponsor(s): SEN. KERTTULA, Kelly, Faiks

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 333 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the ~~desecration~~ misuse of the flag of the United States or of the state; and providing for an effective date."

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

* Section 1. AS 11.61.100(a) is amended to read:

Sec. 11.61.100. RIOT. (a) A person commits the crime of riot if,

(1) while participating with five or more others, the person engages in tumultuous and violent conduct in a public place and thereby causes, or creates a substantial risk of causing damage to property or physical injury to a person; or

(2) with intent to incite or produce imminent violent conduct, the person ~~desecrates~~ misuses the flag of the United States or of the state under circumstances likely to incite or produce imminent violent conduct.

* Sec. 2. AS 11.76 is amended by adding a new section to read:

Sec. 11.76.150. ~~DESECRATION~~ MISUSE OF A FLAG. (a) A person commits the crime of ~~desecration~~ misuse of a flag who intentionally ~~desecrates~~ misuses the flag of the United States or of the state.

(b) In a prosecution under (a) of this section, it is an affirmative defense that the conduct consisted of the disposal of a flag because it was worn or soiled.

(c) ~~Desecration~~ Misuse of the flag of the United States or of the state is a class B misdemeanor.

(d) Upon conviction under this section the court shall impose only a sentence of up to 100 hours of community work if the person has not previously been convicted in this or another jurisdiction under this section, AS 11.61.100(a)(2), or another law or ordinance with substantially similar elements.

* Sec. 3. AS 11.81.900(b) is amended by adding new paragraphs to read:

(58) "desecrate" means to deface, damage, physically defile, burn, use as a floor or ground covering, sit upon, or trample;

(59) "flag" means a flag of the United States or of the state, or a part of the flag, made of fabric, of any size, in a form that is commonly displayed upon a pole, staff, or stick.

* Sec. 4. When the Department of Law evaluates a specific case for prosecution under AS 11.61.100(a)(2) as amended in sec. 1 of this Act or under AS 11.76.150 as added in sec. 2 of this Act, it shall consider the standards for the review of such laws established by the United States Supreme Court.

* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

6-1551H
Bradley
2/21/90

Original sponsor(s): SEN. KERTTULA, Kelly, Faiks

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 333 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the desecration of the flag of the United States or of the state; and providing for an effective date."

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

* Section 1. AS 11.61.100(a) is amended to read:

Sec. 11.61.100. RIOT. (a) A person commits the crime of riot if,

(1) while participating with five or more others, the person engages in tumultuous and violent conduct in a public place and thereby causes, or creates a substantial risk of causing damage to property or physical injury to a person; or

(2) with intent to incite or produce imminent violent conduct, the person desecrates the flag of the United States or of the state under circumstances likely to incite or produce imminent violent conduct.

* Sec. 2. AS 11.76 is amended by adding a new section to read:

Sec. 11.76.150. DESECRATION OF A FLAG. (a) A person commits the crime of desecration of a flag who intentionally desecrates the flag of the United States or of the state.

(b) In a prosecution under (a) of this section, it is an affirmative defense that the conduct consisted of the disposal of a flag because it was worn or soiled.

(c) Desecration of the flag of the United States or of the state is a class B misdemeanor.

(d) Upon conviction under this section the court shall impose only a sentence of up to 100 hours of community work if the person has not previously been convicted in this or another jurisdiction under this section, AS 11.61.100(a)(2), or another law or ordinance with substantially similar elements.

* Sec. 3. AS 11.81.900(b) is amended by adding new paragraphs to read:

(58) "desecrate" means to deface, damage, physically defile, burn, use as a floor or ground covering, sit upon, or trample;

(59) "flag" means a flag of the United States or of the state, or a part of the flag, made of fabric, of any size, in a form that is commonly displayed upon a pole, staff, or stick.

* Sec. 4. When the Department of Law evaluates a specific case for prosecution under AS 11.61.100(a)(2) as amended in sec. 1 of this Act or under AS 11.76.150 as added in sec. 2 of this Act, it shall consider the standards for the review of such laws established by the United States Supreme Court.

* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

RECEIVED
JAN 11 1990
JAN FAIKS
SENATE OFFICE

M E M O R A N D U M January 11, 1990

SUBJECT: Desecration of certain flags (SSSB 333)

TO: Senator Jan Faiks

FROM: Richard A. Bradley
Legislative Counsel

You have asked that I comment briefly on the issues arising under the flag desecration case decided by the U.S. Supreme Court last summer.

