

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

7844 HOUSE JUDICIARY

109

HB

61

3111 C STREET
ANCHORAGE, ALASKA 99503-3957
561-7007

WHILE IN SESSION:
ALASKA STATE CAPITOL
JUNEAU, ALASKA 99801-1182
465-4968

Alaska State Legislature
House of Representatives



DISTRICT 11:
SAND LAKE
SPENARD
TAKU-CAMPBELL

Representative Jim Nordlund

SPONSOR STATEMENT

House Bill 61 reduces the legal definition of intoxication for the crime of driving while intoxicated from .10% to .08% blood alcohol content. This means it would be illegal for a person to be in control of a motor vehicle, aircraft, or watercraft with a blood alcohol level of .08% or greater.

Five states have already lowered their legal definition of intoxication to .08%: California, Oregon, Utah, Maine, and Vermont. All of Canada has a .08% blood alcohol threshold, and all European nations prohibit driving with a .08% or lower blood alcohol level.

Scientific evidence persuasively establishes that the risk of a driver being involved in a serious or fatal crash increases as the alcohol concentration in the body increases. Many studies have shown that measurable impairment to operate a motor vehicle begins in most drivers at or below .05% blood alcohol level, and that all drivers are impaired at a blood alcohol level of .08%.

Setting the allowable blood alcohol level at .08% will greatly increase the probability of obtaining convictions for drunk driving. Because the law will increase the certainty of conviction, it will also be more effective than current law in deterring drunk driving and in reducing the number of alcohol related crashes.

A study by the state of California showed that traffic fatalities were reduced by 12% after the implementation of .08 DWI laws. Alaska averages approximately 100 traffic related fatalities per year. If we were to achieve the same results this bill could save approximately 12 lives per year.

In addition to the inherent benefits of the bill, the National Highway Traffic Safety Administration has notified us that Alaska currently receives \$688,000 in federal funds annually for Highway Safety Planning and may be eligible for a 30% or more increase if House Bill 61 passes. If similar legislation had passed last year, Alaska would have already received the benefits of the increase.

In the past, the argument against this type of law has been that it will further burden our corrections system. However, section 3 of this bill establishes the minimum penalty for newly affected drivers (those with blood alcohol levels between .08% and .10%) as a \$250 fine only. It is therefore not likely to have any effect on overcrowding except in the rare instance when a judge imposes jail time.

Since it was introduced, House Bill 61 has received an overwhelming amount of public support. In addition to the support of many individual Alaskans, House Bill 61 is endorsed by:

National Highway Traffic Safety Administration
Allstate Insurance Company
State Farm Insurance
American Medical Association
American Association of Neurological Surgeons
American Spinal Injury Association
National Safety Council
Mothers Against Drunk Driving (MADD)
Remove Intoxicated Drivers (RID)
Insurance Institute for Highway Safety
National Committee on Uniform Traffic Laws and Ordinances
National Commission Against Drunk Driving

CSHB 61(TRA) adds language to make the bill effective only if the state fails to become eligible for a basic federal grant as required under 23 U.S.C. 410(c) before January 1, 1995.

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SECTIONAL ANALYSIS
CSHB 61(TRA)

Section 1. Findings and purpose.

Section 2. Reduces the level of alcohol at which a person commits the crime of driving while intoxicated from 0.10% to 0.08%.

Section 3. Imposes a mandatory minimum fine of \$250 for a person convicted of driving while intoxicated who had a level of at least 0.08% but less than 0.10%. Imposes existing penalties for a person with a level of intoxication of 0.10% or more.

Section 4. Amends the presumptions of intoxication in a civil or criminal action relating to driving while intoxicated to conform with amendments in section 2.

Section 5. Provides that the Act will only take effect if the state fails to become eligible for a basic federal grant as required under 23 U.S.C. 410(c) before January 1, 1995.

Section 6. Effective date.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P. O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 W. 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

March 1, 1993

The Honorable Jim Nordlund
House of Representatives
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99801-1182

Re: HB 61 (Relating to DWI offenses)

Dear Representative Nordlund:

By letter dated February 17, 1993, you have asked for our comments regarding HB 61, relating to DWI offenses. As initially drafted, this bill creates a separate misdemeanor offense for driving with a blood-alcohol content of between .08 and .10, punishable by a fine of at least \$250 and up to one year in jail. The mandatory minimum periods of incarceration specified in AS 28.35.030(b) would not apply to this offense.

The new .08 DWI offense would not count as a prior conviction for purposes of the .10% offenses. Accordingly, the graduated sentencing scheme established in AS 28.35.030(b) would not be available for these offenses. Furthermore, as a lesser offense, courts would be obliged to sentence defendants less harshly for the .08 offense. Nonetheless, there may be serious collateral consequences for the defendant, such as loss of driving privileges and/or insurance problems. Accordingly, those charged with this offense would not be likely to plead out, but would instead probably take their cases to trial to the same extent as do other DWI offenders.

Also, the new .08 DWI offense would be considered a lesser-included offense of the traditional .10% offense. It is our experience that juries are predisposed toward lesser-included offenses, considering them to be a "compromise" verdict. We are thus concerned that the defense bar will expect us to regularly reduce offenses to this lesser-included offense, or will take substantially more cases to trial in the hopes that the jury will convict only on the lesser-included offense.

We believe the effects would be substantially different if you simply reduced the necessary BAC for the DWI offense from .10% to .08%, without creating any new "in-between" offenses. Currently, defendants with .10 or .11% BAC levels are either not being

arrested or prosecuted or are more inclined to take their cases to trial because the margin of test-result error at that level is so small. If, however, the minimum level for a DWI offense were .08%, then defendants would be much more likely to plead out when their BAC was .10 or .11%.

If you have further questions or if we may be of assistance in any other manner, please do not hesitate to contact us. Thank you for extending us the opportunity to comment on this proposal.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: Margot O. Knuth
Margot O. Knuth
Assistant Attorney General

cc: Charles Cole
Attorney General

Deborah Behr
Department of Law

Kris Lethin
Legislative Liaison
Office of the Governor

Richard Burton, Commissioner
Department of Public Safety

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 26, 1993

FURTHER REFERRALS:

Finance

Date of Committee Action: 3-29-93

The JUDICIARY Committee considered:

HB 61

HOUSE BILL NO. 61

LOWER ALCOHOL LIMIT TO 0.08 FOR OMVI'S

"An Act relating to the offense of operating a motor vehicle, aircraft, or watercraft while intoxicated; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 61 (JUD)

the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S):

fiscal impact DEPT. OF ADMIN. - PUB. DEF. (3-31-93)

APPROVES PREVIOUS:

(Dept/Date)

zero fiscal note DEPT. OF PUB. SAF. (3-30-93)

fiscal note(s) _____

DEPT. OF ADMIN. - PUB. ADVOCATE (3-31-93)

zero fiscal note(s) _____

SIGNING <u>DO PASS</u>	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Shannette James</i>	<input checked="" type="checkbox"/>	<i>Rita [unclear]</i>		<input checked="" type="checkbox"/>	
<i>Jim [unclear]</i>	<input checked="" type="checkbox"/>	<i>Chip [unclear]</i>		<input checked="" type="checkbox"/>	
<i>Brian S. Porter</i>	<input checked="" type="checkbox"/>				

Brian S. Porter
 CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSHB 61 (Iud)

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to the offense of operating a BRU: Public Defender
motor vehicle, aircraft or watercraft while intoxicated . . ." Component: Public Defender
 Sponsor: Representative Nordlund
 Requestor: _____ COMPONENT SERIAL NO. 1631

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	885	108.0	111.2	114.5	117.9	121.4
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	2.0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	91.5	109.0	112.2	115.5	118.9	122.4

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF	91.5	109.0	112.2	115.5	118.9	122.4
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	91.5	109.0	112.2	115.5	118.9	122.4

POSITIONS

FULL-TIME	20	20	20	20	20	20
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ _____

ANALYSIS: (attach a separate page if necessary.)

See attached.

Prepared By: John Salemi, Public Defender Phone: 274-1684
 Division: Public Defender Agency Date: _____

Approved by Commissioner: Nancy Bear Usera *UBU* Date: 3/31/93
 Agency: Department of Administration

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CONTINUATION OF FISCAL NOTE ANALYSIS
For CSHB 61 (Jud)

CSHB 61 amends the State statutes regarding the crime of driving while under the influence of alcohol. The most significant change in the law proposed through this bill involves the amount of alcohol which a driver can have in his/her system in order to be found guilty of driving while intoxicated. Under present law, a suspected drunk driver who takes a chemical test and is found with 0.10% or more (by weight) of alcohol in his/her blood, is presumed by the court to be under the influence. If found guilty of said offense, mandatory minimum penalties must be imposed.

CSHB 61 lowers the amount of alcohol which must be found in the blood in order for a person to be presumed guilty of driving while intoxicated. This proposal also changes the evidentiary presumptions with respect to this issue. See Section 4, paragraph (a)(4) amending AS 28.35.033.

Significant mandatory penalties attach to a conviction for driving while intoxicated. These punishments will apply to the provisions of this bill.

The Public Defender supports all legislative enactments which reasonably deter driving while under the influence. Other states have lowered the blood alcohol level as is done through this proposal.

Fiscal Impact

There will be distinct fiscal impact on the Public Defender Agency if this bill becomes law. Under present law, individuals who fall into the .08%-10% range typically are offered a reduced charge of Reckless Driving in exchange for a plea of no contest. Reckless Driving carries no significant mandatory minimum penalties, does not have the same stigma as a DWI conviction, and in other ways is a more acceptable resolution of a case, from a defendant's perspective, than is a conviction for drunk driving. If this bill passes, it is anticipated that there will be more DWI charges and as a result, more DWI clients wishing to exercise their right to trial. With the attorneys who handle misdemeanors in Anchorage and Fairbanks already carrying caseloads of over 100 cases, it is likely additional resources will be required so that effective legal representation can be provided for these additional DWI prosecutions. It is felt that the fiscal impact can be absorbed through the use of paralegals to assist attorneys in file organization, witness coordination, and other related support work. As such, two paralegal positions are requested; one each for Anchorage and Fairbanks.

