

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8305 SENATE JUDICIARY

proposed to be made, that the insured party has violated or is considered to violate section 213, 228, 227, 1002, 1003, 1007, 1014, 1022, or 1344 of title 18 of the United States Code, or section 1341 or 1343 of such title affecting a federally insured financial institution as defined in title 18 of the United States Code.

(c) In making a determination under paragraph (b) of this section, the appropriate federal banking agency and the Corporation may consider:

(1) Whether, and to what degree, the institution-affiliated party was in a position of managerial or fiduciary responsibility;

(2) The length of time the institution-affiliated party was affiliated with the insured depository institution or depository institution holding company, and the degree to which the proposed payment represents a reasonable payment for services rendered over the period of employment; and

(3) Any other factors or circumstances which would indicate that the proposed payment would be contrary to the intent of section 18(k) of the Act or this part.

(d) Notwithstanding paragraphs (a) and (b) of this section, a depository institution holding company that is a diversified holding company as defined in section 10(a)(1)(F) of the Home Owner's Loan Act (12 U.S.C. 1461 et seq.) may make a golden parachute payment if, and to the extent that, such depository institution holding company determines and can demonstrate that:

(1) The conditions delineated in paragraphs (b) (1), (2), (3) and (4) of this section have been satisfied; and

(2) The institution-affiliated party falls within the definition of "institution-affiliated party" solely because such person is a director, officer, employee or controlling stockholder of a diversified holding company.

§ 359.3 Indemnification payments prohibited.

No insured depository institution or depository institution holding company shall make or agree to make any indemnification payment, except as provided in § 359.5 of this part.

§ 359.4 Permissible golden parachute payments.

An insured depository institution or depository institution holding company may agree to make a golden parachute payment if:

(a) Such an agreement is made with respect to an institution-affiliated party who was hired by an insured depository institution or depository institution holding company at a time when that institution or holding company satisfied

any of the criteria set forth in § 359.2(a)(1)(ii) of this part and the institution's appropriate federal banking agency and the Corporation consented in writing to the amount and terms of the golden parachute payment; and

(b) At the time the payment is made, the factors delineated in § 359.2(b) (1), (2), (3), or (4) of this part have been satisfied, and the factors delineated in § 359.2(c)(3) of this part are not present.

§ 359.5 Permissible indemnification payments.

(a) An insured depository institution or depository institution holding company may make or agree to make reasonable indemnification payments to an institution-affiliated party if:

(1) The institution's or holding company's board of directors, in good faith, determines in writing that the institution-affiliated party has a substantial likelihood of prevailing on the merits;

(2) The institution's or holding company's board of directors, in good faith, determines in writing that the payment of such expenses will not adversely affect the institution's safety and soundness;

(3) At any time the institution's or holding company's board of directors believes, or should reasonably believe, that the conditions of paragraphs (a) (1) and (2) of this section are no longer being met, it ceases making or authorizing such payments;

(4) The indemnification payments are limited to the payment or reimbursement of reasonable legal or other professional expenses incurred in connection with an institution-affiliated party's involvement in an administrative proceeding or civil action instituted by the appropriate federal banking agency; but in no event shall such indemnification pay or reimburse an institution-affiliated party for the amount of, or any cost incurred in connection with, any settlement of any such claim, proceeding or action or any judgment or penalty imposed with respect to any such claim, proceeding or action;

(5) The institution-affiliated party agrees in writing to reimburse the institution for such indemnification payments in the event that the proceeding results in a final order under which the institution-affiliated party:

(i) Is assessed a civil money penalty;

(ii) Is removed from office or prohibited from participating in the conduct of the affairs of the insured depository institution; or

(iii) Is required to cease and desist from or take any affirmative action described in section 8(b) of the Act with respect to such institution; and

(6) The institution or holding company provides the appropriate federal banking agency and the FDIC with prior written notice of its board of directors' authorization of such indemnification.

(b) An institution-affiliated party requesting indemnification payments shall not participate in any way in the board's discussion and approval of such payments; provided, however, that such institution-affiliated party may present his/her request to the board and respond to any inquiries from the board concerning his/her involvement in the circumstances giving rise to the administrative proceeding or civil action.

By order of the Board of Directors, dated at Washington, DC, this 24th day of September, 1991.

Federal Deposit Insurance Corporation
Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-23747 Filed 10-4-91; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1212

[NHTSA Docket No. 91-17; Notice 1]

RIN 2127-AE10

Drug Offender's Driver's License Suspension

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice of Proposed Rulemaking (NPRM) contains a proposal for implementing a new program enacted by the Department of Transportation and Related Agencies Appropriations Act for FY 1991. Section 333 of the Act requires the withholding of certain Federal-aid highway funds from States that do not enact legislation requiring the revocation or suspension of an individual's driver's license upon conviction for any violation of the Controlled Substances Act or any drug offense. This notice proposes the manner in which States would certify that they are not subject to this withholding, and the disposition of funds that are withheld. The agencies

request comments on the proposed regulation discussed in this notice.

DATES: Comments must be received by November 21, 1991.

ADDRESS: Written comments should refer to the docket number and the number of this notice and be submitted (preferably in ten copies) to: Docket Section, National Highway Traffic Safety Administration, room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are from 8 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: In NHTSA: Mr. William Holden, Office of Alcohol and State Programs, Traffic Safety Programs, room 5130, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-2722; or Ms. Heidi L. Coleman, Office of Chief Counsel, room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-1834.

In FHWA: Mr. Warren Harper, Office of Highway Safety, Room 3407, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-2172; or Mr. Wilbert Baccus, Office of Chief Counsel, room 4230, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-0780.

SUPPLEMENTARY INFORMATION: The Department of Transportation and Related Agencies Appropriations Act for FY 1991, Public Law 101-518, was signed into law on November 5, 1990. Section 333 of the Act requires the withholding of certain Federal-aid highway funds from States that do not enact legislation requiring the revocation or suspension of an individual's driver's license upon conviction for any violation of the Controlled Substances Act (Pub.L. 91-513, as amended) or any drug offense. If a State decides not to enact such legislation, the section stipulates a procedure by which the state can avoid the withholding of funds.

This notice proposes the manner in which States would certify that they are not subject to this withholding and the disposition of funds that are withheld.

Adoption of Drug Offender's Driver's License Suspension

The legislation specifically provides that the Secretary must withhold a portion of Federal-aid highway funds from any State that does not meet certain statutory requirements. To avoid such withholding, a State must have enacted and be enforcing a law that provides for the revocation or suspension of the driver's license of any

individual who is convicted for any violation of the Controlled Substances Act or any drug offense. Alternatively, a State can avoid the withholding by submitting to the Secretary a written certification stating that the Governor is opposed to the enactment or enforcement of such a law and that the legislature has adopted a resolution expressing its opposition to such a law.

The requirements of the Commercial Motor Vehicle Safety Act of 1988 would remain unaffected by any such resolution. Specifically, a State may not waive the requirement of 49 CFR 383.51 that a person who is convicted of either driving a commercial motor vehicle (CMV) while under the influence of a controlled substance, or using a CMV in the commission of a controlled substance-related felony, be disqualified from operating a CMV for a period of from one year to life, depending on the specific offense(s), without facing a reduction in Federal-aid highway funds.

Any State that does not enact and enforce a law that provides for the revocation or suspension of the driver's license of drug offenders or submit to the Secretary written certification from the Governor that he or she is opposed to the enactment or enforcement of such a law in the State will be subject to withholding of a portion of its Federal-aid highway funds. In accordance with the statute, if a State does not meet the statutory requirements by October 1, 1993, five percent of its FY 1994 Federal-aid highway apportionment under 23 U.S.C. 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) shall be withheld. These sections relate to the apportionments for the primary, secondary, interstate (including inter-state construction and interstate resurfacing, restoration, rehabilitation and reconstruction (4R) funds) and urban highway systems. Five percent will be withheld also in FY 1995 if the State does not meet the requirements by October 1, 1994. If the State does not meet the statutory requirements by October 1 of any subsequent fiscal year (beginning with FY 1996), ten percent of its Federal-aid highway apportionments under these sections will be withheld.

Compliance Criteria

To avoid the withholding of Federal-aid highway funds, a State has two alternatives, the first of which is to enact and enforce a law that meets the statutory criteria. Section 333 provides that:

A State meets the requirements of this paragraph if—

(a) The State has enacted and is enforcing a law that requires in all circumstances, or requires in the

absence of compelling circumstances warranting an exception—

(i) The revocation, or suspension for at least 6 months, of the driver's license of any individual who is convicted, after the enactment of such law, of—

(I) Any violation of the Controlled Substances Act, or

(II) Any drug offense, and

(ii) A delay in the issuance or reinstatement of a driver's license to such an individual for at least 6 months after the individual applies for the issuance or reinstatement of a driver's license if the individual does not have a driver's license, or the driver's license of the individual is suspended, at the time the individual is so convicted.

1. Statutory Definitions

The statute defines several terms, and the agencies are proposing to adopt these definitions. Section 333 defines the term "driver's license" to mean "a license issued by a State to any individual that authorizes the individual to operate a motor vehicle on highways." This definition would encompass licenses that permit individuals to operate any type of motor vehicle, including motorcycles and commercial motor vehicles.

The term "drug offense" is also defined in the statute. The term, as defined in the statute, would cover any criminal drug offense including "the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance the possession of which is prohibited under the Controlled Substances Act, or . . . the operation of a motor vehicle under the influence of such a substance." It should be noted that, while Section 333 requires that States take a driver's licensing action against violators of these drug offenses, the offenses covered by this definition are not limited to moving violations. In fact, to be covered, these offenses need not be motor vehicle-related at all.

The agencies do not believe that the Act requires a State to enact any particular drug offense law. The Act requires only that if a drug offense is proscribed and an individual is convicted for a violation of the offense that the State suspend, revoke or delay that individual's driver's license.

Since the statutory definition of "drug offense" includes manufacturing among the activities that are unlawful, the agencies believe this term should cover not only controlled and counterfeit substances but also listed chemicals, the possession of which was made unlawful by the Chemical Diversion and

Trafficking Act of 1988, Public Law 100-692, NHTSA and FHWA therefore propose to define the term "substance the possession of which is prohibited under the Controlled Substances Act" to mean "a controlled or counterfeit substance or a listed chemical as those terms are defined in subsections 102(6), (7) & (33) of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (21 U.S.C. 802(6), (7) & (33)). Complete listings of all controlled substances and listed chemicals are contained in 21 CFR 1308.11-15 and 1310.02."

The statute provides that the term "convicted" includes "adjudicated under juvenile proceedings." In other words, the statute requires that State laws provide that juveniles who are adjudicated for drug offenses outside of criminal proceedings would also be subject to revocation or suspension of their driver's licenses. If these individuals do not have driver's licenses, then the State must delay issuance of driving privileges to them.

Several issues are left unresolved by the statutory language; and the agencies request comments from the public on these issues.

2. Compelling Circumstances

Section 333 provides that, to meet the statutory requirements, the State law must require the revocation, suspension or delay in issuance of driver's licenses for drug offenders "in all circumstances" or "in the absence of compelling circumstances warranting an exception." The statute does not specify what circumstances would warrant an exception.

NHTSA and FHWA believe that this language provides States with flexibility to issue restricted licenses to individuals in certain limited circumstances, but the agencies are not proposing to define for the States which circumstances would warrant an exception. When NHTSA originally promulgated its regulation implementing section 408 of the Highway Safety Act of 1968, Incentive Grant Criteria for Alcohol Traffic Safety Programs, the agency defined the particular conditions for which restricted or hardship licenses could be issued to drunk drivers. Over time, however, NHTSA found these conditions to be overly restrictive for the States and amended the regulation accordingly. Based on this experience, the agencies are not proposing to define in this regulation a limited set of conditions under which hardship or restricted licenses may be issued. However, hardship or restricted licenses should be issued only in exceptional circumstances specific to the offender.

3. Enforcement

Section 333 requires not only that States enact drug offender's driver's license suspension statutes, but also that they enforce such statutes. The Act does not explain, however, how States are to satisfy this enforcement requirement. The Senate Report for the measure states:

The requirement . . . is satisfied so long as the State is attempting in good faith to enforce the law. If a State resident is convicted of a drug offense in another State, and officials of the State of residence are unaware of the conviction, the failure of the State of residence to revoke or suspend the offender's driver's license would not, by itself, be a sufficient basis to find the State of residence in noncompliance with the bill's requirements. Similarly, if State officials are unaware of the conviction of a resident under the Controlled Substances Act, the failure to revoke or suspend the resident's license is not, by itself, a sufficient basis to find the State in noncompliance. S.Re. 238, 101st Cong., 1st Sess. 5 (1989).

The Senate Report further suggests that a State could show good faith efforts to enforce its law by entering into agreements with other States or with Federal officials to inform each other of drug offense convictions. The report indicates, however, that such agreements are not required by the Act.

The agencies are proposing to require that, in order to comply with the enforcement criterion, States with qualifying laws must submit a description of the steps they are taking to enforce their law. The description would need to include the steps the State is taking to enforce its law with regard to within-State convictions, out-of-State convictions, Federal convictions and juvenile adjudications. We intend to accept good faith efforts, and are not mandating that States meet any particular condition as a prerequisite.

States would be able to show good faith in a number of ways. With regard to out-of-State and Federal convictions, for example, as suggested by the Senate Report, States could show good faith by entering into agreements with Federal officials and with other States to inform each other of drug offense convictions. Such agreements could be modeled after the Driver License Compact, under which States report convictions for major moving violations to a driver's home State.