One common error concerning Texas v. Johnson, ___U.S.___ , 57 U.S.L.W. 4770, is that, with the Johnson ruling, the Texas law became unconstitutional, as did the provisions in forty-seven other states.

A careful reading of the Johnson case suggests that the Court did not declare the law unconstitutional; in fact, in the Johnson case and three of the cases that prefigured the Johnson case in the U.S. Supreme Court, the Court has not declared the underlying subject law unconstitutional. It is not the law but the conduct involving speech or communication protected by the First Amendment that requires that the conviction be reversed. In footnote 3 of the Johnson opinion, Justice Brennan notes:

> Although Johnson has raised a facial challenge to Texas' flag-desecration statute, we choose to resolve this case on the basis of his claim that the statute as applied to him violates the First Amendment. Section 42.09 regulates only physical conduct with respect to the flag, not the written or spoken word, and although one violates the statute only if one "knows" that one's physical treatment of the flag "will seriously offend one or more persons likely to observe or discover his action," Tex. Penal Code Ann. Sec. 42.09(b) (1989), this fact does not necessarily mean that the statute applies only to expressive conduct protected by the

> First Amendment. * * * A tired person might, for example, drag the flag through the mud, knowing that this conduct is likely to offend others, and yet have no thought of expressing any idea; . . ." (Emphasis in original.)

Johnson was thus consistent with the earlier cases where the Court reverses the conviction but does not seek to invalidate the law. See Street v. New York, 394 U.S. 576 (1969), Smith v. Goguen, 415 U.S. 566 (1973), and Spence v. Washington, 418 U.S. 405 (1974)

SSSB 333 is constitutional.

You will note, of course, that while the laws remain constitutional, it will continue to be difficult to obtain convictions for their violation when speech or action affected by First Amendment claims are involved.

If I may be of further assistance, please advise.

RAB:lmb
L9/037

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M February 21, 1990

SUBJECT: Desecration of flags
(Work Order No. 6-S333)

TO: Senator Jan Faiks
Chair, Senate Judiciary Committee

FROM: Richard A. Bradley
Legislative Counsel

While Chris requested the amendment as "temporary law," it seemed that the ideas should be incorporated into permanent law. Because of Chris' specific request that it be drafted as "temporary law," we have provided it to the committee as requested.

Although we provided the language of Sec. 11.76.150(d) to you in an earlier draft, we believe that a comment should be made on it. The language was ambiguous; it failed to address where the subsection fits into the sentencing: Is (d) additional to or in place of the normal "class B misdemeanor" penalties for the first offender? The draft now addresses that question.

If I may be of further assistance, please advise.

RAB:pl
WKP2/070

Enclosure

a0466
rw
^BM-Flag Case, 1st Ld-Writethru, a0449,580
^Flag-Burning Statute Suffers Another Setback
^EDS: CORRECTS spelling of Kunstler in last three grafs
^By JAMES ROWLEY=
^Associated Press Writer=
WASHINGTON (AP) _ Opponents of a new federal law making it a crime to burn the American flag scored another victory when a second federal judge ruled that the statute runs afoul of the Constitution.

But Monday's ruling by U.S. District Judge June Green here also gives proponents of a constitutional amendment to ban flag burning more political ammunition for their cause.

President Bush endorsed the amendment route to undo last year's Supreme Court ruling that struck down a Texas flag-burning law, saying he was unsure that the statute Congress passed instead would survive court challenges.

So far, Bush and other supporters of a constitutional amendment have been proven correct.

For the second time in three weeks, the law was held unconstitutional by a federal jurist and flag-burning charges were dismissed [illegible] Protesters.

The ruling [illegible] Green and a similar one Feb. 21 by U.S. District [illegible] Rothstein in Seattle set the stage for another fight in the Supreme Court over the issue.

The Justice Department has already filed a notice of its intention to appeal the Seattle ruling. Spokesman David Runkel said department officials had not seen the most recent decision but would seek high-court review if it were similar to the Seattle ruling.

The law provides for direct appeal of district-court rulings to the Supreme Court. Such rulings have legal effect only in the geographical area covered by the district court.

In Monday's decision, Green held that flag burning is a form of political speech protected by the First Amendment. She rejected the Justice Department's contention that the law was enacted to protect the flag, not regulate speech.