Budget Analysis

Anchorage:		
Paralegal II	16A	\$ 51.6
Fairbanks:		
Paralegal II	16A	53.4
100	Personal Services (10 months first year)	\$ 88.5
200	Travel	0.0
300	Contractual	0.0
400	Supplies	1.0
500	Equipment (one time)	<u>2.0</u>
	TOTAL	\$ 91.5

Position Title Paralegal Assistant II		No. of Positions 2	Range / Step 16/A	Barg. Unit GGU
Time Status PFT	Staff Months 20.0	Location EBA - JBA		Election District 7 - 20
TYPE OF EXPENDITURE		Amount		
Salary	62.2	Justification HB 61 amends the state statutes regarding the crime of driving while under the influence of alcohol. The most significant change in the law proposed through this bill involves the amount of alcohol which a driver can have in their system in order to be found guilty of driving while intoxicated. If this bill passes it is anticipated that there will be more DWI charges and as a result more DWI clients wishing to exercise their right to trial. With the attorneys who handle misdemeanors in Anchorage and Fairbanks already carrying caseloads of over 100 cases, additional resources will be required so that effective legal representation can be provided. The fiscal impact can be absorbed through the use of paralegals to assist attorneys in file organization, witness coordination and other related support work. As such, two paralegal positions are requested; one each for Anchorage and Fairbanks.		
Benefits	26.3			
Premium Pay				
Other				
Total Personal Services	88.5			
Travel	-0-			
Contractual	-0-			
Commodities	1.0			
Equipment	2.0			
Other				
Total Cost	91.5			
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts 1002				
G.E. Match 1003				
General Fund 1004	91.5			
IA Receipts 1007				
CIP Receipts 1061				
Other				

**Request For
New Position**

AGENCY Department of Administration
 BRU Public Defender Agency
 COMPONENT Public Defender Agency

FY 94

Page 3 of 3
 Revised Date: _____

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO: CSHB 61(JUD)

Revision Date: 3/30/93 Dept. Affected: Public Safety
 Title: "An Act relating to offense of operating a motor vehicle while intoxicated." BRU: Alaska State Troopers
 Sponsor: Representative Nordlund Component: Detachments
 Requestor: Representative Nordlund COMPONENT SERIAL NO. 799

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

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	12.5	12.5	0	0	0	0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	12.5	12.5	0	0	0	0
CAPITAL						
REVENUE FUND SOURCE:						

FINDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	12.5	12.5	0	0	0	0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	12.5	12.5	0	0	0	0

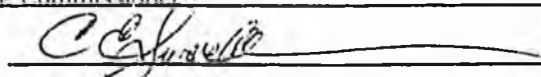
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 93) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary.)

Please see attached.

Prepared By: C.E. Swackhammer Phone: 465-4322
 Division: Office of the Commissioner Date: 3/30/93
 Approved by Commissioner:  Date: 3/30/93
 Agency: Richard L. Burton, Dept. of Public Safety

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Analysis:

Statistics show that "lower level" or "borderline" DWI offenders are not being apprehended now. The average breath alcohol concentration (BAC) of DWI arrestees in 1989 was .19 percent--well over the legal limit of .10. Concerted, long-term training will be needed to assist law enforcement officers to detect and apprehend DWI offenders at lower BAC levels. The need for such training, and for more effective enforcement efforts will be an issue addressed in the Department's FY 94 budget request. In the meantime, \$25,000 in contractual funding (\$12,500 in each of the next two fiscal years) is needed to develop and implement a concentrated public information program to educate the public about the dangers of drinking and driving and about the content of the new law.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSHB 61

Revision Date: 3-30-93

Dept. Affected: Corrections

Title: "An Act relating to the offense
of operating a motor vehicle....

BRU: Statewide Programs: Institutions
 Component: _____

Sponsor: Rep. Nordlund

Requestor: House Judiciary

COMPONENT SERIAL NO. 1860; 1858

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE FUND SOURCE						
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FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ -0-

ANALYSIS: (Attach a separate page if necessary)

The committee substitute does not change the department's earlier zero fiscal note.

Prepared by: Dana LaTour
 Division: Special Assistant

Phone: 465-3376

Date: 3-30-93

Approved by Commissioner: Lloyd G. Rupp
 Agency: Commissioner

Date: 3-30-93

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSHB 61 (Iud)

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to the offenses of operating a motor vehicle ..." BRU: Office of Public Advocacy
 Component: Office of Public Advocacy
 Sponsor: Representative Nordlund and Ulmer
 Requestor: House Judiciary COMPONENT SERIAL NO. 43

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	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

Estimate of current year (FY93) impact: \$ None

ANALYSIS: (attach a separate page if necessary.)

Prepared By: Brant McGee, Public Advocate Phone: 274-1684
 Division: Office of Public Advocacy Date: _____

Approved by Commissioner: Nancy Bear Usery Date: 3/31/93
 Agency: Department of Administration

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STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSHB 61 (JUD)

Revision Date: March 31, 1993
 Title: "...relating to the offense of operating a motor vehicle, aircraft, or watercraft while intoxicated..."
 Sponsor: Representative Nordlund
 Requestor: House Judiciary Committee

Department Affected: Department of Law
 BRU: Prosecution
 Component: All
 COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

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

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Peques, Director
 Division: Administrative Services Division
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: March 31, 1993
 Date: March 31, 1993

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSHB 61 (JUD)

ANALYSIS (Continued):

The Judiciary Committee Substitute for HB 61 amends AS 28.35.030(a) and AS 28.35.033(a) to lower the blood/alcohol limit for the crime of driving while under the influence of intoxicating liquor from 0.10 percent or more by weight alcohol in a person's blood to 0.08 percent. This version of the bill drops language that would have made driving while intoxicated, with less than 0.10 percent blood/alcohol, a lesser included offense.

Other jurisdictions, most notably California and Maryland, experienced about a ten percent increase in DWI arrests in the year immediately following their lowering of the limit to 0.08 percent. However, Oregon, which lowered its limit in 1983, saw a small decrease in arrests. It is not known why their results differed, or what impact enforcement and public information efforts may have had on them. Consequently, we cannot predict the result in Alaska.

Moreover, the Department of Public Safety has advised that they do not anticipate any significant increase in DWI arrests, because that department's traffic stops are based on observed impaired driving behavior where the operator appears intoxicated. Therefore, we are not requesting fiscal impact funds.

Rep. Brian Porter, Chairman

House Judiciary Committee

Date: March 29, 1993

Place: Capitol Room 120

HB 61 Lower Alcohol Limit to .08 for DWIs'

Subject of Meeting: HB 41 Civil Liability for Ski Accidents; HB 147 Employer's Liability for Reference

Info; HJR 3 Limiting Terms of Legislators

Please Print Name	Representing	Business/Personal Mailing Address	Zip	(H) Phone	(W) Phone	Do you Want to Testify?	Which Subject/ Which Bill?
MARGOT KNUTH	law - crim	Box 110300		3428		<input checked="" type="radio"/> Y <input type="radio"/> N	HB 61
Juanita Hensley	DPS/DMV	Box 20720	99802	4335	4335	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 61
Cherise Rose	---					Y <input type="radio"/> N	
GRETCHEN PEWET	DPS	Box 200100	99811	4322		Y <input checked="" type="radio"/> N	HB 41
Jenni Gorsuch	Miller	Box 240504, Douglas	99824		3-3531	Y <input checked="" type="radio"/> N	#BC1 LISTEN ONLY
GADY MENDIVIL	EAGLECREST SA AREA	155 S. Seward St.	99830	586-5284	→	Y <input checked="" type="radio"/> N	HB 41
						Y <input type="radio"/> N	
						Y <input type="radio"/> N	
						Y <input type="radio"/> N	
						Y <input type="radio"/> N	
						Y <input type="radio"/> N	
						Y <input type="radio"/> N	

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National Safety Council
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Remove Intoxicated Drivers (RID)
Insurance Institute for Highway Safety
National Committee on Uniform Traffic Laws and Ordinances
National Commission Against Drunk Driving

3111 C STREET
ANCHORAGE, ALASKA 99503-3957
561-7007

WHILE IN SESSION:
ALASKA STATE CAPITOL
JUNEAU, ALASKA 99801-1182
465-4968

Alaska State Legislature
House of Representatives



DISTRICT 11:
SAND LAKE
SPENARD
TAKU-CAMPBELL

Representative Jim Nordlund

SECTIONAL ANALYSIS

Section 1. Findings and purpose.

Section 2. Reduces the level of alcohol at which a person commits the crime of driving while intoxicated from 0.10% to 0.08%.

Section 3. Imposes a mandatory minimum fine of \$250 for a person convicted of driving while intoxicated who had a level of at least 0.08% but less than 0.10%. Imposes existing penalties for a person with a level of intoxication of 0.10% or more.

Section 4. Amends the presumptions of intoxication in a civil or criminal action relating to driving while intoxicated to conform with amendments in section 2.

Section 5. Effective date.

3111 C STREET
ANCHORAGE, ALASKA 99503-3957
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WHILE IN SESSION:
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JUNEAU, ALASKA 99801-1182
465-4968

Alaska State Legislature

House of Representatives



DISTRICT 11:
SAND LAKE
SPENARD
TAKU-CAMPBELL

Representative Jim Nordlund

MEMORANDUM

TO: Representative Richard Foster, Chair
Transportation Committee

FROM: Representative Jim Nordlund

RE: HB 61 - Lowering Blood Alcohol Level for DWI

DATE: February 16, 1993

I would greatly appreciate it if a Transportation hearing could be scheduled as soon as possible on House Bill 61, which reduces the legal definition of intoxication for DWI from .10% to .08% blood alcohol content. A number of states, Canada, and all European nations have lowered their legal definition of intoxication from .10% based on medical evidence that shows driving ability is significantly impaired at the lower blood alcohol level.

The National Highway Traffic Safety Administration has notified us that Alaska currently receives \$688,000 in federal funds annually for Highway Safety Planning and may be eligible for a 30% or more increase if House Bill 61 passes. If similar legislation had passed last year, Alaska would have already received the benefits of the increase.

A study by the state of California showed that traffic fatalities were reduced by 12% after the implementation of .08 DWI laws. Alaska averages approximately 100 traffic related fatalities per year. If we were to achieve the same results this bill could save approximately 12 lives per year. In order to begin saving lives, I believe that it is important for the legislature to act quickly in passing House Bill 61.

Dennis Poshard of my staff is preparing the necessary back up and will provide it to you as soon as necessary.

Thank you for your consideration of this matter.