In addition, States could establish procedures for submitting inquiries to the National Crime Information Center (NCIC) prior to issuing or renewing an individual's driver's license. The NCIC maintains the Interstate Identification Index (I3), a nationwide computerized

information system that contains criminal justice information, and includes both State and Federal drug offense conviction information. The agencies are aware that access to the NCIC/III is limited to criminal justice purposes. Because of this limitation, NHTSA and FHWA have requested an interpretation from the Assistant Director/Legal Counsel for the Federal Bureau of Investigation to determine whether State access to this information for the purpose of suspending, revoking or refusing a driver's license to a drug offender would be authorized.

4. Suspension, Revocation or Delay

Section 333 requires that States revoke or suspend for at least six months the driver's license of any individual who is convicted of the Controlled Substances Act or any drug offense. The statute is silent as to the effect, if any, a prison term would have on the suspension or revocation. A drug offender, for example, may be sentenced to serve one year in prison. Must that individual be deprived of his or her driver's license for at least six months after the prison term is completed, or could the suspension or revocation period run concurrently with the term of imprisonment imposed?

The Drug Offender's Driving Privileges Suspension Act was enacted to deter drug offenders. If a drug offender serves at least six months in prison, the agencies believe such punishment provides a greater degree of deterrence than would the suspension or revocation of the individual's driver's license. NHTSA and FHWA therefore have tentatively determined that the license suspension or revocation term may run concurrently with any prison term imposed, if the offender serves less than six months in prison, of course, the full six month suspension or revocation would have to be completed.

If the individual does not have a driver's license or if the individual's driver's license is suspended at the time the individual is convicted, Section 333 requires that the State law must provide for a delay in the issuance or reinstatement of the individual's driver's license for at least six months after the individual applies for issuance or reinstatement of his or her driver's license. The statute seems to provide that the six month period would not begin to run until the individual initiates the issuance or reinstatement process by submitting an actual application. The agencies request comments, particularly from the States, regarding whether this would impose unnecessary burdens for driver licensing operations, and if there

is a preferable method for marking the beginning of the six month period within the meaning of the statute. For example, we request comments on whether it would be preferable to require the issuance or reinstatement of the individual's driver's license be preferable to require that issuance or reinstatement of the individual's driver's license be delayed for at least six months after the individual otherwise would have been eligible to have his or her driver's license issued or reinstated. NHTSA and FHWA have tentatively determined that, like the license suspension or revocation term, the period of delay may run concurrently with any prison term imposed.

5. Certification

To avoid the withholding of Federal-aid highway funds, each State would be required by this proposed regulation to submit a certification on an annual basis. Under the agencies' proposal, States would be required to submit their certifications by April 1, 1993 to avoid the withholding of funds in fiscal year 1994. Thereafter, States would be required to submit certifications by January 1 of each year (beginning with January 1, 1994) to avoid the withholding of funds in the following fiscal year (beginning with FY 1995). States could submit their certifications along with their Certifications of Speed Limit Enforcement, which are required to be submitted annually in accordance with 23 CFR Part 859.

The certifications submitted under the Part would provide the agencies with the basis for finding States in compliance with the Drug Offender's Driver's License Suspension requirements. Accordingly, until a State has been determined to be in compliance with these requirements, the agencies are proposing that the certification must consist of a certifying statement and also supporting documentation. Once a State has been determined to be in compliance with the Drug Offender's Driver's License Suspension requirements, the State would then be required to submit a certifying statement, but would no longer be required to submit supporting documentation, unless the State's law or enforcement efforts have changed significantly enough so as to warrant an amendment of the State's supporting material.

For example, if a State believes that it has a law that revokes or suspends the driver's license of drug offenders in conformance with the statutory and regulatory requirements, the State would be required to submit a certifying

statement to this effect. With the certification, the State would be required to submit a copy of its conforming law and, as discussed earlier, a description of the steps the State is taking to enforce the law. Once the State is determined to be in compliance, the State would be required to submit only the certifying statement. It would not be required to resubmit its law or describe again its enforcement efforts. If the State's law or its enforcement efforts were to change significantly, the State would be required to amend or supplement the State's original submission.

If a State has not enacted or is not enforcing a conforming law, it can avoid the withholding of funds by submitting, not earlier than the adjournment sine die of the first regularly scheduled session of the State's legislature which begins after November 5, 1990, a written certification signed by the Governor stating that he or she is opposed to the enactment or enforcement in the State of a drug offender's driver's license suspension law. The Governor would also be required to submit written certification that the legislative (including in both Houses where applicable) has adopted a resolution expressing its opposition to such a law and a copy of the resolution. Once the State is determined to be in compliance, the State would be required to submit only the Governor's certifying statement. The State legislature would not be required to pass a resolution each successive year, and the State would not be required to resubmit a copy of the resolution.

Notification of Compliance

For each fiscal year beginning with FY 1994, NHTSA and FHWA propose to notify States of their compliance or noncompliance with Public Law 101-518, based on a review of certifications received. The agencies propose that this notification will take place through FHWA's normal certification of apportionments process. If the agencies do not receive a certification from a State or if the certification does not conform to Public Law 101-518 and the implementing regulation, the agencies will make an initial determination that the State is in noncompliance. States that are determined to be in noncompliance with Public Law 101-518 will be advised of the amount of funds expected to be withheld through FHWA's advance notice of apportionments, normally not later than ninety days prior to final apportionment.

Each State determined not to comply will have an opportunity to rebut the initial determination. These States will

be notified of the agencies' final determination of compliance or noncompliance as part of the certification of apportionments, which normally occurs on October 1 of each fiscal year.

NHTSA and FHWA recognize that States may want to know as soon as possible whether their laws satisfy the requirements of Public Law 101-518 or they may want assistance in drafting conforming legislation. States are encouraged to request preliminary reviews and assistance from NHTSA's or FHWA's Office of Chief Counsel, 400 Seventh Street, SW, Washington, DC 20590. They are encouraged also to request assistance from NHTSA and FHWA regional offices.

Period of Availability for Funds

Section 333 provides an incremental approach to the withholding of funds for noncompliance with Public Law 101-518. If a State is found to be in noncompliance in fiscal years 1994 or 1995, the State would be subject to a five percent withholding. If a State is found to be in noncompliance in any subsequent fiscal year, beginning with FY 1996, the State would be subject to a ten percent withholding.

In addition, if a State is found to be in noncompliance in fiscal years 1994 or 1995, the funds withheld from apportionment to the State would remain available for apportionment to that State for a period of time, prescribed in the statute. If a State is found to be in noncompliance in any subsequent fiscal year, the funds withheld from apportionment would no longer be available for apportionment.

Paragraph 104(b)(1)(E) of the Section provides that "No funds withheld under this section from apportionment to any State after September 30, 1995, shall be available for apportionment to such State." The disposition of these funds would be made in accordance with paragraph 104(b)(4) of the section.

Paragraphs 104(b)(1)(A) and (b)(2) of the section identify the period of time during which funds withheld on or before September 30, 1995, remain available for apportionment, and when they are to be restored if the State complies with the Federal requirements before the funds lapse. Paragraph 104(b)(3) establishes the period of time during which these subsequently apportioned funds would remain available to a State for expenditure. If the withheld funds lapse before they are restored, their disposition would be made in accordance with paragraph 104(b)(4) of the section.

These sections are virtually identical to those found in the National Minimum Drinking Age Act, as amended, 23 U.S.C. 158. For a full discussion of how these provisions have been applied in practice, interested parties are encouraged to read the agencies' joint final rule published in the Federal Register on August 18, 1988 (53 FR 31318).

Comments

Interested persons are invited to comment on this proposal. All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by November 21, 1991. The agencies have not provided a longer comment period in order to provide States with sufficient time to prepare their agendas for their upcoming legislative sessions. To expedite the submission of comments, simultaneous with the issuance of this notice, NHTSA and FHWA will mail copies to all Governors, Governors' Representatives for Highway Safety and State highway agencies.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. The agencies will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons who wish to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all comments will be placed in Docket 91-17; Notice 1 of the NHTSA Docket Section in room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

On April 20, 1991, the State of Alaska submitted some questions to FHWA regarding the agency's interpretation of section 333. FHWA acknowledged receipt of these questions, but declined to answer them since the agencies were in the process of developing this

proposed regulation. We believe the questions raised in Alaska's inquiry have all been addressed in this NPRM. The questions have been placed in the public docket for his rulemaking action, and are available for public examination.

Federalism Assessment

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12812, and it has been determined that it would have no federalism implication that warrants the preparation of a federalism assessment. States can choose to enact and enforce a law that requires the suspension or revocation of driver's licenses for drug offenders in conformance with Public Law 101-518, and thereby avoid the withholding of Federal-aid highway funds. Alternatively, States can choose not to enact and enforce this type of law, and still avoid such withholding. To avoid the withholding of funds in such cases, the Governor would submit a certificate that he or she is opposed to the enactment or enforcement in the State of such a law and that the State legislature has adopted a resolution expressing its opposition to such a law. While specific criteria that State laws must meet have been proposed in this NPRM, they are mandated by Public Law 101-518.

Economic and Other Effects

NHTSA has analyzed the effect of this action and has determined that it is not "major" within the meaning of Executive Order 12291, but that it is "significant" within the meaning of Department of Transportation regulatory policies and procedures. A preliminary regulatory evaluation of the impacts of this proposal has been prepared and placed in Docket 91-17; Notice 1. This preliminary evaluation provides information regarding the expected costs and benefits of the agencies' proposal and requests information demonstrating that license suspensions or revocations for drugged driving or illegal possession convictions deter drug use or reduce driver's future involvement in crashes. It also requests comments on methods that States could use and the costs to develop systems for providing Federal, out-of-State and juvenile records to State Departments of Motor Vehicles. Any interested person may obtain a copy of this preliminary evaluation by writing to NHTSA's Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling the Docket Section at (202) 368-4949. Comments should be submitted to the NHTSA Docket, in

accordance with the procedures described earlier in this notice.

In compliance with the Regulatory Flexibility Act, the agency has evaluated the effects of this proposed rule on small entities. Based on the evaluation, we certify that this rule would not have a significant economic impact on a substantial number of small entities. Any withholding of funds under the regulation would be from States. Accordingly, the preparation of an Initial Regulatory Flexibility Analysis is unnecessary.

The requirements in this proposal that States certify that they conform to the statutory requirements to avoid the withholding of Federal-aid highway funds are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Accordingly, the reporting and recordkeeping requirement associated with this rule is being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35 under DOT No.: 3517; OMB No.: New; Administration: NHTSA. **NEED FOR INFORMATION:** To encourage States to enact and enforce drug offender's driver's license suspension; **PROPOSED USE OF INFORMATION:** To provide procedures to State highway construction grant recipients on how to certify compliance with the provision of Public Law 101-518. The law requires a driver's license suspension, or revocation, for individuals convicted of any drug-related offense; **FREQUENCY:** Annual; **BURDEN ESTIMATE:** 250 hours; **RESPONDENTS:** State/local government; **FORM(S):** None, but Forms HS-52, HS-62A and HS-217 may be used. OMB No. 2127-0003; **AVERAGE BURDEN HOURS PER RESPONDENT:** 5 hours. For further information contact The Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 368-4735, or Edward Clarke or Wayne Brough, Office of Management and Budget, New Executive Office Building, room 3223, Washington, DC 20503, (202) 395-7340.

Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for NHTSA. It is requested that comments sent to OMB also be sent to the NHTSA rulemaking docket for this proposed action.

The agencies have also analyzed this proposed action for the purpose of the

National Environmental Policy Act. The agencies have determined that this action would not have any effect on the human environment.

List of Subjects in 23 CFR Part 1212

Driver licensing, Drugs, Highway safety.

In accordance with the foregoing, the agencies propose to add a new part 1212 to title 23 of the Code of Federal Regulations to read as follows:

PART 1212—DRUG OFFENDER'S DRIVER'S LICENSE SUSPENSION

Sec.

- 1212.1 Scope.
1212.2 Purpose.
1212.3 Definitions.
1212.4 Adoption of Drug Offender's Driver's License Suspension.
1212.5 Certification Requirements.
1212.6 Period of Availability of Withheld Funds.
1212.7 Apportionment of Withheld Funds After Compliance.
1212.8 Period of Availability of Subsequently Apportioned Funds.
1212.9 Effect of Noncompliance.
1212.10 Procedures Affecting States in Noncompliance.

Authority: Public Law 101-518; delegation of authority at 49 CFR 1.48 and 1.50.

§ 1212.1 Scope.

This part prescribes the requirements necessary to implement section 333 of Public Law 101-518, which encourages States to enact and enforce Drug Offender's Driver's License Suspensions.

§ 1212.2 Purpose.

The purpose of this part is to specify the steps that States must take in order to avoid the withholding of Federal-aid highway funds for noncompliance with section 333 of Public Law 101-518.

§ 1212.3 Definitions.

As used in this part:

- (a) *Convicted* includes adjudicated under juvenile proceedings.
(b) *Driver's license* means a license issued by a State to any individual that authorizes the individual to operate a motor vehicle on highways.
(c) *Drug offense* means:
(1) The possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance the possession of which is prohibited under the Controlled Substances Act, or
(2) The operation of a motor vehicle under the influence of such a substance.
(d) *Substance the possession of which is prohibited under the Controlled Substances Act or substance* means a controlled or counterfeit substance or a

listed chemical, as those terms are defined in subsections 102 (A), (7) & (33) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 302 (6), (7) & (33)) and listed in 21 CFR 1308.11-15 and 1310.02.

§ 1212.4 Adoption of Drug Offender's Driver's License Suspension.

(a) The Secretary shall withhold five percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) of title 23 of the United States Code on the first day of fiscal years 1994 and 1995 if the State does not meet the requirements of this section on that date.

(b) The Secretary shall withhold ten percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) of title 23 of the United States Code on the first day of fiscal year 1996 and any subsequent fiscal year if the State does not meet the requirements of this section on that date.

