

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6340 SENATE JUDICIARY

788

1 offense.

AS 17.30.110(6) 2
21 U.S.C. 931(6) 3
and (7) 4

(b) In addition to the provisions of (a) of this section, property is subject to forfeiture to the state if used, or intended to be used, in a direct or indirect exchange for a controlled substance or imitation controlled substance in violation of AS 11.71 or AS 11.73, or if traceable to or derived from such an exchange. In this subsection, "property" means money, securities, negotiable instruments, or anything of value, whether tangible or intangible, secured or unsecured, including any right, title, or interest in real property and any improvements or appurtenances.

AS 17.30.114(a) 12

11 Sec. 17.30.105. SEIZURE AND CUSTODY OF PROPERTY. (a) Property subject to forfeiture may be seized by a peace officer

13 (1) under an order issued by a court in an ex parte proceeding upon a showing

14 (A) of probable cause that the property is subject to
15 forfeiture; or
16

AK Rules of 17
Criminal Procedure 18
Rule 6(c) 19

(B) that a grand jury has returned an indictment charging that the evidence, if unexplained or uncontradicted, would warrant a court's conclusion that the property specifically identified in the indictment is subject to forfeiture under AS 17.30.103; or
20
21

AS 17.30.114(a) (1) 22

(2) without a court order if

23 (A) constitutionally permissible or otherwise authorized by law;
24

AS 17.30.114(a) (2) 25

(B) the property has been the subject of a judgment in favor of the state in a forfeiture proceeding; or
26

AS 17.30.114(a) (3) 27

(C) there is probable cause to believe that the property is subject to forfeiture and is easily movable; property seized under this subparagraph may not be held for more than 48
28
29

AS 17.30.114(b)

AS 17.30.114(c)

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AS 17.30.12C

1 hours without a court order, which may be obtained as described
2 in (a)(1) of this section.

3 (b) Subject to the order of the court, or to an order by a
4 hearing officer in an administrative forfeiture proceeding under
5 AS 17.30.117, property seized under this section must be held in the
6 custody of the commissioner of public safety or a municipal law en-
7 forcement agency authorized by the commissioner of public safety to
8 retain custody. Within 10 days after a seizure under this section,
9 the law enforcement agency with custody of the property shall estimate
10 the value and make an inventory of the property. The inventory and
11 estimate must be sent to the attorney general.

12 (c) If the attorney general determines that a forfeiture pro-
13 ceeding cannot be suscained or as a matter of discretion will not be
14 instituted, a written report of that decision must be sent to the
15 agency with custody of the property and, except as provided in AS 17.-
16 30.107, the property must be returned to the owner.

17 (d) A person claiming an exemption under AS 17.30.119(b) may
18 petition the court, or the hearing officer if an administrative for-
19 feiture proceeding has been initiated, for use of exempted property
20 while forfeiture proceedings are pending.

21 Sec. 17.30.107. SEIZURE, FORFEITURE, AND DISPOSAL OF CONTROLLED
22 SUBSTANCES AND IMITATION CONTROLLED SUBSTANCES. Notwithstanding any
23 other provisions of this chapter, a controlled substance or imitation
24 controlled substance subject to forfeiture under AS 17.30.103, or
25 plants grown in the wild from which controlled substances or imitation
26 controlled substances might be derived, must be seized and summarily
27 forfeited to the state. The commissioner of public safety, or a
28 municipal law enforcement agency authorized under AS 17.30.105(b) to
29 retain custody of seized property, shall dispose of controlled

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1 substances or imitation controlled substances in accordance with
2 procedures prescribed by the commissioner of public safety.

3 Sec. 17.30.109. PRESERVATION, RELEASE, OR DISPOSAL OF PROPERTY
4 BEFORE ORDER OF FORFEITURE. (a) A court, whether or not a forfeiture
5 proceeding has been initiated, or a hearing officer in an administra-
6 tive proceeding under AS 17.30.117, may issue an appropriate temporary
7 or other order, require execution of a satisfactory performance bond
8 to the state, or take other action to preserve the availability or
9 value of property that might be subject to forfeiture under
10 AS 17.30.103 or AS 17.30.119(d). A temporary order to preserve the
11 availability or value of property subject to forfeiture may be entered
12 upon ex parte application of the state, if there is reason to believe
13 that notice would jeopardize the availability of the property for
14 forfeiture.

AS 17.30.118
AS 17.30.120

15 (b) The state may at any time before an order of forfeiture is
16 issued, request the sale or release of property seized under AS 17.-
17 30.105 or encumbered under (a) of this section. A claimant may also
18 request sale or release before an order of forfeiture is issued if

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19 (1) the claimant has filed a timely answer under AS 17.30.-
20 113 or, before the initiation of a forfeiture proceeding, has sent a
21 notice of claim to the attorney general setting out the nature of the
22 claimant's interest in the property, the date it was acquired, the
23 consideration paid, and the circumstances under which it was acquired;

24 (2) the property is not likely to be used as evidence in a
25 judicial or administrative proceeding;

AS 17.30.118(b)

26 (3) the claimant gives adequate assurance that the property
27 or its proceeds will remain subject to the court's or the hearing
28 officer's jurisdiction;

AS 17.30.113(b) (1)

(4) the sale or release is in the best interests of the

1 state and will provide for protection of the value of the property;
2 and

AS 17.30.113(b) (2)

3 (5) the claimant provides a bond or other equivalent secu-
4 rity equal to twice the estimated value of any released property.

AS 17.30.120

5 (c) Proceeds from any sale of property, plus interest earned on
6 the proceeds to the date of termination of the proceedings, become the
7 subject of the forfeiture action.

AS 17.30.116(a)

8 Sec. 17.30.111. NOTICE OF SEIZURE AND OF FORFEITURE PROCEEDINGS.

9 (a) Within 30 days after a seizure under AS 17.30.105, the commis-
10 sioner of public safety shall notify persons known to have an interest
11 in an item with an estimated value of \$500 or more, or whose interest
12 in such property is ascertainable from official registration numbers,
13 licenses, or other state, federal, or municipal identification numbers
14 affixed to the property. Notice may be given in any manner authorized
15 for service of process under the rules of civil procedure.

AS 17.30.116(b)

16 (b) Within 30 days after a forfeiture proceeding has been initi-
17 ated under AS 17.30.115,

18 (1) persons required to be notified under (a) of this
19 section must be served with a copy of the motion, complaint, or other
20 pleading in any manner authorized for service of process under the
21 rules of civil procedure; and

22 (2) the commissioner of public safety shall begin to pub-
23 lish notice of the action to forfeit property in the manner provided
24 for service by publication in the rules of civil procedure.

AS 17.30.116(a)

25 (c) The notice requirements of this section do not apply to
26 property that consists of controlled substances or imitation con-
27 trolled substances.

28 Sec. 17.30.113. PROCEDURE FOR CLAIMANTS. Upon notice under
29 AS 17.30.111, a person claiming an interest in property that is the

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AS 17.30.116 (b)

AS 17.30.112(a)

AS 17.30.112(a)

AS 17.30.112(a)

AK Rules of
Criminal Procedure
Rule 6(c)

1 subject of a forfeiture proceeding, including a defendant in a crimi-
2 nal proceeding who has been served with a motion to forfeit, shall
3 file an answer within the time permitted for answering civil com-
4 plaints under the rules of civil procedure. The answer must, under
5 penalty of perjury, set out the reasons why the property is not sub-
6 ject to forfeiture or why the claimant is entitled to remission under
7 AS 17.30.121. The answer must state the nature of the claimant's
8 right, title, or interest in the property, the time and circumstances
9 of the claimant's acquisition, the consideration paid, and any addi-
10 tional facts supporting the claim. If an answer is not timely filed,
11 the property is forfeited to the state without further proceedings.

12 Sec. 17.30.115. PROCEEDINGS RESULTING IN FORFEITURE; BURDEN OF
13 PROOF; DEFENSES EXEMPTED. (a) A forfeiture proceeding may be initi-
14 ated by the state by

15 (1) filing a motion to forfeit in a criminal or civil pro-
16 ceeding relating to the conduct that makes the property subject to
17 forfeiture;

18 (2) filing a complaint in a separate in rem proceeding; or
19 (3) filing a notice with the commissioner of administration
20 of the state's intent to seek forfeiture of property administratively
21 as provided in AS 17.30.117.

22 (b) In a forfeiture proceeding the state must prove by a prepon-
23 derance of the evidence that the property is subject to forfeiture
24 under AS 17.30.103. It is prima facie evidence sufficient to support
25 an order of forfeiture, that a defendant has been convicted of conduct
26 making the property subject to forfeiture, or that a grand jury has
27 returned an indictment charging that the evidence, if unexplained or
28 uncontradicted, would warrant a court to conclude that the property
29 specifically identified in the indictment is subject to forfeiture

1 under AS 17.30.103.

AS 17.30.116(c)

2 (c) Questions of fact or law in a forfeiture proceeding must be
3 determined by the court or by the administrative hearing officer,
4 sitting without a jury. A claimant may testify, present evidence and
5 witnesses, and cross-examine witnesses presented by other parties. In
6 addition to other testimony and evidence presented, the court or the
7 hearing officer shall consider the relevant portions of the record of
8 any related criminal action.

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AS 17.30.116(c)

9 (d) Except as to preliminary proceedings under AS 17.30.105(d)
10 to permit use of exempted property, at the request of the state a
11 forfeiture proceeding, including discovery, must be held in abeyance
12 until the conclusion of a pending criminal action relating to the
13 conduct making the property subject to forfeiture.

AS 17.30.112(b)

14 (e) It is not a defense to a forfeiture proceeding that a crimi-
15 nal violation has not been prosecuted, or has resulted in a conviction
16 of a different offense or an acquittal.

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17 Sec. 17.30.117. ADMINISTRATIVE FORFEITURE PROCEDURES. (a) If a
18 notice is filed under AS 17.30.115(a)(3), and if the value of the
19 property sought to be forfeited does not exceed \$100,000, the commis-
20 sioner of administration may order forfeiture of the property adminis-
21 tratively. The administrative process is governed by AS 17.30.100 -
22 17.30.130, and not by the Administrative Procedure Act (AS 44.62). If
23 the proposed administrative forfeiture is contested, the commissioner
24 of administration shall appoint a hearing officer to hold a hearing
25 and make a recommendation regarding forfeiture of the property.

26 (b) In an administrative forfeiture hearing, the hearing officer
27 may order discovery as provided in the rules of civil procedure, order
28 equitable relief as provided in AS 17.30.109, and may issue subpoenas
29 and subpoenas duces tecum at the request of a party. Orders and

Alaska Rules of
Appellate Procedure
Rules 601 -- 611

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1 subpoenas issued by a hearing officer are enforceable in the superior
2 court.

3 (c) Judicial review of an administrative forfeiture is available
4 under applicable rules of court for appeals from administrative
5 agencies.

6 Sec. 17.30.119. ORDER OF FORFEITURE; EXEMPTIONS. (a) If the
7 state establishes in a forfeiture proceeding, that property is subject
8 to forfeiture under AS 17.30.103, the property must be ordered for-
9 feited to the state, subject to remission to an innocent claimant
10 under AS 17.30.121 and subject to exemptions under (b) of this sec-
11 tion. An order of forfeiture must provide clear title to the state.
12 An order of forfeiture subject to remission must clear, in favor of
13 the claimant, all liens, encumbrances, or other clouds on the title
14 resulting from the forfeiture proceeding.

15 (b) With the exception of liquor licenses granted under AS 04
16 and limited entry permits granted under AS 16.43, a person whose
17 property is subject to forfeiture under AS 17.30.103 may claim ex-
18 emptions to the extent permitted under AS 09.38.010 - 09.38.030 of the
19 Alaska Exemptions Act. A person claiming such an exemption has the
20 burden of proving, by a preponderance of the evidence, that the person
21 is entitled to the exemption.

22 (c) A person who causes property to be subject to forfeiture
23 shall pay the reasonable cost of maintenance, storage, disposal, or
24 other expenses of the forfeiture or remission, either as part of a
25 sentence, a condition of probation or suspended imposition of sen-
26 tence, or as a mandatory assessment of costs in a forfeiture proceed-
27 ing.

28 (d) The order of forfeiture must include any other assets, up to
29 the value of any property found to be subject to forfeiture which has

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AS 17.30.124(b)

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Fehir v. State,
755 P.2d 1107,
1110, n.13
(Alaska 1983)

Fehir v. State
supra;

State v. Rice,
620 P.2d 104
(Alaska 1984)

1 been

2 (1) commingled with other property and cannot be separated

3 without difficulty;

4 (2) transferred to, sold to, or deposited with a third

5 party;

6 (3) placed beyond the jurisdiction of the court or cannot

7 be located;

8 (4) substantially diminished in value by any act or omis-

9 sion of the person who caused the property to be subject to forfei-

10 ture; or

11 (5) remitted to an innocent claimant under AS 17.30.121.

12 (e) An order of forfeiture issued under this section may be made

13 regardless of the location of any property that might be subject to

14 forfeiture or that has been ordered forfeited.

15 (f) A perfected priority lien over property that has been or-

16 dered forfeited is created in favor of the state up to an amount that

17 is the sum of the expenses of investigation, prosecution, and forfei-

18 ture arising out of the conduct making the property subject to forfei-

19 ture. In calculating the amount of the lien, expenses of all state,

20 federal, or local agencies are to be included. The lien has priority

21 over all unsecured and all unperfected secured debts associated with

22 the property.

23 Sec. 17.30.121. REMISSION OF PROPERTY SUBJECT TO FORFEITURE.

24 (a) A claimant who has filed an answer under AS 17.30.113 may obtain

25 remission of property that is subject to forfeiture upon proof by a

26 preponderance of the evidence that the claimant

27 (1) has a valid right, title, or interest in the property,

28 acquired in good faith, which takes priority over a lien in favor of

29 the state under AS 17.30.119(f);

AS 17.30.110(4) 1

(2) did not knowingly participate in or facilitate the
conduct that resulted in the property being subject to forfeiture; and

State v. Rice,
620 P.2d at
114 and n.39

(3) at no time knew, or had reasonable cause to believe,
that the property was or might be subject to forfeiture or that a
person using the property with the claimant's permission or ac-
quiescence, except persons using common carriers, had a criminal
record or reputation for offenses involving controlled substances or
imitation controlled substances.

AS 17.30.124(a) (2) 11

(b) If the claimant to property subject to remission under (a)
of this section is entitled to less than the total value of the prop-
erty, the claimant may choose to receive either the proportional value
of the partial interest or, upon payment of the difference in value,
the entire property, if there are no other claimants. In cases of
multiple claimants, the return of the property is to be based on the
value and priority of each claimant's respective interest.

AS 17.30.122 17

Sec. 17.30.123. STATE DISPOSAL OF FORFEITED PROPERTY. (1)
Property forfeited under AS 17.30.100 - 17.30.130, other than con-
trolled substances or imitation controlled substances, must be trans-
ferred to the commissioner of administration for disposition in accor-
dance with applicable law. Controlled substances and imitation con-
trolled substances must be disposed of as provided in AS 17.30.107.
The commissioner of administration may

AS 17.30.122(1) 23

(1) destroy property harmful to the public;

AS 17.30.122(2) 24

(2) sell the property and, subject to appropriations for
that purpose, use the proceeds to pay the expenses of the proceedings
for forfeiture and sale, including expenses of seizure, custody, and
court costs;

AS 17.30.122(3) 27

(3) transfer the property to another agency of the state or
a political subdivision of the state for use in the furtherance of the

AS 17.30.122(5)

AS 17.30.122(6)

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AS 17.30.122(4)

1 administration of justice;
2 (4) transfer the property to the United States Department
3 of Justice for disposition;
4 (5) transfer ownership of an aircraft to the Alaska Wing,
5 Civil Air Patrol;
6 (6) upon the recommendation of the commissioner of public
7 safety, transfer property or the proceeds of its sale, up to a total
8 of 50 percent of the net value of forfeited property, to one or more
9 political subdivisions of the state for significant contributions to
10 the investigation of the conduct making the property subject to for-
11 feiture; and
12 (7) otherwise dispose of the property in accordance with
13 the law.
14 (b) The commissioner of administration shall separately account
15 for the proceeds from the sale of forfeited property under (a) of this
16 section which the commissioner deposits in the general fund. The
17 annual estimated balance in the account may be used by the legislature
18 to make appropriations to the department for the purposes described in
19 (a)(2) of this section.
20 * Sec. 2. AS 17.30.900(a) is amended to read:
21 Sec. 17.30.900. DEFINITIONS. (a) Unless the context clearly
22 requires otherwise, the definitions set out in AS 11.71.900 and
23 AS 11.73.099(3) apply to this chapter.
24 * Sec. 3. AS 17.30.900 is amended by adding a new subsection to read:
25 (c) In this chapter, "violation of AS 11.71 or AS 11.73" in-
26 cludes an attempt or solicitation under AS 11.31 to violate AS 11.71
27 or AS 11.73.
28 * Sec. 4. AS 11.73.060, AS 17.30.110, 17.30.111, 17.30.114, 17.30.116,
29 17.30.118, 17.30.120, 17.30.122, 17.30.124, and 17.30.126 are repealed.