3111 C STREET
ANCHORAGE, ALASKA 99503-3957
561-7007

WHILE IN SESSION:
ALASKA STATE CAPITOL
JUNEAU, ALASKA 99801-1182
465-4963

Alaska State Legislature
House of Representatives



DISTRICT 11:
SAND LAKE
SPENARD
TAKU-CAMPBELL

Representative Jim Nordlund

	# OF DRINKS TO .10 BAC (1HR PERIOD)	#OF DRINKS TO .08 BAC (1HR PERIOD)
FEMALE 100 LBS.	2	2
FEMALE 140 LBS.	3	3
FEMALE 180 LBS.	4	3
MALE 120 LBS.	3	3
MALE 160 LBS.	5	4
MALE 200 LBS.	6	5
MALE 240 LBS.	7	6

* Information from the "Controlled Drinking Guide" published by The Alaska Center for Responsible Alcohol Control

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 15, 1993

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: _____

** AS HB 61 (Trans)
attached*

The TRANSPORTATION Committee considered:

HB 61

HOUSE BILL NO. 61

LOWER ALCOHOL LIMIT TO 0.08 FOR OMVI'S

"An Act relating to the offense of operating a motor vehicle, aircraft, or watercraft while intoxicated; and providing for an effective date."

RECOMMENDATIONS:

be replaced with _____

AS HB 61 (Trans) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S):

(Dept)

APPROVES PREVIOUS:

(Dept/Date)

fiscal impact ⁽³⁾ DPS, D.Law, Admin. fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
		<i>[Signature]</i>		X	
		<i>[Signature]</i>		*	
		<i>[Signature]</i>	✓		
<i>[Signature]</i>	X	<i>[Signature]</i>	X		
		<i>[Signature]</i>	X		

Richard J. Foley
CHAIRMAN'S SIGNATURE



add: info
submitted

*Alaska Cabaret, Hotel,
Restaurant & Retailers Association*

P. O. Box 104830 • Anchorage, Alaska 99510
401 K Street • (907) 272-8133 • Fax: (907) 271-8640

February 23, 1993

Representative Richard Foster
House of Representatives
State Capitol
Juneau, AK 99801-1182

Dear Representative Foster,

House Bill 61, shortly to be considered by the Transportation Committee, would lower the legal definition of intoxication from a Blood Alcohol Content (BAC) of 0.10 to 0.08%. This bill does not address the real cause of the drunk driving problem, the alcohol abuser, and may in fact, impede efforts to reduce the number of accidents and fatalities caused by intoxicated drivers. The State of Maine adopted the lower BAC standard in 1988, one of only 5 states to do so. Between 1988 and 1990, the arrest rate increased by 16% as more people were considered technically intoxicated. At the same time, the alcohol-related fatality rate increased, by more than 7%.

These deaths were the unintended result of diluting the law enforcement and judicial resources available to combat the real culprit, the alcohol abuser. The average BAC of someone involved in an alcohol-related accident is over 0.15%. To direct scarce resources against the responsible consumer is counterproductive. We are continually reminded by the media of our overloaded court and jail facilities, to the point of serious recommendations that jail time for first time DWI offenders under the current definition be abolished.

Addressing the problem by restricting responsible consumption is clearly misdirected. Instead, our efforts should be directed to pursue realistic solutions to this terrible social problem by providing our law enforcement, judiciary, and corrections systems the assets they require to implement current laws and to provide stiffer penalties against repeat offenders.

Candy Lightner, the founder of Mothers Against Drunk Drivers (MADD), has doubts about lowering the BAC to 0.08% which she has expressed publicly on several occasions. I am enclosing a copy of a newspaper column that she wrote issue in 1992. Also enclosed is a reprint of a report originally published by the Beverage Retailers

Is MADD Veering off the Road?

by Candy Lightner, founder of MADD

Cleveland Plain Dealer
Thursday, May 21, 1992

I founded Mothers Against Drunk Driving 12 years ago after my 13-year-old daughter, Cari, was killed by a hit-and-run drunken driver. Two days before he killed my daughter, the man had been arrested for another hit-and-run drunken driving with injury. His blood alcohol content was 0.22% -- more than twice the 0.10%, the current legal limit in most states.

My grief and anger made me determined to do everything in my power to stop the senseless slaughter caused by impaired drivers. Though still deeply committed to that goal, I worry that the movement I helped create has lost direction.

Our biggest obstacle was society's tolerance of drinking and driving. So we passed more than 1,000 laws, and attitudes changed. Society no longer considers impaired driving socially acceptable.

This led to significant reductions in alcohol-related fatalities; 50% in 1988 involved alcohol, as compared to 57% in 1982. But we are still nowhere near the point of eliminating this horrible tragedy from our streets and highways.

Lately, anti-drunken driving groups are working on legislation that would lower the BAC to .08. The recent federal highway bill conditions access to highway aid on implementing anti-drunken driving measures, including the suggestion that states adopt the .08 standard. Unfortunately, this ignores the real core of the problem, individuals who, despite new laws and the change in attitude, continue to drink and drive.

While no one can deny that the safest BAC is no BAC, this is also unrealistic given our limited resources and energies. What is realistic, is attacking the problem drinker or chronic drunken driver, the most dangerous threat to our safety.

In our rush to "do the right thing" let's not lose sight of the facts:

- * Half of the drinking drivers involved in fatal crashes have a BAC of 0.17 or greater. Most drivers with a level this high are problem drinkers and repeat offenders.
- * Even among young people aged 16 to 24, the great majority of deaths involved drinkers with a BAC of at least .15%.

Lowering the blood alcohol content won't make a difference to these offenders. After 12 years we should be past the point of just raising public consciousness. We need to bring creativity into play and focus on the programs and laws that will make the most difference.

Ohio, for example, is concentrating on measures that would reduce recidivism. In the past 10 years, 53% of all drunken driving offenses were committed by repeat offenders. The State Highway Patrol now notifies law enforcement officers of individuals whose driving record includes five or more DUI convictions and whose licenses were suspended. The repeat offenders were also contacted directly and told they risked re-arrest if they continued to drive.

2

Kodiak Liquor Licence Association
P.O. Box 947
Kodiak, Alaska 99615
March 9, 1993

Representative Richard Foster
House Of Representatives
State Of Alaska

Re: House Bill 61

Dear Representative Foster:

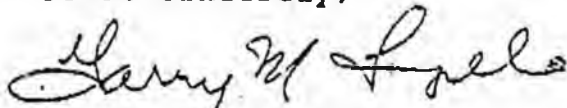
I am writing on behalf of our Association to oppose what we believe to be serious consequences for our industry of HB # 61.

We believe that those that drink and drive should take full responsibility for their actions and that their actions need to be stopped. What our industry is most concerned with is the fact that in Alaska we are also liable and .08 is a very low level for our staff to gauge (it might be only two drinks for some people, yet they would show few visible effects) Also there is provision here for the courts to look at .04. The .04 is very scary. We do not mind that ways be made to stop drinking and driving (the level is a technical point, the liability is the issue). We also want to see those in our industry who over serve to be removed, and if current laws were enforced this could be dealt with.

Our industry is in a very great squeeze, on one hand consumption is down 16% over the last 7 years and insurance rates (if you can get coverage) has gone through the roof. The most seriously affected are those Ma and Pa operations that make up the majority of our members.

Please give our thoughts serious consideration.

Yours sincerely,



Garry M. Langille
President

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO: HB 61

Revision Date: _____ Dept. Affected: Public Safety
 Title: "An Act relating to offense of operating a BRU: Alaska State Troopers
motor vehicle while intoxicated. Component: Detachments
 Sponsor: Representative Nordlund
 Requestor: Representative Nordlund COMPONENT SERIAL NO. 799

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

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	12.5	12.5	0	0	0	0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	12.5	12.5	0	0	0	0
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	12.5	12.5	0	0	0	0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	12.5	12.5	0	0	0	0

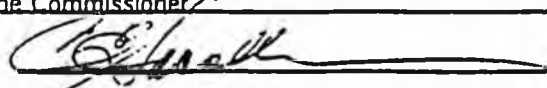
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 93) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary.)

Please see attached.

Prepared By: C.E. Swackhammer Phone: 465-4322
 Division: Office of the Commissioner Date: 1/22/93
 Approved by Commissioner:  Date: 1/22/93
 Agency: Richard I. Burton, Dept. of Public Safety

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Analysis:

Statistics show that "lower level" or "borderline" DWI offenders are not being apprehended now. The average breath alcohol concentration (BAC) of DWI arrestees in 1989 was .19 percent--well over the legal limit of .10. Concerted, long-term training will be needed to assist law enforcement officers to detect and apprehend DWI offenders at lower BAC levels. The need for such training, and for more effective enforcement efforts will be an issue addressed in the Department's FY 94 budget request. In the meantime, \$25,000 in contractual funding (\$12,500 in each of the next two fiscal years) is needed to develop and implement a concentrated public information program to educate the public about the dangers of drinking and driving and about the content of the new law.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 61

Revision Date: February 22, 1993
Title: ...relating to the offense of operating a motor vehicle, aircraft, or watercraft while intoxicated...
Sponsor: Representative Nordlund
Requestor: Representative Nordlund

Department Affected: Department of Law
BRU: Prosecution
Component: Third Judicial District
COMPONENT SERIAL NO. 0087

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	54.8	109.6	109.6	109.6	109.6	109.6
TRAVEL	2.5	5.0	5.0	5.0	5.0	5.0
CONTRACTUAL	6.0	11.9	11.9	11.9	11.9	11.9
SUPPLIES	5.8	4.8	4.8	4.8	4.8	4.8
EQUIPMENT	15.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	69.1	131.3	131.3	131.3	131.3	131.3

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

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF	69.1	131.3	131.3	131.3	131.3	131.3
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL						

FULL-TIME	2	2	2	2	2	2
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director
Division: Administrative Services Division
Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law

Phone: 465-3672
Date: February 22, 1993
Date: February 22, 1993

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 61

ANALYSIS CONTINUATION:

This bill amends AS 28.35.030(a) and AS 28.35.033(a) to lower the blood alcohol limit for the crime of driving while under the influence of intoxicating liquor, a class A misdemeanor, from 0.10 percent to 0.08 percent. The bill also provides that a court shall impose a minimum mandatory fine of not less than \$250 when there was at least 0.08 but less than 0.10 percent blood alcohol.