(c) A State meets the requirements of this section if:

(1) The State has enacted and is enforcing a law that requires in all circumstances, or requires in the absence of compelling circumstances warranting an exception:

(i) The revocation, or suspension for at least 9 months, of the driver's license of any individual who is convicted, after the enactment of such law, of

(A) Any violation of the Controlled Substances Act, or

(B) Any drug offense, and
(ii) A delay in the issuance or reinstatement of a driver's license to such an individual for at least 8 months after the individual applies for the issuance or reinstatement of a driver's license if the individual does not have a driver's license, or the driver's license of the individual is suspended, at the time the individual is so convicted, or

(2) The Governor of the State:

(i) Submits to the Secretary no earlier than the adjournment sine die of the first regularly scheduled session of the State's legislature which begins after November 5, 1990, a written certification stating that he or she is opposed to the enactment or enforcement in the State of a law described in paragraph (c)(1) of this section relating to the revocation, suspension, issuance, or reinstatement of driver's licenses to convicted drug offenders; and

(ii) Submits to the Secretary a written certification that the legislature (including both Houses where applicable) has adopted a resolution expressing its opposition to a law

described in paragraph (c)(1) of this section.

§ 1212.5 Certification requirements.

(a) Each State shall certify to the Secretary of Transportation by April 1, 1993 and by January 1 of each subsequent year that it meets the requirements of section 333, Public Law 101-518 and this regulation.

(b) If the State believes it meets the requirements of section 333 of Public Law 101-518 and this regulation on the basis that it has enacted and is enforcing a law that suspends or revokes the driver's license of drug offenders, the certification shall contain:

(1)(i) A statement by the Governor of the State, or an official designated by the Governor, that the State has enacted and is enforcing a Drug Offender's Driver's License Suspension law. The certifying statement shall be worded as follows:

(Name of certifying official), (position title) of the (State or Commonwealth) of _____ do hereby certify that the (State or Commonwealth) of _____ has enacted and is enforcing a Drug Offender's Driver's License Suspension law.

(ii) If the statement is made by an official other than the Governor, a copy of the document designating the official, signed by the Governor.

(2) Until a State has been determined to be in compliance with the requirements of section 333 of Public Law 101-518 and this regulation, the certification shall include also:

(i) A copy of the State law, regulation, or binding policy directive implementing or interpreting such law or regulation relating to the suspension, revocation, issuance or reinstatement of driver's licenses of drug offenders, and

(ii) A statement describing the steps the State is taking to enforce its law with regard to within State convictions, out-of-State convictions, Federal convictions and juvenile adjudications.

(c) If the State believes it meets the requirements of section 333 of Public Law 101-518 on the basis that it opposes a law that requires the suspension, revocation or delay in issuance or reinstatement of the driver's license of drug offenders, the certification shall contain:

(1)(i) A statement by the Governor of the State, or an official designated by the Governor, that he or she is opposed to the enactment or enforcement of such a law and that the State legislature has adopted a resolution expressing its opposition to such a law. The certifying statement shall be worded as follows:

(Name of certifying official), (position title) of the (State or Commonwealth) of _____ do

hereby certify that I am opposed to the enactment or enforcement of such a law and that the legislature of the (State or Commonwealth) of _____ has adopted a resolution expressing its opposition to such a law.

(ii) If the statement is made by an official other than the Governor, a copy of the document designating the official, signed by the Governor.

(2) Until a State has been determined to be in compliance with the requirements of section 333 of Public Law 101-518 and this regulation, the certification shall include also a copy of the resolution.

(c) The Governor, or an official designated by the Governor, each year shall submit the original and four copies of the certification to the local FHWA Division Administrator. The FHWA Division Administrator shall retain the original and forward two copies each to the Regional Administrator of NHTSA and FHWA. The Regional Administrators shall each retain one copy and forward one copy of the submission, with any pertinent comments, to their respective Washington Headquarters, attention of the Chief Counsel.

(e) Any changes to the original certification or supplemental information necessitated by the review of the certifications as they are forwarded, State legislative changes or changes in State enforcement activity shall be submitted in the same manner as the original.

§ 1212.3 Period of availability of withheld funds.

(a) Funds withheld under § 1212.4 from apportionment to any State on or before September 30, 1995, will remain available for apportionment as follows:

(1) If the funds would have been apportioned under 23 U.S.C. 104(b)(5)(A) but for this section, the funds will remain available until the end of the fiscal year for which the funds are authorized to be appropriated.

(2) If the funds would have been apportioned under 23 U.S.C. 104(b)(5)(B) but for this section, the funds will remain available until the end of the second fiscal year following the fiscal year for which the funds are authorized to be appropriated.

(3) If the funds would have been apportioned under 23 U.S.C. 104(b)(1), 104(b)(2) or 104(b)(6) but for this section, the funds will remain available until the end of the third fiscal year following the fiscal year for which the funds are authorized to be appropriated.

(b) Funds withheld under § 1212.4 from apportionment to any State after

September 30, 1995 will not be available for apportionment to the State.

§ 1212.7 Apportionment of withheld funds after compliance.

Funds withheld under § 1212.4 from apportionment, which remain available for apportionment under § 1212.5(a), will be made available to any State that conforms to the requirements of § 1212.4 before the last day of the period of availability as defined in § 1212.5(a).

§ 1212.5 Period of availability of subsequently apportioned funds.

(a) Funds apportioned pursuant to § 1212.7 will remain available for expenditure as follows:

(1) Funds originally apportioned under 23 U.S.C. 104(b)(5)(A) will remain available until the end of the fiscal year succeeding the fiscal year in which the funds are apportioned.

(2) Funds originally apportioned under 23 U.S.C. 104(b)(1), 104(b)(2), 104(b)(5)(B), or 104(b)(6) will remain available until the end of the third fiscal year succeeding the fiscal year in which the funds are apportioned.

(b) Sums apportioned to a State pursuant to § 1212.7 and not obligated at the end of the periods defined in § 1212.8(a), shall lapse or, in the case of funds apportioned under 23 U.S.C. 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

§ 1212.9 Effect of noncompliance.

If a State has not met the requirements of section 333 of Public Law 101-518 at the end of the period for which funds withheld under § 1212.4 are available for apportionment to a State under § 1212.8, then such funds shall lapse or, in the case of funds withheld from apportionment under 23 U.S.C. 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

§ 1212.10 Procedures affecting states in noncompliance.

(a) Every fiscal year, each State determined to be in noncompliance with section 333 of Public Law 101-518, based on NHTSA's and FHWA's preliminary review of its statutes, will be advised of the funds expected to be withheld under § 1212.4 from apportionment, as part of the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than ninety days prior to final apportionment.

(b) If NHTSA and FHWA determine that the State is not in compliance with section 333 of Public Law 101-518 based on the agencies' preliminary review, the State may, within 30 days of its receipt of the advance notice of

apportionments, submit documentation showing why it is in compliance. Documentation shall be submitted to the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(c) Every fiscal year, each State determined not to be in compliance with section 333 of Public Law 101-518, based on NHTSA's and FHWA's final determination, will receive notice of the funds being withheld under § 1212.4 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

Issued on: October 1, 1991.

Jerry Ralph Curry,

Administrator, National Highway Traffic Safety Administration.

Thomas D. Larson,

Administrator, Federal Highway Administration.

[FR Doc. 91-23991 Filed 10-4-91; 8:45am]

BIDDING CODE 4810-17-01

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 409

[BPO-625-P]

RIN: 0938-AES4

Medicare Program: "Confined to the Home" Requirements for Home Health Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the current Medicare rules to clarify when a home health patient would be considered "confined to the home" in order to receive home health benefits. It would conform our regulations to changes made by section 4024 of the Omnibus Budget Reconciliation Act of 1987.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 8, 1991.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration,

Department of Health and Human Services, Attention: BPO-625-P, P.O. Box 26678, Baltimore, Maryland 21207

If you prefer, you may deliver your comments to one of the following addresses:

FISCAL NOTE

Revision Date:
Title: Federal-Aid Hy Funding/Drug
Enforcement
Sponsor: Transportation
Requestor:

Department Affected: DOT&PF
BRU:

Component:
Component Serial Number:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
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: (Thousands of Dollars)

1002 FEDERAL RECEIPTS **	0	-9,615,346	-9,615,346	-19,230,692	-19,230,692	-19,230,692
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 FUNDING:	0	-9,615,346	-9,615,346	-19,230,692	-19,230,692	-19,230,692

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: \$ _____

ANALYSIS: (Attach a separate page if necessary)

** Failure to pass legislation will result in the loss of federal ISTEAs funds.

Prepared by: Katy McHugh

Phone: 465-3902

Division: Office of the Commissioner

Date: March 1, 1993

Approved by Commissioner: 

Phone: 465-3901

Agency: Department of Transportation and Public Facilities

Date: March 1, 1993

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Alaska State Legislature

SENATOR
BERT SHARP
CHAIRMAN



FAIRBANKS

DENALI BANK BUILDING
119 N. CUSHMAN, SUITE 201
FAIRBANKS, ALASKA 99701
(907) 452-7883/7886

SESSION ADDRESS

STATE CAPITOL, ROOM 514
JUNEAU, ALASKA 99801-1182
(907) 465-3064/4921

Senate Transportation Committee

Drug Offender's Driver's License Suspension

PL 101-516 Department of Transportation and Related Agencies appropriations Act, Sec. 333 requires withholding of certain Federal-Aid highways from states that do not enact legislation requiring revocation of driver licenses for drug offenses. The state can avoid withholding of funds in several ways.

1.) States must have enacted, and be enforcing a law that provided for revocation or suspension of drivers licenses upon any conviction of the Controlled Substances Act, or any drug offense.

(ie. requires driver licensing actions against violators of drug offences not limited to moving violations, not necessarily involving a motor vehicle at all.)

2.) The state shall submit to the Secretary (of Transportation), a certification stating that the Governor is opposed to the enactment or enforcement of such a law and the legislature has adopted a resolution (SCR 2) expressing its opposition to such a law.

(The Hickel Administration will support either approach)

Penalties

If a state does not meet the statutory requirements by Oct 1, 1993, then 5% of the federal highway apportionment for FY 94 shall be withheld. 5% will be withheld also in FY 95 if requirement not met by Oct 1, 1994, if neither action is taken by Oct 1, 1995, FY96 10% if federal funds will be withheld.

Annual Certification

If the bill, (SB 133) is passed, states will have to submit certification by April 1, on an annual basis that they are enforcing the law. Once the state has passed the resolution and the resolution has been determined to be in compliance, the Governor is

SPONSOR STATEMENT

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HOUSE JOINT RESOLUTION //
40TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1991

INTRODUCED BY

[Handwritten signature]
Daniel L. Silva

A JOINT RESOLUTION

CERTIFYING THE NEW MEXICO LEGISLATURE'S OPPOSITION TO SECTION 333 OF
THE FEDERAL DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES
APPROPRIATIONS ACT FOR FISCAL YEAR 1991.

WHEREAS, Section 333 of the federal Department of Transportation
and Related Agencies Appropriations Act for Fiscal Year 1991 mandates
the withholding of certain federal-aid highway funds from states that
by October 31, 1993, fail to either:

A. enact legislation requiring suspension of an
individual's driver's license upon conviction of any violation of the
federal Controlled Substances Act or any drug offense; or

B. certify that the governor is opposed to the enactment
of such a law and that the legislature has adopted written
certification expressing its opposition to such a law; and

WHEREAS, failure of this legislature to take either mandated

underscoring material = new
~~(bracketed material) = deletion~~

HJR 11

1 action will result in the withholding of federal-aid highway funds;
2 and

3 WHEREAS, the state of New Mexico is concerned with drug abuse by
4 its citizens and has enacted numerous laws and initiated programs
5 aimed at reducing both the demand for and supply of illegal drugs;
6 and

7 WHEREAS, the state of New Mexico currently revokes the driver's
8 licenses of persons convicted of driving a motor vehicle under the
9 influence of drugs; and

10 WHEREAS, the revocation of a drug offender's driver's license
11 has not been shown to deter drug use; and

12 WHEREAS, congress' actions to coerce states into passing
13 ineffective laws is inappropriate; and

14 WHEREAS, the New Mexico legislature has and will continue to
15 address illegal drugs in effective and cost beneficial ways;

16 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE
17 OF NEW MEXICO that the New Mexico legislature certifies that it is
18 opposed to revoking the driver's license of any person convicted of a
19 drug offense if that person is not operating a motor vehicle; and

20 BE IT FURTHER RESOLVED that the New Mexico legislature will
21 continue its efforts in drug abuse education and enforcement programs
22 and will commit its limited resources to programs that, based on New
23 Mexico's experience, have a reasonable chance of reducing drug abuse.

underscoring material = new
[bracketed material] = deletion

24
25

SB

137

BILL NO: SB 137

DATE: March 3, 1993

TITLE: "An Act relating to conspiracies to commit murder. . ."

CONTACT: C.E. Swackhammer
Deputy Commissioner
465-4322

SB 137 would amend 11.31 Attempt and Solicitation, by adding a section concerning CONSPIRACY. An offender commits the crime of conspiracy if, with the intent to promote or facilitate murder, arson, kidnapping, or an offense relating to the delivery of a controlled substance under AS 11.71.010 - 11.71.030, the:

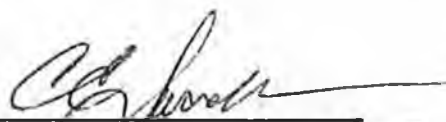
1. offender agrees with one or more persons to engage in or cause the performance of the offense and communicates the agreement to the other person or persons; and
2. offender, or one of the persons with whom the offender has agreed, does an overt act in furtherance of the conspiracy.

An "overt act in furtherance of the conspiracy" means an act that manifests a purpose on the part of the actor that the crime that was the object of the conspiracy be completed.

Conspiracy is the same class of offense as the crime that was the object of the conspiracy.

The Department of Public Safety supports crime of conspiracy legislation. Adoption of this bill will provide Alaska law enforcement officers and prosecutors with a valuable tool which is available to law enforcement in the federal system and in most other states.