- (8) lidocaine;
- (9) procaine;
- (10) tetracaine;
- (11) dyclonine;
- (12) acetaminophen;
- (13) salicylamide;
- (14) doxylamine;
- (15) diphenhydramine;
- (16) pheniramine;
- (17) chlorpheniramine; or
- (18) pyrrolamine.

(b) A person who violates this section commits a class C felony. (§ 1 ch 41 SLA 1983)

Sec. 11.73.030. Delivery of an imitation controlled substance to a minor. (a) Except as provided in AS 11.73.050, a person 19 years of age or older may not deliver an imitation controlled substance to a person under 19 years of age, who is at least three years younger than the person delivering the substance.

(b) A person who violates this section commits a class B felony. (§ 1 ch 41 SLA 1983)

Sec. 11.73.040. Advertisement to promote the delivery of an imitation controlled substance. (a) Except as provided in AS 11.73.050, a person may not knowingly place in a newspaper, magazine, handbill, or other publication, or post or distribute in a public place, an advertisement or solicitation knowing that the purpose of the advertisement or solicitation is to promote the delivery of an imitation controlled substance in the state.

(b) A person who violates this section commits a class C felony. (§ 1 ch 41 SLA 1983)

Sec. 11.73.050. Imitation controlled substance as placebo. No civil or criminal liability may be imposed under this chapter on a person who manufactures, delivers, possesses or advertises or solicits to promote delivery of an imitation controlled substance solely for use as a placebo prescribed by a registered practitioner, as defined in AS 11.71.900(19), in the course of professional practice or research. (§ 1 ch 41 SLA 1983)

Sec. 11.73.060. Forfeitures. (a) Property used during or in aid of a violation of this chapter may be forfeited to the state to the extent permitted under and in accordance with the provisions of AS 17.30.110 — 17.30.126.

(b) For purposes of this section the terms "controlled substance" and "this chapter", as used in AS 17.30.110 — 17.30.126, shall be

construed as "imitation controlled substance" and "AS 11.73" respectively. (§ 1 ch 41 SLA 1983)

Sec. 11.73.099. Definitions. In this chapter

(1) "controlled substance" means a substance as defined in AS 11.71.900(4);

(2) "deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of an imitation controlled substance, whether or not there is an agency relationship;

(3) "imitation controlled substance" means a substance containing ephedrine, ephedrine sulfate, pseudoephedrine, pseudoephedrine hydrochloride, phenylpropanolamine, caffeine, theophylline, lidocaine, procaine, tetracaine, dyclonine, acetaminophen, salicylamide, doxylamine, diphenhydramine, pheniramine, chlorpheniramine, or pryrilamine, or their salts, that is not a controlled substance, and that by dosage unit appearance (including color, shape, size, and markings) or by representations would lead a reasonable person to believe that the substance is a controlled substance; the term "representations", as used in this paragraph, includes

(A) statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, or its use or effect;

(B) statements made to the recipient that the substance may be resold for inordinate profit;

(C) whether the substance is packaged in a manner normally used for controlled substances;

(D) evasive tactics or actions used by the owner or person in control of the substance to avoid detection by law enforcement authorities;

(E) the storage, packaging, presentation, display of or reference to a controlled substance with, near, or in connection with the activity involving the imitation controlled substance.

(4) "manufacture" means the production, preparation, compounding, processing, encapsulating, packaging or repackaging, labeling or relabeling, of an imitation controlled substance. (§ 1 ch 41 SLA 1983)

Cross references. — For definition of terms used in this title, see AS 11.81.900.

NOTES TO DECISIONS

This section, as interpreted, was not unconstitutional^{ly} vague. — See *Morrow v. State*, 704 P.2d 226 (Alaska Ct. App. 1985).

(3) cooperating with the Drug Enforcement Administration of the United States Department of Justice by establishing a centralized unit to accept, catalog, file, and collect statistics, including records of persons who have violated the provisions of this chapter or AS 11.71 in the state and making the information available for federal, state, and local law enforcement purposes.

(b) The commissioner of public safety may not furnish the name or identity of a patient or research subject whose identity could not be obtained under AS 17.30.155. (§ 4 ch 45 SLA 1982)

Sec. 17.30.110. Items subject to forfeiture. The following may be forfeited to the state:

(1) a controlled substance which has been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or AS 11.71;

(2) raw materials, products, and equipment which are used or intended for use in manufacturing, distributing, compounding, processing, delivering, importing, or exporting a controlled substance which is a felony under this chapter or AS 11.71;

(3) property which is used or intended for use as a container for property described in (1) or (2) of this section;

(4) a conveyance, including but not limited to aircraft, vehicles or vessels, which has been used or is intended for use in transporting or in any manner in facilitating the transportation, sale, receipt, possession, or concealment of property described in (1) or (2) of this section in violation of a felony offense under this chapter or AS 11.71; however,

(A) a conveyance may not be forfeited under this paragraph if the owner of the conveyance establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the owner was neither a consenting party nor privy to the violation;

(B) a forfeiture of a conveyance encumbered by a valid security interest at the time of seizure is subject to the interest of the secured party if the secured party establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the secured party was neither a consenting party nor privy to the violation;

(5) books, records, and research products and materials, including formulas, microfilm, tapes, and data, which are used in violation of this chapter or AS 11.71;

(6) money, securities, negotiable instruments, or other things of value used in financial transactions derived from activity prohibited by this chapter or AS 11.71; and

(7) a firearm which is visible, carried during, or used in furtherance of a violation of this chapter or AS 11.71. (§ 4 ch 45 SLA 1982)

Revisor's notes. — AS 17.30.110(b) —
(g) were renumbered as AS 17.30.112 —
17.30.126 in 1983.

NOTES TO DECISIONS

Former forfeiture statute construed. 1265 (1977), decided under former AS
— See *One Cocktail Glass v. State*, Sup. 17.12.130.
Ct. Op. No. 1437 (File No. 2729), 565 P.2d

Collateral references. — Forfeiture of personal property used in illegal manufac-
ture, processing, or sale of controlled sub- stances under § 511 of Comprehensive
Drug Abuse Prevention and Control Act of
1970 (21 USCS § 881), 59 ALR Fed. 765.

Sec. 17.30.112. Proceedings resulting in forfeiture. (a) Property listed in AS 17.30.110 may be forfeited to the state either upon conviction of the defendant of a violation of this chapter or AS 11.71, or upon judgment of a court in a separate civil proceeding in rem. The court may order a forfeiture in the in rem proceeding if it finds that an item specified in AS 17.30.110 was used during or in aid of a violation of this chapter or AS 11.71.

(b) It is not a defense in an in rem proceeding brought under this section that a criminal proceeding has resulted in a conviction or conviction of a lesser offense for a violation of this chapter or AS 11.71. (§ 4 ch 45 SLA 1982)

Revisor's notes. — Formerly AS
17.30.110(b) and (c). Renumbered in 1983.

Sec. 17.30.114. Seizure and custody of property. (a) Property listed in AS 17.30.110 may be seized by a peace officer upon an order issued by a court having jurisdiction over the property upon a showing of probable cause that the property may be forfeited under AS 17.30.110. Seizure without a court order may be made if

(1) the seizure is incident to a valid arrest or a search under a valid search warrant;

(2) the property subject to seizure has been the subject of an earlier judgment in favor of the state in a criminal proceeding or civil proceeding in rem under this chapter or AS 11.71; or

(3) there is probable cause that the property was used, is being used, or is intended for use, in violation of this chapter or AS 11.71 and the property is easily movable; property seized under this paragraph may not be held for more than 48 hours without a court order obtained to continue its detention

(b) Property taken or detained under (a) of this section shall be held in the custody of either the commissioner of public safety or a munic-

ipal law enforcement agency authorized by the commissioner of public safety to retain custody of property listed in AS 17.30.110 subject only to the orders and decrees of the court having jurisdiction over any forfeiture proceedings. If property is seized under this chapter, the commissioner of public safety or an authorized municipal law enforcement agency may

- (1) place the property under seal;
- (2) remove the property to a place designated by the court; or
- (3) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(c) Within 10 days after a seizure under AS 17.30.110 — 17.30.126, the commissioner of public safety shall make an inventory of any property seized, including controlled substances, and shall appraise the value of any items seized other than controlled substances. (§ 4 ch 45 SLA 1982)

Revisor's notes. — Formerly AS 17.30.110(d) — (f). Renumbered in 1983.

Sec. 17.30.116. Procedure for forfeiture action. (a) Within 20 days after a seizure under AS 17.30.110 — 17.30.126, the commissioner of public safety shall, by certified mail, notify any person known to have an interest in an item with an appraised value of \$500 or more, or who is ascertainable from official registration numbers, licenses, or other state, federal or municipal numbers on the item, of the pending forfeiture action. Additionally, the commissioner of public safety shall publish notice of forfeiture action of an item valued at \$500 or more in a newspaper of general circulation in the judicial district in which the seizure was made, or if no newspaper is published in that judicial district, in a newspaper published in the state and distributed in that judicial district. The notice shall be published once each week during four consecutive calendar weeks. The requirements of this subsection do not apply to the forfeiture of controlled substances which have been manufactured, distributed, dispensed, or possessed in violation of this chapter or AS 11.71, regardless of their value.

(b) Upon service or publication of notice of commencement of a forfeiture action under this section, a person claiming interest in the property shall file within 30 days after the service or publication, a notice of claim setting out the nature of the interest, the date it was acquired, the consideration paid, and an answer to the state's allegations. If a claim and answer is not filed within the time specified, the property described in the state's allegation must be ordered forfeited to the state without further proceedings or showings.

(c) Questions of fact or law raised by a notice of forfeiture action and answer of a claimant in an action commenced under this section must be determined by the court sitting without a jury. This proceeding may be held in abeyance until conclusion of any pending criminal charges

against the claimant under this chapter or AS 11.71. (§ 4 ch 45 SLA 1982)

Revisor's notes. — Formerly AS 17.30.110(g) — (i). Renumbered in 1983. **failure to furnish notification required under this chapter. see AS 11.71.050(a)(4).**
Cross references. — For penalty for

Sec. 17.30.118. Petition for release of seized items. (a) A claimant under AS 17.30.116(b) may at any time petition for release of a seized item as follows:

- (1) to a court in which a warrant for seizure has been issued;
- (2) to a court in which a criminal or civil action alleging forfeiture of the item has been filed; or
- (3) before an action is filed, or if no seizure warrant was issued, to a court in the judicial district in which the violation took place.

(b) An item may not be released by the court under (a) of this section unless the claimant gives adequate assurance that the item will remain subject to the court's jurisdiction and

- (1) the court finds that the release is in the best interests of the state; or
- (2) the claimant provides a bond or other valid and equivalent security equal to twice the assessed value of the item. (§ 4 ch 45 SLA 1982)

Revisor's notes. — Formerly AS 17.30.110(j) and (k). Renumbered in 1983.

Sec. 17.30.120. Petition for sale of seized item. A claimant may petition the court for sale of an item before final disposition of court proceedings. The court shall grant a petition for sale upon a finding that the sale is in the best interests of the state and the preservation and maintenance of the item seized. Proceeds from the sale plus interest to the date of final disposition of the court proceedings become the subject of the forfeiture action. (§ 4 ch 45 SLA 1982)

Revisor's notes. — Formerly AS 17.30.110(l). Renumbered in 1983.

Sec. 17.30.122. State disposal of forfeited property. Property forfeited under AS 17.30.110 — 17.30.126 other than controlled substances shall be disposed of by the commissioner of administration in accordance with applicable law. The commissioner of administration may

- (1) destroy property harmful to the public;
- (2) sell the property and use the proceeds for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, custody, and court costs;

(3) take custody of the property and authorize its use in the enforcement of this chapter or AS 11.71, or transfer it to another agency of the state or a political subdivision of the state for a use in furtherance of the administration of justice;

(4) take custody of the property and remove it for disposition in accordance with law;

(5) forward it to the Drug Enforcement Administration of the United States Department of Justice for disposition; or

(6) transfer ownership of an aircraft to the Alaska Wing, Civil Air Patrol. (§ 4 ch 45 SLA 1982; am § 2 ch 18 SLA 1983)

Revisor's notes. — Formerly AS 17.30.110(m). Renumbered in 1983.

Effect of amendments. — The 1983 amendment added paragraph (6).

Sec. 17.30.124. Remittance to claimant. (a) Upon a showing that a claimant is entitled to remittance under AS 17.30.110 — 17.30.126, the court shall order that

(1) if the claimant is entitled to the item, it shall be delivered to the claimant immediately;

(2) if the claimant is entitled to remittance of some value less than the total value of the item, the claimant is entitled, at the claimant's choice, to receive either the value of the claimant's interest or, upon receipt of payment of the difference in value by the claimant, the entire item.

(b) An offender who used an item subject to remission in violation of this chapter or AS 11.71 shall be assessed a fine which may not be less than the cost of any lien payment or remittance made by the state plus the reasonable costs of the seizure. (§ 4 ch 45 SLA 1982)

Revisor's notes. — Formerly AS 17.30.110(n) and (o). Renumbered in 1983.

~~**Sec. 17.30.126. Forfeiture of controlled substances.** (a) A controlled substance manufactured, possessed, transferred, sold, or offered for sale in violation of this chapter or AS 11.71 is contraband and must be seized and summarily forfeited to the state. The commissioner of public safety or the commissioner's designee, including a municipal law enforcement agency authorized under AS 17.30.114(b) of this section to retain custody of controlled substances, is responsible for the disposal of controlled substances which have been forfeited. The controlled substances shall be disposed of in accordance with procedures and requirements prescribed by the commissioner.~~

~~(b) Plants from which controlled substances may be derived and which have been planted or cultivated in violation of this chapter or AS 11.71, or which are grown in the wild, may be seized and summarily forfeited to the state. (§ 4 ch 45 SLA 1982)~~

Sec. 17.30.116. Procedure for forfeiture action.**NOTES TO DECISIONS**

Cited in *Resek v. State*, 706 P.2d 288
(Alaska 1985).

Sec. 17.30.126. Forfeiture of controlled substances. (a) A controlled substance manufactured, possessed, transferred, sold, or offered for sale in violation of this chapter or AS 11.71 is contraband and must be seized and summarily forfeited to the state. The commissioner of public safety or the commissioner's designee, including a municipal law enforcement agency authorized under AS 17.30.114(b) to retain custody of controlled substances, is responsible for the disposal of controlled substances which have been forfeited. The controlled substances shall be disposed of in accordance with procedures and requirements prescribed by the commissioner.

(b) Plants from which controlled substances may be derived and which have been planted or cultivated in violation of this chapter or AS 11.71, or which are grown in the wild, may be seized and summarily forfeited to the state. (§ 4 ch 45 SLA 1982)

Editor's notes. — This section is set out to incorporate editorial changes made by the Revisor of Statutes.

Sec. 17.30.130. Judicial review. [Repealed, § 22 ch 146 SLA 1986.]

Article 4. General Provisions.

Section	Section
150. Reliance on Drug Enforcement Administration	900. Definitions
155. Confidentiality of certain information	

Sec. 17.30.150. Reliance on Drug Enforcement Administration. Results, information, and evidence received from the Drug Enforcement Administration of the United States Department of Justice relating to the enforcement functions of this chapter, including results of inspections conducted by it, may be relied on and acted on by the Department of Public Safety in the exercise of its enforcement functions under this chapter. (§ 4 ch 45 SLA 1982; am § 20 ch 146 SLA 1986)

Effect of amendments. — The 1986 amendment substituted "enforcement" for "regulatory" in two places and substituted "Department of Public Safety" for "board."

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An act relating to forfeiture as a result of violating state drug laws
 Sponsor: Rules Committee
 Requestor: Governor

Agency Affected: Administration
 BRU: Central and Statewide Services

Components: Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL	.6	.6	.6	.6	.6	.6
CONTRACTUAL	22.5	23.7	24.9	26.2	27.5	28.9
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	23.1	24.3	25.5	26.8	28.1	29.5

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	23.1	24.3	25.5	26.8	28.1	29.5
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	23.1	24.3	25.5	26.8	28.1	29.5

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)

See Attached

Prepared by: Robert L. Stewart
 Division: Administrative Services

Phone: 465-4418
 Date: 12-21-89

Approved by Commissioner: Frank S. Baxter
 Agency: Department of Administration

Date: 12-22-89

Distribution (by preparer) :

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

CONTINUATION OF FISCAL NOTE ANALYSIS

It is anticipated that each year, beginning in FY 91, six (6) cases will be referred to the Commissioner of Administration which will require adjudication. This fiscal note is prepared on the assumption that contractual hearing officers will be required.