Other jurisdictions, most notably California and Maryland, experienced about a ten percent increase in DWI arrests in the year immediately following their lowering of the limit to 0.08 percent. However, Oregon, which lowered its limit in 1983, saw a small decrease in arrests. It is not known why their results differed, or what impact enforcement and public information efforts may have had on them. Consequently, we cannot predict the result in Alaska, but some increase in arrests will probably occur if the bill is approved. And although it could be that the bill will result in less litigation, the amount of litigation will most probably increase.

The bill provides for a fine of at least \$250 when a person's blood alcohol content is below 0.10 percent, but the underlying crime is still a class A misdemeanor, and a court is free to impose a far harsher penalty, including imprisonment. This means that defendants must be accorded a jury trial and, if eligible, a publicly-funded defense. Even in those cases where a person might expect to face only the potential of a \$250 fine, defendants can still be expected to wage an aggressive defense because of the serious collateral consequences of a guilty verdict. These include most particularly the restriction or suspension of a person's privilege to drive (as ordered by the court or as a result of an administrative process) and the certainty of a substantially increased cost for insurance.

The defense of these types of 0.08 DWI cases will be easier than normal DWI cases and therefore more defendants may decide to go to trial. In a normal DWI case the state can obtain a conviction by proving either that a breath-test yielded a result of 0.10% or that the person was "under the influence." Therefore even if the results of the breath-test are suppressed or if the jury does not believe the breath-test results (which often happens), the person is nonetheless convicted because bad driving or other symptoms of intoxication prove that the person was "under the influence." In 0.08 cases, the only issue is the validity of the test results; if the jury does not believe the test result, the defendant is acquitted.

Ironically, the existence of a different penalty for 0.08% cases than for normal DWI cases is an advantage to all DWI defendants, not merely for those whose blood alcohol is below 0.10%. The reason is because this new offense may be considered to be a "lesser included offense" of normal DWI, and thus every DWI defendant will ask that the jury be permitted to find that this lesser offense, rather than normal DWI, was committed. The possibility of this kind of compromise verdict may encourage more defendants to take their chances at trial. Alternatively, defendants may ask for a "special verdict", in which the jury is asked to determine the specific amount of blood alcohol. This may tend to prolong jury deliberations and may lead to jury confusion if the jury cannot agree on a specific amount.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 61

ANALYSIS CONTINUATION:

During FY 92, nearly 4,000 DWI complaints were referred to Department of Law prosecutors. If Alaska follows the California example, a ten percent increase would result in 400 new DWI cases statewide. The largest number of new cases would be experienced in the Anchorage and Mat-Su Valley areas. When we commented on similar legislation in 1992 (HB 102) we indicated that although we expected an increase in the misdemeanor caseload we were not going to request fiscal note funds because of the recent addition of three new prosecutors in Anchorage. Subsequently, the department's budget was reduced and the three attorney positions, plus one paralegal and two clerical positions were eliminated in Anchorage. We expect that this bill will cause us to prosecute 300 or more additional class A misdemeanors in the Third Judicial District, where the effects of the bill will be felt most. Because of staffing cutbacks in Anchorage, and because the Anchorage office is the hub from which prosecutors are sent to other offices to assist in times of overload, it will therefore be necessary to add one Attorney III at Anchorage.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 61

ANALYSIS CONTINUATION:

	<u>Attorney III</u> (22A)	<u>Legal Secretary I</u> (10B)	<u>Total</u>
Personal Services	72.3	37.3	109.6
Travel	5.0	-0-	5.0
Contractual	7.4	4.5	11.9
Supplies	4.1	4.1	8.2
Equipment	6.5	8.5	15.0
	<hr/>	<hr/>	<hr/>
Total	95.3	54.4	149.7

Position Title Attorney III		No. of Positions 1	Range / Step 22A	Barg. Unit PX
Time Status PFT	Staff Months 12	Location Anchorage		Election District 7/15
TYPE OF EXPENDITURE		AMOUNT		
Salary		53,304		
Benefits		19,011		
Premium Pay				
Other				
Total Personal Services		73,315		
Travel		5,000		
Contractual		7,400		
Commodities		4,100		
Equipment		6,500		
Other				
Total Cost		95,300		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts1002				
G.F. Match1003				
General Fund1004		95,300		
I-A Receipts1007				
CIP Receipts1061				
Other				
Justification				
<p>This position is needed to handle the 300 or more additional class A misdemeanors that are expected if HB 61 is enacted. The bill will lower the blood alcohol content from 0.10 percent to 0.08 percent for driving while under the influence of alcohol, resulting in a potential increase of 10 percent in the number of DWI prosecutions handled by the Anchorage District Attorney's Office and other offices in the District where the Anchorage office provides overload and relief coverage. Because of skills required to prosecute class A misdemeanors, this position should be allocated to the Attorney III level.</p>				

Request For New Position

AGENCY DEPARTMENT OF LAW

BRU Prosecution

COMPONENT Third Judicial District 0087

FY 94

Page 1 of 2
Revised Date: _____

Position Title Legal Secretary I		No. of Positions 1	Range / Step 10B	Barg. Unit GGU
Time Status PFT	Staff Months 12	Location Anchorage		Election District 7/15
TYPE OF EXPENDITURE		AMOUNT	Justification This position is needed to handle the paperwork and witness scheduling for an additional 300 misdemeanors that are expected to be handled if HB 61 is enacted. Full-time legal secretarial assistance is required due to the large number of misdemeanor trials that are expected. Preparation of legal pleadings and other documentation is appropriately handled by the Legal Secretary I classification.	
Salary		25,524		
Benefits		11,780		
Premium Pay				
Other				
Total Personal Services		37,304		
Travel				
Contractual		4,500		
Commodities		4,100		
Equipment		8,500		
Other				
Total Cost		54,404		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts1002				
G.F. Match1003				
General Fund1004		54,404		
I-A Receipts1007				
CIP Receipts1061				
Other				

Request For New Position

AGENCY DEPARTMENT OF LAW

BRU Prosecution

COMPONENT Third Judicial District 0087

FY 94

Page 2 of 2
Revised Date: _____

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 61

Revision Date: _____ Dept. Affected: Department of Corrections
 Title: "An Act relating to the offense of BRU: Statewide Programs; Institutions
operating a motor vehicle... while intoxicated..." Component: Statewide Programs; Institutions
 Sponsor: Rep. Nordlund
 Requestor: Rep. Nordlund COMPONENT SERIAL NO. 1860: 1858

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-
-----------------------------	------------	------------	------------	------------	------------	------------

FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ -0-

ANALYSIS: (Attach a separate page if necessary)

 See attached fiscal analysis.

Prepared by: Dana LaTour *D. LaTour* Phone: 465-3376
 Division: Office of the Commissioner Date: 2-23-93
 Approved by Commissioner: Lloyd G. Rupp *L. G. Rupp for* Date: 2-23-93
 Agency: Department of Corrections

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Fiscal Analysis

HB 61: "An Act relating to the offense of operating a motor vehicle, aircraft, or watercraft while intoxicated;"

Page 2

This bill amends AS 28 by lowering the blood alcohol limit for drunk driving from 0.10 to 0.08 percent. Although the crime remains a class a misdemeanor, the bill provides that a court shall impose a minimum mandatory fine of \$250. The department assumes that although the court can impose a sentence of incarceration, in most cases it will order only a fine.

The Department of Public Safety provided the department with data that shows the motorists stopped by Alaska State Troopers for suspicion of driving while under the influence of alcohol test on the intoximeter at an average blood alcohol level of 0.19 percent. Statistics from the Juneau Police Department show that in 1990 148 people were tested on the intoximeter, and none tested at between 0.08 and 0.10 percent.

Considering the infrequency of the number of offenders whose test result fall into the 0.08 and 0.10 rate, it is assumed that HB 61 will not have a significant fiscal impact on the Department.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 61

Revision Date: _____ Dept. Affected: Department of Corrections
 Title: "An Act relating to the offense of operating a motor vehicle... while intoxicated..." BRU: Statewide Programs; Institutions
 Component: Statewide Programs; Institutions
 Sponsor: Rep. Nordlund
 Requestor: Rep. Nordlund COMPONENT SERIAL NO. 1860: 1858

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-
----------------------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year (FY93) impact: \$ -0-

ANALYSIS: (Attach a separate page if necessary)
 See attached fiscal analysis.

Prepared by: Dana LaTour *D. LaTour* Phone: 465-3376
 Division: Office of the Commissioner Date: 2-23-93
 Approved by Commissioner: Lloyd G. Rupp *L. Rupp for* Date: 2-23-93
 Agency: Department of Corrections

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Fiscal Analysis

HB 61: "An Act relating to the offense of operating a motor vehicle, aircraft, or watercraft while intoxicated;"

Page 2

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Considering the infrequency of the number of offenders whose test result fall into the 0.08 and 0.10 rate, it is assumed that HB 61 will not have a significant fiscal impact on the Department.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 61

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to the offense of operating a motor vehicle, aircraft or watercraft while intoxicated" BRU: Public Defender Agency
 Component: Public Defender Agency
 Sponsor: Reps. Nordlund, Ulmer
 Requestor: _____ COMPONENT SERIAL NO. 1631

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES	52.5	108.0	111.2	114.5	117.0	121.4
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	2.0	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	55.5	109.0	112.2	115.5	118.9	122.4

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

REVENUE FUND SOURCE:						
-----------------------------	--	--	--	--	--	--

FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	55.5	109.0	112.2	115.5	118.9	122.4
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	55.5	109.0	112.2	115.5	118.9	122.4

POSITIONS:

FULL-TIME	2.0	2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary)

See attached.

Prepared by: John Salemi, Public Defender
 Division: Public Defender Agency
 Approved by Commissioner: Nancy Bear Usura
 Agency: Administration

Phone: 279-7541
 Date: _____
 Date: 2/24/93

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CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 61

HB 61 amends the state statutes regarding the crime of driving while under the influence of alcohol. The most significant change in the law proposed through this bill involves the amount of alcohol which a driver can have in his/her system in order to be found guilty of driving while intoxicated. Under present law a suspected drunk driver who takes a chemical test and is found with 0.10% or more (by weight) of alcohol in his/her blood is presumed by the court to be under the influence. If found guilty of said offense, mandatory minimum penalties must be imposed.