If sufficient evidence of the conspiracy is obtained, charges may be filed and arrests made before the conspirators actually commit the offence, thus preventing the crime before it occurs to protect the intended victim or victims. This legislation will also assist law enforcement in the dismantling of drug distribution networks particularly when trying to charge drug king pins who may seldom touch the controlled substances being distributed.


Richard L. Burton
Commissioner

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO: SB 137

Revision Date: _____ Dept. Affected: Public Safety
 Title: " An Act relating to conspiracies to commit
murder in the first and second degree " BRU: Alaska State Troopers
 Component: Criminal Investigations Bureau
 Sponsor: Senate Rules
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 830

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						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
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: (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-

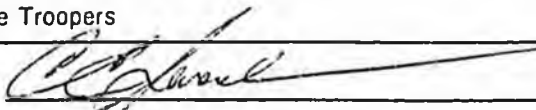
POSITIONS:

FULL-TIME	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 (FY 93) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact upon the Alaska State Troopers is anticipated.

Prepared By: Francis C. Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 02/09/93
 Approved by Commissioner:  Date: 3/18/93
 Agency: Richard I. Burton, Dept. of Public Safety

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SB

139

MEMORANDUM

STATE OF ALASKA

Department of Military & Veterans Affairs


TO: The Honorable Ron Larson
Alaska State House

DATE: April 27, 1993

FILE NO:

THRU:

TELEPHONE NO: 428-6003

SUBJECT: HB 188
An Act Relating
to Forfeiture
of Property
FROM: Hugh L. Cox III
Commissioner
DMVA

This memo is to let you know of my strong support of HB 188 which is an act relating to forfeiture of real property by those using it to facilitate illicit drug dealing. This bill was introduced by the Governor and is vitally needed to curb the extensive drug trafficking taking place in this state.

Our Alaska National Guard Drug Eradication and Interdiction Unit, is extensively involved in raids which confiscate millions of dollars worth of property used to manufacture, transport, and sell illegal drugs in Alaska. Passage of this legislation would deal a strong blow against the illicit drug dealers by confiscating their substantial property holdings and would have a deterrent effect on those tempted to deal in illicit drugs. If the State of Alaska is going to deter this felony crime which is poisoning an increasing part of our society we need to put more teeth into the law. I ask for your help in obtaining passage of this vital bill.

01505

MILITARY & VETERANS AFFAIRS SUPPORT



U. S. Department of Justice
Drug Enforcement Administration

222 West 7th Avenue, #15
Anchorage, Alaska 99513

April 27, 1993

Honorable Charles E. Cole
Attorney General
Department of Law
State of Alaska
Box K
Juneau, Alaska 99811

RE: State of Alaska proposed legislation on forfeiture of property
as drug related assets. HB 188.

Dear Attorney General Cole,

The State of Alaska is presently lacking a tough legislation that effectively deals with drug trafficking. I am not talking about any particular criminal statute, but a lack of a tough state forfeiture law. Drug dealers are making millions of dollars in this illicit trade. Without a forfeiture law that can effectively take these ill gained proceeds of their enterprise, a prison sentence in a criminal case is not an adequate deterrent. Many drug traffickers continue to operate from behind the bars managing their organizations and assets that remain untouched and waiting for them when released from prison. Jailtime simply becomes a "cost of doing business" and the drug business has become very profitable. A tough forfeiture statute hits the drug dealers where it hurts them most. Seizure of their "toys", bank accounts, lavish homes, leaves them without any means to readily resume their activities.

Up to present Drug Enforcement Administration has been "adopting" for federal forfeiture, those state and local cases within the State of Alaska where forfeiture of drug assets was warranted. Recently some true obstacles have come into play that may impede the State's ability to continue such practice. I am referring to a recent Supreme Court decision in Johnson vs. City of Fairbanks. In this case the Alaska Supreme Court has ruled that if assets of a drug dealer are seized pursuant to a state search warrant, they can not be adopted for seizure by DEA without the release from the state court jurisdiction.

U.S. DEPT. OF JUSTICE
DRUG ENFORCEMENT ADMIN.

01544

While federal forfeiture is necessary to "round out" federal drug prosecution, I believe that the State of Alaska needs its own tough legislation on forfeiture of drug related assets to complement its own laws.

Sincerely,



Zoran Yankovich
Acting Resident Agent in Charge
Drug Enforcement Administration



U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No.

Post Office Box 100560
Anchorage, Alaska 99510
April 27, 1993

Mr. Charles E. Cole
Office of the Attorney General
State of Alaska
Department of Law
P.O. Box 110300 - State Capitol
Juneau, Alaska 99811-0300

Dear Mr. Cole,

I have been advised that the Alaska Legislature is currently considering a bill which would provide Alaskan law enforcement officers with the ability to pursue the forfeiture of property used by drug traffickers, as well as the profits derived from drug trafficking.

Please allow me this opportunity to state how beneficial similar legislation has been on the Federal level. The ability of the government to forfeit property connected with drug trafficking is a very effective law enforcement tool because it directly affects the purposes and motivation of drug traffickers. The forfeiture of assets of drug traffickers help eliminate the ability of these offenders to command the resources they need to continue their illegal enterprises. Federal forfeiture legislation contains safeguards to protect the interests of innocent owners and secured creditors. I understand the proposed Alaska legislation contains the same provisions.

My staff and I support your efforts to have legislation passed which authorized forfeiture of real property in specific criminal cases.

Please feel free to contact me if I or my staff can be of any further assistance in this matter.

Sincerely yours,

Burdena G. Pasenelli
Special Agent in Charge

01504

** TOTAL PAGE.002 **

FBI SUPPORT

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR


DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: ~~XXXXXX~~ (907) 465-2075

April 29, 1993

TO: Honorable Robin Taylor
Senate Majority Leader

FROM: 
Charles E. Cole
Attorney General

SUBJECT: SB 139 Real Property Asset Forfeiture

Among the items in the Governor's crime package not yet acted upon by the legislature are the bills providing for forfeiture of interests in real property where the owner participates in illegal drug activities on the property or knowingly condones such activities on it, SB 139 and HB 188. HB 188 is stalled in House Finance, where Representative Kay Brown has managed to delay Committee action on the bill by interminably questioning one provision after another. Representative Eileen MacLean has also voiced objection to the bill. And questions exist whether Representatives Foster, Grussendorf, and Hoffman will vote to move it out of Committee. Yet if the bill were to get to the House floor I am confident that it would pass. Perhaps, therefore, the best approach is to seek passage first in the Senate.

This legislation is badly needed to fight the growing drug problem in Alaska. Annexed is an excerpt from the 1992 Annual Report of the Department of Public Safety, showing a dramatic increase in drug arrests and seizures in 1992 over 1991. Unless strong measures are taken by the legislature, drug activities in Alaska are expected to increase. We therefore ask your support for action on this legislation.

Law enforcement agencies strongly support this bill. Annexed are letters supporting it from the Federal Bureau of Investigation, the Drug Enforcement Administration, and General Cox, Alaska Department of Military and Veterans Affairs.

If you have any questions about this bill or if I in any way can be of any assistance in the passage of this bill by the Senate, I am available at your beckon.

CEC:pml

att.

93131

WALTER J. FICKEL
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 26, 1993

139

*The Honorable Rick Halford
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182*

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill amending the state's asset forfeiture laws to make them more effective. Many of these changes are found in the Model Asset Seizure and Forfeiture Act (1991), prepared by the American Prosecutor's Research Institute. This bill

- permits forfeiture of real property, including buildings;*
- permits tracing of drug money to allow forfeiture of any property purchased with that money;*
- permits forfeiture of all dangerous instruments used by a drug dealer, while existing law requires forfeiture only of firearms;*
- permits the sharing of forfeited assets between municipal police departments and the state;*
- requires the costs of the forfeiture proceedings to be paid by the drug dealer;*

SPONSOR STATEMENT

The Honorable Rick Halford
February 26, 1993
Page 2

-- allows the court to forfeit other assets of the drug dealer if the property to be forfeited is commingled with other property, has been removed from the jurisdiction, or has been destroyed by the drug dealer;

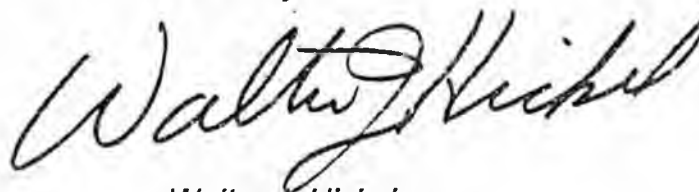
-- gives the state a perfected priority lien on the forfeited property, and thus avoids the pitfalls of Fehir v. State, 739 P.2d 785 (Alaska App. 1987), which permits unsecured creditors to claim forfeited property; and

-- resolves some of the procedural ambiguities in existing forfeiture law noted in Badoino v. State, 785 P.2d 39 (Alaska App. 1990).

This bill is one of four that I am introducing this session to create tough new laws to combat drugs and violent crime. If enacted, these bills will give the state the tools it needs to prosecute serious criminals fairly and effectively.

I urge your favorable action on this bill.

Sincerely,

A handwritten signature in cursive script that reads "Walter J. Hickel". The signature is written in dark ink and is positioned above the printed name and title.

Walter J. Hickel
Governor

Figure 8: Drug and Asset Seizures.

Drug Type	FY 1991		FY 1992	
	July 1, 1990 - June 30, 1991		July 1, 1991 - June 30, 1992	
Cocaine	42.56 lbs.		77.62 lbs.	
Marijuana	132.47 lbs.		1010.88 lbs.	
Marijuana Plants	6,444		9,512	
Heroin	117.35 grams		12781.0 grams	
Hashish	3.0 grams		97878.5 grams	
Amphetamines	917.25 grams		93.6 grams	
Mushrooms	104 grams		22.8 grams	
Dilaudid	67 dosage units		1106 dosage units	
LSD	483 dosage units		1540 dosage units	
Other	12 dosage units		90 dosage units	

Type of Asset		
Cash	\$530,144	\$489,388
Vehicles	\$192,225	\$204,075
Property	\$429,948	\$1,893,349
TOTAL ASSETS	\$1,152,317	\$2,586,812

Figure 9: Arrests by Type of Drug.

Drug Type	FY 1991		FY 1992	
	July 1, 1990 - June 30, 1991		July 1, 1991 - June 30, 1992	
Cocaine	125	56%	220	29%
Marijuana	50	23%	441	58%
Other	26	12%	53	7%
Multi-Drug	20	9%	45	6%
Total	221	100%	759	100%

FISCAL NOTE

No. 4

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Bill Version: SB 139

(S) Publish Date: 2-26-93

Revision Date: February 16, 1993

Title: "An Act relating to forfeiture of certain property..."

Sponsor: Rules Committee/Rep. of Governor

Requestor: Governor's Office/OMB

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						
---------	--	--	--	--	--	--

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

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.

Richard I. Peques

Prepared by: Richard I. Peques, Director

Division: Administrative Services Division

Phone: 465-3672

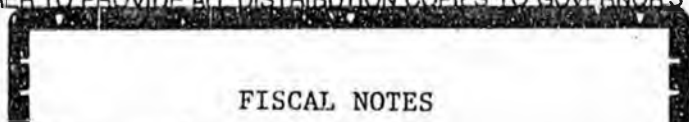
Date: February 16, 1993

Approved by Commissioner: Charles E. Cole, Attorney General

Agency: Department of Law

Date: February 16, 1993

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. _____

ANALYSIS (Continued):

This bill amends the state drug asset forfeiture laws (AS 17.30) in order to resolve procedural ambiguities in the existing law, as noted in Badoino v. State. Because of those ambiguities the state has had to rely on federal prosecutors for most drug forfeiture actions in Alaska, thus reducing the proceeds that would otherwise flow to the state as the result of the seizure and sale of assets used in narcotics trafficking.

This bill would also permit the forfeiture of real property, including buildings; permit the tracing of drug money to allow forfeiture of any property purchased with that money; permit the forfeiture of all dangerous instruments used by a drug dealer, while existing law requires forfeiture only of firearms; permit the sharing of forfeited assets between municipal police departments and the state; require the state's costs for forfeiture proceedings to be paid by the drug dealer; allow the court to forfeit other assets of the drug dealer if the property to be forfeited is commingled with other property, has been removed from the court's jurisdiction or has been destroyed by the drug dealer; and give the state a perfected priority lien on the forfeited property ahead of unsecured creditors.

All of these changes are designed to improve the state's forfeiture and disposal of drug trafficking assets, and they are expected to have a positive fiscal impact for the state.

FISCAL NOTE

No. 3

STATE OF ALASKA
1993 LEGISLATIVE SESSION.

Bill Version: SB 139

(S) Publish Date: 2-26-93

Revision Date: _____ Dept. Affected: Public Safety
 Title: "An Act relating to forfeiture
of certain property." BRU: Alaska State Troopers
 Component: Criminal Investigation Bureau
 Sponsor: Rules
 Requestor: Governor COMPONENT SERIAL NO. 830

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						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
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: (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	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 (FY 93) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary.) This zero fiscal note is based on the assumption that the Department of Admin. will make forfeiture reports available to the Dept. of Public Safety Commissioner to determine recommendations for the transfer of up to 90% of the net value of forfeited property to one or more agencies or political subdivisions of the State as set out in Sec. 17.30.122(4).

Prepared By: C.E. Swackhammer Phone: 465-4322
 Division: Office of the Commissioner Date: 2/12/93
 Approved by Commissioner:  Date: 2/12/93
 Agency: Richard I. Burton, Dept. of Public Safety

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BILL NO: SB 139

DATE: March 24, 1993

TITLE: "An Act relating to forfeiture of certain property. . ."