For purposes of estimate, three cases will be in Anchorage, one will be in Juneau and two will be in Fairbanks. Rates for attorneys acting as hearing officers will average \$125 per hour. Holding the hearing and preparing a decision will average 30 hours equalling \$3,750 per case. Travel may be involved in the Fairbanks cases estimated at \$300 per case. It is additionally estimated that costs will escalate at 5% per year.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Administration
 Title: An Act relating to forfeiture
as a result of violating state drug laws.
 BRU: Office of Public Advocacy
 Sponsor: Rules Committee
 Requestor: Governor
 Components: Office of Public Advocacy

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	77.9	81.0	84.2	87.6	91.1	94.7
TRAVEL	10.4	10.8	11.2	11.7	12.2	12.7
CONTRACTUAL	104.0	108.2	112.5	117.0	121.5	126.0
SUPPLIES	2.1	2.2	2.3	2.4	2.5	2.6
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	194.4	202.2	210.2	218.7	227.3	236.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	194.4	202.2	210.2	218.7	227.3	236.0
FEDERAL FUNDS						
OTHER						
TOTAL	194.4	202.2	210.2	218.7	227.3	236.0

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: James & Fox
Grant McGee, Public Advocate
 Division: Office of Public Advocacy
 Phone: 274-1684
 Date: 12/22/89
 Approved by Commissioner: Frank S. Baxter
 Agency: Department of Administration
 Date: 12-22-89

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Administration
 Title: An Act relating to forfeiture as
a result of violating state drug laws
 BRU: Public Defender Agency
 Sponsor: Rules Committee
 Requestor: Governor Components: Third Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	77.8	80.9	84.1	87.5	90.9	94.4
TRAVEL	5.2	5.4	5.6	5.8	6.0	6.2
CONTRACTUAL	10.4	10.8	11.2	11.6	12.0	12.4
SUPPLIES	2.1	2.2	2.3	2.4	2.5	2.6
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	95.5	99.3	103.2	107.3	111.4	115.6
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	95.5	99.3	103.2	107.3	111.4	115.6
FEDERAL FUNDS						
OTHER						
TOTAL	95.5	99.3	103.2	107.3	111.4	115.6

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: John B. Salemi, Acting Public Defender Phone: 275-7541
 Division: Public Defender Date: 12/22/89
 Approved by Commissioner: Frank S. Baxter Date: 12-22-89
 Agency: Department of Administration

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

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

Without an AS 09 exemption for attorney fees incurred in the defense of related drug prosecutions, the proposed drug forfeiture statutes would increase the Public Defender caseload. Criminal defendants in drug cases whose assets are seized will be unable to hire private counsel. Although somewhat speculative, it is anticipated the Public Defender Agency would require one Attorney IV position for Anchorage to absorb these new cases. It should be noted that the defense of drug prosecutions often involve complex and protracted litigation, including much pre-trial motion work and lengthy trials.

Budget Analysis

100	-	Attorney IV--Anchorage	77.8
200	-	Travel	5.2
300	-	Contractual (Experts, etc.)	10.4
400	-	Supplies	2.1
		Total	<u>95.5</u>

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Administration
 Title: Forfeiture as a result of of _____ BRU: General Services & Supply
violation.
 Sponsor: Rules Committee Components: Property management
 Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

The fiscal impact of this bill on the sales/disposal function of property management will be negligible. This fiscal note applies only to property management and disposal and does not cover the expenses for forfeiture proceedings, or seizure custody, or court costs.

*To date, we have not received revenue from the sale of forfeited property. We do not know if the bill would change this.

Prepared by: Robert J. Link *Robert Link* Phone: 465-2250
 Division: General Services & Supply Date: 12/21/89

Approved by Commissioner: Frank S. Baxter *Frank S. Baxter* Date: 12-22-89
 Agency: Department of Administration

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
 Title: An Act relating to forfeitures
for violations of state drug laws BRU: Alaska State Troopers
 Sponsor: Rules Committee Component: _____
 Requestor: Governor

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

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

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

GENERAL FUND						
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)

By improving the procedures under which property used to commit drug offenses can be forfeited, this bill could result in an increase of funds and property forfeited to the State. It is impossible to estimate the amount of this increase, however, especially as some of the forfeited assets may be passed on to municipalities that assist in these investigations.

Prepared by: Gavle A. Horetski, Deputy Commissioner Phone: 465-4322
 Division: Office of the Commissioner Date: 12/15/89

Approved by Commissioner: A. U. H. English Date: 12/15/89
 Agency: Department of Public Safety

S B

368

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE SENATE

2

SENATE BILL NO. 368

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to commercial motor vehicle in-
7 spections."

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

9 * Section 1. AS 28.32.010 is amended by adding a new subsection to
10 read:

11 (b) A peace officer, or an employee of the department who is
12 authorized by the commissioner to enforce hazardous materials and
13 commercial vehicle safety regulations, may issue a citation under
14 AS 12.25.180 - 12.25.230 to a person who violates a regulation adopted
15 under AS 28.05.011(2). An employee of the department who is aut-
16 horized by the commissioner to enforce hazardous materials and commer-
17 cial vehicle safety regulations may not take a person into custody
18 under AS 12.25.180(b).

19 * Sec. 2. AS 28.32.900 is repealed and reenacted to read:

20 Sec. 28.32.900. DEFINITIONS. In this chapter,

21 (1) "commercial motor vehicle" means a motor vehicle or a
22 combination of a motor vehicle and one or more other vehicles

23 (A) used to transport passengers or property;

24 (B) used upon a highway or vehicular way connected to

25 (i) the land-connected state highway system; or

26 (ii) a land highway or vehicular way with an
27 average daily traffic volume greater than 499; and

28 (C) which

29 (i) has a gross vehicle weight rating or gross

1 combination weight rating greater than 10,000 pounds;

2 (ii) is designed to transport more than 15 passen-
3 gers, including the driver; or

4 (iii) is used in the transportation of materials
5 found by the Secretary of Transportation to be hazardous for
6 purposes of 49 U.S.C. 1801 - 1813 (Hazardous Materials
7 Transportation Act);

8 (D) except that the following vehicles meeting the
9 criteria in (A) - (C) of this paragraph are not commercial
10 vehicles:

11 (i) emergency or fire equipment that is necessary
12 to the preservation of life or property;

13 (ii) farm vehicles that are controlled and
14 operated by a farmer; used to transport agricultural
15 products, farm machinery, or farm supplies to or from that
16 farmer's farm; not used in the operations of a common or
17 contract motor carrier; and used within 150 miles of the
18 farmer's farm;

19 (iii) school buses;

20 (iv) vehicles owned and operated by the federal
21 government unless the vehicle is used to transport property
22 of the general public for compensation in competition with
23 other persons who own or operate a commercial motor vehicle
24 subject to this chapter, and except to the extent that
25 regulation of vehicles operated by the federal government is
26 permitted by federal law; and

27 (v) vehicles used exclusively for purposes other
28 than commercial purposes;

29 (2) "commercial purposes" means activities for which a

1 person receives direct monetary compensation or activities for which a
2 person receives no direct monetary compensation but which are inci-
3 dental to and done in furtherance of the person's primary business;

4 (3) "division" means the division of ^{trucks} motor vehicles, De-
5 partment of Public Safety;

6 (4) "gross combination weight rating" means the value
7 specified by the manufacturer as the loaded weight of a combination
8 vehicle, except that if a value has not been specified by the manufac-
9 turer, the gross combination weight rating is determined by adding the
10 gross vehicle weight rating of the power unit and the total weight of
11 the towed unit and the load on the towed unit;

12 (5) "gross vehicle weight rating" means the value specified
13 by the manufacturer as the loaded weight of a single vehicle.

14 * Sec. 3. AS 28.32.020 is repealed.

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 8, 1990

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to commercial vehicle safety inspections.

This bill is intended to bring Alaska into compliance with the Federal Motor Carrier Safety Regulations (49 C.F.R. secs. 390 -- 399). Compliance with these federal regulations is a condition of receiving federal Motor Carrier Safety Assistance Program money.

The primary component of this bill is the definition of "commercial motor vehicle" in sec. 2 of the bill, which adopts federal standards while recognizing the uniqueness of Alaska roadways. The definition continues the tradition of less strict regulation of vehicles on roads not connected either to the main state highway system or to heavily travelled roads. See, e.g., AS 28.10.011 (registration) and AS 28.22.200 (insurance).

The secondary component of this bill is the authorization in sec. 1 of the bill, for employees of the Department of Public Safety, who are not peace officers, to issue citations for violations of commercial vehicle safety regulations. Granting authorized employees the authority to conduct inspections and to issue citations is a cost-effective method of enforcing the commercial vehicle safety standards.

I urge your favorable action on this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper".

Steve Cowper
Governor

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
Title: An Act relating to commercial BRU: Highway Safety Planning Agency
vehicle inspections
Sponsor: Rules Committee Component: Commercial Vehicle Safety
Requestor: Governor

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

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

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

GENERAL FUND						
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)

This bill amends AS 28.32 to bring Alaska law into conformity with federal motor carrier safety regulations. These changes are needed to allow Alaska to participate in the federal commercial vehicle safety inspection program. Alaska's participation in the federal program is not mandated by the federal government, at least at this time. A State program is being developed; funding for implementation will be sought through the normal departmental budgetary process. There will be no direct fiscal impact as a result of the passage of this bill.

Prepared by: Earl D. Clark
Division: Highway Safety Planning Agency

Phone: 465-2446
Date: 12/15/89

Approved by Commissioner: D.A. H. English
Agency: Department of Public Safety

Date: 12/15/89
Page: 1 of 1

12/15/89

Chapter 25. Protection of Blind Persons.

[Repealed, § 1 ch 19 SLA 1972.]

Chapter 30. Abandoned Vehicles.

[Repealed, § 36 ch 127 SLA 1974.]

Chapter 31. Abandoned Motor Vehicles.

[Repealed, § 3 ch 61 SLA 1976. For current law, see AS 28.11.]

Chapter 32. Commercial Motor Vehicle Safety Inspections.

Section	Section
10. Commercial motor vehicle safety inspections	50. Issuance of certificate of inspection
20. Exemptions	60. Falsely representing to be an official station
30. Official commercial motor vehicle inspection stations	70. Counterfeit certificates of inspection
40. Certification of commercial motor vehicle inspectors	80. Duties of commissioner
	90. Violation a misdemeanor
	900. Definitions

Sec. 28.32.010. Commercial motor vehicle safety inspections. A commercial motor vehicle may not be operated after January 1, 1986 without a certificate of inspection. An owner of a commercial motor vehicle shall renew a certificate of inspection at least semi-annually at an official inspection station under AS 28.32.030. The owner may renew a certificate of inspection at any time during the office hours of the inspection station. An owner of a commercial motor vehicle shall display a current sticker of inspection visible from outside the vehicle in a location determined by the division. (§ 3 ch 104 SLA 1985)

Sec. 28.32.020. Exemptions. A commercial motor vehicle is exempt from the requirements of AS 28.32.010 if it is

(1) owned and operated by the federal government unless the vehicle is used to transport property of the general public for compensation in competition with other persons who own or operate a commercial motor vehicle subject to this chapter, and except to the extent regulation of vehicles operated by the federal government is permitted by federal law;

(2) used exclusively to transport ranch and farm products other than bulk milk; or

(3) customarily and historically used for commercial purposes for less than 20 hours per month. (§ 3 ch 104 SLA 1985)

Sec. 28.32.900. Definitions. In this chapter,

(1) "commercial motor vehicle" means a vehicle used by the owner or another person for commercial purposes upon a highway or vehicular way with a daily traffic volume greater than 499 that is a part of the state highway system or is connected by another highway or vehicular way to the state highway system, if the vehicle is

(A) a school bus;

(B) a state or local government vehicle of more than 10,000 pounds unladen gross weight;

(C) a truck or bus of more than 10,000 pounds unladen gross weight; or

(D) a trailer of 5,000 pounds or more unladen gross weight attached to a vehicle described in (C) of this paragraph;

(2) "commercial purposes" means activities for which a person receives direct monetary compensation or activities for which a person receives no direct monetary compensation but are incidental to and done in furtherance of the person's primary business;

(3) "division" means the division of motor vehicles, Department of Public Safety. (§ 3 ch 104 SLA 1985)

Chapter 33. Commercial Motor Vehicle Financial Responsibility.

Section

10. Financial responsibility

Sec. 28.33.010. Financial responsibility. (a) A person who carries passengers or freight for hire intrastate in a commercial motor vehicle or a person who carries freight in a motor vehicle for commercial purposes, or a person who rents or leases a motor vehicle for the use of another to carry freight shall procure and maintain security in the following minimum amounts:

(1) \$200,000 for property damage in a single occurrence;

(2) \$500,000 for bodily injury or death in a single occurrence.

(b) Evidence of security required under (a) of this section shall be filed with the department and must be

(1) a policy or certificate of insurance issued by an insurer acceptable to the department;

(2) a bond of a surety company licensed to write surety bonds in the state;

(3) evidence accepted by the department, showing ability to self-insure; or

(4) other security approved by the department.

(c) The department may authorize department personnel to enforce this section and may adopt procedural regulations necessary to implement this section.

Sec. 28.01.020. Short title. This chapter may be cited as the Alaska Uniform Traffic Laws Act. (§ 3 ch 241 SLA 1976)

Chapter 05. Administration.

Article

- 1. Powers and Duties of Department of Public Safety (§§ 28.05.011 — 28.05.071)
- 2. Vehicle Equipment Standards (§§ 28.05.081 — 28.05.099)
- 3. Subpoenas, Notices and Hearings (§§ 28.05.111 — 28.05.141)
- 4. Disposition of Certain Vehicle and Traffic Offenses (§ 28.05.151)

Article 1. Powers and Duties of Department of Public Safety.

Section

- 11. Duty of commissioner to adopt regulations
- 21. Commissioner to enter compacts and reciprocal agreements
- 31. Department to publish statutes and regulations relating to vehicles, vehicle use and pedestrians
- 35. Approval of accident prevention courses

Section

- 41. Commissioner to prescribe forms, examine applications, and administer oaths
- 45. Voter registration
- 51. Suspended or revoked documents
- 61. Records of department and certified copies of records
- 71. Change of name or address

Sec. 28.05.010. Powers and duties. [Repealed, § 6 ch 178 SLA 1978.]

Sec. 28.05.011. Duty of commissioner to adopt regulations. The commissioner shall, unless otherwise provided by statute, adopt regulations in compliance with the Administrative Procedure Act (AS 44.62) necessary to carry out the provisions of this title and other statutes the administration of which is vested in the department. The regulations must include, but are not limited to:

(1) rules of the road relating to the driving, stopping, standing, parking, and other conduct of vehicles, to pedestrians and to official traffic control devices;

(2) minimum equipment for vehicles, including, but not limited to, minimum standards of compliance to be met by manufacturers and vehicle sales and repairs businesses;

(3) inspection of vehicles, and the removal of vehicles from areas of public use when they are found to be in a defective or unsafe condition;

(4) registration, titling, transfer, and abandonment of vehicles;

(5) licensing of drivers of vehicles;

(6) financial responsibility relating to vehicles;

(7) management of records of the department required for the administration of this title and regulations adopted under this title,

including provisions for ensuring the accuracy of information contained in automated and manual information retrieval systems;

(8) *(Repealed, § 3 ch 77 SLA 1982.)*

(9) definitions of words and phrases used in this title and in regulations adopted under this title unless otherwise provided by statute;

(10) registration of motor vehicle, trailer, and semi-trailer dealers; and

(11) certification and regulation of junk yards. (§ 6 ch 178 SLA 1978; am § 3 ch 77 SLA 1982)

Cross references. — For regulations adopted under this section, see generally 13 Alaska Admin. Code 02 — 40 and 70; for rules of road, see 13 AAC 02; for required equipment and inspection, see 13 AAC 04; for authority of Department of Transportation and Public Facilities to establish weight, size and load limitations, see AS 19.10.060; for present provisions of former paragraph (8) of this section, see AS 44.33.020(25).

Opinions of attorney general. — Statutes may be enforced on streets not within state highway system. The Department of Public Safety has the authority to enforce all traffic statutes and regulations upon dedicated or public subdivision streets, regardless of whether they are in the state highway system. 1965 Op. Att'y Gen., No. 10.

NOTES TO DECISIONS

Editor's notes. — Many of the cases cited below were decided under former AS 28.05.030.

Power of commissioner includes regulation of motorcycle construction and safety apparel. — The power of the commissioner of public safety to adopt regulations governing rules of the road has been interpreted as including the regulation of motorcycle construction and safety apparel insofar as such regulations are reasonable and do not violate constitutional rights of the individual. *Kingery v. Chapple*, 504 P.2d 831 (Alaska 1972).