HB 61 lowers the amount of alcohol which needs to be found in the blood in order for a person to be presumed guilty of driving while intoxicated. This proposal also changes the evidentiary presumptions with respect to this issue. See Section 4, paragraph (a)(4), amending A.S. 28.35.033.

This bill makes distinctions, in terms of punishment, between those individuals who are convicted of DWI with an alcohol level of 0.10% or higher and those whose alcohol level is at least 0.08% but less than 0.10% blood alcohol level. It appears from the bill that a fine of \$250 is the only mandatory punishment. If this bill passes into law, it remains to be seen how the courts will otherwise distinguish, in terms of punishment, a .08% offender from a .10% offender.

The Public Defender supports all legislative enactments which reasonably deter driving while under the influence. Other states have lowered the blood alcohol level as is done through this proposal.

Fiscal Impact

There will be distinct fiscal impact on the Public Defender Agency if this bill becomes law. Under present law individuals who fall into the .08% - .10% range typically are offered a reduced charge of Reckless Driving in exchange for a plea of no contest. This charge carries no significant mandatory minimum penalties, does not have the same stigma as a DWI conviction and in other ways is a more acceptable resolution of a case, from a defendant's perspective, than is a conviction for drunk driving. If this bill passes it is anticipated that there will be more DWI charges and as a result more DWI clients wishing to exercise their right to trial. With the attorneys who handle misdemeanors in Anchorage and Fairbanks already carrying caseloads of over 100 cases, it is likely additional resources will be required so that effective legal representation can be provided. It is felt that the fiscal impact can be absorbed through the use of paralegals to assist attorneys in file organization, witness coordination and other related support work. As such, two paralegal positions are requested; one each for Anchorage and Fairbanks. In that the effective date for enactment is January 1, 1994, the requested FY 94 personal services expenditures are for one half of the fiscal year.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 61

Budget Analysis

Anchorage

Paralegal II 16A 25.8

Fairbanks

Paralegal II 16A 26.7

100	Personal Services	52.5
200	Travel	-0-
300	Contractual	-0-
400	Supplies	1.0
500	Equipment (one time)	<u>2.0</u>
	TOTAL	55.5

Position Title Paralegal Assistant II		No. of Positions 2	Range / Step 16/A	Barg. Unit GGU
Time Status PFT	Staff Months 24.0	Location EBA - JBA		Election District 7 - 20
TYPE OF EXPENDITURE		Amount		
Salary	74,340	Justification HB 61 amends the state statutes regarding the crime of driving while under the influence of alcohol. The most significant change in the law proposed through this bill involves the amount of alcohol which a driver can have in their system in order to be found guilty of driving while intoxicated. If this bill passes it is anticipated that there will be more DWI charges and as a result more DWI clients wishing to exercise their right to trial. With the attorneys who handle misdemeanors in Anchorage and Fairbanks already carrying caseloads of over 100 cases, additional resources will be required so that effective legal representation can be provided. The fiscal impact can be absorbed through the use of paralegals to assist attorneys in file organization, witness coordination and other related support work. As such, two paralegal positions are requested; one each for Anchorage and Fairbanks.		
Benefits	30,550			
Premium Pay				
Other				
Total Personal Services	104,890			
Travel	-0-			
Contractual	-0-			
Commodities	1.0			
Equipment	2.0			
Other				
Total Cost	107,890			
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.E. Match	1003			
General Fund	1004	107,890		
EA Receipts	1007			
CIP Receipts	1061			
Other				

**Request For
New Position**

AGENCY Department of Administration
 BRU Public Defender Agency
 COMPONENT Public Defender Agency

FY _____

Page 4 of 4
 Revised Date: _____

FISCAL NOTE
STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 61

Revision Date: _____
 Title: 'An Act relating to the offenses of operating a motor vehicle. . . .'

 Sponsor: Reps. Nordlund, Ulmer
 Requestor: House Transportation

Department Affected: Administration
 BRU: Office of Public Advocacy
 Component: Office of Public Advocacy

 COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	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

Estimate of current year (FY93) impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Brant McGee, Public Advocate
 Division: Office of Public Advocacy

Phone: 274-1684
 Date: _____

Approved by Commissioner: Nancy Bear Usera
 Agency: Administration

Date: 2/24/93

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G 2

8-LS0392E
Cramer
3/9/93

CS FOR HOUSE BILL NO. 62(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE GRUSSENDORF

A BILL
FOR AN ACT ENTITLED

1 "An Act prohibiting employers from discriminating against individuals who use
2 legal products in a legal manner outside of work."

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

4 * Section 1. AS 23.10 is amended by adding a new section to read:

5 Sec. 23.10.450. NONDISCRIMINATION FOR LAWFUL USE OF
6 PRODUCTS. (a) An employer may not refuse to hire, discharge, or otherwise
7 discriminate against an individual with respect to compensation, privileges, terms, or
8 conditions of employment because the individual uses a lawful product in a lawful
9 manner during nonworking hours and for the individual's personal consumption when
10 not wearing or carrying clothing or other items that identify the individual as an
11 employee of the employer and when in places other than the work site or the premises
12 or vehicles of the employer.

13 (b) It is not a violation of this section for an employer to

14 (1) discharge an individual or otherwise disadvantage an individual with

1 respect to compensation, terms, conditions, or privileges of employment if that decision
2 is based on the individual's failure to meet job performance standards including job
3 performance standards based on the use of lawful products;

4 (2) offer, impose, or have in effect a health, disability, or life insurance
5 policy that makes distinctions between employees for the type of coverage or the
6 coverage based upon the employees' use of legal products; if differential premium
7 rates apply,

8 (A) the differential premium rates charged employees must
9 reflect a differential cost to the employer, and

10 (B) the employer shall provide employees with a written
11 statement setting out the differential rates used by the insurance carriers.

12 (c) This section does not apply to a religious corporation, association,
13 educational institution, or society with respect to the employment of individuals who
14 perform work connected with the carrying on, by the religious entity, of its activities.

15 (d) This section does not supersede a federal or state law that protects the
16 health, safety, or well-being of the general public.

17 (e) In this section,

18 (1) "employee" means a person employed by an employer;

19 (2) "employer" means a person, including the state and political
20 subdivisions of the state, that employs 10 or more persons in the state;

21 (3) "premises of the employer" includes camps or other living
22 accommodations provided or maintained by the employer at or near the worksite.

Rep. Brian Porter, Chairman

House Judiciary Committee

Date: March 10, 1993
Place: Capitol Room 120

Subject of Meeting: HJR 3 Limitation of
 Legislative Terms; HB 152 Jurisdiction of
 Magistrates; HB 62 Employee's Use of Legal
 Products; HB 147 Liability for Reference Info.

Please Print Name	Representing	Business/Personal Mailing Address	Zip	(H) Phone	(W) Phone	Do you Want to Testify?	Which Subject/ Which Bill?
C.S. CHRISTENSEN	COURT SYSTEM	303 K ST ANCH	99501		264-8228	(Y) N	KB 152
Rosa Jemel	NFIB	9159 Skywood	99801		789-4278	(Y) N	HJR 3
Doug Rickey	Rep. Guissardorf	State CA9.				(Y) N	HB 62 - if needed
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 17, 1993

FURTHER REFERRALS:

Date of Committee Action: 3-10-93

The JUDICIARY Committee considered:

HB 62

HOUSE BILL NO. 62

EMPLOYEE'S RIGHT TO USE LAWFUL PRODUCTS

"An Act prohibiting employers from discriminating against individuals who use legal products in a legal manner outside of work."

RECOMMENDATIONS:

be replaced with CS HB 62 (JUD)

the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) Labor, Administration

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Bryan Porter</i>	<input checked="" type="checkbox"/>	<i>Janette James</i>		<input checked="" type="checkbox"/>	
<i>Pat Phillips</i>	<input checked="" type="checkbox"/>	<i>Joseph P. ...</i>		<input checked="" type="checkbox"/>	
<i>Don ...</i>	<input checked="" type="checkbox"/>				
<i>Pete ...</i>	<input checked="" type="checkbox"/>				

Bryan Porter
CHAIRMAN'S SIGNATURE

DEPARTMENT OF ADMINISTRATION

Proposed Amendment to HB 62

Add a new paragraph after line 11 on p.2 to read:

(3) discharge an individual or otherwise disadvantage an individual with respect to compensation, terms, conditions, or privileges of employment if the individual fails to comply with an employer's reasonable standards of conduct, even during nonworking hours, where the employer can demonstrate a close relationship between the standards and the employer's business.

Amend Subsection (e) to read as follows:

(e) In this section,

(1) "employee" means a person employed by an employer;

(2) "employer" means a person, including the state and political subdivisions of the state, that employs 10 or more persons in the state;

(3) "work site" includes camps or other living accommodations provided or maintained by an employer;

(4) "premises of the employer" includes work sites.

Rep. Brian Porter, Chairman

House Judiciary Committee

Date: March 8, 1993

Place: Capitol Room 120

Subject of Meeting: HB 62 Employee's Use of Lawful Products; HB 147 Employer's Liability for Reference Info; HB 181 State's Right to Appeal/Criminal Cases

Please Print Name	Representing	Business/Personal Mailing Address	Zip	(H) Phone	(W) Phone	Do you Want to Testify?	Which Subject/ Which Bill?
✓ Mike McMullen	Dept. of Admin	P.O. Box 110701 Juneau, AK	99811	364-3885	465-1451	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 62 HB 147
✓ Jamie Parson	AK STATE CHAMBER	217 SECOND ST # 201	99801	789-9201	584-2323	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 147
Margot Smith	Law - CDCO	7th Fl Ct Bldg Juneau 99811			465-4049	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 181
✓ Rosa Jewel	NFIB	9159 Skywood	99801		789-4278	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 147
✓ Ben Gaussonas	District II					<input checked="" type="radio"/> Y <input type="radio"/> N	HB 62
Willie Anderson	NEA					<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	

Alaska State Legislature

REPRESENTATIVE
BEN GRUSSENDORF
1221 HALIBUT POINT ROAD
SITKA, ALASKA 99835
(907) 747-8458

SECRET OF JUDICIAL
STATE CAPITAL
JUDICIAL ALASKA HOUSE 1993
(907) 405-1004

FINANCE COMMITTEE

DISTRICT 2
KUPREANOF
PETERSBURG
SITKA
WRANGELL

House of Representatives

MEMORANDUM

To: Rep. Brian Porter
Chairman
House Judiciary Committee

From: Rep. ³Ben Grussendorf

Date: February 18, 1993

Re: House Bill No. 62
"An Act prohibiting employers from discriminating
against individuals who use legal products in a legal
manner outside of work."