''However compelling the government may see its interests, they cannot justify restrictions on speech which shake the very cornerstone of the First Amendment,'' the judge wrote.

''For in protecting the flag for those who wish to wave it in support of these causes, but preventing the defendants from burning it in opposition, the government has created a regulation which cannot be justified without reference to the content of the defendants' message,'' she wrote.

Green dismissed flag-burning charges against Shawn D. Eichmann, David G. Blalock and Scott W. Tyler. The three were arrested last Oct. 30 after they set several flags on fire during a protest outside the U.S. Capitol.

Conviction under the law carries a one-year sentence.

''The right to dissent is sometimes an albatross which burdens our society with its offensive sounds. Yet, political dissent lies at the heart of the First Amendment's protection,'' Green wrote.

It ''would not be needed if the persons who exercise their right of free expression by word and action were all pleasing, lovable persons with whom the rest of the citizens agreed,'' she said.

''The First Amendment, of course, makes no invidious exceptions. It provides protection for everyone, including the defendants.''

William Kunstler, a New York attorney who handled both the Washington and Seattle cases for the Center for Constitutional Rights, hailed the ruling, saying: ''We have knocked out an offensive statute in the area of the First Amendment.''

But Kunstler predicted that there would be a long fight over passage of a constitutional amendment if both the Washington and Seattle rulings are upheld by the Supreme Court.

''We passed phase one, we are going into phase two,'' Kunstler said. ''If we win, we go into phase three, which is this horrible amendment, which the president is sitting back and licking his chops over.''

a0546 -----
ra
^PM-Flag Burning, 2nd Ld - Writethru, a0474,0690
^Law Against Flag-Burning Unconstitutional, Judge Rules
^Eds: RECASTS lead to reflect that law is not overturned nationally by a district judge's ruling. SUBS grafs 16-18 bgng 'House Speaker' with 3 grafs to UPDATE with Sen. Mitchell commenting, adds background on charges of destruction of government property.
^By KATIA BLACKBURN=
^Associated Press Writer=
SEATTLE (AP) _ A federal judge declared unconstitutional a law passed by Congress to prohibit flag desecration, ruling that Americans' right to burn their flag must be protected as energetically as their right to wave it.

Prosecutors said the challenge to the Flag Protection Act of 1989 may be appealed directly to the U.S. Supreme Court.

In dismissing flag burning charges against four people, U.S. District Judge Barbara Rothstein on Wednesday ruled that the new federal law is unconstitutional.

''In order for the flag to endure as a symbol of freedom in this nation, we must protect with equal vigor the right to destroy it and the right to wave it,'' she said.

Mark Haggerty, Jennifer Campbell, Darius Strong and Carlos Garza were charged with burning a U.S. flag outside a Seattle post office shortly after midnight on Oct. 28, the day the flag protection law went into effect.

After the ruling, Strong set a flag on fire on the steps of the U.S. Courthouse and spat on it as it burned.

He released a statement, with Garza and Campbell, that called the ruling a ''real victory for righteous people everywhere.''

The case is the first constitutional challenge to the law, according to David Cole of the Center for Constitutional Rights in New York, which represented the four defendants.

Assistant U.S. Attorney Mark Bartlett said the U.S. Attorney's office, the Department of Justice and the Solicitor General will decide whether to appeal directly to the Supreme Court, an avenue provided for in the law, or to try the four demonstrators on another charge.

The center planned to argue the same issue today in a district court in Washington, D.C., in a case involving three people who burned flags on the steps of the Capitol, Cole said.

He predicted both cases would end up before the Supreme Court.

Congress passed the new law after the Supreme Court last June overturned a Texas flag-burning conviction against Gregory Lee Johnson. Johnson, who burned a flag at the 1984 Republican National Convention, was among the spectators at a Feb. 14 hearing before Rothstein.

Rothstein cited the Johnson case in her decision, saying it supported the conclusion that Congress is outlawing certain forms of expression under the Flag Protection Act.

''The principle underlying the Supreme Court's decision last summer was that the government can't compel people under penalty of imprisonment to be patriotic and Rothstein's decision recognizes that Congress' new law does exactly that,'' said Cole, who called the decision ''wonderful.''

The legislation prohibiting flag desecration was pushed by Democratic congressional leadership in opposition to a Republican plan for a constitutional amendment.