CONTACT: C.E. Swackhammer
Deputy Commissioner
465-4322

SB 139 will provide law enforcement with a more effective means of utilizing asset forfeiture as a tool to combatting drugs and violent crimes by taking weapons away from criminals and illegally gained assets from drug dealers.

This bill will:

- permit forfeiture of real property including buildings;
- permit tracing of drug money to allow forfeiture of any property purchase with that money;
- permit forfeiture of all dangerous instruments used by a drug dealer;
- permit the sharing of forfeited assets between municipal police departments and the state;
- require the cost of all forfeiture proceedings to be paid by the drug dealer;
- allow the court to forfeit other assets of the drug dealer if the property to be forfeited is co-mingled with other property, or has been removed from the jurisdiction;
- give the state a perfected priority lien on the forfeited property and to avoid the pitfalls of unsecured creditors claiming forfeited property;
- resolve current procedural ambiguities in existing forfeiture law;

This legislation will provide Alaskan law enforcement agencies with the same mechanism presently utilized by the Federal government to seize from drug dealers assets used in the commission of crimes relating to controlled substances.


Richard L. Burton
Commissioner

FISCAL NOTE

No. 2

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Bill Version: SB 139

(S) Publish Date: 2-26-93

Revision Date: _____

Department Affected: Administration

Title: 'An Act relating to forfeiture of certain property ...'

BRU: Public Defender Agency

Component: Public Defender Agency

Sponsor: Rules Committee

Requestor: Governor

COMPONENT SERIAL NO. 1631

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
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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: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: John Salemi, Public Defender

Phone: 279-7541

Division: Public Defender Agency

Date: _____

Approved by Commissioner: Nancy Bear Useja

Agency: Administration

Date: 2/10/93

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FISCAL NOTE

No. 1

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Bill Version: SB 139

(S) Publish Date: 2-26-93

Revision Date: _____
 Title: 'An Act relating to forfeiture of certain property:
and providing. . .'
 Sponsor: Governor
 Requestor: Rules Committee

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
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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: 2/10/93

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SB

149

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 3/5/93

FURTHER: FINANCE

Date of 5-Day Notice: 03/11/93
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 03/19/93

JUDICIARY Committee considered SB 149

"An Act revising the laws governing financial institutions and relating to trust companies, the Alaska Small Loans Act, and the Premium Financing Act; amending Alaska Rule of Criminal Procedure 17 and Alaska Rule of Civil Procedure 45(b); and providing for an effective date."

and recommends:

replace with _____ CS _____ (_____)

- same title
- new title
- technical title change (HB only)

attaches amendment(s)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
DCED		0	

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

OTHER RECOMMENDATIONS:

George Sklar to table

Suzanne R. Gittle No Rec

Richard D. Taylor Do Pass

Chair: Signature and Recommendation

Law Office of Jeff Bush
Senate Building
175 S. Franklin St., Ste. 318
Juneau, AK 99801
(907)463-4150
Fax: 463-4132

March 9, 1993

Robin Taylor
Chair
Senate Judiciary Committee
Alaska State Senate
Capitol Building
Juneau, AK 99801

Re: SB 149; Recodification of the Alaska Banking Code

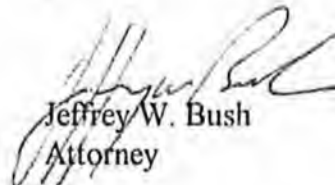
Dear Senator Taylor:

I am the attorney that was hired by the Division of Banking, Securities and Corporations to draft the recodification of the Alaska Banking Code. This bill was recently introduced by the Senate Labor & Commerce Committee, as SB 149, and referred to the Judiciary Committee. The purpose of this letter is to provide the committee with some back-up materials and to request that you consider scheduling a hearing on this important piece of legislation. This recodification project, and the current bill, are strongly supported not only by the Administration, but also by the Alaska financial institutions.

Enclosed for your reference is a sectional analysis of the bill. Also enclosed is a draft set of regulations, which would be adopted by the department once the new code is enacted.

If you have any questions about the bill, the sectional analysis, or the draft regulations, please feel free to contact me or Willis Kirkpatrick (465-2521). Thank you for your consideration of this request.

Sincerely,


Jeffrey W. Bush
Attorney

Senator Taylor, March 9, 1993, page 2

enclosures: Sectional Analysis
Draft regulations

cc: Willis Kirkpatrick, Director
Division of Banking, Securities and Corporations

SENATE BILL 149
RECODIFICATION OF THE ALASKA BANKING CODE
SECTIONAL ANALYSIS

Section 1. Technical change. Alaska no longer issues a "charter," so references to that term are eliminated throughout the statutes.

Section 2. Technical change.

Section 3. This is current AS 06.05.025 and 06.05.040, mostly with minor technical changes. Recognizing that examiners should not be precluded from merely investing in banks, we have changed the provisions to allow an examiner to own up to 5% of the voting stock of another institution; this will allow simple investments but will not permit an examiner to have a controlling ownership interest in a bank.

Since the department examines all financial institutions, not just banks, the provisions relating to exams have been moved to AS 06.01, the chapter that applies to all financial institutions.

Section 4. Changed to bring the section up to date, given that the list of federal agencies in the current statute is inaccurate. The change will make the statute apply regardless of what changes occur in the future to the names of the federal agencies.

Also, at the banks' request, "corresponding" was removed in (2) to allow the department to equalize competition between financial institutions regardless of what they are called.

Section 5. Current AS 06.05.060(a) and (b). Only change is to clarify that this section applies only to records relating to financial institutions, not all records of DCED.

Section 6. (a) - (d). New cease and desist provisions, to more accurately set out the procedure used by the department; existing law has been confusing. These new subsections are generally taken from the FDIC Act (12 USC 1818(b)(1)) and the Alaska Securities Act (AS 45.55.200(a)), both of which have proven track records. (d) will permit the department to issue temporary orders before a hearing, to ensure preservation of the status quo (like a TRO).

(d) Current (b), amended to make it clear that public hearings need not be held in cease and desist proceedings.

(e) Current (c) & part of (d), without substantive change; the rest of (d) has been moved to Section 8 of the bill.

(f) Current (e).

(g) Defines "unsafe or unsound practice."

Section 7. This section consolidates all penalty provisions from AS 06 relating to financial institutions. Existing penalty provisions, scattered throughout the code, are repealed in this bill.

(a). The criminal sentences on individuals are generally kept

the same as in current law. However, this will raise the potential corporate sentences from the current \$20,000 (\$1000 for trust companies) to \$200,000, under AS 12.55.035(c)(B). This subsection supersedes current AS 06.05.065(e), 06.05.090(c), 06.05.210(b), 06.05.235(d), 06.05.520, AS 06.20.320(b), and AS 06.25.320.

(b). Supersedes current AS 06.40.160(b).

(c). This is consistent with current AS 06.05.380(c), 06.05.500, and AS 06.25.060; current AS 06.05.510 seems to make it only a misdemeanor for the same violations, but a single consistent penalty is more appropriate in all these cases. Supersedes current AS 06.05.380(c), 06.05.500, 06.05.510, AS 06.25.060, 06.25.070, and AS 06.45.320.

(d). Penalizes receiving a deposit after being notified by the state or federal regulators that the institution is insolvent. Under the Credit Union Act, this is currently a Class A felony (AS 06.45.330). The general criminal law makes defrauding creditors a misdemeanor for up to \$500, a Class C felony for \$500 to \$25,000, and a Class B felony for more than \$25,000 (AS 11.46.730(c)). We have decided to go with the Class C felony for these cases. Supersedes AS 06.05.490 and AS 06.45.330.

(e) and (f). For intentional violations of the code or the department's orders; taken from Securities Act, AS 45.55.200(b). Note that (e) also applies to people who cause others to violate the code or department orders. A person assessed an administrative penalty would have a right to a hearing under AS 06.01.030. The differential rates for institutions as opposed to individuals is common in other states. See FL and OR below. For point of reference, here is a summary of what some other states allow for administrative fines:

IN allows up to \$15,000 per violation (sec. 28-11-4-9).

GA allows \$1000 per day per violation, until corrected (sec. 7-1-91).

OR allows \$2500 per violation for individuals, \$50,000 for institutions (sec. 708.980).

FL allows \$10,000 per day if the violation is due to recklessness; and \$50,000 per day for individuals and \$500,000 per day for institutions if the violation is intentional (sec. 655.041).

By the way, the FDIC penalties are also very high -- \$25,000 per day for reckless actions, up to \$1 million per day for intentional violations (12 CFR 308.116).

(g). For non-intentional violations, taken from AS 45.55.200(c); also applies to those who cause others to commit a violation.

(h). Supersedes AS 06.01.010(c) and AS 06.05.505. These figures seem consistent with those used in other states. However, for late call reports the FDIC uses a sliding scale based on the size of the institution and whether the conduct is repetitious, charging from \$100 to \$2000 per day (12 CFR 308.132).

(i). Current AS 06.05.065(e).

Section 8. This is part of current AS 06.01.030(d), which is moved

because it did not belong as part of the section on departmental orders.

Section 9. This section lists most of the department's powers with respect to banks. To the extent the list refers to powers contained elsewhere in the code, the reference here is unnecessary, but it does offer a relatively comprehensive laundry list. In addition, (b)(13) and (14) give the department essentially unlimited authority to issue orders to get compliance with the code.

Current AS 06.05.005(3) has been repealed; neither the department nor the banks could determine what it meant or what was its purpose. Some current sections have been repealed elsewhere and included in this section. They are

(a)(2). AS 06.05.070 is repealed, and here it simply states that the department will provide for bank records retention through regulations.

(b)(1). Current AS 06.05.030, although we have removed the authority of the department to relieve a bank from the examination fee; this seemed appropriate given that fees for specific exams have been replaced with an assessment system. See AS 06.01.010(d).

(b)(6). Current AS 06.05.005(2).

(b)(7). Includes current AS 06.05.015. In (J), we have added authority to require loan loss reserves for loans classified as "doubtful." We also eliminated reference to "FDIC" exams and substituted "federal" exams, to include the Federal Reserve Bank.

Section 10. Amended to make the reporting requirements as to signatures consistent with FDIC requirements, so that the same reports can be used by the banks for both state and federal agencies.

Section 11. Here and in Section 12 of the bill, references to state "charter" have been removed as obsolete. Also, we removed reference to "lending" institutions to make the terminology consistent with that used in the rest of the code.

Section 12. Adds an exemption for mortgage loans existing at the time of hire. This section will no longer disqualify a person from working as a bank examiner if the person has a home mortgage loan with a state bank.

Section 13. Amended to clarify that all actions of the department under this chapter, not just the adoption of regulations, are designed to promote a sound banking system.

Section 14. These changes are primarily stylistic, to clarify the section's meaning.

Section 15. Amended to provide that the notice of charges for new accounts need only be provided where accounts are opened; for example, there is no reason to require this at a bank's automated

teller machine (ATM).

We will also clarify in regulation that "clearly post" can include using pamphlets or brochures, provided they are easily accessible and there is some notice or sign indicating their location.

Section 16. The phrase in current statute, "the extent necessary to meet the needs of customers," might be interpreted either to mean "to meet existing orders" or "to meet anticipated demands." This change, proposed by the banks, clarifies the meaning.

Section 17. The repealed language is all contained in other subsections -- the three day maximum closure is now contained in (e); the branch bank variance is now in (f). See Section 19, below. The reduction of necessary prior notice of a holiday closure, from 15 to 7 days, was done at the request of Northrim Bank.

Section 18. Many stylistic changes. We changed the notice requirement to be before closure, if possible, and otherwise as soon as possible after closure. Also, we removed the requirement that the Comptroller of the Currency be notified of these closures -- that is a matter that should be left to the comptroller and federal regulation. Finally, at the suggestion of First Bank, we clarified the final sentence in the subsection.

Section 19. (d). This is new, to cover the Key Bank "neighborhood day" situation.

(e). Currently in (a). The three day maximum closure applies not only to holidays, but also to board declared closures, but it does not apply to branch banks operating under a department approved different schedule.

(f). Currently the last sentence in (a).

Sections 20 & 21. At the request of the banks, we have changed this statute to clarify that bank records need not be released pursuant to subpoena. Given that subpoenas can be obtained routinely from the court clerk without judicial review, to permit release of the info in response to a subpoena would amount to an elimination of any customer confidentiality, and has resulted in a huge burden on the banks.

Section 22. This is new, also at the request of the banks. The current cost of responding to information requests is very high, and it is reasonable to provide the banks with reimbursement for these costs.

Section 23. First, the subsection is modified to apply to all banks -- the distinction of "commercial" banks is meaningless in Alaska law, and there was no reason for the exception for members of the federal reserve system. Second, the subsection has also been changed to provide that reserve requirements will be set by

regulation be based on the bank's liquidity needs (rather than as a means of protecting against capital impairment). There has been confusion in the past over the purpose of the reserve requirements. It should be noted that the Comptroller sets reserve requirements in federal law, but those requirements are not based on a bank's liquidity needs, but rather as a method to manipulate the supply of money in the U.S. Finally, we have changed "reserves" to "reserve fund" to avoid confusion with loan loss reserves.

Section 24. This change will give the department more discretion in regulating problem banks. If a bank falls below the reserve requirements, it will not automatically be prohibited from making loans or paying dividends -- that will be up to the department.

Section 25. This adopts the general lending limits used by the Office of the Comptroller of the Currency (OCC). The definition of "fully secured" will be put in regulation, probably requiring collateral equal to 100% of loan balance. The list of transactions not included in these calculations is generally taken from current subsection (b), with an addition in (3) of loans collateralized with assigned deposit accounts. This list is generally more liberal than OCC regulations, except for the requirement that cannery products and products in transit be insured to be exempt. The definition of "products in transit" in (4) is taken directly from current regulation and is not a change in current law.

Section 26. Amended to make loans unconditionally guaranteed by the state, such as AIDEA, also not count toward the loans to one borrower limitations.