This is to request a Judiciary Committee hearing on the above-referenced bill, of which I am the prime sponsor.

The bill is identical to HCS CS SB 340 (JUD), which died in the House Rules Committee at the end of the Seventeenth Alaska Legislature.

The basic purpose of the measure is to protect an employee from workplace discrimination based solely on that employee's use of a legal product in a legal manner while on that employee's own time.

Attached to this memorandum are a number of letters of support, a newspaper editorial, and the results of a survey on workplace privacy conducted by the National Consumer's League. Alaska was one of four states (Arizona, Utah and Washington were the others) participating in the survey, and the results clearly show that residents of Alaska have a strong interest in protecting employees' privacy rights.

House Bill 62 was favorably reported out of the House Labor & Commerce Committee and carries two zero fiscal notes

I will be available to testify on this bill at your convenience. Thank you for your consideration of this matter.

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 15, 1993

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 2/16/93

The LABOR AND COMMERCE Committee considered:

HB 62

HOUSE BILL NO. 62

EMPLOYEE'S RIGHT TO USE LAWFUL PRODUCTS

"An Act prohibiting employers from discriminating against individuals who use legal products in a legal manner outside of work."

RECOMMENDATIONS: |] the same title
 be replaced with _____ |] a new title

[] have attached amendments(s)

[X] do pass

[] do not pass

[] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

[] fiscal impact _____

[] fiscal note(s) _____

[X] zero fiscal note Adm. Labor

[] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Joe Sutton</i>	✓	<i>Brian S. Porter</i>		✓	
<i>Phil Hurd</i>	✓	<i>Capt. J. Long</i>		✓	
<i>(2) F. Williams</i>	✓				
<i>Bill Hurd</i>	✓				

Bill Hurd
 CHAIRMAN'S SIGNATURE

FOR IMMEDIATE RELEASE

March 23, 1992

Contact: Pete Carran

**STATE SENATE APPROVES EMPLOYEE RIGHTS BILL
SPONSORED BY SENATOR JIM DUNCAN**

The State Senate today approved legislation sponsored by Senator Jim Duncan of Juneau that strengthens employee rights. Senate Bill 340 forbids Alaskan employers to discriminate based on the use of legal products in a legal manner outside the work place.

"The criteria for hiring, firing, and promotions should be based exclusively on work performance," Senator Duncan said. The use of legal products consumed on their own time in a legal fashion should not be a factor in these decisions. It is a right of privacy issue. Even though our state constitution recognizes privacy as an 'inherent right', I feel it also needs to be spelled out in the appropriate state statute." The bill includes the prohibition in Title 23 of Alaska law that deals with labor and workers' compensation.

Senator Duncan said the legislation is in response to a nationwide trend on the part of some employers to forbid the use of products, such as alcohol and tobacco, outside the work place as a condition of employment. The bill has no effect on employer's ability to establish such policies on the work place during working hours, according to Senator Duncan.

The measure contains language preventing employers from discriminating in this fashion "...with respect to compensation, terms, conditions or privileges of employment."

SB 340 now moves to the State House.

Gerald E. Grilly
Publisher



Howard Weaver
Editor

Michael Carey, Editorial Page Editor

Patrick Dougherty, Managing Editor

Katherine Fanning, Editor and Publisher 1971 to 1983
Lawrence Fanning, Editor and Publisher 1967 to 1971

Founded in 1946 by Norman C. Brown

Nose out

For once, the tobacco lobby is right

American tobacco firms routinely bombard the public with transparently bogus or self-serving rhetoric.

Listening to the industry line, you'd think that there's still some doubt smoking causes cancer, that tobacco firms are disinterested guardians of the First Amendment and that smokers have made rational, fully informed decisions to take up their addictive and life-shortening habit.

But there is one instance where the tobacco industry has a legitimate point. The move by some firms to ban all smoking by all employees — not just at work, but off the job, too — is an illegitimate intrusion on workers' privacy.

Some 6,000 firms refuse to hire smokers, according to The New York Times. A case from Indiana drew national attention earlier this year when a woman was fired because a random drug test showed she'd been smoking cigarettes at home.

Smoking isn't the only unhealthy habit that gets workers in trouble with nosy employers. Best Lock Corporation of Indianapolis bars its workers from drinking alcohol — any time, anywhere. The city of Athens, Ga., even went so far as to reject job applicants with high cholesterol levels.

How do employers rationalize trying to run their workers' private lives? The best answer they can give is that bad habits like smoking or drinking can drive up their health insurance bills.

When that's the case, firms have good reason to charge those workers higher insurance premiums. But they don't have any grounds to tell employees how to live their lives outside of working hours.

In the workplace, only one question should matter: How well do workers do their jobs? As long as what employees do on their own time doesn't affect their job performance, it's none of their employers' business.

ALASKA STATE AFL-CIO

2501 Commercial Dr.
Anchorage, Alaska 99501
(907) 258-6284



819 1st Ave.
Fairbanks, Alaska 99701
(907) 456-2030

MANO FREY
Executive President

GARY BROOKS
Secretary / Treasurer

FEBRUARY 11, 1992

TO: MEMBERS OF THE SENATE JUDICIARY COMMITTEE

FROM: PAT SMUTZ, BUSINESS REPRESENTATIVE

RE: SENATE BILL 340

The Alaska State AFL-CIO has always supported the right of privacy for individuals. We have always believed that what an individual does on their own time is their own business as long as it doesn't interfere with the rights of others or doesn't present a danger to anyone.

With this in mind the Alaska State AFL-CIO would like to go on record as being in support of Senate Bill 340. Thank you for your consideration.

Statement by the AFL-CIO Executive Council

on

Employee Privacy

February 19, 1991
Bal Harbour, FL

Employers in increasing numbers are seeking to probe--and then to regulate--the most private aspects of their employees' lives away from work. The AFL-CIO opposes these invasions of employee privacy.

Employers continue to interrogate employees about their union sympathies, political beliefs, financial status and other personal matters.

Random drug testing policies applied without any requirement of reasonable suspicion of wrongdoing--which are inconsistent with a basic regard for worker dignity and autonomy--is now endemic in American workplaces.

To shift the blame for rising health care and compensation costs to their employees--and to further their personal agendas--employers are increasingly seeking to regulate workers' off-the-job behavior. These restrictions make use of the employer's economic leverage to prohibit workers from engaging in perfectly lawful activities. Employers go so far as to specify whether employees can smoke at home and what employees can eat or drink at their own dinner tables.

As a matter of course, employers also conduct medical exams and genetic tests to screen out employees thought to be at increased risk of developing a disease in the future. Medical screening reveals the most intimate details of employee health, including those that have no relation to job performance.

Secret employer telephone eavesdropping on employee-customer calls permitted through a little known loophole in the federal wiretap code, is yet another often-used technique that has no place in a free society.

These employer surveillance tactics undermine basic privacy and due process rights. Yet to date, there has been only limited legislative protection for these rights; the polygraph bill and the Americans with Disability Act are the most conspicuous exceptions. The AFL-CIO is committed to enhancing the dignity of working men and women and to preventing intrusions into workers' privacy. We support legislation that would go further than present law to preserve and enhance worker privacy and to outlaw management practices which intrude on those privacy interests.

###



THE NATIONAL BLACK CAUCUS OF STATE LEGISLATORS

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President

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Region 12

EXECUTIVE DIRECTOR
C. Ayo Bryan

NECSL GENERAL ASSEMBLY MEETING DECEMBER 6, 1991 LAS VEGAS, NEVADA

RESOLUTION ON EMPLOYEE PRIVACY

WHEREAS: It has come to the attention of the National Black Caucus of State Legislators that individuals have been fired from their jobs or disadvantaged in other employment and compensation decisions for smoking tobacco products in the privacy of their homes; and

WHEREAS: There is a growing trend in job classification notices published in daily newspapers to stipulate "smokers need not apply" and "nonsmokers only"; and

WHEREAS: Twenty-one state legislatures have enacted legislation protecting employee privacy; and

WHEREAS: The National Black Caucus of State Legislators believes in individual privacy; and

WHEREAS: The National Black Caucus of State Legislators believes that employment decisions should be based solely on an individual's job skills, training and performance

THEREFORE BE IT RESOLVED: The National Black Caucus of State Legislators supports legislation that would make it unlawful for employers to refuse to hire or to discharge any individual, or otherwise disadvantage any individual, with respect to compensation, terms, conditions or privileges of employment because the individual is a smoker or non-smoker; and

The National Black Caucus of State Legislators supports legislation that would make it unlawful for an employer to require as a condition of employment that any employee or applicant for employment abstain from smoking or using tobacco products during nonworking hours, provided the individual complies with applicable laws or policies regulating smoking on the premises of the employer during working hours.



National
Consumers
League
Founded 1899

315 15th Street NW • Suite 928-N • Washington, DC 20005 • (202) 639-6140

Linda F. Golodner, Executive Director

January 15, 1992

Dear Editor:

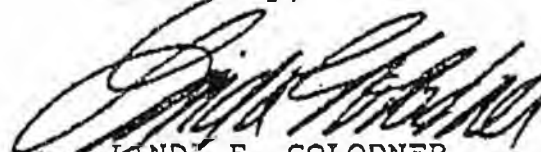
Attached are a news release and report on a special survey commissioned by The National Consumers League on vital issues of workplace privacy in Alaska. The survey is being released in Alaska by the Older Persons Action Group.

The vast majority of those polled in Alaska believe that employers and prospective employers have no business asking applicants and employees about religion, smoking habits, lifestyle, outside hobbies and activities, and other personal, off-the-job factors which have nothing to do with their ability to perform a job. They also believe an employer has no right to force an employee to change diet, stop smoking, or quit a second job. Those polled in Alaska were also opposed to credit checks on job applicants and monitoring of personal telephone calls.

In spite of their opposition to such intrusions on their personal lives, many respondents reported that they or someone they knew had had such an experience.

Because of the importance of this issue and the overwhelming reaction of people in Alaska to the questions we have put to them, we have taken the unusual step of expressing the survey results to you.