Senate Majority Leader George Mitchell, D-Maine, said in Washington today, ''I wouldn't get too worked up about a district court ruling. It's what we all exprected.'' The only significance to the ruling, he added, is ''getting it (the issue) in a posture where it now will go ... directly to the Supreme Court.''

The four defendants had pleaded innocent and moved to have the flag desecration charges dismissed on grounds the act violates the First Amendment.

Each of the four also was charged with one count of destruction of U.S. government property, as the demonstration escalated from the burning of small paper flags to burning a flag on the post office flagpole. Rothstein was asked only to dismiss the desecration charges and that is what she did in holding the law unconstitutional.

The flag desecration and destruction of property counts each carry a maximum penalty of one year in prison and a $100,000 fine.

Prosecutors were meeting to decide whether to take the remaining count of property destruction to trial or take the issue directly to the Supreme Court.
ap-ag-02-22-90 0746ast

—1st SESS. Oct. 25

Care for Handicapped Chil-
2 U.S.C. 5117) is amended by
and inserting the following:
ary Child Care for Children
t of 1986'.".

hall take effect October 1,
this Act, whichever occurs

tion and Labor).

nded, in lieu of S. 1454.
ent.

PUBLIC LAW 101–131 [H.R. 2978]; October 28, 1989

FLAG PROTECTION ACT OF 1989

An Act to amend section 700 of title 18, United States Code, to protect the physical integrity of the flag.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Flag Protection Act of 1989".

SEC. 2. CRIMINAL PENALTIES WITH RESPECT TO THE PHYSICAL INTEGRITY OF THE UNITED STATES FLAG.

(a) IN GENERAL.—Subsection (a) of section 700 of title 18, United States Code, is amended to read as follows:

"(a)(1) Whoever knowingly mutilates, defaces, physically defiles, burns, maintains on the floor or ground, or tramples upon any flag of the United States shall be fined under this title or imprisoned for not more than one year, or both.

"(2) This subsection does not prohibit any conduct consisting of the disposal of a flag when it has become worn or soiled.".

(b) DEFINITION.—Section 700(b) of title 18, United States Code, is amended to read as follows:

"(b) As used in this section, the term 'flag of the United States' means any flag of the United States, or any part thereof, made of any substance, of any size, in a form that is commonly displayed.".

SEC. 3. EXPEDITED REVIEW OF CONSTITUTIONAL ISSUES.

Section 700 of title 18, United States Code, is amended by adding at the end the following:

"(d)(1) An appeal may be taken directly to the Supreme Court of the United States from any interlocutory or final judgment, decree, or order issued by a United States district court ruling upon the constitutionality of subsection (a).

"(2) The Supreme Court shall, if it has not previously ruled on the question, accept jurisdiction over the appeal and advance on the docket and expedite to the greatest extent possible.".

Approved October 28, 1989.

TEXAS, Petitioner

v

GREGORY LEE JOHNSON

491 US —, 105 L Ed 2d 342, 109 S Ct —

[No. 88-155]

Argued March 21, 1989. Decided June 21, 1989.

Decision: Conviction of protester for burning American flag as part of political demonstration held to violate Federal Constitution's First Amendment.

SUMMARY

While the 1984 Republican National Convention was taking place in Dallas, Texas, a group of people staged a political demonstration in Dallas to protest the policies of the President of the United States, who was being nominated by the Convention for re-election, and of certain Dallas-based corporations. During the course of that demonstration, one of the protesters (1) accepted an American flag handed to him by a fellow protester, who had taken the flag from a pole outside one of the targeted buildings, (2) doused the flag with kerosene, and (3) set the flag on fire. While the flag burned, the protesters chanted, "America, the red, white, and blue, we spit on you." The protester who allegedly had burned the flag was subsequently prosecuted in a Texas trial court for that act and was convicted of violating a state statute which (1) prohibited the desecration of, among other things, a state or national flag, and (2) defined desecration as the physical mistreatment of such objects in a way which the actor knows will seriously offend one or more persons likely to observe or discover the act. Several witnesses testified that they had been seriously offended by the flag burning. The defendant protester appealed his conviction on the ground, among others, that the application of the state statute violated his right to freedom of speech under the Federal Constitution's First Amendment. In affirming the conviction, the Court of Appeals for the Fifth District of Texas at Dallas ruled that the defendant protester's flag burning constituted symbolic speech requiring First Amendment scrutiny, but concluded that the desecration statute nevertheless could be upheld as a legitimate and constitutional means of (1)