Wholesale frontal assault on traffic laws not intended. — Although the supreme court strongly presumes that most traffic regulations do in fact provide standards of reasonable behavior, it is conceivable that in highly unusual cases certain traffic laws may be so obscure, oblique or irrational that they could not be said as a matter of law to provide such a standard. In the event the courts of Alaska are faced with such arbitrary and unreasonable laws, they may provide that violations thereof merely indicate some evidence of negligence or no evidence at all. But it should be emphasized that the supreme court does not intend to signify a wholesale frontal assault on Alaska's wise and comprehensive traffic laws. *Ferrell v. Baxter*, 484 P.2d 250 (Alaska 1971).

Certain class of individual to be protected from certain type of harm. — In promulgating traffic laws and regulations the legislature, sometimes expressly, but more often by implication, indicates a policy that a certain class of individual be protected from a certain type of harm. For example, in the case at bar the regulation requiring drivers to remain within their lanes was at least partly designed to protect oncoming motorists against head-on collisions. By enacting the regulation pursuant to statutory authority, the Department of Public Safety has implicitly indicated that no reasonable person would move from his lane before ascertaining it could be done safely. Therefore, before a plaintiff is entitled to an instruction defining the violation as negligence per se, he must first demonstrate that he is among the protected class and, second, that the injury was caused by a harm against which the law was designed to protect. *Ferrell v. Baxter*, 484 P.2d 250 (Alaska 1971).

Restatement rules adopted. — The rules the supreme court adopts to be applied in this state in trials held after the date of this opinion are those set forth in the Restatement (Second) of Torts §§ 286, 288A, and 288B (1965). Trial courts should apply these rules whether the actor is alleged to have violated a traffic

Sec. 12.25.160. Arrest defined. Arrest is the taking of a person into custody in order that the person may be held to answer for the commission of a crime. (§ 2.01 ch 34 SLA 1962)

NOTES TO DECISIONS

Arrest for speedy trial purposes. — "Arrest," as used in Crim. R. 45(c)(1), which provides for a 120-day speedy trial period, must be defined in conformity with the statutory definition of an arrest. *G.D. v. State, Ct. App. Op. No. 374* (File No. 7724), P.2d (1984).

Defendant was not arrested on the date of the child-in-need-of-aid hearing, and the 120-day speedy trial period did not begin to run until he was served with a copy of the information charging him with sexual assault in the first degree and contributing to the delinquency of a minor. *G.D. v. State, Ct. App. Op. No. 374* (File No. 7724), P.2d (1984).

Drawn guns and handcuffing do not necessarily turn stop into arrest. *Howard v. State, Ct. App. Op. No. 260* (File Nos. 6027, 6123), 664 P.2d 603 (1983).

Lawful stops and custodial arrest distinguished. — See *Howard v. State, Ct. App. Op. No. 260* (File Nos. 6027, 6123), 664 P.2d 603 (1983).

Applied in *Goss v. State, Sup. Ct. Op. No. 193* (File No. 235), 390 P.2d 220, cert. denied, 379 U.S. 859, 85 S. Ct. 118, 13 L.Ed.2d 62 (1964); *Aldridge v. State, Sup. Ct. Op. No. 1971* (File No. 3413), 602 P.2d 798 (1979); *Maynard v. State, Ct. App. Op. No. 136* (File No. 5501), 652 P.2d 489 (1982).

Sec. 12.25.180. When peace officer may issue citation or take person before the court. (a) When a person is stopped or contacted by a peace officer for the commission of a misdemeanor or the violation of a municipal ordinance, the person may, in the discretion of the contacting peace officer, be issued a citation instead of being taken before a judge or magistrate under AS 12.25.150, unless

- (1) the person does not furnish satisfactory evidence of identity;
- (2) the contacting officer has reasonable and probable cause to believe the person is a danger to self or others;
- (3) the crime for which the person is contacted is one involving violence or harm to another person or to property; or
- (4) the person asks to be taken before a judge or magistrate under AS 12.25.150.

(b) When a person is stopped or contacted by a peace officer for the commission of an infraction or a violation, the person shall be issued a citation instead of being taken before a judge or magistrate under AS 12.25.150, unless

- (1) the person does not furnish satisfactory evidence of identity; or
- (2) the person refuses to accept the citation or to give a written promise to appear as provided for under AS 12.25.190(c). (§ 1 ch 31 SLA 1973; am § 19 ch 127 SLA 1974; am § 3 ch 144 SLA 1977; am § 34 ch 102 SLA 1980)

Effect of amendments. — The 1980 amendment designated the provisions of this section as subsection (a), deleted "or an infraction" following "of a misdemeanor" near the beginning of subsection (a), and added subsection (b).

Legislative history reports. — For report on ch. 31, SLA 1973 (SB 25), see 1973 Senate Journal Supplement No. 7, p. 2.

NOTES TO DECISIONS

Applied in Ahmaogak v. State, Sup. Ct.
Op. No. 1857 (File No. 4171), 595 P.2d 985
(1979).

~~Sec. 12.25.190. When person to be given five-day notice to appear in court. (a) When a person is contacted by a peace officer and the peace officer exercises the option provided for in AS 12.25.180, the officer shall prepare a written citation and issue it to the person.~~

~~(b) The time specified in the notice to appear shall be at least five days after the alleged violation or the issuance of the citation, whichever is later, unless the person cited requests an earlier hearing.~~

~~(c) The person cited for the crime shall give a written promise to appear in court by signing at least one copy of the written citation prepared by the peace officer and the officer shall deliver a copy of the citation to the person. The written promise requirement of this subsection does not apply to motor vehicle and traffic citations under AS 28.05.151, fish and game citations for which a bail schedule has been established under AS 16.05.165, citations issued under AS 18.35.341, and citations issued in state park and recreational facilities under AS 41.21.960. (§ 1 ch 31 SLA 1973; am § 20 ch 127 SLA 1974; am § 4 ch 144 SLA 1977; am § 20 ch 78 SLA 1978; am § 12 ch 34 SLA 1984; am § 1 ch 102 SLA 1984; am § 1 ch 132 SLA 1984)~~

Effect of amendments. — The first 1984 amendment, in subsection (c), substituted "a" for "his" in the first sentence and added "or a citation issued under AS 18.35.341" in the second sentence.

The second 1984 amendment added "and citations issued in state park and recreational facilities under AS 41.21.960" at

the end of the last sentence in subsection (c).

The third 1984 amendment, in subsection (c), added the language beginning "and fish and game citations" and ending "under AS 16.05.165" in the second sentence.

NOTES TO DECISIONS

Applied in Ahmaogak v. State, Sup. Ct.
Op. No. 1857 (File No. 4171), 595 P.2d 985
(1979).

~~Sec. 12.25.200. Form for citations. The chief administrative officer of each law enforcement agency in the state is responsible for the issuance of books containing appropriate citations, and shall maintain a record of each book and each citation contained in it and shall require and retain a receipt for every book issued to a peace officer. (§ 1 ch 31 SLA 1973)~~

~~Sec. 12.25.210. Disposition and records of citations. (a) A peace officer, upon issuing a citation to an alleged violator under AS 12.25.180, shall deposit the original or a copy of the citation with a court having jurisdiction over the alleged offense.~~

(b) Upon the deposit of the original or a copy of the citation with a court having jurisdiction over the alleged offense, the original or copy of the citation may be disposed of only by trial in the court or other official action by a magistrate or judge of the court.

(c) It is unlawful and official misconduct for a peace officer or other officer or public employee to dispose of a citation or copies of it or of the record of the issuance of the citation in a manner other than as required in this section.

(d) The chief administrative officer of each law enforcement agency shall require each officer in the agency to return a copy of every citation issued by the officer to an alleged violator of a law or ordinance and all copies of every citation that has been spoiled or upon which any entry has been made and not issued to an alleged violator.

(e) The chief administrative officer of each law enforcement agency shall also maintain in connection with every citation issued by an officer in the agency a record of the disposition of the charge by the court in which the original or copy of the citation was deposited. (§ 1 ch 31 SLA 1973)

Sec. 12.25.220. When copy of citation considered a lawful complaint. If the form of citation provided under AS 12.25.200 includes information and is sworn to as required under the laws of this state in respect to a complaint charging commission of the offense alleged in the citation, then the citation when filed with a court having jurisdiction is considered to be a lawful complaint for the purpose of prosecution. (§ 1 ch 31 SLA 1973)

NOTES TO DECISIONS

When citation is a charge within meaning of Cr. R. 45(c)(1). — When a citation is served which gives a person official notice that he or she is accused of a crime and is summoned to appear in court to answer for such crime upon penalty of fine and/or imprisonment, the citation is a charge within the meaning of Cr. R. 45(c)(1) which triggers the 120-day period.

Ahmaogak v. State, Sup. Ct. Op. No. 1857 (File No. 4171), 595 P.2d 985 (1979).

Service of a Uniform Summons and Complaint triggers the 120-day period in which trial must be commenced under Cr. R. 45(b). Ahmaogak v. State, Sup. Ct. Op. No. 1857 (File No. 4171), 595 P.2d 985 (1979).

~~**Sec. 12.25.230.** Failure to obey citation. A person who fails to appear in court to answer the citation, regardless of the disposition of the charge for which the citation was issued, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both. (§ 1 ch 31 SLA 1973; am § 5 ch 144 SLA 1977)~~

submit to a blood test at the hospital or be arrested and transported to the state police where he would be required by law to submit to a breath test to determine his blood-alcohol level, was released after the blood sample was taken, and was never handcuffed or moved from the hospital, the trial court could find that although

the defendant was in police custody, the custody never amounted to an arrest as defined in this section. *Greenawalt v. Municipality of Anchorage*, 692 P.2d 983 (Alaska Ct. App. 1985).

Cited in *Cannizzaro v. State*, 765 P.2d 110 (Alaska Ct. App. 1988).

Sec. 12.25.190. When person to be given five-day notice to appear in court. (a) When a person is contacted by a peace officer and the peace officer exercises the option provided for in AS 12.25.180, the officer shall prepare a written citation and issue it to the person.

(b) The time specified in the notice to appear shall be at least five days after the alleged violation or the issuance of the citation, whichever is later, unless the person cited requests an earlier hearing.

(c) The person cited for the crime shall give a written promise to appear in court by signing at least one copy of the written citation prepared by the peace officer and the officer shall deliver a copy of the citation to the person. The written promise requirement of this subsection does not apply to motor vehicle and traffic citations for which a bail or fine schedule has been established under AS 28.05.151, fish and game citations for which a bail schedule has been established under AS 16.05.165, citations issued under AS 04.21.065, citations issued under AS 18.35.341, citations issued in state park and recreational facilities under AS 41.21.960, or littering citations issued under AS 46.06.080. (§ 1 ch 31 SLA 1973; am § 20 ch 127 SLA 1974; am § 4 ch 144 SLA 1977; am § 20 ch 178 SLA 1978; am § 12 ch 34 SLA 1984; am § 1 ch 102 SLA 1984; am § 1 ch 132 SLA 1984; am § 1 ch 37 SLA 1987; am § 1 ch 16 SLA 1987; am § 3 ch 81 SLA 1989)

Effect of amendments. — The first 1987 amendment, effective June 6, 1987, in the last sentence of subsection (c) deleted "and" following "AS 18.35.341" and added "and littering citations issued under AS 46.06.080" at the end of the subsection.

The second 1987 amendment, effective

January 1, 1988, inserted "for which a bail or fine schedule has been established" in the second sentence of subsection (c).

The 1989 amendment, effective August 30, 1989, inserted "citations issued under AS 04.21.065" in the second sentence of subsection (c).

Sec. 12.25.195. Disposition of scheduled offenses. (a) A person cited for an offense for which a scheduled amount of bail or a fine has been established may mail or personally deliver to the clerk of the court with appropriate jurisdiction if a bailable offense, or to the clerk of the municipality that issued the citation if a scheduled municipal fine, the amount of the bail or fine indicated on the citation for the offense together with a copy of the citation signed by the person indi-

cating the person's waiver of court appearance, entry of plea of no contest, and forfeiture of bail or fine. A motor vehicle or traffic citation may be mailed or personally delivered within five days of the date of the citation. A citation for a scheduled offense other than a motor vehicle or traffic citation may be mailed or personally delivered within 15 days of the date of the citation.

(b) When bail or a fine is forfeited under this section, a judgment of conviction shall be entered. The bail or fine paid is complete satisfaction for the offense. (§ 2 ch 76 SLA 1987)

Sec. 12.25.200. Form for citations. (a) The chief administrative officer of each law enforcement agency in the state is responsible for the issuance of books containing appropriate citations, and shall maintain a record of each book and each citation contained in it and shall require and retain a receipt for every book issued to a peace officer.

(b) A citation issued under AS 12.25.180 must indicate the amount of bail or fine applicable to the offense, the procedure a person must follow in responding to the citation, and that if the person fails to pay the bail or fine the person must appear in court. In addition, a citation must indicate that the person has a right to

- (1) a trial;
- (2) engage counsel;
- (3) confront and question witnesses;
- (4) testify; and

(5) subpoena witnesses on the person's behalf. (§ 1 ch 31 SLA 1973; am § 3 ch 76 SLA 1987)

Effect of amendments. — The 1987 amendment, effective January 1, 1988, added subsection (b).

Sec. 12.25.210. Disposition and records of citations. (a) A peace officer, upon issuing a citation to an alleged violator under AS 12.25.180, shall deposit the original or a copy of the citation with a court having jurisdiction over the alleged offense. If the citation charges an offense under a municipal ordinance for which a scheduled fine has been established, the peace officer shall deposit the original or a copy of the citation with the clerk of the municipality that issued the citation, unless otherwise provided under rule adopted by the supreme court.

(b) Upon the deposit of the original or a copy of the citation with a court having jurisdiction over the alleged offense, the original or copy of the citation may be disposed of only by trial in the court or other official action by a magistrate or judge of the court.

(c) It is unlawful and official misconduct for a peace officer or other officer or public employee to dispose of a citation or copies of it or of

the record of the issuance of the citation in a manner other than as required in this section.

(d) The chief administrative officer of each law enforcement agency shall require each officer in the agency to return a copy of every citation issued by the officer to an alleged violator of a law or ordinance and all copies of every citation that has been spoiled or upon which any entry has been made and not issued to an alleged violator.

(e) The chief administrative officer of each law enforcement agency shall also maintain in connection with every citation issued by an officer in the agency a record of the disposition of the charge by the court in which the original or copy of the citation was deposited. (§ 1 ch 31 SLA 1973; am § 4 ch 76 SLA 1987)

Effect of amendments. — The 1987 amendment, effective January 1, 1988, added the last sentence of subsection (a).

Sec. 12.25.230. Failure to obey citation. (a) Except as provided in (b) of this section, a person who fails to appear in court to answer the citation, regardless of the disposition of the charge for which the citation was issued, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both.

(b) If a person is cited for an offense for which an amount of scheduled bail or fine is established and fails to pay the bail or fine, or appear in court, the citation shall be considered a summons for a misdemeanor.

(c) If a person cited for an offense for which an amount of scheduled bail or fine has been established appears in court and is found guilty, the penalty imposed for the offense may not exceed the bail or fine established for the offense. (§ 1 ch 31 SLA 1973; am § 5 ch 144 SLA 1977; am §§ 5, 6 ch 76 SLA 1987)

Effect of amendments. — The 1987 amendment, effective January 1, 1988, substituted "Except as provided in (b) of this section, a" for "A" at the beginning of the section and added subsections (b) and (c).

Chapter 30. Bail.

Sec. 12.30.060. Violation of conditions.

NOTES TO DECISIONS

Superior court has discretion to order remission of a forfeited bond. In exercising its discretion, the court should consider all relevant factors, including: (1)

Cost, inconvenience, or prejudice to the government in regaining custody, (2) delay resulting from the nonappearance, (3) willfulness of the failure to appear, and

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373

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 5
JUNEAU, ALASKA 99811-0400
PHONE: (907) 465-2300
TELEFAX: (907) 465-2389

March 23, 1990

MAR 23 1990

The Honorable Paul Fischer
Alaska State Senate
Capitol, Room 508
Juneau, Alaska 98511

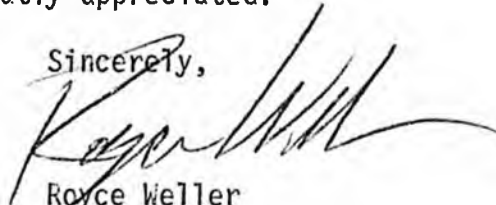
Dear Senator Fischer:

The passage of SB 373, currently residing in your committee, is very important to the State's Child Support Enforcement Program as well as its AFDC program. Enclosed is a brief statement as to the fiscal implications of failing to move on this important legislation.