Sincerely,



LINDA F. GOLODNER
President

LFG:jb
Attachments

FOR IMMEDIATE RELEASE
January 16, 1992

CONTACT: Linda Golodner
202-639-8140
Vera Gazaway
907-276-1059

WORKPLACE PRIVACY SURVEY

ALASKA FEATURED IN MAJOR PUBLIC OPINION POLL
ON WHAT THE BOSS NEEDS TO KNOW ABOUT EMPLOYEES

WASHINGTON, D.C. ---- People in Alaska value their privacy, on the job and outside the workplace. The vast majority says that the boss has no business asking questions about the private lives, lifestyles, and off-work activities of job applicants and employees. Although most Alaskans believe employers should not ask these questions, many of those polled reported that an employer has done such things either to them or to someone they know.

Alaska was one of four states participating in the survey released today by the National Consumers League and the Older Persons Action Group in Anchorage.

The other states were Arizona, Utah, and Washington.

According to the Penn and Schoen Associates poll for the National Consumers League, Americans clearly believe:

- o Employers have no right to ask intrusive questions during job interviews.
- o It is inappropriate for employers to hire and fire an employee for personal matters unrelated to the job.
- o Employers have no right to try to change personal habits and lifestyles of employees.

Linda F. Golodner, executive director of the National Consumers League, said: "This poll confirms what we have found in many other states - that Americans believe they have a right to privacy on the job and off the job. It also shows that a significant number of employers are not respecting those rights."

In releasing the report, Vera Gazaway, executive director of the Older Persons Action Group, said: "The poll also reveals the vast majority of workers in Alaska are adamantly opposed to attempts by employers to force upon them a company-blessed lifestyle. Those 65 and over who were polled are in agreement with the rest of the state's population. As far as they are concerned, it's none of the boss's business who employees date, how much they eat, whether they smoke, take part in a political demonstration, hold a second job, drive a motorcycle, or have pending workers' compensation claims.

"As far as Alaska senior citizens and the general public are concerned, the ability to perform the job should be the sole criterion for winning and holding a job," she said.

I. NO RIGHT TO ASK

Overwhelmingly, those interviewed in Alaska said a prospective employer has no right to ask the following questions:

- o 88 percent, about an applicant's religion;
- o 87 percent, whether applicant lived with member of opposite sex;
- o 84 percent, if applicant had elderly parents;
- o 82 percent, whether applicant planned to have children;
- o 77 percent, if applicant smoked after work hours;
- o 59 percent, about hobbies and outside activities; and
- o 53 percent, about applicant's marital status.

II. NO JUSTIFICATION FOR HIRING OR FIRING

Those surveyed in Alaska were presented with nine examples of activities that employees may pursue on their own time away from work, their physical condition, and controversial opinions they may hold. Respondents were asked if they thought it was appropriate for the employer to base a decision to hire or fire on these criteria:

- o 98 percent said it was inappropriate for an employer to base hiring or firing on whether an individual dated a person of a different race.
- o 98 percent said whether an individual drives a motorcycle should not be a criterion.
- o 91 percent said participating in political demonstrations should not be a basis for hiring or firing.

- o 91 percent said it was inappropriate for employers to consider whether an employee participates in gambling at a racetrack.
- o 74 percent said holding an unusual second job should not be a consideration for employers.
- o 84 percent said being overweight should not be a consideration in hiring or firing an individual.
- o 95 percent said it was inappropriate to base hiring or firing on an individual's support for abortion.
- o 97 percent said it was inappropriate to base hiring or firing on an individual's opposition to abortion.
- o 94 percent said it was inappropriate to base hiring or firing on whether an individual smoked after work hours.

III. NO RIGHT TO FORCE A CHANGE IN LIFESTYLE

The vast majority of Americans believe that employers have no right to force employees to change their lifestyles.

Here's the level at which survey respondents in Alaska opposed employer rights in the following categories:

- o 77 percent opposed employers monitoring personal telephone conversations.
- o 86 percent opposed a prohibition of employees dating rival firm employees.
- o 81 percent opposed an employer's refusal to hire an overweight person.
- o 78 percent opposed an employer's refusal to hire a smoker.
- o 92 percent opposed an employer's requirement that an employee or job applicant change his or her diet.
- o 85 percent opposed requiring an employee to quit smoking.
- o 68 percent opposed an employer requiring an employee to quit a second job.
- o 67 percent opposed employers performing a credit check on a prospective employee.

IV. PERSONAL EXPERIENCE

The poll also asked Alaskans if they or anyone they knew had ever been asked any of the types of questions they objected to from employers. Sixty percent said they had been asked about their marital status;

- o 45 percent, about outside hobbies and activities;
- o 21 percent, about their religion;
- o 15 percent about whether or not they planned to have children;

- o 15 percent, about whether or not they smoked away from the workplace;
- o 7 percent, whether they had elderly parents; and
- o 6 percent, whether they lived with a non-family member of the opposite sex.

Seventeen percent reported personal experience with monitored personal telephone conversations;

- o 17 percent, credit checks on prospective employees;
- o 15 percent, required to quit a second job;
- o 13 percent, refused to hire a overweight person;
- o 10 percent, refused to hire a smoker;
- o 7 percent, required an employee or applicant to quit smoking;
- o 6 percent, forbid an employee or applicant from dating an employee from a rival firm; and
- o 4 percent, required an employee or applicant to change diet.

Nine percent of those polled indicated they or someone they knew had been denied a job or fired because of a weight problem;

- o 7 percent because of an unusual second job;
- o 7 percent because of participation in a political demonstration;
- o 3 percent for smoking away from the workplace;
- o 4 percent for dating a person of a different race;
- o 2 percent for driving a motorcycle;
- o 2 percent for gambling at a racetrack; and
- o 1 percent for supporting or opposing abortion.

The Penn and Schoen poll, conducted in December 1991 on behalf of the National Consumers League, was based on a random sample of 609 respondents in Alaska. The margin of error in the survey is +/- four percent.

The National Consumers League, founded in 1899, is a private, non-profit consumer advocacy organization concerned with workplace and marketplace issues.

**INDIVIDUAL PRIVACY
AND EMPLOYMENT RIGHTS
IN ALASKA**

**A Survey by
Penn + Schoen Associates, Inc.
Conducted for the National Consumers League
January 2, 1992**

INTRODUCTION

Interviews were held in December 1991 with 609 residents of Alaska for the purposes of determining citizens' attitudes toward privacy, their knowledge of employment rights, and the extent to which employers have acted to limit these rights. All respondents were 18 years of age or older. The survey was commissioned by the National Consumers League.

Interviewing was done by telephone from the central telephone facilities of Penn + Schoen Associates at the headquarters in New York City. The margin of error for the entire sample is +/- 4.0%, but is higher for sub-groups.

EXECUTIVE SUMMARY

Summary of Key Finding

Despite the fact that the vast majority of respondents in Alaska believe that employers do not have the right to ask questions about, make job decisions based on, or take actions that infringe upon an individual's right to privacy, up to two out of ten people -- and in some cases more -- report that an employer has done such things to either them or someone they know. This finding supports the notion that while most Alaskans believe in the right of privacy in employment, a significant number of employers are not fully respecting these rights.

Purpose and Format of Study

The purpose of the study is to determine the attitudes and knowledge of the general public concerning individual rights of privacy in employment and measure the extent to which these rights have been limited by employers. Specifically, this survey seeks to assess how the public feels

about certain actions employers might take and questions employers might ask as determinants of prospective or continued employment.

The public was first asked a general question concerning individual privacy in employment. This was followed by three series of questions.

The first set (Section I) were questions prospective employers might ask a job applicant. The second set of questions (Section II) concerned things employees might do and asked whether or not it was appropriate to deny a job to or fire someone for doing these things. The last set of questions (Section III) asked whether or not employers have the right to take certain actions against employees. For each set of questions, people were first asked whether or not employers should have the right to ask these questions or behave in this manner, and secondly, if such a question has ever been asked or such an action has ever been taken against either the respondent personally or someone the respondent knows.

At the end of the questionnaire (Section IV), respondents were asked whether or not businesses in Alaska should be allowed to refuse to hire a person who has a worker compensation claim. In addition, they were asked whether or not they worked outside the home or if they smoked. They were also asked their age, political party affiliation, income, race,

senatorial district, the job title of the head of the household, and whether or not they were registered to vote.

SUMMARY OF FINDINGS

Section I: Questions Posed to Job Applicants

Generally speaking, 69% of Alaskan residents say prospective employers *should not* be allowed to ask questions about the private lives of job applicants. At the same time, two out of three (67%) people report that either they or someone they know has been asked such questions by a potential employer.

As for specific questions, a majority believe employers should not have the right to ask prospective employees about their living arrangements, religion, outside activities, marital status, plans for children, age of parents, or smoking behavior.

Residents of the Northwestern district, Hispanics, and women are all more likely to believe that employers should not have the right to ask these specific questions. On the other hand, people 65 and over,

executives, high-level professionals, former smokers, and men are more likely to think employers should have this right.

Occasional smokers, people aged 25 to 34, those earning between \$20,000 and \$31,000, African-Americans, and Hispanics are more likely to report that either they or someone they know has been asked some of these specific questions.

These findings are reported in detail in Section I, beginning on page nine.

Section II: Employee Behavior Outside of Work

The public was then asked whether or not they thought it is appropriate for employers to deny a job to or fire someone for specific activities. At least 91% say it is inappropriate for employers to deny a job to someone or fire an employee for dating a person of a different race, driving a motorcycle, participating in political demonstrations, gambling at a racetrack, supporting or opposing abortion, or smoking away from the workplace. More than four out of five (84%) think it is not appropriate to deny a job to someone or fire an employee for being overweight, and 74% say it is inappropriate to deny a job or fire someone who holds an unusual second job.

At the same time, almost two out of ten people (19%) report that an employer has denied a job to or fired either them or someone they know for one of these reasons.

High-level professionals and semi/unskilled laborers are more likely to feel it is appropriate for employers to deny someone a job or fire them for some of these behaviors. Executives, high-level professionals, salespeople, former smokers, people aged 35 to 49, Republicans, Hispanics, and African-Americans are all more likely to report that either they or someone they know has been denied a job or fired for exhibiting one of these behaviors.

These findings are explained in detail in Section II, beginning on page seventeen.