Section 27. Expands the prohibition for bank loans to include loans collateralized by stock of any of the bank's holding companies, unless the stock is publicly traded, and to unsecured loans used to purchase stock of either the bank or its holding companies. Adds an exception to this rule for situations of bank acquisitions or mergers, with department approval.

Section 28. (g). New provision allowing the department to adopt regulations defining when a loan made in the name of one person or entity will be attributed to another for purposes of calculating the lending limits in this section. This is taken from the recommendations of Montana's advisory committee that reviewed that state's banking code.

Section 29. (a). Combines existing (a), (c), and (d). Specific loan-to-value (LTV) and term restrictions have been eliminated and replaced with a requirement that real estate loans be made consistent with sound bank policies. Also, the section's application is expanded to apply to all loans where the primary security for the loan is real estate, not just those on improved real estate; thus, current (e) and (f) were eliminated along with AS 06.05.206 and AS 06.05.211. Existing (g) has been eliminated as

obsolete.

(b). From current subsection (b); changed to apply to all junior liens, not just seconds.

Section 30. Several changes are proposed to this subsection. First, we clarify that all normal lending restrictions apply to loans to directors, officers and bank employees, in addition to the specific limitations of this section. Second, directors are added to those subject to this section. Third, the threshold for application of the section is raised to \$100,000 in the aggregate, and up to \$250,000 for personal primary residences of directors, officers and employees. We have also repealed the final sentence, since loans are defined in AS 06.05.540 to include overdrafts, making this sentence unnecessary.

There has been some confusion in the past whether a bank's board of directors could act through a committee for the approval of these loans. AS 10.06.468, incorporated under this act, would allow this, except for loans to directors which would still require full board approval.

Section 31. This subsection has been amended to remove specific LTV and term restrictions, and make these loans generally subject to the same restrictions as all real estate loans under AS 06.05.207.

Section 32. Changed to make this merely a prohibition; penalties are provided in AS 06.01.035 for all violations of the code, including this section.

Section 33. This section has been confusing and somewhat controversial in the past. We have rewritten it to make sense. The standard adopted here - knowingly or with gross negligence - is strongly supported by the banks, because they feel that a simple negligence standard might discourage people from becoming bank directors.

Section 34. This section probably could be repealed, since federal law arguably preempts the state law. (We have repealed AS 06.05.220 for this reason.) However, for clarity, this section is left in. The reference to AS 06.05.220 has been changed to refer directly to the applicable federal statute.

Section 35. The section currently is incorrect in its reference to "real estate," since it actually applies to both real and personal property, so this has been fixed. Also, the section has been broadened in several respects, to allow a bank to hold

1) property used for promotional purposes, such as a boat; of course, any asset so held will have to be used exclusively for bank purposes;

2) a building in which bank offices are located, even if only a portion of the building is used for the bank (this is already being done by several Alaska banks, arguably in violation of present law); and

3) real estate for future expansion, subject to prior department approval.

As for the reference to bank building corporations, these are now covered under the section relating to subsidiaries, AS 06.05.272.

Section 36. Conforming amendment only.

Section 37. Conforming amendment, since provisions relating to out-of-state bank holding companies (BHC's) have been moved to new AS 06.05.570.

Section 38. We have added a permitting system for all bank holding companies that wish to purchase a bank or bank holding company doing business in Alaska.

Section 39. Conforming amendment.

Section 40. New subsection, taken from current 3 AAC 02.910(b). This provides for an exemption to the normal rules applicable to BHC's, and it is more appropriate for the exemption to be in statute, rather than regulation.

Section 41. Technical changes to make it clearly consistent with AS 06.05.205.

Section 42. Technical changes to make the language consistent with AS 06.05.230.

Section 43. There are several proposed changes to this section. The amendments add an exemption from borrowing limits for repurchase agreements; raise borrowing limits without necessary department approval from 100% of capital and 50% of surplus to 15% of assets -- this will be an approximately 50% increase in the limit for most banks (this new standard, 15% of assets, is currently used in the Mutual Savings Bank Act, AS 06.15.180(2)); remove a redundancy regarding borrowings approved by the department; and finally, the adjective "unimpaired" is meaningless and confusing, and is therefore removed.

Section 44. In (2), the change clarifies that when a bank pledges property for a mortgage, the pledged property must be the subject of the purchase transaction. Also adds a new paragraph (3), as suggested by several banks, to permit a bank to pledge assets to a federal reserve bank or a federal home loan bank. This language was taken from WY, sec. 13-3-203. (However, such borrowings will still be subject to limitations of AS 06.05.255.)

Section 45. This is current AS 06.05.485. The second sentence was added to clarify that this section does not prohibit a bank from issuing warranty deeds.

Section 46. This bill repeals the list of specific permissible bank investments in statute. These specific investments, as well as others that may be appropriate, will now be set out in the regulations. This is important, because new investment opportunities seem to come up frequently, and requiring the department to get legislation passed each time has proven burdensome and unpredictable.

Section 47. (a). Adds a provision to permit banks to have subsidiaries, in most cases subject to department approval. The department intends to approve limited underwriting activities, probably on a case-by-case basis. "Subsidiary" is defined in AS 06.05.540 to be corporation more than 50% owned by the bank.

(b). Sets a limit on the amount a bank may invest in subsidiaries, and clarifies that a bank may not use its lending authority to avoid the investment limits.

(c). Makes it clear that subsidiaries are subject to examination.

Section 48. Clarifies that these are alternative requirements.

Section 49. (a). Makes the Alaska Corporations Code applicable to banks.

(b). Sections of the Corporations Code that are inapplicable to banks are as follows:

AS 10.06.010(4-8). General corporate powers, specifically limited here and elsewhere for banks.

AS 10.06.105(a). Requires a corporation to have "inc.," ltd." etc. in its name.

AS 10.06.325, 10.06.385 - 10.06.388, & 10.06.420(i). Deal with redemption of shares; This revised banking code sets up specific provisions for stock redemption in AS 06.05.320.

AS 10.06.356. Permits shares to be held by nominees. This is inconsistent with the philosophy behind AS 06.05.450, that all shareholders and the department have a right to know all shareholders of a bank.

AS 10.06.358 - 10.06.360. Dividends; covered by AS 06.05.440 - 06.05.445.

AS 10.06.370. Specifically applies only to regulated investment companies.

AS 10.06.430. Provides that the "books and records of account" of a corporation must be available for inspection by shareholders. To avoid anyone misinterpreting the code to allow a shareholder to see a bank examination, this was excluded.

AS 10.06.453. Provides that the number of directors may be one or more, and if not designated, three. Current banking code (AS 06.05.435) requires at least five directors, and we have retained that in this recodification.

AS 10.06.460(b). Restricts reasons a director may be removed. We have provided for removal of bank directors by the department.

AS 10.06.485. Loans to directors, officers and employees; already covered in AS 06.05.210.

AS 10.06.522 - 10.06.526. Reorganization of corporations in bankruptcy; this is covered for banks under liquidation provisions.

Article 8 (AS 10.06.530 - 10.06.582). Organic change (mergers, etc). These are covered under AS 06.05.462.

Article 9 (AS 10.06.605 - 10.06.678). Dissolution; covered under the liquidation article.

Article 10 (AS 10.06.705 - 10.06.788). Foreign corporations; covered under new article on interstate and international banking.

Article 11 (AS 10.06.805 - 10.06.868). Biennial reports and corporate tax. Banks pay an assessment under AS 06.01.010 and are subject to annual examination and frequent reporting requirements.

AS 10.06.863. Appeal of foreign corporation to Superior Court for revocation of certificate of authority; all appeal processes for banks will be handled under AS 06.01.

AS 10.06.865 & 10.06.915. Appeal to commissioner for refusal or cancellation of certificate of authority; all appeal processes for banks will be handled under AS 06.01.

AS 10.06.960. Applies only to native corps.

AS 10.06.990(30) & (36). Definitions for "paid in capital" and "retained earnings"; we have provided definitions for all aspects of a bank's capital accounts in AS 06.05.540.

Section 50. (a). Raises minimum capital requirements to \$2 million for banks in Anchorage and Fairbanks, \$1 million for other communities (to allow possible formation of small community banks). However, this clarifies that these are absolute minimums, and that the actual requirements will be set in each case by the department. (At present, all Alaska banks have capital amounts far greater than these minimums.)

(b). To the extent this may be interpreted as inconsistent with AS 06.05.320, we have amended that section to allow stock redemptions if approved by the department. Otherwise, technical amendments only.

(c). Technical amendments only.

Section 51. Present AS 06.05.310 provides for an assessment of shareholders procedure that the department may purportedly order when a bank's capital is impaired. Since this process is essentially unenforceable and, in our experience, unreasonable, this assessment procedure is repealed here and replaced with a simple process for the department to order a bank to increase capital, in whatever manner the bank chooses. This new section is taken from Indiana (sec. 28-13-4-7).

Section 52. Changed to permit bank stock redemptions with departmental approval.

Section 53. Changed to require prior department approval before any significant change in bank ownership or before a change in bank control.

Section 54. Clarified to ensure that all stock sales are subject to

this requirement, not just those at the corporate formation stage.
[Note to Revisor: Please amend section title accordingly.]

Section 55. Present AS 06.05.345 is split; new AS 06.05.344 deals with the application for approval process, while AS 06.05.345 retains the provisions relating to articles of incorporation.

(a). Current AS 06.05.345(c). Clarifies that prior approval of director for bank plan is required before articles of incorporation will be issued. Also eliminates requirement for triplicate filing of articles (also changed in (h)).

(b). Current AS 06.05.345(d). The amount that an applicant must submit to the department has been doubled to \$2000; this will afford the department a bit more protection, assuring a better chance of repayment of its costs. Current amounts charged have been in statute at least since 1978 and need raising. By way of comparison, OR charges a non-refundable \$2500 (sec. 707.070).

(c). Current AS 06.05.345(e).

(d). Current AS 06.05.345(f).

(e). Current AS 06.05.345(g).

(f). Current AS 06.05.345(h). Change to (4) is designed to clarify that the capital requirements are those set by the department. Otherwise, one technical change, and one other change to not duplicate the Corporations Code.

(g). Current AS 06.05.345(i).

(h). Current AS 06.05.345(j).

Section 56. Changed to incorporate the Corporations Code, and then eliminates requirements already covered by that code. Also, (2) is clarified to make sure that no-par stock is not allowed, and (3) is clarified to allow articles to say "5 to 25" directors, instead of giving a specific number.

Section 57. Allows amendment of articles by a majority of shareholders, or more -- this is consistent with the Corporations Code, AS 10.06.504 - 10.06.508. As for filing amendments to articles, these will be done in the manner provided in the Corporations Code.

Section 58. Amended to clarify that certificate of incorporation comes first, certificate of authority later. Incorporation allows a bank corporation to set up a facility and get subscriptions paid in, but not to do any banking business. AS 06.05.395 has been merged with this subsection.

Section 59. (b)(1). This is the same as AS 06.05.380(b); the latter has been repealed. Also, the department does not require a bank to carry a specific amount for undivided profits, so that has been removed.

Current (b)(4). This is repealed because we will no longer be requiring FDIC insurance in all cases. See Section 61.

Section 60. Current AS 06.05.480.

Section 61. Changed to make FDIC insurance optional, at the department's discretion. This is primarily designed to allow for the formation of small community banks, and to allow other banks to use alternative insurance if it becomes available. [Note to Revisor: Please correct title to this section.]

Section 62. Conforming amendment.

Section 63. (a). Most of the requirements of this section that are deleted are covered in the Corporations Code, particularly AS 10.06.223.

(b). Provides that the executive offices of the bank must be designated in the articles or bylaws, and a current copy of the bylaws must be kept on file with the department. We are eliminating any definition of executive or managing officers from the code.

Section 64. These are almost all technical changes, except for (f)(3), which is eliminated because we are eliminating the requirement for FDIC insurance. As for (a), the amounts have been raised for processing an application -- see comments to new AS 06.05.344 in section 55 of the bill. The definition for "mobile facility branch bank" is taken from 3 AAC 02.910(a)(5).

Section 65. ATM's will no longer be subject to general branching laws; there is no reason that the lengthy application process for a branch should apply to a bank's opening of an ATM.

(a). Permits banks to set up wholly-owned ATM's in bank offices without department approval; these machines may be exclusively for use of the bank's customers.

(b). Permits a bank to establish a wholly-owned ATM outside the bank with prior approval of the department; these machines must be made available to other banks.

(c). Simplified application process for ATM's that are off bank premises, generally taken from Arkansas sec. 23-32-1304.

(d). Permits bank to invest in an ATM corporation (like Options). These operations will not be directly regulated by the department, although the investments themselves will still be subject to safety and soundness considerations upon examination.

Section 66. Repealed language will permit staggered terms for bank directors like that provided in the Corporations Code, AS 10.06.455.

Section 67. Added language will allow the qualifying minimum amount of stock that a director must own to be jointly held, and will allow the department to approve other situations when a director need not meet the minimum ownership requirements, such as where the bank is wholly owned by a bank holding company.

Section 68. (f). From current AS 06.05.437(b).

(g). New, to give department authority to remove or object to

certain persons as directors. Taken generally from FL and GA.

Section 69. (a). Repealed language is covered by AS 10.06.483(b). Second sentence is amended to allow the board to pick the best possible person for CEO of the bank, even if that person is not on the board; if the bank chooses a non-board member as CEO, that person becomes an ex officio member of the board, to make sure he/she is kept aware of what the board is thinking and doing.

(b). We moved the requirement to report changes in directors to the previous section, which deals specifically with directors.

Section 70. Although the department cannot actually order that an employee of a bank be fired -- that is the sole responsibility of the board -- this subsection will allow the department to essentially recommend an employee's removal, if necessary; if the board refuses, the directors risk personal liability should damages occur thereafter due to the fault of the employee. This change was recommended by the Conference of State Bank Supervisors (CSBS).