I respectfully request that you schedule SB 373 for hearing in the near future.

Your attention to this request is greatly appreciated.

Sincerely,



Royce Weller
Assistant Commissioner

RW:sp

90-67

Enclosure

SB 373

Impact of Failure to Enact

SB 373 was requested by the Administration this year to implement changes in State child support law required by the U.S. Congress's enactment of welfare reform legislation.

The Federal government will pay for about 78% of Alaska's costs for child support enforcement, or \$5,301,600, based on FY91 estimates.

To receive this money from the Federal government, Alaska must operate its child support program under a plan (called the IV-D plan) that is written by the Federal government to stipulate the requirements and options each State must follow.

In addition to the money the Federal government provides for child support enforcement, it also pays for 50% of Alaska's AFDC costs. To receive this AFDC money, Alaska must operate its public assistance program under a similar plan (called the IV-A plan). One of the requirements of the IV-A plan is that Alaska have a child support enforcement program operating under an approved IV-D plan.

If SB 373 is not enacted in this session, Alaska will receive notice from the Federal Regional Administrator in early 1991 that the Regional office is recommending to the Secretary of Health and Human Services that the Alaska IV-D plan be disapproved. The State will have an opportunity for hearing and 60 days to request the hearing.

If the Secretary determines that the State IV-D plan is disapproved, all payments to the State for child support enforcement will be suspended, and child support enforcement activities in Alaska will cease. The State IV-A plan for AFDC will no longer be in compliance with Federal law (which requires a child support program), triggering a similar review by the Regional Administrator of Alaska's IV-A plan, with progressive financial sanctions eventually imposed against the State's AFDC grant.

In summary, if SB 373 (or similar legislation) is not adopted the state stands to lose significant federal dollars and the termination of its child support program.

The immediate financial and operating losses to the State in Fiscal Year 1991 will be:

* suspension of CSED grant and incentives	\$ 5,301,600
* loss of AFDC and Foster Care recoveries paid to Alaska	5,996,700
	<hr/>
	SUBTOTAL
	\$11,298,300
* suspension of child support recoveries from other states for Alaska residents	3,593,209
* suspension of child support collections for non-AFDC residents of Alaska and other States	20,428,273
	<hr/>
	TOTAL COMBINED LOSSES AND SUSPENSIONS
	\$35,319,782

In addition to this immediate impact, the Federal government will eventually begin to remove money from the State's AFDC grant in progressively greater amounts during each operating period in which the State IV-A plan is not in compliance with the requirement that the State have a child support enforcement program that complies with Federal laws and regulations.

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 5
JUNEAU, ALASKA 99811-0400
PHONE: (907) 465-2300
TELEFAX: (907) 465-2389

March 9, 1990

The Honorable Paul Fischer
Alaska State Legislature
Capitol, Room 508
Juneau, Alaska 99811
Attention: David Moses

Dear Mr. Moses:

As requested, enclosed is a brief introduction and sectional analysis of SB 373. Committee consideration of this legislation would be greatly appreciated.

If you should have any further questions, please contact myself or Linda Langston, Director of the Child Support Enforcement Division.

Sincerely,



Royce Weller
Assistant Commissioner

RW:sp

SO-52

Enclosure

S.B. 373

EXPLANATION

Senate Bill 373 contains the provisions necessary for the Child Support Enforcement Division to meet the requirements for welfare reform in the Family Support Act of 1988.

The federal law requires states to have procedures for:

- * immediate wage withholding on support orders issued or modified after October 31, 1990;
- * periodic review and modification of all support orders enforced by CSED at the request of either parent (or at the state's request in public assistance cases);
- * prompt response to requests for assistance.

SB 373 will minimally fulfill the Federal requirements and maintain the State of Alaska's eligibility for Federal funding of CSED and the public assistance program. These improvements to the child support program have great potential for improving timely payment of support obligations and the effectiveness of other agency services to the public.

Here is how each section of SB 373 implements the subsections of the Family Support Act (FSA):

Section 1: Gives CSED specific authority to adopt regulations for immediate wage withholding in the circumstances specified in FSA subsection 101, and to establish procedures for periodic review and modification of support orders, as required by FSA subsection 103(c).

FSA subsection 101 requires immediate income withholding for support orders issued or modified after October 31, 1990, regardless of whether support payments are in arrears. There are two exceptions: if one of the parties demonstrates (and the court or agency finds) good cause not to require immediate income withholding, or if the parties reach a written agreement which provides for an alternate arrangement; however, income must be withheld if payments are one month's support in arrears or if a parent's request for withholding is approved.

Section 2: Allows CSED to appear in modification actions at the request of obligors as well as obligees, to meet the periodic review requirement. FSA subsection 103(c) requires procedures for periodic review of support orders at the request of either parent, and adjustment of such orders as appropriate in accordance with the child support guidelines.

Sections 3 - 6: Preserves a custodial parent's right to seek judicial wage withholding if support payments are in arrears. (CSED utilizes administrative income withholding provisions in AS 47.23.250.)

Section 7: Will allow the agency to meet the standards of prompt response by permitting administrative action on court orders from other states. FSA subsection 121 sets time limits for agencies to respond to requests for child support assistance.

Section 8: Extends notification of review of a support order to 30 days. FSA subsection 103(c) requires that the State notify each parent of a review of their child support order at least 30 days before the commencement of the review.

Sections 9 and 10: Necessary to give continuing effect to withholding orders for the duration of the support obligation. FSA subsection 101 requires income withholding on the effective date of support orders, regardless of whether payments are in arrears, subject to the exceptions described in Section 1.

Section 11: Allows the agency to terminate immediate income withholding if a party demonstrates good cause, as required by FSA subsection 101. This Section also extends the employer's responsibilities in judicial withholding orders (AS 47.23.065(f), (j), and (k)) to administrative orders.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 8, 1990

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to modify existing procedures used by the Department of Revenue's child support enforcement division (referred to in AS 47.23 and in this letter as "the agency") to establish and modify child support orders and to collect child support from wage-earners. The changes are necessary to allow the agency to comply with requirements imposed by the Family Support Act of 1988 (P.L. 100-485), including requirements regarding immediate wage withholding and review and adjustment of support orders. By making these changes, Alaska will remain in compliance with federal requirements under the Title IV-D program of the Social Security Act, 42 U.S.C. 651 -- 669, enabling the state to continue to receive substantial federal revenue. More importantly, these changes will facilitate the establishment of fair and adequate child support orders and will enhance the agency's ability to collect support in a timely manner.

The Family Support Act of 1988 imposes on states two requirements that must be met by the fall of 1990. First, under amended 42 U.S.C. 666(b)(3), by November 1, 1990 immediate wage withholding must be implemented, regardless of whether support payments are in arrears, in those cases in which the agency enforces orders that are issued or modified on or after that date (with certain limited exceptions). Section 1 of this bill adds new AS 47.23.020(a)(2)(D) to provide the agency with clear statutory authority to implement immediate wage withholding under the procedures in AS 47.23.250 and 47.23.255, as amended by secs. 9 and 11 of the bill. Existing AS 47.23.062, which sets out certain procedures, including some "waiting periods," regarding income withholding orders, is then amended so that it may be used by an

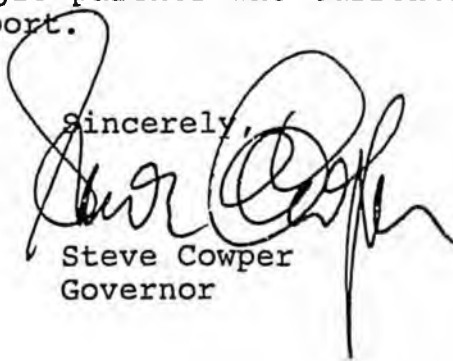
individual (without involvement of the agency) to put into effect an income withholding order. Sections 3 -- 6 of the bill. Amendments to AS 47.23.250(g) and 47.23.253, in secs. 9 and 10 of the bill, clarify that, to be consistent with amended 42 U.S.C. 666(b)(3), income withholding remains in effect until a support order is satisfied.

Second, under new 42 U.S.C. 666(a)(10), the agency is required to follow certain procedures for review and adjustment of child support orders, beginning October 13, 1990. This review and adjustment process must be available at the request of either parent subject to a child support order. AS 47.23.020(a)(2)(E), added by sec. 1 of the bill, will allow the agency to adopt regulations to implement this review and adjustment requirement. Section 8 of the bill amends AS 47.23.190(d), which sets out the timeframe for an agency hearing regarding modification of a support order. The amendment will conform our statutory timeframe to the time limit imposed by new 42 U.S.C. 666(a)(10)(C)(iii). Two other amendments, in secs. 2 and 7 of the bill, will give obligors access to certain agency services in acknowledgement of that part of the new federal requirement in 42 U.S.C. 666(a)(10) regarding equal access by either parent.

In addition, AS 47.23.140(a) is amended by sec. 7 of the bill to specifically authorize the agency to administratively establish an order of support if no Alaska child support order already exists (even though there might be an out-of-state support order). This will allow the agency to meet the standards established under new 42 U.S.C. 652(h) regarding time limits to respond to a request for assistance.

The changes contained in this bill will preserve the substantial level of federal funding for our public assistance and child support programs and will allow the agency to function more effectively. The timely collection of an adequate award of child support should improve the lives of our children and reduce the need for public assistance by the many single parents who currently do not receive adequate child support.

Sincerely,



Steve Cowper
Governor

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE SENATE

2

SENATE BILL NO. 373

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the child support enforcement
7 agency's jurisdiction to administratively establish
8 and modify child support orders; and the appearance
9 by the agency in action; for modification of support
10 orders; and relating to procedures for income with-
11 holding and for orders to withhold and deliver."

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

13 * Section 1. AS 47.23.020(a)(2) is amended to read:

14 (2) adopt regulations to carry out the purposes of this
15 chapter, including regulations that establish

16 (A) schedules for determining the amount an obligor is
17 liable to contribute toward the support of an obligee under this
18 chapter and under 42 U.S.C. 651 - 665 (Title IV-D, Social Securi-
19 ty Act);

20 (B) procedures for hearings conducted under AS 47.-
21 23.170; and

22 (C) subject to AS 47.23.025 and to federal law, a
23 uniform rate of interest on arrearages of support that shall be
24 charged the obligor upon notice if child support payments are 10
25 or more days overdue or if payment is made by a check backed by
26 insufficient funds; however, an obligor may not be charged inter-
27 est on late payment of a child support obligation, other than a
28 payment on arrearages, if the obligor is

29 (i) employed and income is being withheld from

1 the obligor's wages under an income withholding order;

2 (ii) receiving unemployment compensation and child
3 support obligations are being withheld from the obligor's
4 unemployment payments under AS 23.20.401; or

5 (iii) receiving compensation for disabilities under
6 AS 23.30 and child support obligations are being withheld
7 from the obligor's compensation payments;

8 (D) procedures for income withholding on child support
9 orders enforced by the agency, including immediate income with-
10 holding on orders issued or modified after October 31, 1990;

11 (E) procedures for review of support orders and ad-
12 justment, as appropriate, in accordance with guidelines for
13 determining child support;

14 * Sec. 2. AS 47.23.045 is amended to read:

15 Sec. 47.23.045. DETERMINATION OF SUPPORT OBLIGATION. The agency
16 may appear in an action seeking an award of support on behalf of a
17 child owed a duty of support, or to enforce a spousal support order if
18 a spousal support obligation has been established and if a support
19 obligation, established with respect to a child of that spouse, is
20 also being administered, and may also appear in an action for [SEEK-
21 ING] modification of a support order, decree or judgment already
22 entered. Action under this section may be undertaken upon application
23 of an obligee or obligor, or at the agency's own discretion if the
24 obligor is liable to the state under AS 47.23.120(a) or (b).

25 * Sec. 3. AS 47.23.062(b) is amended to read:

26 (b) An income withholding order must direct the obligor, the
27 obligor's employer, future employer, and any person, political subdi-
28 vision, or department of the state to withhold money due or to be due
29 the obligor and pay the money to the obligee [AGENCY], in an amount

1 determined under (i) of this section.

2 * Sec. 4. AS 47.23.062(c) is amended to read:

3 (c) If support payments are in arrears in an amount at least
4 equal to support payable for one month, the obligee may [AGENCY, ON
5 BEHALF OF AN OBLIGEE OR PERSON OR PUBLIC AGENCY DESIGNATED TO RECEIVE
6 SUPPORT PAYMENTS, SHALL] request an income withholding order against
7 the obligor to take effect by filing a sworn statement with the court
8 that alleges that the obligor is in arrears in an amount at least
9 equal to the support payable for one month.

10 * Sec. 5. AS 47.23.062(d) is amended to read:

11 (d) If an application is filed with the clerk of court, notice
12 shall be served upon the obligor [BY THE AGENCY] in the manner provid-
13 ed by Rule 5, Alaska Rules of Civil Procedure or any other method
14 permitted by law. The notice shall inform the obligor that the income
15 withholding order will take effect 15 days after the date on which the
16 notice is served unless the obligor requests a hearing within the 15
17 days after the notice is served. If the obligor requests a hearing, an
18 income withholding order may not take effect until the conclusion of
19 the hearing. The court shall hold a hearing requested under this
20 section within 15 days after the date the obligor requests the hear-
21 ing, to determine if there are any mistakes of fact that make the
22 withholding order improper. If the amount to be withheld is incorrect,
23 or if there are any other legal defenses. The court shall inform the
24 obligor, either at the hearing or within 15 days after the hearing,
25 whether or not the withholding will occur and of the date on which it
26 is to commence. It is not a defense under this section that less than
27 one full month's payment is due if at least one full month's payment
28 was due on the date notice was served under this section.

29 * Sec. 6. AS 47.23.062(e) is amended to read:

1 (e) The obligee or person or public agency that requested the
2 income withholding order shall immediately send a copy of the income
3 withholding order, a copy of AS 47.23.260 and this section, and an
4 explanation of the effect of the statutes by certified mail to persons
5 who may owe money to an obligor. An income withholding order made
6 under this section is binding upon a person, employer, political
7 subdivision, or department of the state immediately upon receipt of a
8 copy of the income withholding order. An employer shall begin with-
9 holding the specified amount from the employee's wages 14 days after
10 the mailing date on the notice of withholding or on the first day of
11 the next pay period, if earlier. The amount withheld shall be sent to
12 the obligee [AGENCY].

13 * Sec. 7. AS 47.23.140(a) is amended to read:

14 (a) ~~If no support order has been entered in the superior court~~
15 ~~of this state, the agency may establish a duty of support using~~
16 ~~[UTILIZING] the procedures prescribed in AS 47.23.160 - 47.23.220 and~~
17 ~~may enforce a duty of support using [UTILIZING] the procedure pre-~~
18 ~~scribed in AS 47.23.230 - 47.23.270. Action under this subsection may~~
19 ~~be undertaken upon application of an obligee or obligor, or at the~~
20 ~~agency's own discretion if the obligor is liable to the state under AS~~
21 ~~47.23.120(a) or (b).~~

22 * Sec. 8. AS 47.23.190(d) is amended to read:

23 (d) A hearing shall be set not less than 30 [15] nor more than
24 45 [30] days after [FROM] the date of mailing of notice of hearing,
25 unless extended for good cause.

26 * Sec. 9. AS 47.23.250(g) is amended to read:

27 (g) [DELIVERY TO THE AGENCY OF THE MONEY OR OTHER PROPERTY DUE,
28 OWING, OR BELONGING TO THE OBLIGOR SHALL SATISFY THE REQUIREMENT OF
29 THE ORDER TO WITHHOLD AND DELIVER.] Money [DELIVERY OF MONEY] due and

1 owing to the obligor under any contract of employment, express or
2 implied, or held by any person, political subdivision, or department
3 of the state, and subject to withdrawal by the obligor, shall be
4 delivered by remittance payable to the order of the agency.

5 * Sec. 10. AS 47.23.253 is amended to read:

6 Sec. 47.23.253. EARNINGS SUBJECT TO AN ORDER OR LIEN. (a)
7 Unless modified or terminated by the agency or the court, an order to
8 withhold and deliver remains in effect until the support order is
9 satisfied. A person, political subdivision, or department of the
10 state shall withhold the earnings of the obligor subject to an order
11 to withhold and deliver or a lien at each succeeding interval of
12 payment until the entire amount of the debt stated in the order to
13 withhold and deliver has been withheld. Upon satisfaction of a sup-
14 port order, the agency shall notify all persons served with the order
15 to withhold and deliver.

16 (b) Notwithstanding (a) of this section, an [AN] order to with-
17 hold and deliver issued to the Department of Revenue remains in effect
18 throughout the calendar year in which it is served, unless earlier
19 modified or terminated. [THAT ORDER APPLIES TO ANY TAX REFUND OR
20 OTHER DISBURSEMENTS TO WHICH THE OBLIGOR IS ENTITLED EVEN IF THE TAX
21 REFUND OR DISBURSEMENT IS ISSUED MORE THAN 30 DAYS AFTER SERVICE OF
22 THE ORDER.]