Section III: Actions Taken by Employers

People also were asked whether they believe employers have the right to take certain actions concerning an individual's privacy. At least three out of four (77%) say employers do not have the right to monitor personal telephone conversations, forbid an employee from dating someone from a rival firm, refuse to hire someone who is overweight or a smoker, or require an employee to quit smoking or change diets. More than two out of

three people (67%) say employers do not have the right to require an employee to quit a second job or to do a credit check on a prospective employee. People aged 50 to 64 are far more likely than any other subgroup to say that employers *do* have the right to take such actions.

In spite of these opinions, more than one out of three respondents (37%) reports that an employer has taken at least one of these actions against either the respondent or someone the respondent knows. Former smokers, Republicans, residents of the Central district, people aged 50 to 64, high-level professionals, salespeople, and Hispanics are all more likely to report these things occurring.

These findings are explored in detail in Section III, beginning on page twenty-two.

Section IV: Worker Compensation Claim

Nearly three out of four respondents (73%) oppose allowing businesses in Alaska to refuse to hire a person who has a worker compensation claim, while 17% favor allowing them to do so.

This finding is examined in Section IV, on page twenty-seven.

Section I: Questions Posed to Job Applicants

"Should prospective employers be allowed to ask
questions about the private lives of job applicants?"

	<u>Should (%)</u>	<u>Should not (%)</u>	<u>Don't Know (%)</u>
<u>ALL</u>	23	69	8
<u>AGE</u>			
18-24	22	73	6
25-34	18	73	9
35-49	23	70	7
50-64	28	58	14
65 +	39	55	5
<u>PARTY</u>			
Democrat	15	79	6
Independent	20	72	8
Republican	33	57	10
<u>INCOME</u>			
< \$20,000	19	69	12
\$20-\$30,999	16	79	5
\$31-\$40,999	22	69	9
\$41-\$50,999	25	66	9
\$51,000 +	27	65	8
<u>OCCUPATION</u>			
High-level prof.	31	65	4
Mid-level prof.	18	71	11
Executive	35	61	4
Sales	20	75	5
Other white collar	15	81	4
Skilled labor	22	71	6
Semi/unskilled	14	69	17
Retired	31	62	7
<u>RACE</u>			
White	24	68	8
African-American	33	67	0
Hispanic	11	75	14

Respondents were asked whether prospective employers should be allowed to ask questions about the private lives of job applicants. More than two-thirds (69%) say they should not be allowed to probe the private lives of job applicants, while 23% say they should and 8% are undecided. At the same time, however, two-thirds of the people (67%) report that a potential employer has asked either them or someone they know one or more of these personal questions.

Those age 65 and over (39%), executives (35%), Republicans (33%), blacks (33%), retirees (31%), and high-level professionals (31%) are groups more likely to say employers should be allowed to ask about the private lives of job applicants.

Among those who are most likely to say employers should not be allowed to ask about job applicants' private lives are white collar workers other than professionals or salespeople (81%), Democrats (79%), those in the \$20,000-\$30,999 income bracket (79%), regular smokers (76%), Hispanics (75%), and salespeople (75%).

Those most likely to say that an employer has asked either them or someone they know at least one of these questions include occasional smokers (77%), blacks (74%), Hispanics (74%), those aged 25 to 34 (73%) and those earning between \$20,000 and \$31,000 (73%).

Respondents were read a series of questions prospective employers might ask a job applicant. For each, they were asked whether employers should or should not have the right to ask that question, and whether or not they or someone they know has ever been asked that question.

**SHOULD PROSPECTIVE EMPLOYERS HAVE THE
RIGHT TO ASK JOB APPLICANT'S CERTAIN QUESTIONS
ABOUT THEIR PRIVATE LIVES?**

All Respondents

Ranked by "Should Not"

All numbers expressed as percentages

	<u>Should</u>	<u>Should Not</u>	<u>Don't Know</u>
About applicants' religion	12	88	0
Live with member of opposite sex	13	87	0
If applicants have elderly parents	15	84	1
Whether they plan to have children	17	82	1
If they smoke after work hours	21	77	2
About hobbies and activities	38	59	3
About applicants' marital status	46	53	0

"Has a potential employer ever asked you or someone you know...?"

	<u>Yes (%)</u>	<u>No (%)</u>
About your marital status	60	40
About your outside hobbies and activities	45	55
About your religion	21	79
Whether you plan to have children	15	85
If you smoke away from the workplace	15	85
Whether you have elderly parents	7	93
Whether you live with a non-family member of the opposite sex	6	94

NONE OF THESE	33	67

"Asking whether the job applicant lives with a non-family member of the opposite sex."

o Eighty-seven percent (87%) say employers should not have the right to ask this question and 13% say they should. Those over 65 (21%) are more likely to say that employers should have the right to ask this question, while blacks (94%), Hispanics (94%), people from the Northwestern district (94%), and those making between \$20,000 and \$31,000 (94%) are more likely to say that employers should not have the right to ask.

- o Six percent (6%) of respondents report that either they or someone they know has been asked this question. Hispanics (20%) and people in sales (15%) are more likely to say either they or someone they know has been asked this question.

"Asking whether the job applicant has elderly parents."

- o 84% say employers should not be allowed to ask this question; 15% say they should. Those age 65 and over (28%), retirees (26%), and blacks (26%) are more likely than other groups to believe employers have the right to ask this question, while Hispanics (100%) and people from the Northwestern district (93%) more often believe employers do not have the right.

- o Seven percent (7%) say either they or someone they know has been asked this question. Retirees (13%), those over 50 (11%), and salespeople (15%) are more likely to report this occurring.

"Asking the job applicant about their religion."

- o 88% say employers should not be allowed to ask job applicants this question. 12% say they should. Retirees (25%) and those age 65 and over (22%) are more likely to say they have the right to ask. African-Americans (25%) are more likely than whites (11%) to say employers have the right to ask about a job applicant's religion.

o One out of five respondents (21%) say that either they or someone they know has been asked about their religion by a potential employer. This figure is generally consistent across all sub-groups.

"Asking the job applicant about whether they plan to have children."

o More than four out of five people (82%) say employers should not be allowed to ask this question, while 17% say they should. Executives (32%), high-level professionals (26%), semi/unskilled workers (25%), and people 18-24 (24%) are more likely than others to think employers have the right to ask whether job applicants plan to have children, while retirees (91%) and those from the Northwestern district (89%) are more likely to feel they do not.

o Almost one out of six respondents (15%) report that either they or someone they know has been asked whether they plan to have children. Executives (28%) and Hispanics (26%) are more likely to report this occurring.

"Asking the job applicant if they smoke after work hours, at home, or otherwise away from the workplace."

o 77% say employers should not be allowed to ask job applicants this question, while 21% say they should. Executives (34%), high-level professionals (30%), and former smokers (28%) are more likely to say

employers have the right to ask if a job applicant smokes after work hours, while regular (91%) or occasional (87%) smokers, Hispanics (89%), and residents of the Northwestern district (89%) are more likely to believe that employers do not have this right.

o Almost one out of six respondents (15%) report that either they or someone they know has been asked if they smoke away from the workplace. Executives (22%), salespeople (22%), those earning between \$20,000 and \$31,000 (21%), and people aged 25-34 (20%) are more likely to say that either they or someone they know has been asked this question.

"Asking the job applicant about their off-the-job hobbies and activities."

o Almost three out of five (59%) say employers should not be allowed to ask this question; 38% say they should be allowed to ask it. Among the groups most likely to say employers should not be allowed to ask about hobbies and activities outside of the job are retirees (78%), residents of the Northwestern district, those over 65 (71%), mid-level professionals (69%), and Hispanics (66%). Conversely, those most likely to feel employers should be allowed to ask this question include executives (60%), Republicans (49%), high-level professionals (48%), those earning over \$51,000 (46%), and former smokers (45%). Men (44%) are more likely than women (32%) to believe that employers should be able to ask this question.

o Nearly half the respondents (45%) say that either they or someone they know has been asked about their off-the-job hobbies or activities by a potential employer. Executives (60%), high-level professionals (50%), and people aged 25-49 (51%) are most likely to report this occurring.

"Asking the job applicants about their marital status."

o While 53% say employers should not be allowed to ask about a job applicant's marital status, 46% say they should be allowed to ask about it. Residents of the Northwestern district (70%), semi/unskilled workers (65%), salespeople (63%), and other white collar workers (61%) are more likely to feel employers should not be allowed to ask about marital status. Executives (60%), people aged 50 to 64 (58%), and residents of the Southeastern district (55%) are groups which tend to feel employers should be allowed to ask this question. A majority of men (52%) think employers should be able to ask this, but a majority of women (59%) think they should not.

o The majority of people (60%) say that either they or someone they know has been asked their marital status. This figure is generally consistent across all sub-groups.

In summary, only one out of three respondents (33%) said that neither they nor anyone they know has ever been asked any of the

preceding questions by an employer, while two out of three (67%) said the opposite. This occurred despite the fact that the majority of people indicate that employers *should not* have the right to ask such questions.

Section II: Employee Behavior Outside of Work

**WHETHER IT IS APPROPRIATE FOR AN EMPLOYER
TO DENY SOMEONE A JOB OR FIRE AN EMPLOYEE
FOR DOING CERTAIN THINGS**

All Respondents

Ranked by "Not Appropriate"

All numbers expressed as percentages

	<u>Appropri.</u>	<u>Not Appropri.</u>	<u>Don't Know</u>
Dates a person of a different race	1	98	0
Drives a motorcycle	2	98	0
Opposes abortion	2	97	1
Supports abortion	4	95	1
Smokes after work hours	5	94	1
Gambles at a racetrack	7	91	2
Participates in political demonstrations	7	91	3
Is overweight	12	84	4
Holds an unusual second job	16	74	10

"Have you, or has someone you know, ever been denied a job or fired because they ...?"

	<u>Yes (%)</u>	<u>No (%)</u>
Were overweight	9	91
Held an unusual second job	7	93
Participated in political demonstrations	7	93
Dated a person of a different race	4	96
Smoked away from the workplace	3	97
Drove a motorcycle	2	98
Gambled at a racetrack	2	98
Supported abortion	1	99
Opposed abortion	1	99

NONE OF THESE	81	19

Respondents then were read a list of things employees might do. For each, they were asked whether or not they think it is appropriate to deny someone a job or fire a person because they behaved in this way, and whether or not they or someone they know has ever been denied a job or fired because of such behavior.

o Ninety-eight percent (98%) say it is inappropriate to deny a job to or fire someone because they are dating a person of a different race; only 1%