Section 71. Minor change to clarify that board meetings are held for many purposes, not just to investigate the affairs of the bank.

Section 72. (e). Allows teleconference board meetings; taken from the Corporations Code, AS 10.06.475(a).

(f). Present AS 06.05.238.

Section 73. Clarifies that dividend distributions are subject to possible restrictions under AS 06.05.307(c).

Section 74. Generally just technical changes; clarifies that requirements of this section are in addition to those in AS 06.05.442.

Section 75. Changed to allow a bank, with department approval, to carry a negative balance in the undivided profits (U.P.) account, and prohibits dividends until this negative U.P. account balance is replaced and the surplus account is fully restored.

Section 76. This section has been combined with AS 06.05.443.

(a). Currently the first part of sec. 443.

(b) (1). Current sec. 443(1) and (2); there was no reason for a one-year provision for judgments, so this was eliminated. This is consistent with departmental powers in AS 06.05.005(b)(8)(K).

(2). Current sec. 445(1); the reference to "debt" is changed to make it clear that this refers to money owed to the bank, not by the bank.

(3). Current sec. 445(2).

(4). Current sec. 443(3).

(5). Current sec. 445(3); under this proposal, stock may also be carried at market value, rather than par.

(6). Current sec. 443(4).

Section 77. Modernized to allow for the maintenance of this record of shareholders in a form other than a book. Also, clarifies that inspection of the record is available for the department, while shareholders will have access to a list of current shareholders. Before each annual meeting, the bank will also need to comply with AS 10.06.413, which requires preparation of a list of shareholders, including names, addresses and numbers of shares owned.

Section 78 - 80. Technical amendments only.

Section 81. AS 06.05.466 currently set out a procedure for dissolution of a bank before issuing a certificate of authority. The proposed revisions to this section retain the same grounds for dissolution in these situations, but permit such a dissolution to be effected as with any other corporation under the Corporations Code.

Section 82. (a). This is generally taken from current AS 06.05.470(a), although it has been expanded to clarify that the department may close and take possession of a bank for violations of the banking laws or orders of the department.

(b) - (c). This clarifies the process for bank takeovers by the department. Under the Supreme Court's decision in Hoffman v. State, ___ P.2d ___, No. 3845 (Alaska May 29, 1992), an opportunity for hearing must be provided to interested parties before a bank may be liquidated by state or federal authorities. Since, as a general rule, it is in the best interest of the public and depositors to minimize the time a bank is closed when it is being liquidated/transferred, the procedure set out in these subsections provides for hearing at the time the department first identifies the bank's problems and confronts the board with them.

(d). This is present AS 06.05.470(d); however, we have reduced the time allowed to request a hearing to two days, to expedite the process and enhance the chances that the bank will be reopened.

Section 83. Repealed language is now contained in sec. 468(c).

Section 84. Clarifies that transfers in anticipation of department takeover for whatever reason, not just due to insolvency, are voidable. New language is taken from current AS 06.05.495, which is repealed.

Section 85.

AS 06.05.471. This section is essentially just a recodification of current AS 06.05.470(f), (j) and (k).

AS 06.05.472. Recodification of current sec. 470(1) - (n). In (a)(1) and (2), the values were raised from \$10,000 to \$100,000, because the FDIC has complained that the lower amount requires frequent, unnecessary court appearances. In (a)(3), also at the request of the FDIC, the provision was changed to allow a receiver to make partial distributions before a final accounting is prepared.

AS 06.05.473. Existing sec. 470(j) - (y), generally with only technical amendments.

(c). Present sec. 470(p) and 465(f), but modified to allow the department to turn over unclaimed property and safe deposit box contents to the Department of Revenue under the Unclaimed Property Act at the conclusion of the liquidation, rather than having to hold the property for five years.

(g). Clarifies that secured claims based on pledged assets under sec. 260 fall behind the general depositor preference.

AS 06.05.474. Current sec. 470(z).

Section 86. Many of these definitions are taken from the existing code. Ones that have been changed, or are new, are

(1). Taken from 3 AAC 910(a)(1).

(3). Changed to make the definition primarily focus on accepting deposits (the first part of the definition was generally taken from OR and ID); the rest of the section was updated to remove archaic language.

(4). Changed to take out internal references to "branch" that make the existing definition circuitous, and exempts ATM's from the definition.

(5). All aspects of a bank's capital are defined in this section, to remove the ambiguities that exist in current law. This definition of "capital" is generally taken from IN.

(6). From 3 AAC 02.910(a)(9).

(10). From current AS 06.05.235(h)(1).

(12). From AS 06.01.050(3).

(14). From OR, sec. 711.305 and AS 06.05.305(a).

(15). Loosely adapted from OR, sec. 711.405; (A) and (C) are the two traditional definitions for insolvency - see Annot. 81 ALR 1160.

(16). Defines "international bank" as a bank that is from outside the United States.

(17). Defines "interstate bank" to include any bank chartered in a state other than Alaska and national banks operating outside Alaska.

(18). From IN, sec. 28-1-13-1.2, with some modifications; note that it includes guarantees, overdrafts, letters of credit and loan commitments.

(19). From WY, sec. 13-1-101(a)(xii).

(20). Current AS 06.05.235(h)(2), amended to exclude international bank holding companies from the requirement that they be registered with the federal government.

(21). Current AS 06.05.235(h)(3).

(22). Changed to remove the reference to charters, which no longer exist in Alaska.

(24). In conjunction with new AS 06.05.272, proposed in this bill, this will allow banks to operate subsidiaries that are not directly in the banking business. This definition is taken from the Alaska Corporations Code and is the same as that used by the FDIC.

(25). Current law does not define the essential elements of

capital, which has caused some confusion in the past. This bill simplifies the terminology and makes it consistent throughout, and then all terms used are defined here.

(27). Defines when a bank will be deemed to be in trouble.

Section 87.

The new article on interstate and international banking is loosely inspired by NY, IL and GA law. However, we have tried to think of what is specifically needed and desired in Alaska.

AS 06.05.550. (a). Authorizes international and insured non-Alaska banks to branch by purchasing existing Alaska institutions. "Interstate," "international," and "recently formed" banks are defined in AS 06.05.540. Note the FDIC requirement for non-Alaska US banks; OR has a similar requirement. For international banks, there is provided an in-state asset requirement -- see next section. Much of this is taken from IL and NY.

(b). Authorizes international banks, but not interstate banks, to de novo branch.

(c). Guarantees that interstate and international bank branches enjoy the same rights as other Alaska financial institutions; taken from NY.

AS 06.05.555. Application process for interstate and international banks. These provisions are generally taken from AS 06.05.399, the department's procedure for branch bank applications. Thus, these applications would be handled in the same general manner as other branch applications.

(d). Requires reciprocity for banks from other states, but not for international banks (taken from NY).

AS 06.05.560. (a) and (b). Requires an international bank operating a branch in Alaska to maintain assets in this state sufficient to cover all depositors. This section is taken from OR sec. 713.025.

(c). Provides that if the department takes over one of these branches, the in-state assets will be liquidated under the general liquidation statutes; inspired by IL law.

AS 06.05.565. (a). Essentially same as current AS 06.05.367, which is repealed.

(b). Requires branch to meet general reserve requirements applicable to state banks under AS 06.05.200, but allows appropriate assets held for purposes of the minimum asset requirements of preceding section to be applied to this requirement as well.

(c). Provides that these branches will be subject to normal assessments for exams, but the assessment will be based on the branch's deposits, rather than its assets (since it is impossible to determine how much of the assets of a multi-state or multi-national bank are attributable to the Alaska branch).

(d). Provides that the parent interstate or international bank may be examined to protect Alaska's interests, in much the same manner as an out-of-state BHC can be examined.

AS 06.05.570. This is presently part of AS 06.05.235.

(a). Currently sec. 235(e). We have added a permitting system

for all bank holding companies that wish to purchase a bank or bank holding company doing business in Alaska.

(b). Currently sec. 235(f).

(c). Taken from 3 AAC 02.910(b).

Section 88. This amends the exemption from the small loan act for pawnbrokers from \$200 to \$500. The current figure dates back at least to 1981, and inflation makes a higher limit now appropriate.

Section 89. This has been changed to clarify that the provisions of the banking code apply to trust companies engaged in the business of banking.

Section 90. Technical amendment.

Sections 91 and 92. Makes the Corporation Code applicable to banks.

Section 93. Conforming amendment.

Section 94. Clarifies that the Consumer Protection Act, while exempting transactions regulated under AS 06.05, applies to all other bank transactions, and in particular those between banks and their customers.

Section 95. Technical amendment.

Section 96. Repealers:

AS 06.01.010(c). Now covered by AS 06.01.035(h).

AS 06.05.015. Included in new AS 06.05.005(b)(7).

AS 06.05.020. (a). All covered elsewhere in the code.

(b). The first sentence is already covered by AS 06.01.030 (in this bill, subsection (f)). The rest duplicates common law, except for the last sentence, which is a labor law issue and should not be in the code.

AS 06.05.025. All provisions relating to examinations are now in AS 06.01. This section is contained in AS 06.01.015.

AS 06.05.030. Moved to AS 06.05.005(b)(1); see notes to that provision.

AS 06.05.035. Already covered by AS 06.01.010.

AS 06.05.040. Moved to AS 06.01.015(a).

AS 06.05.055. Some of the information ((1) and (2)) is already essentially done, through the governor's legislative requests, and the rest either is unnecessary for legislators or is public information. This is an expensive annual exercise for the division (estimate is 30 person-days) that is unnecessary.

AS 06.05.060. (a) and (b). Moved to AS 06.01.025, to apply to all financial institutions.

(c). Already covered in AS 06.05.110.

AS 06.05.065. (d) and (e). Included in comprehensive penalties section, AS 06.01.035.

(f). Definition no longer used in the code.

AS 06.05.070. Most of this section is obsolete. We have

repealed it and simply provided in AS 06.05.005 that the department will adopt regulations for records retention (which it has already done in current 3 AAC 02.010).

AS 06.05.080. Already established in Alaska case law.

AS 06.05.085. Already covered by Alaska case law.

AS 06.05.090(c). This is included in comprehensive penalties section, AS 06.01.035.

AS 06.05.130. This section is essentially superseded in substance by the UCC, AS 45.04.406.

AS 06.05.175(c). This is already covered; any violation of the code is subject to discipline and/or enforcement action under AS 06.01.

AS 06.05.185. The sections relating to trust companies (AS 06.05.185 - 06.05.195) are obsolete and are therefore repealed. These provisions are already covered in the trust company act, specifically AS 06.25.085.

AS 06.05.190. See note to previous section.

AS 06.05.195. See note to repeal of AS 06.05.185.

AS 06.05.200(b) and (c). These are procedural matters that will be put in regulations. Also, the permissible list of deposits will be expanded to include deposits held by the Federal Reserve Bank and the Federal Home Loan Bank, to make the regulations consistent with current practice.

AS 06.05.205. (a). By regulation adopted under AS 06.05.438(c), a requirement will be inserted that when lending reports are made to the board, all loans over a specified amount (higher than \$25,000 - probably \$100,000) will be specifically identified.

(e). Already covered under sound lending practices.

(f). Obsolete.

AS 06.05.206. All special statutory restrictions on real estate loans are repealed in this draft of the code, except those still remaining in AS 06.05.207. Leasehold and development loans are now covered by that section.

AS 06.05.208. This section is covered by AS 45.10.120(c).

AS 06.05.210(b). This is repealed and the substance moved to the comprehensive penalties section, AS 06.01.035.

AS 06.05.220. Already covered by federal law.

AS 06.05.232. The code has been drafted to provide that only a bank's subsidiary can enter into these types of leases. Thus, the section is repealed here, and a broad authority to enter into leases is included in new AS 06.05.272.

AS 06.05.235. (c). Already covered in powers of the department to adopt regulations.

(d). Covered by comprehensive penalties section.

(e) and (f). We have split this section in half, moving the provisions relating to out-of-state bank holding companies to new AS 06.05.521, in the article on interstate banking.

(h). Definitions have been moved to the general definitions section, AS 06.05.540.

AS 06.05.238. This section belongs with the provisions relating to meetings of the board. Thus, it has been moved to AS

06.05.438(f).

AS 06.05.255(c). This subsection was ambiguous and unnecessary.

AS 06.05.260(b). This subsection was probably unenforceable, definitely unclear and ambiguous, and arguably inconsistent with the state's depositor preference.

AS 06.05.270(b). Specific permissible investments for banks have been repealed and will now be set out in regulations. See comments to bill section 46.

AS 06.05.275. (a). Deleted as unnecessary and obvious.

(c). Deleted as unnecessary. For clarity, if desired, we will put it into regulation.

AS 06.05.280(a) and (b). These are sufficiently handled by market forces, and they are unnecessary.

AS 06.05.300. Covered by AS 10.06.010.

AS 06.05.307. (d). Already covered by AS 06.05.205(b).

(e). Repealed as obsolete.

AS 06.05.325. Covered by the Corporations Code.

AS 06.05.330. Covered by AS 10.06.205. However, the Corporation Code provides that there can be only one incorporator, and this will now be allowed for banks as well.

AS 06.05.345. (b). Covered by the Corporations Code.

(c) - (j). Moved to new AS 06.05.344.

(k). Beginning of corporate existence is already covered in the Corporations Code.

AS 06.05.360. Foreign banks are permitted to engage in banking under new article 9.

AS 06.05.367. Most of this section is incorporated into new AS 06.05.565. Paragraph (2) is removed because we are no longer going to require FDIC insurance.

AS 06.05.380. (a) and (b). are the same as 350(b)(1).

(c). This is included in the comprehensive penalties section.

AS 06.05.390. Covered, with minor variations, by AS 10.06.490.

AS 06.05.395. Substance moved to and incorporated in AS 06.05.350(a).