23 * Sec. 11. AS 47.23.255 is amended to read:

24 Sec. 47.23.255. ADMINISTRATION OF ORDERS TO WITHHOLD AND DELIVER
25 [INCOME WITHHOLDING ORDERS]. (a) The agency shall pay to the obligee
26 all money recovered by the agency from the obligor under an order to
27 withhold and deliver [INCOME WITHHOLDING ORDER] except for court costs
28 and money assigned to the agency under AS 47.23.120 - 47.23.130.

29 (b) [NOTWITHSTANDING AS 47.23.250, AN INCOME WITHHOLDING ORDER

1 CONTAINED IN A DECISION OF THE AGENCY THAT HAS NOT BEEN SET ASIDE BY
2 THE SUPERIOR COURT UNDER AS 47.23.220 SHALL BE ENFORCED UNDER THE
3 PROCEDURE ESTABLISHED IN AS 47.23.062.]

4 (c) An obligor may petition the agency to terminate or modify an
5 order to withhold and deliver if there are no support payments in
6 arrears in an amount that equals or exceeds the support payable for
7 one month [INCOME WITHHOLDING ORDER IF THE OBLIGOR HAS MADE PAYMENTS
8 UNDER THE ORDER FOR AT LEAST 12 MONTHS AND ALL ARREARAGES HAVE BEEN
9 PAID]. Upon receipt of the petition under this subsection, the agency
10 may terminate or modify the [INCOME WITHHOLDING] order upon a showing
11 of good cause [UNLESS THE AGENCY FINDS GOOD CAUSE TO DENY THE PETITION
12 DUE TO THE OBLIGOR'S PAYMENT HISTORY OR OTHER GROUNDS]. The agency
13 may not terminate or modify an order to withhold and deliver [INCOME
14 WITHHOLDING ORDER] solely on the ground that the obligor has paid all
15 arrearages. The agency shall notify the obligor in writing of the
16 reason for denying a petition under this subsection.

17 (d) An employer may not discharge, discipline, or refuse to
18 employ an obligor on the basis of an order to withhold and deliver.
19 If an employer discharges, disciplines, or refuses to employ an
20 obligor because of an order to withhold and deliver, the court may
21 order rei statement or restitution, or both. A person who violates
22 this subsection, or a regulation adopted to implement it, is liable
23 for a civil penalty of not more than \$1,000.

24 (e) An employer may combine into a single payment to the agency
25 amounts withheld from more than one obligor if the employer specifies
26 the portion of the payment attributable to each obligor.

27 (f) At the time an obligor terminates employment with an employ-
28 er then in receipt of an unsatisfied income withholding order regard-
29 ing the obligor, the employer shall immediately inform the agency of

Can the agency

Handle this.

Back log

It is worth it to

not hire. Right?

More Expense

to business.

1 the obligor's name and last known address and the name and address of
2 all other known employers of the obligor.

3 * Sec. 12. AS 47.23.062(j) and (k) are repealed.

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Welfare Reform
 Sponsor: Rules Committee
 Requestor: Governor

Agency Affected: Revenue
 BRU: Child Support Enforcement
 Components: Child Support Enforcement

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91*	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	202.3	347.0	347.0	347.0	347.0	347.0
TRAVEL						
CONTRACTUAL	223.1	249.1	248.5	248.5	248.5	248.5
SUPPLIES						
EQUIPMENT	181.9	57.8				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	607.3	653.9	595.5	595.5	595.5	595.5

CAPITAL						
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REVENUE	1,139.2	1,230.3	1,343.1	1,180.4	1,281.6	1,391.5
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FUNDING: (Thousands of Dollars)

GENERAL FUND	206.5	222.3	202.5	202.5	202.5	202.5
FEDERAL FUNDS	400.8	431.6	393.0	393.0	393.0	393.0
OTHER						
TOTAL	607.3					

POSITIONS:

FULL-TIME	6	10	10	10	10	10
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

SEE ATTACHED

Prepared by: LINDA LANDOLTAN Phone: 713-1270
 Division: Child Support Enforcement DIVISION Date: 11/10/89
 Approved by Commissioner: [Signature] Date: 11/13/89
 Agency: REVENUE

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

* FY91 Expenditures have been included in the FY91 operating budget request.

need for the Child Support Enforcement Division from FY92 through FY96. The FY91 funding need is being requested as an increment in the FY 91 operating budget submission, but is included in the detail below:

	FY91*	FY92	FY93-FY96
<u>PERSONAL SERVICES:</u>			
(2) Child Support Enforcement Officer III;			
(2) Clerk IV;			
(2) Accounting Clerk III	202.3	202.3	202.3
(3) Child Support Enforcement Officer III;			
(1) Clerk IV		144.7	144.7
Total Personal Services	<u>202.3</u>	<u>347.0</u>	<u>347.0</u>
<u>CONTRACTUAL:</u>			
Economic Research Study	50.0**		
Telephone Installation for new positions	3.1**		
Public Education	50.0	50.0	50.0
Advertising and Printing	50.0	50.0	50.0
RSA-Department of Law	70.0	140.0	140.0
Telephone Installation for new positions		0.6**	
Postage and Printing Costs		7.0	7.0
Lease/Maintenance		1.5	1.5
Total Contractual	<u>223.1</u>	<u>249.1</u>	<u>248.5</u>
<u>EQUIPMENT:</u>			
Two Remote Job Entry Stations	80.0**		
Six IBM Terminals	9.0**		
Central Processing Unit (CPU)	13.0**		
Printer	6.5**		
FY91 Modular furniture units for new positions	73.4**		
FY92 Modular furniture units for new positions		45.3**	
IBM Terminals for new positions		5.8**	
One Printer		6.7**	
Total Equipment	<u>181.9</u>	<u>57.8</u>	<u>0.00</u>
Total Operating	607.3	653.9	595.5
PFT	6.0	10.0	10.0
Staff Months	72.0	120.0	120.0

**The cost of one-time items does not carry forward.

SEN. FISCHER

ALASKA FAMILY SUPPORT GROUP

Lugh Malone, Commissioner
Dept. of Revenue
P.O. Box S
Juneau, Ak. 99811

FEB 0

February 3, 1990

Dear Commissioner Malone,

As a parent, as a member of the Child Support Enforcement Subcommittee of the Family Support Task Force, and as President of the Alaska Family Support Group on behalf of the membership, I am disappointed and surprised that the Department of Revenue apparently did not request the \$1.6 million legislative appropriation for recommendations 35 & 36 of the Task Force in the Governors Budget.

The central goal of the Family Support Act of 1988 was to enable families to get off and stay off welfare rolls. Of all the Task Force Recommendations, #35 and #36 will contribute most to the financial independence of post - AFDC families. If implemented, both recommendations would mean cash in the hands of between 1700 and 6000 custodial families - from payments BEING MADE by noncustodial parents, including fathers who are being blamed for not supporting their children.

Linda Langston and Royce Weller, (whom I commend for collecting child support payments when those collections are done fairly, legally, and in compliance with our Constitution), agreed to both Recommendations.

Please consider this a request for the following information:

1. Why didn't the Department of Revenue request funding for Recommendations 35 and 36?
2. Will the Department of Revenue support a request for funding both recommendations so that children get the back support their dads and moms are paying and so that Public Assistance and Support Enforcement can continue their services at current budget levels?
3. Please send a IV-D plan to me, to Sandy Armstrong, and to Rep. Max Gruenberg. Sandy's address is 5974 North St. Juneau 99801.

Sincerely,

Steven P. Strube
Steven P. Strube, President
POB 521155 Big Lk. Ak. 99652
892 7760

cc: State Senate
House of Representatives
Senators Stevens, Murkowski
Congressman Don Young
Federal Office of Child Support Enforcement

ALASKA FAMILY SUPPORT GROUP

FEB 01 1990

Senator Paul Fischer, Chair
Senate H.E.S.S. Committee
Box V
Juneau, Ak. 99801

Re: SB 373

January 27, 1990

Dear Senator Fischer,

This letter is a follow - up to the P.O.M. that I sent you last week regarding Senate Bill 373. The only portion of this bill that we approve of at this time is on page 2 regarding the change in AS 47.23.045 that will give obligors equal protection of the law with obligees, a federal requirement of the Family Support Act of 1988.

As a member of the Child Support Subcommittee of the Family Support Task Force I was directly involved with the drafting of the recommendations of the task force to the legislature. Not only was I disappointed that the Dept. of Revenue submitted the list of proposed changes to state law to the Governors Office without giving the Subcommittee the chance to review those proposed changes, (which we had the opportunity to do eventually after it became known to us that the action had already taken place), Senate Bill 373 was introduced by the Governors Office without extending the Alaska Family Support Group the courtesy of reviewing the bill prior to its introduction.

Had we been given the opportunity to review the bill, we would have proposed, and do propose a change at this time, to Section 1. AS 47.23.020(a)(2)(C), to eliminate interest on arrearages.

There are parents in Alaska who have lost their jobs or have had salary reductions who cannot afford attorneys and have been denied equal protection of the law by State Government, consequently, they are unable to get their court orders modified per Civil Rule 90.3. These parents, who often have second families to support, then go into arrears and are subject to interest payments in addition to child support payments. As time marches on those second families suffer because as their arrearages increase, the interest on the arrearages increase. Wages are garnished, taking food away from their children. In these cases, interest on arrearages is punitive. These families are being punished financially for an action they have no control over.

Another group of parents and children that interest on arrearages adversely effects is addressed in recommendation #37 of the Task Force Recommendations, attached. In these cases parents are notified, often years after the fact, that their ex - spouse has been on Aid To Families With Dependent Children, and that the State wants to be paid back, and soon. We have members that were sent bil's in excess of \$10,000 with no prior notification that a debt was accruing. Of course they cannot pay the debts off overnight so interest begins to accrue. The interest on these debts will prevent the principle from ever being paid off. In

addition, the case will most likely go into arrears resulting in wage garnishment that will have an adverse effect on the family. We believe interest on arrearages is putting many noncustodial parents below the poverty level. In the "Survey of Absent Parents Pilot Results" published in July 1988, by the U.S. Department of Health and Social Services, statistics show on page iii, attached, that in Florida 38 percent of noncustodial parents, and in Ohio 49 percent of noncustodial parents live below the poverty level.

We strongly oppose the portions of this bill that are und lined on page 2. We believe procedures for income withholding and for period review of child support orders MUST be done by statute NOT by regulation. Both these issues are substantive that effect tens of thousands of Alaskans, and with a 70% divorce rate, will effect tens of thousands more in the near future. These issues MUST be dealt with by elected officials and effected parents in public, NOT behind closed doors by the insulated nobility. The clandestine revision of Civil Rule 90.3 raised our hackles, in part because substantive public policy was made by a select few behind closed doors for the benefit of government, not in the best public interest. We need to be part of the procedure making process otherwise we will continue to be victims of government tyranny.

In our opinion, if the State is going to accept federal dollars to violate our Constitution Rights by confiscating our property on the premise that we might not, at a future date pay child support, we have the right, at least, to observe those who are selling us out to government tyranny - in public.

And finally, on page 4. Section 7. AS 47.23.140(a) The addition of " in the superior court of this state" is, in our opinion, contradictory to Recommendation #29, attached, which states in part that Alaska not develop new laws addressing interstate child support enforcement issues until.....

The addition of the superior court clause will directly effect interstate cases, and will violate Recommendation #29. We request that "in the superior court of this state " be deleted from this bill.

This bill as written, promotes injustice. We believe it is the duty of government to prevent injustice - not to promote it, and it is our hope that your committee will work with us for passage of a fair and equitable bill.

Sincerely,

St. P. Strube

Steven P. Strube, President

POB 521155 Big Lk Ak 99652

hm 892 7760 wk 892 6027

cc: Mat-su Legislative Delegation Senate H.E.S.S. Committee
Alaska Congressional Delegation
Reps. Ulmer, Foster, Brown, Boyer, Davis, Ellis

Profiles of Matched Custodial and Noncustodial Parents

Descriptive profiles of the 203 custodial mothers and noncustodial fathers with matched interviews were prepared. Since the sample sizes are very small and representative of the sampling frames in the 3 Ohio and the 3 Florida counties, findings cannot be generalized to populations beyond these sampling frames.

a. Demographic Characteristics:

Custodial parents in the samples were on average 2-3 years younger than noncustodial parents, but they were similar in terms of education, ethnicity and religion. Respondents whose cases originated in the courts were slightly older than respondents from the CSE case load; in addition the court samples had a lower proportion of black respondents. On average the current households of custodial parents were larger in size than those of noncustodial parents, and while all the custodial parent households contain children under the age of 18, only 20-30 percent of the noncustodial parent households contained children. Remarriage rates varied from 19 to 32 percent among custodial parents and from 24 to 40 percent among noncustodial parents.

b. Work and Income:

Across the samples the noncustodial parents had more work experience and higher wage rates than custodial parents. These differences translated into lower median annual incomes among custodial parents, even after child support transfers had occurred. The differences in income levels were most evident when poverty status was examined. Among the court samples approximately 40 percent of the custodial parents had household incomes below the poverty level compared to 15 percent of their former partners. Among the CSE samples the overall incidence of poverty was higher. While 76 percent of the Florida CSE custodial parents lived below the poverty line, 38 percent of noncustodial parents did. In Ohio, 69 percent of the CSE custodial parent households were poor compared to an incidence of 49 percent among noncustodial parents. While high proportions of the custodial parent samples lived in poverty, the incidence of AFDC participation was lower particularly in the court samples. Between 43 and 58 percent of the CSE custodial parents reported that they had been on AFDC in the past year; the proportions were 17 and 27 percent for the court sample custodial parents.

c. Child Support Awards:

Practically all of the court sample reported that child support awards were in force while 12 percent of the CSE cases in Florida and 34 percent of the CSE cases in Ohio did not have awards. The average levels of the recorded annual awards were \$1869 for CSE parents and \$3212 for court parents in Florida and \$2312 for CSE parents and \$3019 for court parents in Ohio. As a proportion of the noncustodial parents' income these award levels ranged from 14 to 21 percent. About 12 percent of noncustodial parent income was earmarked for the support of 1 child and from 14 to 26 percent for the support of 2 children.

RECOMMENDATION 29:

ALASKA SHOULD NOT DEVELOP NEW LAWS ADDRESSING INTERSTATE CHILD SUPPORT ENFORCEMENT ISSUES UNTIL AFTER REVIEWING THE REPORT TO BE ISSUED BY THE FEDERAL COMMISSION ON INTERSTATE CHILD SUPPORT ISSUES.

IF THE COMMISSION IS NOT CONSTITUTED AND FUNDED IN A TIMELY FASHION, OUR LEGISLATURE, ADMINISTRATION, AND COURT SYSTEM SHOULD REVIEW THE REVISIONS TO THE UNIFORM RECIPROCAL ENFORCEMENT SUPPORT ACT (URESA) TO BE COMPLETED BY THE NATIONAL CONFERENCE OF COMMISSIONERS IN 1990, AND RESPOND APPROPRIATELY.

THE COMMISSIONERS SHOULD CONSIDER PROMULGATION OF A UNIFORM CHILD SUPPORT ACT.

RECOMMENDATION 30.

Notify Obligor within 30 Days

RECOMMENDATION 37:

THE TASK FORCE RECOMMENDS THAT IN CASES WHERE THE UNCONTESTED IDENTITY AND THE ADDRESS WITHIN ALASKA OF THE NON-CUSTODIAL PARENT ARE KNOWN, THE CHILD SUPPORT ENFORCEMENT DIVISION MUST NOTIFY OBLIGORS THAT A SUPPORT OBLIGATION HAS BEEN ACCRUING BECAUSE OF NON-PAYMENT OF COURT-ORDERED SUPPORT AND/OR BECAUSE OF PAYMENT OF AID TO FAMILIES WITH DEPENDENT CHILDREN BENEFITS FOR WHOM THE PARENT HAS A DUTY OF SUPPORT, WITHIN 30 DAYS AFTER THE DATE THAT THESE FACTS BECOME KNOWN TO THE DIVISION.

Issue

Sometimes government agencies take a long time to notify non-custodial parents that the custodial parent of their children is receiving AFDC benefits. Because of this, non-custodial parents can build a large debt to the state without knowing that the debt is being incurred, with interest. How can this be avoided?

FSA Criteria

The Act strengthens the relationship between the public assistance and Child Support Enforcement agencies, both of which operate on the assumption that parents are responsible for the support of their children, even if they don't live in the same house.

AFDC benefits can sometimes be viewed as child support payments paid by the government on behalf of the non-custodial parent. Just because the parents don't make the payments doesn't mean they are not still responsible for some or all of the payments. Therefore AFDC cash benefits can be considered a loan to the non-custodial parent, which must be repaid, with interest. This debt and interest accrual begins when the first AFDC check is issued for a parent's children.

Therefore when single parents apply for AFDC, they must provide the name and address of the children's other parent, so that child support payments can be collected to offset the government-paid AFDC benefits. The government then notifies the non-custodial parent that the other parent is receiving AFDC benefits for their children and that a debt is therefore developing.

Rationale

Neither the Act nor existing regulations provide guidelines for when the State must notify the non-custodial parents that costs are being incurred for which they are responsible. This recommendation provides a reasonable time frame. The intent is to allow the non-custodial parent as much time as possible to repay or make plans for repaying AFDC debts.

ALASKA FAMILY SUPPORT GROUP

Senator Paul Fischer
Box V
Juneau, Ak. 99811

FEB 01 1990

January 28, 1990

Re: Family Support Task Force Recommendations 35 & 36

Dear Senator Fischer,


During the week of January 22 through January 26 you received a large number of P.O.M.'s from your constituents and from many other Alaskans, regarding funding of Recommendations 35 & 36 of the Family Support Task Force. You also received a letter from DADS AGAINST DISCRIMINATION on January 26 that specifically described the purpose for the recommendations - that children will receive the back support their Dads and Moms are paying and so that Public Assistance and CSED can continue their vital services at current budget levels.

Sandy Armstrong researched and discovered, on her own time and money, that noncustodial parents are paying an estimated \$1.6 million in back (arrearage) support payments annually, over and above the current monthly child support owed. That \$1.6 million is earned by the State first to reimburse public assistance provided to the custodial family, even though "Mom and the Kids" are also owed a back support bill. Again, on her own time and money, Sandy worked on the Child Support Enforcement Subcommittee to get both recommendations adopted.

The Governor did not put funding for the Recommendations in his budget. The State agencies who agreed to the Recommendations on the Task Force did not request funding to implement the Recommendations in their budget requests.

On behalf of the hundreds of Moms, Dads, and Kids that I represent as President of the Alaska Family Support Group I ask you: Will you begin work immediately on implementation and funding of Recommendations 35 & 36?

Sincerely,


Steven P. Strube, President
POB 521155 Big Lk, Ak 99652
hm 892 7760 wk 892 6027

March 10, 1990

Senator Paul A. Fischer
Chair, Senate Health, Education
and Social Services Committee
Alaska Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811



Dear Senator Fischer:

This letter is a respectful, but urgent, request that you schedule SB 373 for hearing in the Senate HESS Committee as soon as possible.

SB 373 is the Governor's omnibus Child Support Enforcement bill for this session. It contains, however, one amendment to Alaska statutes, which, if not passed this session, will mean that the Alaska Child Support Enforcement Division will not be in federal compliance with a mandated provision of the Family Support Act of 1988. The failure to comply with all mandated provisions of the Family Support Act, in the area of child support enforcement, could easily cost the State of Alaska millions of dollars in lost federal incentives payments, the state now receives, which I am sure you are aware of as a member also of the Senate Finance Committee.

Section 2. on page 2 of SB 373 contains a two word amendment at line 23 which would bring the State of Alaska into compliance with Title I, Section 103 (c) of the Family Support Act. The amendment adds the words "or obligor" to the child support modification section of Alaska statutes, thus allowing obligors also to receive agency modification services under uniform child support guidelines, just as obligees now enjoy under state law...equal access to modification of support order agency services is now mandated by federal law, Senator Fischer.

I am attaching a copy of Recommendation 43 of the Family Support Task Force, which fully explains the above Alaska law change which is required. As an appointed public member of the Child Support Subcommittee of the Alaska Family Support Task Force, I can assure you that the above Alaska statute amendment was unanimously supported by both subcommittee members and by members of the Task Force itself.

We are at the half-way mark in the Sixteenth Legislature. Senate HESS is the first of three committee referrals in the Senate. Time is of the essence in obtaining a federally mandated change to state law, which will finally introduce some balanced justice to the child support modification process for child support obligors. Please act quickly to move this bill.

Sincerely,

Sandy Armstrong

Sandy Armstrong, Member
Child Support Subcommittee
Family Support Task Force
Phone: 780-4684

cc: Members, Senate HESS Committee
Members, Senate Judiciary Committee
Members, Senate Finance Committee
Rep. Max Gruenberg Chair
Child Support Subcommittee
Family Support Task Force

Encl 1

Allow Obligor To Request Support Order Modifications

RECOMMENDATION 43:

THE LEGISLATURE SHOULD AMEND ALASKA STATUTE 47.23.045 TO READ:

The agency may appear in an action seeking an award of support on behalf of a child owed a duty of support, or to enforce a spousal support order if a spousal support obligation has been established and if a support obligation, established with respect to a child of that spouse, is also being administered, and may also appear in an action seeking modification of a support order, decree or judgment already entered. Action under this section may be undertaken upon application of an obligee or obligor, or at the agency's own discretion if the obligor is liable to the state under AS 47.23.120(a) or (b).

Issue

What do we need to change so that obligors can obtain State assistance in requesting child support order modifications?

FSA Requirement

Section 103(c) of the Family Support Act requires states to review and adjust child support orders upon request of either parent beginning in November, 1990.

Rationale

Alaska law currently allows CSE to assist obligees requesting modifications to support orders, but provides no State assistance in obtaining changes in ways for obligors to request changes. One of the most common criticisms of the existing child support system we heard during our public process was this lack of a mechanism for State assistance to obligors seeking child support order adjustments. Prior federal law contained no requirement for these services, and Alaska statutes do not currently provide clear authority for CSED to offer them.

Cost

There will be staff costs required to provide adequate services.

Benefits

This is part of a larger requirement for periodic reviews of support orders, which as a whole, should increase support collections in Alaska. The specific provision for State assistance to obligors requesting modification should alleviate concerns about unfair procedures, and facilitate greater cooperation by all parents.

, ALASKA'S FAMILY SUPPORT TASK FORCE

RECOMMENDATION 29:

ALASKA SHOULD NOT DEVELOP NEW LAWS ADDRESSING INTERSTATE CHILD SUPPORT ENFORCEMENT ISSUES UNTIL AFTER REVIEWING THE REPORT TO BE ISSUED BY THE FEDERAL COMMISSION ON INTERSTATE CHILD SUPPORT ISSUES.

IF THE COMMISSION IS NOT CONSTITUTED AND FUNDED IN A TIMELY FASHION, OUR LEGISLATURE, ADMINISTRATION, AND COURT SYSTEM SHOULD REVIEW THE REVISIONS TO THE UNIFORM RECIPROCAL ENFORCEMENT SUPPORT ACT (URESA) TO BE COMPLETED BY THE NATIONAL CONFERENCE OF COMMISSIONERS IN 1990, AND RESPOND APPROPRIATELY.

THE COMMISSIONERS SHOULD CONSIDER PROMULGATION OF A UNIFORM CHILD SUPPORT ACT.

RECOMMENDATION 30:

Notify Obligor within 30 Days

RECOMMENDATION 37:

THE TASK FORCE RECOMMENDS THAT IN CASES WHERE THE UNCONTESTED IDENTITY AND THE ADDRESS WITHIN ALASKA OF THE NON-CUSTODIAL PARENT ARE KNOWN, THE CHILD SUPPORT ENFORCEMENT DIVISION MUST NOTIFY OBLIGORS THAT A SUPPORT OBLIGATION HAS BEEN ACCRUING BECAUSE OF NON-PAYMENT OF COURT-ORDERED SUPPORT AND/OR BECAUSE OF PAYMENT OF AID TO FAMILIES WITH DEPENDENT CHILDREN BENEFITS FOR WHOM THE PARENT HAS A DUTY OF SUPPORT, WITHIN 30 DAYS AFTER THE DATE THAT THESE FACTS BECOME KNOWN TO THE DIVISION.

Issue

Sometimes government agencies take a long time to notify non-custodial parents that the custodial parent of their children is receiving AFDC benefits. Because of this, non-custodial parents can build a large debt to the state without knowing that the debt is being incurred, with interest. How can this be avoided?

FSA Criteria

The Act strengthens the relationship between the public assistance and Child Support Enforcement agencies, both of which operate on the assumption that parents are responsible for the support of their children, even if they don't live in the same house.

AFDC benefits can sometimes be viewed as child support payments paid by the government on behalf of the non-custodial parent. Just because the parents don't make the payments doesn't mean they are not still responsible for some or all of the payments. Therefore AFDC cash benefits can be considered a loan to the non-custodial parent, which must be repaid, with interest. This debt and interest accrual begins when the first AFDC check is issued for a parent's children.

Therefore when single parents apply for AFDC, they must provide the name and address of the children's other parent, so that child support payments can be collected to offset the government-paid AFDC benefits. The government then notifies the non-custodial parent that the other parent is receiving AFDC benefits for their children and that a debt is therefore developing.

Rationale

Neither the Act nor existing regulations provide guidelines for when the State must notify the non-custodial parents that costs are being incurred for which they are responsible. This recommendation provides a reasonable time frame. The intent is to allow the non-custodial parent as much time as possible to repay or make plans for repaying AFDC debts.

1
ALASKA FAMILY SUPPORT GROUP

TO SENATOR SZYMANSKI
Senator Paul Fischer, Chair
Senate H.E.S.S. Committee
Box V
Juneau, Ak. 99801

Re: SB 373

January 27, 1990

Dear Senator Fischer,

This letter is a follow - up to the P.O.M. that I sent you last week regarding Senate Bill 373. The only portion of this bill that we approve of at this time is on page 2 regarding the change in AS 47.23.045 that will give obligors equal protection of the law with obligees, a federal requirement of the Family Support Act of 1988.

As a member of the Child Support Subcommittee of the Family Support Task Force I was directly involved with the drafting of the recommendations of the task force to the legislature. Not only was I disappointed that the Dept. of Revenue submitted the list of proposed changes to state law to the Governors Office without giving the Subcommittee the chance to review those proposed changes, (which we had the opportunity to do eventually after it became known to us that the action had already taken place), Senate Bill 373 was introduced by the Governors Office without extending the Alaska Family Support Group the courtesy of reviewing the bill prior to its introduction.

Had we been given the opportunity to review the bill, we would have proposed, and do propose a change at this time, to Section 1. AS 47.23.020(a)(2)(C), to eliminate interest on arrearages.

There are parents in Alaska who have lost their jobs or have had salary reductions who cannot afford attorneys and have been denied equal protection of the law by State Government, consequently, they are unable to get their court orders modified per Civil Rule 90.3. These parents, who often have second families to support, then go into arrears and are subject to interest payments in addition to child support payments. As time marches on those second families suffer because as their arrearages increase, the interest on the arrearages increase. Wages are garnished, taking food away from their children. In these cases, interest on arrearages is punitive. These families are being punished financially for an action they have no control over.

Another group of parents and children that interest on arrearages adversely effects is addressed in recommendation #37 of the Task Force Recommendations, attached. In these cases parents are notified, often years after the fact, that their ex - spouse has been on Aid To Families With Dependent Children, and that the State wants to be paid back, and soon. We have members that were sent bills in excess of \$10,000 with no prior notification that a debt was accruing. Of course they cannot pay the debts off overnight so interest begins to accrue. The interest on these debts will prevent the principle from ever being paid off. In

addition, the case will most likely go into arrears resulting in wage garnishment that will have an adverse effect on the family. We believe interest on arrearages is putting many noncustodial parents below the poverty level. In the "Survey of Absent Parents Pilot Results" published in July 1988, by the U.S. Department of Health and Social Services, statistics show on page iii, attached, that in Florida 38 percent of noncustodial parents, and in Ohio 49 percent of noncustodial parents live below the poverty level.

We strongly oppose the portions of this bill that are underlined on page 2. We believe procedures for income withholding and for period review of child support orders MUST be done by statute NOT by regulation. Both these issues are substantive that effect tens of thousands of Alaskans, and with a 70% divorce rate, will effect tens of thousands more in the near future. These issues MUST be dealt with by elected officials and effected parents in public, NOT behind closed doors by the insulated nobility. The clandestine revision of Civil Rule 90.3 raised our hackles, in part because substantive public policy was made by a select few behind closed doors for the benefit of government, not in the best public interest. We need to be part of the procedure making process otherwise we will continue to be victims of government tyranny.

In our opinion, if the State is going to accept federal dollars to violate our Constitution Rights by confiscating our property on the premise that we might not, at a future date pay child support, we have the right, at least, to observe those who are selling us out to government tyranny - in public.

And finally, on page 4. Section 7. AS 47.23.140(a) The addition of " in the superior court of this state" is, in our opinion, contradictory to Recommendation #29, attached, which states in part that Alaska not develop new laws addressing interstate child support enforcement issues until.....

The addition of the superior court clause will directly effect interstate cases, and will violate Recommendation #29. We request that "in the superior court of this state " be deleted from this bill.

This bill as written, promotes injustice. We believe it is the duty of government to prevent injustice - not to promote it, and it is our hope that your committee will work with us for passage of a fair and equitable bill.

Sincerely,

St. P. Strube

Steven P. Strube, President
POB 521155 Big Lk Ak 99652
hm 892 7760 wk 892 6027

cc: Mat-su Legislative Delegation Senate H.E.S.S. Committee
Alaska Congressional Delegation
Reps. Ulmer, Foster, Brown, Boyer, Davis, Ellis

PUBLIC OPINION MESSAGE

DEAR: SENATOR FISCHER

NAME: DAVID BERTRAND

TITLE: ST COORDINATOR FOR AK FAMILY SUPPORT GRO

ADDRESS: P.O.BOX 583

CITY: GIRWOOD

ZIP: 99587

PHONE: 783-2513

BILL NO: SB 373

SUBJECT: CHILD SUPPORT ENFORCEMENT

MESSAGE: BECAUSE OF A RECENT COMPROMISE TO JOIN SB 373 AND HB 472 TOGETHER,
PLEASE DISREGARD MY REQUEST FOR A HEARING IN THE SENATE HES COMMITTEE MAILED
MARCH 27TH. ALSO, PLEASE DISREGARD AN ESTIMATED 20 POMS FROM GIRWOOD DISTRICT
7 CONCERNING THE SAME REQUESTS. /CMR

POMID: 03131304

DATE: 03/28/90

TIME: 13:13:04

LIONAME: ANCHORAGE LIO

MAR 28 1990

A F S G

"Uniting Parents In Alaska"

(907) 892-7760

Statewide Membership
1-800-835-2246 ext 94

Dave Bertrand
Girdwood Coordinator AFSG
P.O. Box 583
Girdwood, Alaska. 99587

Senator Paul Fischer
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska. 99811

March 27th, 1990

Re: Senate Bill 373

Dear Senator:

Due to recent developments concerning the spirit of the bill, request a scheduling of this bill for hearing in the Senate HESS Committee. A hearing is essential for a fair and equitable child support system.

This bill has obligor modifications, interest issues, periodic review for obligor income and other issues vital to a fair system. Added language to the bill after the sub-committee hearings and behind closed doors is not conducive to the efforts put forth so far.


To assure equal consideration, please afford obligee representatives ample time to prepare for a hearing. Ruth Lister's comment at the teleconference March 26th was unacceptable, reference HB 472 and insufficient notification to prepare obligee parents for testimony.

The Alaska Family Support Group in affiliation with the National Legal Support Bureau NLSB have worked very hard to better the child support system and un-funded by the state no less, while the Alaska Women's Commission and C.S.E.D. Directors change the spirit of Senate Bill 373 without notifying us is deplorable. As you know, AFSG Director Steve Strube is a member of the 16th Legislature Child Support Sub-Committee and should have been notified immediately of Ms. Langston's intervention.

We would appreciate your concern for this matter and schedule a hearing.

cc: Steve Strube
Rep. Jim Zawacki
Rep. Mike Szymanski
Senate HESS Comm.

Sincerely,



Dave Bertrand
AFSG/NLSB
Girdwood District 7

MEMBER

National Legal Support Bureau

"Uniting Parents Nationwide"

FEB 05 1990

1-31-90

SENATOR PAUL FISCHER
CHAIRMAN, SENATE H.E.S.S.
BOX V
JUNEAU, AK 99811
RE: SB 373

Dear Senator Fischer,

please consider the following comments regarding interest on arrearages:

On 3-12-87, CSED informed me that I owed \$665.00/month on a total debt of \$31,101.00. This was my first notification that this debt was accruing. On Feb 1, 1988 I was ordered to pay \$384.00 instead of \$665.00/month, and that for the period 7-82 thru 1-88 my arrearages totalled \$25,439.27 and interest accrued was \$1615.00.

CSED reduced the total debt from \$31,101.00 to \$25,439.27 because I was unable to pay.

My latest payment receipt (attached) shows a total owed of \$31,371.46, and that the payment due is \$384, of which \$291.57 is interest.

You can see that at the current rate of payment - with interest - I can never pay off this debt. This interest is punitive and should not be charged to me. Please change SB 373 so that in cases like mine, obligors are not charged interest on arrearages that accrue without obligors knowledge.

Please schedule a teleconference on this ~~Wade~~ Bill, hook up Mat-Sec.

Sincerely,

Mike Kalnoki

STATE OF ALASKA
Department of Revenue
Child Support Enforcement Division
550 West 7th Ave, 4th floor
Anchorage, Alaska 99501-3556
(907) 276-3441

Team/MS 03

Michael A. Kalnoski
957 DELLWOOD #2
WASILLA, AK 99687

December 22, 1989

Dear Michael A. Kalnoski:

This statement replaces the C.S.E.D. receipt letter and is a summary of the accounting activity on your case within the period specified below. A statement will be sent to you monthly.

The following is a detailed accounting summary of your child support case, 3AE-87-05640. This summary covers the period November 22, 1989 to December 22, 1989 .

<u>Date</u>	<u>A c t i v i t y</u>	<u>Amount</u>	<u>Total Due</u>
12/01/89	PRIOR ARREARAGE ACCRUED (cf Stmt: 11/22/89)		\$30,695.89
12/01/89	Scheduled payment due.....	384.00	31,079.89
12/12/89	Interest on arrs (1 % of 29,157.39).....	291.57	31,371.46
	***** END OF DETAILS *****		

C.S.E.D. charges interest in accordance with Alaska Statute 47.23.020 (a)(2)(c). Should you have any questions, please contact our office between the hours of 8:00am and 1:00pm.

Statement Summary follows:

State of Alaska

Committees

CO-CHAIR, HOUSE JUDICIARY
VICE-CHAIR, HOUSE LABOR AND COMMERCE
HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES



P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4712
465-4968/4986
(SESSION)

914 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 276-6844

Representative Max F. Gruenberg, Jr.
District 11
Spennard, Upper Midtown Anchorage

MEMORANDUM

TO: Ardith Lynch
FROM: Andy Hemenway
SUBJECT: SB 373
DATE: February 20, 1990

I've taken a stab at language to insert in SB 373 on wage withholding:

Page 2, lines 8-10, delete current language and insert:

(D) procedures for income withholding on child support orders enforced by the agency in cases in which:

(i) new or modified orders are issued judicially or administratively on or after November 1, 1990;

(ii) the absent parent requests that immediate wage withholding begin;

(iii) the custodial parent requests that immediate wage withholding begin and the agency determines the request should be approved; or

(iv) payments are in arrears in an amount at least equal to support payable for one month.

The intent here is simply to put into law the Child Support Subcommittee's Recommendation #11, that wage withholding be limited to those cases in which it is required by federal law under the Family Support Act of 1988. I think this does it, but let me know if you think it needs revision. Thanks.

MEMORANDUM

State of Alaska

TO: Andy Hemenway

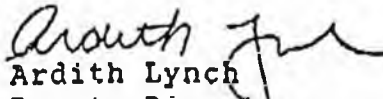
DATE: February 26, 1990

FILE NO:

TELEPHONE NO.

THRU:

SUBJECT: SB 373

FROM: 
Ardith Lynch
Deputy Director
CSED

I've reviewed your proposal to the language to insert in SB 373 on wage withholding, and suggest that it be clarified as follows:

(D) procedures for income withholding on child support orders enforced by the agency in cases in which:

(i) new or modified orders are issued judicially or administratively after October 31, 1990, regardless of whether support payments are in arrears;

(ii) the absent parent requests that withholding begin;

(iii) the custodial parent requests that withholding begin and the agency determines the request should be approved; or

(iv) payments are in arrears in an amount at least equal to the support payable for one month.

The Department of Law changed "on or after November 1, 1990" to "after October 31, 1990" when the bill was reviewed. The statute should specify that immediate wage withholding applies to new and modified orders, regardless of arrearages, in accordance with the Family Support Act. I understand your intent to mirror the subcommittee recommendation; however, the recommendation was drafted in the context of the Family Support Act, and that context will not be readily apparent to people reading the statute without legislative history. For the same reason, i.e. consistency with language of the federal law, I deleted "immediate wage" from (ii) and (iii).

Let me know what you think of these revisions.

7/24/89 Family Support Subcommittee

possible. The general public also needs to be educated about mandatory wage withholding, and the possible benefits of that approach, she added.

Ms. Armstrong suggested that the subcommittee recommend that mandatory wage withholding not be extended beyond the IV-D caseload. Mr. Cotton agreed, since there already exists wage withholding for those who fall into arrears. Ms. Rich stated she supports an automatic provision to have wage withholding if there are arrears. Ms. Langston said this already is the case, even if the parties have previously agreed between themselves to pay support directly, but only if one of the parties requests it.

Staff was requested to draft language recommending that wage withholding be limited as per the discussion.

Mr. Hemenway stated that the federal requirement for Periodic Review of Child Support Orders, agenda item IV-D, is that the IV-D agency formulate a plan for discretionary review of all IV-D support orders, and that the agency must review at the request of either parent, but that there is no requirement at this time that non-IV-D orders be reviewed.

Ms. Langston pointed out that the new law will allow CSED to accept applications for modifications from non-custodial parents. She stated that her planning process assumes that the guideline to be applied would be Civil Rule 90.3, although she recognizes that may not be the case. She stated that the agency anticipated reviewing all AFDC cases, by checking information regarding income from the Department of Labor, but that it would review other cases only on request of a parent.

Mr. Strube asked if the agency could implement the practice of doing modifications on behalf of either parent at this time. Ms. Langston noted that state law prevents the agency from seeking modifications on behalf of an obligor, because persons can only use the agency to provide IV-D services, and under federal regulations modification for an obligee is not a IV-D service. Ms. Langston stated that legislation has been drafted that would permit the CSED to pursue modifications on behalf of obligors prior to November, 1990. The change to be made is in AS 47.23.045, but not AS 47.23.100. Rep. Gruenberg stated that AS 47.23.100 should be changed as well.

Ms. Langston stated that the agency only provides IV-D services. Rep. Gruenberg stated that the agency could provide other services, so long as the State paid for them. Ms. Langston agreed, but pointed out that the agency must also stay in compliance with its IV-D plan. She stated that the federal government currently provides 70% of CSED's funding.

Rep. Gruenberg asked if the CSED could assess attorneys fees in its cases, so that the parties, rather than the government,

Family Support Task Force
Subcommittee on Child Support

MINUTES

August 9, 1989

Subcommittee members present:

Linda Langston, co-chair
Sandy Armstrong
Bill Cotton
Ardith Lynch
Judith Rich
Jan Strandberg
Steve Strube

The meeting was called to order by co-chair Langston at 2:00.

Frank Price testified from Juneau that his wife had asked CSED to increase the amount of child support in his case, but CSED had determined that actually the amount of support should be decreased. However, the agency did not go into court to try to get his support reduced, even though his income was at the federal poverty level. As a result, he testified, he has accumulated arrearages of \$5000. Alaska Legal Services would not represent him, because it had previously represented his wife. Mr. Price attempted to obtain a modification in court himself, but was unable to obtain documents the court system requested, so his case was dismissed.

The subcommittee turned to a discussion of the CSED's draft legislative proposals for the 1989-90 legislative session. Ms. Lynch, who has taken a position as Deputy Director of CSED, reviewed the proposed changes, which she stated the agency believes are the minimum changes needed to comply with the Family Support Act. Ms. Langston stated that the changes were prepared at the request of the governor's office, as part of the overall legislative package to be prepared by the Department of Law for submission by the Governor at the beginning of the session.

AS 47.23.045: changed to give the CSED discretion to accept applications for requests for child support modification by obligors.

AS 47.23.062: several changes to make judicial income withholding orders a private remedy, and to remove CSED's authority to use this remedy.

AS 47.23.140: allows agency to administratively enforce out of state support orders, in a fashion analagous to URESA; the change is necessary to enable CSED to meet the standards for prompt response in Sec. 121 of the Family Support Act.

AS 47.23.253(a): clarifies that income withholding orders remain in effect as long as there is a support order, unless modified by the agency; also requires agency to inform all persons served with an order when it has been satisfied.

AS 47.23.255(b): repealed; unnecessary because now agency is using the administrative withholding process, rather than the judicial process.

AS 47.23.255(c): changes the wording on the standard for the obligor to meet when requesting exemption from wage withholding to "good cause", to conform with the Family Support Act.

AS 47.23.255(d)-(f): adds sanctions against employers who discriminate against persons subject to wage withholding to include administrative wage withholding. The same sanctions are currently in effect for judicially-ordered wage withholding.

Ms. Armstrong stated the language of AS 47.23.045 could be construed as broadening the agency's authority to impose wage withholding, in the absence of an arrearage, to cases other than just new and modified orders enforced by the agency. Ms. Langston and Ms. Lynch indicated that the language was not intended to give the agency authority to impose wage withholding in the absence of an arrearage, except in the case of new and modified IV-D orders.

Ms. Armstrong asked if the question of compliance with due process on wage withholding was up to the state. Ms. Lynch stated it was, and that the CSED did not contemplate any changes from current practice in regards to notice. She stated that she expected CSED would issue a regulation indicating wage withholding would be used in existing IV-D cases when support payments are in arrears, the obligor or obligee so requests, or the agency chooses to do so; and in all new and modified IV-D cases (after November 1, 1990) unless the obligor, obligee or the agency shows good cause not to do so, or there is a written agreement not to do so. Also, the regulation would define "good cause".

Ms. Armstrong stated that under this language, CSED would have the option of imposing mandatory wage withholding in the absence of an arrearage in any IV-D case. Ms. Lynch stated that the language she had drafted simply reflects the Family Support Act, and that it was not an agency proposal at this point. Ms. Langston stated that the Family Support Act was unclear on this issue. Ms. Rich pointed out that the CSED should have flexibility to use wage withholding in the absence of an arrearage, to prevent persons from delaying payment, short of creating a 30 day arrearage, or from making partial payments at irregular times. Ms. Armstrong stated that often payments get to the family later when they go through wage

8/9/89 Family Support Subcommittee

withholding, because of the administrative delay, or employer errors. Ms. Strandberg recommended that Ms. Lynch and Ms. Armstrong work on alternative language for the subcommittee's consideration.

Mr. Mher Vartanian testified that the subcommittee should not go too far in protecting children, without sufficient regard for the impacts on the noncustodial parent. He felt that if a parent is not entitled to visitation, he should not have to pay child support. He stated that sometimes a noncustodial parent without any control over a child might be liable for debts of a child, and this is not right.

Mr. Jack Ryfeul testified that he wanted his case investigated.

Mr. Floyd Turner, a representative of the National Organization of Men, working with the Men's Support Network, testified next. He stated that the Alaska court system is perceived by men as not responsive to their needs, and that the refusal to recognize agreements between the parents regarding child support is a violation of human rights.

Mr. Strube asked if CSED could accept applications for modifications from obligors right now. Ms. Lynch stated that without a change in AS 47.23.045, CSED would not have authority to accept applications from obligors. Ms. Langston added that the federal government does not define IV-D services to include requests for modification from obligors, and therefore it could not be paid by the federal government for such a service.

Ms. Armstrong asked if a bill enacting the change in AS 47.23.045 should be introduced separately, with an immediate effective date. Ms. Langston stated that the agency wanted to implement the new policy as soon as possible. Mr. Cottor asked if there was a specific date on which federal funding for such requests would be available. Ms. Langston was unaware of any specific date for federal funding.

Ms. Lynch stated that under current AS 47.23.045, if a custodial parent is receiving AFDC payments for which the noncustodial parent is liable, the CSED has discretion to modify the order prospectively, but not with respect to an arrearage.

Mr. John Grames testified subcommittee meeting agendas were being sent out too late. He stated that the Family Council, chaired by Mr. Strube, had been through the subcommittee's Issue Agenda prior to a subcommittee meeting. The public testimony at that meeting was cut back to only three hours, and did not begin on schedule at 5:00. He stated the subcommittee should hear from Mr. Grob. He stated that his general concern was that the subcommittee should take action

ALASKA'S FAMILY SUPPORT TASK FORCE

FINAL REPORT

December 1989

Co-Chairmen:
Senator Rick Uehling
Representative Johnny Ellis



CHILD SUPPORT ENFORCEMENT

Recommendation
Number

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<i>HB 513</i>	- 48. Extend Child Support to Age 19	82



RECOMMENDATION 40:

THE CHILD SUPPORT ENFORCEMENT DIVISION (CSED) SHOULD LIMIT WAGE WITHHOLDING TO CASES IN WHICH:

- (1) new and modified orders are issued on or after November 1, 1990, by the Superior Court or administratively by the Division; or
- (2) the absent parent requests that immediate withholding begin; or
- (3) the custodial parent requests that immediate withholding begin, if the State determines in accordance with such procedures and standards as it may establish that the request should be approved; or
- (4) payments are in arrears in an amount at least equal to support payable for one month.

RECOMMENDATION 41:

CSED SHOULD ACTIVELY SEEK THE ASSISTANCE OF THE BUSINESS COMMUNITY IN EVALUATING EXISTING MECHANISMS FOR WAGE WITHHOLDING AND IN DEVELOPING MECHANISMS THAT WILL PROVIDE ACCURATE, UP TO DATE INFORMATION FOR CSED WITHOUT IMPOSING UNNECESSARY OR UNREASONABLE BURDENS ON THE BUSINESS COMMUNITY.

RECOMMENDATION 42:

CSED SHOULD DEVELOP AND INITIATE A PROGRAM TO INFORM THE BUSINESS COMMUNITY AND THE PUBLIC AT LARGE ABOUT THE IMMEDIATE WAGE WITHHOLDING PROVISIONS OF THE FAMILY SUPPORT ACT. THE PROGRAM SHOULD HAVE TWO BASIC GOALS:

- (1) to remove any stigma associated with wage withholding as a means of enforcing child support; and
- (2) to underscore the importance of wage withholding as a means of ensuring that children receive child support benefits on a timely basis.

Issue

Should the State impose across-the-board immediate wage withholding of child support payments without regard to payment history or arrearages? How can we implement such a large new effort?

FSA Requirements

Section 101 of the Family Support Act requires states to begin immediate wage withholding (i.e., mandatory wage withholding without any prior arrearages) by November, 1990, for all new and modified child support orders enforced by the state child support enforcement agency, unless both parties agree to the contrary or the state finds "good cause" not to require it in individual cases.

Section 101 also requires all states to begin immediate wage withholding for all new and modified orders not being enforced by the child support enforcement agency (i.e. by the court system), by January, 1994.

Finally, Section 101 calls for the federal government to study and within three years to report on the administrative feasibility, cost implications, and other effects of making immediate wage withholding mandatory in all cases.

Rationale

These provisions of the Act drew a significant amount of comment and discussion. Current state and federal law limit mandatory wage withholding to cases in which the obligor is at least thirty days in arrears in payments.

The subcommittee heard testimony that immediate wage withholding offends many obligors who regularly make their support payments, because it is associated with being delinquent with payments. Under existing law, wage withholding is typically used when obligors default on their obligations. In addition, the subcommittee was told that employers often do not comply with current withholding requirements. This can be harmful to both the employee-obligor, and the family entitled to the payments.

At the same time, the subcommittee heard testimony that immediate wage withholding is an important safeguard for the protection of families in cases where the obligor is unable or unwilling to make timely payments.

CSED supports a cautious approach to implementation of immediate wage withholding, in view of the administrative and other problems such a program will raise.

Although some members of the subcommittee opposed immediate wage withholding in any case, the subcommittee agreed that the State must comply with federal law. The significant financial penalties that would be applied if Alaska rejected the federal mandate are too severe, particularly in their impact on lower income families, to justify such an approach.

However, in view of the substantial opposition expressed to the policy, the administrative difficulties, and the fact that a federal study will be forthcoming on this topic, the subcommittee agreed that for the time being the State should

limit application of the policy of immediate wage withholding to cases in which federal law requires that policy to begin by November, 1990.

Extending immediate wage withholding to all cases required by federal law in 1994, should be reviewed at a later date. That review can consider those cases in which immediate wage withholding will have been imposed, and the forthcoming federal study.

Successful implementation of any immediate wage withholding program rests in large degree on the willing cooperation of employers and of employees subject to such withholding. A public education program to remove the stigma of immediate wage withholding and to emphasize its value to families receiving child support payments is essential.

Cost

Funds will be needed for the program design and an education campaign. CSED will require additional staff to administer the program.

Benefits

This program should secure greater rates of compliance with support orders, resulting in more money returned to the State to offset public assistance costs, and more money going to the families. It should remove the stigma attached to wage withholding, and procedures for employer compliance should remove current problems associated with late payment of withheld wages.