AS 06.05.430. Covered by AS 10.06.405 and 10.06.415.

AS 06.05.435. (b). Covered by AS 10.06.223.

(e). Covered by AS 10.06.465.

AS 06.05.443. Combined with AS 06.05.445.

AS 06.05.465. Voluntary liquidations will now be covered under the same procedure as involuntary ones, i.e. under the control of the department. See AS 06.05.468(a) in Section 82 of the bill. Of course, if a bank wishes to voluntarily dissolve and there is no reason for the department to get significantly involved, the department can appoint the existing board as receiver.

AS 06.05.470. This section has been split up to make it more manageable. The substance of this section remains essentially unchanged.

(a). Substance moved to sec. 468(a).

(d). Now sec. 468(d).

(f). Now sec. 471(a).

(j) and (k). Now sec. 471(b) and (c).

(l) - (n). Now sec. 472.
(o) - (y). Now sec. 473.
(z). Now sec. 474.
AS 06.05.480. Moved to sec. 350(d).
AS 06.05.485. Moved to new sec. 262.
AS 06.05.490. Included in comprehensive penalties section, AS
06.01.035.
AS 06.05.495. Duplicative; same as sec. 470(g)(2).
AS 06.05.500 - 06.05.520. Covered by comprehensive penalties
section.
AS 06.05.525. Covered by AS 06.01.030.
AS 06.05.530. Obsolete.
AS 06.20.320(b). Covered by new comprehensive penalties
section, AS 06.01.035.
AS 06.25.060. Covered by comprehensive penalties section.
AS 06.25.070. Also covered by comprehensive penalties section.
AS 06.25.320. Also covered by comprehensive penalties section.
AS 06.30. Repeals state Savings Association Act.
AS 06.40.160(h). Covered by comprehensive penalties section.
AS 06.45.320. Covered by comprehensive penalties section.
AS 06.45.330. Also covered by comprehensive penalties section.

Section 97. Transitional provisions.

(a) Makes sure that the new Corporations Code applies to all banks.

(b) Requires existing banks to amend their articles to conform to the new code at the next regular annual meeting, and then file the amended articles with the department.

Section 98. Notes possible Court Rule change.

Section 99. Effective date 1/1/94.

SB

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 5, 1993

*The Honorable Rick Halford
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182*

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill providing for monetary incentives in the form of certain credits to be applied against taxes and other obligations to the state for oil- and gas-related geophysical and exploratory activities performed by a qualified applicant. This bill should provide a valuable tool for the state to encourage oil and gas exploration in Alaska.

The bill amends AS 41 by adding a new chapter, 09. The bill would permit a qualified applicant to receive certain credits that could be used to offset taxes, royalties, or bonuses due the state, if the applicant performed certain defined exploratory work. The bill does not require that the exploratory work be done exclusively on state land, since development on other land also benefits the state in the form of additional jobs, increased economic activity, and development of infrastructure. The bill, though, allows a credit not to exceed 50 percent of the eligible direct costs of activities performed on state-owned land as opposed to 25 percent of those costs on other land, to encourage development on state land. The applicant would be able to assign the credit to any other entity, including banks and security holders. The commissioner of natural resources is authorized to grant up to a total of \$50 million for all incentive credits to applicants under this program, with no single project receiving more than \$5,000,000 in credits.

The Honorable Rick Halford

March 5, 1993

Page 2

The applicant also must submit to the commissioner copies of all data derived from the exploratory activity.

The commissioner may display, but not distribute or transfer, certain geophysical data to others to generate interest in development of state oil and gas reserves. The bill provides protection for confidential data submitted similar to that already existing in other state laws for oil and gas exploration information submitted to the state.

I urge your prompt and favorable consideration of this bill.

Sincerely,

A handwritten signature in cursive script, reading "Walter J. Hickel". The signature is written in dark ink and is positioned above the printed name and title.

Walter J. Hickel
Governor

FISCAL NOTE

No. 2

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Bill Y on: SB 151

(S) Publish Date: 3-5-93

Revision Date Original Department Affected: Natural Resources
 Title: "An Act providing for exploration incentive credits for certain activities on certain land in the state" BRU: Resource Development
 Components: Oil & Gas Development
 Sponsor: Senate Rules for the Governor
 Requestor: _____ Component Serial No. 439

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE fund source:	0.0	0.0	0.0	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	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: \$ No fiscal impact anticipated

ANALYSIS: (Attach a separate page if necessary)
 As the fiscal note indicates, there is no fiscal impact to the Department of Natural Resources related to this proposed bill. There would be, however, a potential reduction in the revenue stream to the state which should be reflected in the fiscal note prepared by the Department of Revenue.

Prepared by: Jim Eason, Director Phone: 762-2547
 Division: Oil & Gas Development Date: 2-Mar-93
 Approved by Commissioner: Glenn A. Olds Date: 2-Mar-93
 Agency: Department of Natural Resources

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FISCAL NOTE

No. 1

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BI

Bill Version: SB 151

(S) Publish Date: 3-5-93

Revision Date: _____	Dept. Affected: <u>Revenue</u>
Title: <u>Oil & Gas Exploration Incentive Credits</u>	BRU: <u>Revenue Operations</u>
Sponsor: <u>Governor</u>	Component: <u>Oil & Gas Audit Division</u>
Requestor: <u>Governor</u>	COMPONENT SERIAL NO. <u>115</u>

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	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	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

ANALYSIS: (Attach a separate page if necessary)

* Over the 15 year term exploration credits could total between \$0 and \$50 million. It is impossible to predict the actual year of amount.

Prepared by:	Rod R. Mourant <i>[Signature]</i>	Phone: 465-2300
Division:	Commissioner's Office	Date: 3/2/93
Approved by Commissioner:	Darrel J. Rexwinkel <i>[Signature]</i>	Date: 3/2/93
Agency:	Revenue	

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Position Paper
Department of Natural Resources
Exploration Incentive Credit Bill
HB 200 & SB 151

The Exploration Incentive Credit Bill extends a program that already exists on State lands to all lands in the State. It provides a means for the State to obtain exploration data to which it would not normally be entitled. It may also encourage exploration on lands that will enhance the exploration of adjacent or nearby State lands.

Exploration Incentive Credits (EICs) are currently offered by the State as a means to encourage exploration on State lands. Under AS 38.05.180(i), the Commissioner of Natural resources may authorize the use of incentive credits to encourage exploration of state leases through either geophysical work or the drilling of a well. Geophysical EICs can be earned if the work is performed during the two seasons immediately preceding an announced lease sale on land included within the sale area, and if the geophysical work is made public following the sale. Drilling EICs are based on the footage drilled and the region in which the well is situated. The decision whether or not to offer credits is sale specific and is determined by evaluating the perceived geologic potential of the sale area as well as the perceived cost of exploration.

Under the current program, credits may not exceed 50 percent of the cost of drilling or geophysical work. Credits may be used during a limited period established by the commissioner and may be assigned during that period. Credits may be applied against oil and gas royalties and lease rentals or taxes payable under AS 43.55. A credit must not exceed 50 percent of the payment toward which it is being applied. Amounts due the Alaska Permanent Fund must be calculated before the application of credits.

Governor Hickel's proposal in HB 200 and SB 151 is to expand the current EIC program to all areas of the state, with certain modifications and restrictions. This new legislation provides an amount of \$50 million that may be used over a period of ten years, with each individual project capped at \$5 million. Credits of up to 50 percent on state-owned land and 25 percent on non state-owned land will be allowed. In contrast, the current EIC program has no time limit and no cap. The new legislation also provides for credits to be applied against income and other taxes in addition to the severance tax. The credits remain transferable under the provisions of this bill and, as with the current plan, amounts due the Permanent Fund must be calculated prior to application of any credits.

All data acquired under the EICs must be submitted to the commissioner. Well data will be held confidential for 24 months after submission, but no extension of this period of confidentiality will be allowed (i.e. all well data will become public 24 months after submission unless the company gives permission to release it sooner). Geophysical data will be allowed to be shown, but not transferred to, any interested party.

The Governor recognizes that activities on lands adjacent to, or nearby, State lands may significantly affect State land. This new legislation allows the commissioner discretion to provide credits to obtain data that the State otherwise would not be able to get. The State, by statute, can now get all seismic data gathered on State land only—but has no mechanism to obtain data on non-state owned land. The data obtained as a result of this legislation will enhance our knowledge of State lands, and the geophysical data may be used as a marketing tool to attract investors to State land.

SB

152

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 152

Revision Date: _____
Title: Weights and Measures Test/Violations
Sponsor: Judiciary
Requestor: _____

Department Affected: Commerce and Economic Development
BRU: Measurement Standards
Component: Measurement Standards
COMPONENT SERIAL NO. 349

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
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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 (FY 93) impact: None

ANALYSIS: (Attach a separate page if necessary.)

In 1986, certain modifications were made to AS 45.75 to provide the authority for Weigh Station Operators to issue citations for truck size and permit violations. The then present authority for Weights and Measures Inspectors to issue citations was inadvertently deleted.

Prepared by: Jennifer Breslin
Division: Measurement Standards

Phone: 345-7750
Date: 3/10/93

Approved by Commissioner: Paul Fuhs
Agency: Commerce and Economic Development

Date: 3-15-93

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OVERVIEW SB 152

The Division of Weights and Measures, Department of Territorial Police, enforced territorial weights and measures laws adopted in 1939. Devices found incorrect were marked "condemned for repairs" and had 90 days for repairs. The fine for penalty was \$500 or one year in jail.

The "Weights and Measures Act," Alaska Statute Title 45, Chapter 75, was enacted in 1961. Implementing regulation, Alaska Administrative Code, Title 3, Chapters 33 and 34, were adopted in 1964, establishing the Weights and Measures Program, requiring the testing and certification of accuracy of weighing and measuring devices used in commerce in Alaska.

The Division of Measurement Standards is charged with the responsibility of assuring that all weights and measures in commercial service within the state are suitable for their intended use and accurate to determine prices by weight, measure, or account and to test prepackaged commodities to ensure that the appropriate net weight, unit price, total price and product identification are stated on the label.

Currently the Weights and Measures Act requires the twice annual device and package testing of over 20,000 devices in 300 locations across the state. However, in view of declining financial resources, the division is in the process of rearranging its method of legislative requirements in the area of enforcement cycles, generating funds through "program receipts" and restructuring administrative practices in an effort to maximize existing resources and maintain a credible weights and measures program in the fast pace of technological advancements in the industry.

Weights and Measures officials currently have no enforcement mechanism requiring device owners and managers to comply with weights and measures regulations pertaining to the following but not limited to: Stop-use orders, removal of a state seal, misleading packaged commodities, removing a rejected tag, hindering or obstructing an inspector in the performance of official duties under this chapter, failing to register devices with the director, failure to pay registration fees and failure to keep accurate records of devices.

Prior to 1986, Weights and Measures Officials were authorized to issue citations for violations of the Weights and Measures Act. In 1986, changes were made to the Weights and Measures Act to authorize Weigh Station Operators to issue citations for violations of the truck size and permitting laws. In this process, the Weights and Measures Officials' authority inadvertently disappeared.

This proposed legislation will provide:

- the reestablishment of the Weights and Measures officials' authority allowing for effective administration and enforcement of the weights and measures regulations and, specifically, provide the authority to effectively enforce the registration fee requirements of the regulations.
- the ability to increase program receipts by ensuring that all who are obliged to register weighing and measuring devices will register and pay the fee.
- the director with the ability to better utilize available resources and improve the level of coverage of the state with an increase in the number of devices inspected and registered. The present law requires twice annual inspection for all weighing and measuring devices in the state. Since the enactment of the law in 1964, it has not been possible to meet the twice annual requirement. This change will allow the director to reduce the frequency of testing of certain types of devices that, through experience, do not require such frequent testing. This change will allow the division to redirect its efforts into areas that have not received as much attention because of the twice annual testing for all other devices.
- the ability to search our new devices used in commerce for testing and registration purposes.

The fiscal impact related to additional financial allocations is based on estimated devices in service across the state, funding generated through the "device registration" program receipts could optimistically total \$100.0 annually. Therefore, it is division management's position that the proposed changes in AS 45.75 would expedite collection of device registration fees and place basic policy powers in the day-to-day weights and measures regulatory process. Reducing the twice annual field device inspections would put the state and the division closer to a legal operation, also, allowing the director flexibility to efficiently administer the Weights and Measures program.

Edward Moses, Director
Division of Measurement Standards
Department of Commerce and
Economic Development

001.mos
031693a

3 AAC 32.710
 3 AAC 32.720
 3 AAC 32.730
 3 AAC 32.740
 3 AAC 32.750
 3 AAC 32.760

ARTICLE 13. WEIGHING AND MEASURING
 DEVICE REGISTRATION AND FEES

Section

- 700. Registration Required
- 710. Forms, Certificates, and Application
- 720. Term of Registration
- 730. Schedule of Fees
- 740. Past Due Fees
- 750. Transitional Provision
- 760. Definitions

3 AAC 32.700. REGISTRATION REQUIRED. A person who uses, or has in possession for the purpose of using, for a commercial purpose specified in AS 45.75.080, a new or used weighing or measuring device not previously used in commerce, must register the device with the Division of Measurement Standards and pay the registration fee before the device is used in commerce. (Eff. 8/15/91, Reg. 119)

Authority: AS 45.75.040
 AS 45.75.050
 AS 45.75.380

3 AAC 32.710. FORMS, CERTIFICATES, AND APPLICATION. Application for registration of a weighing or measuring device must be made on a form prescribed and furnished by the Division and must contain the information the Division requires. Upon completion of registration and receipt of the registration fee, the Division will provide a certificate or other evidence of device registration compliance to the registrant. (Eff. 8/15/91, Reg. 119)

Authority: AS 45.75.040
 AS 45.75.050
 AS 45.75.380

3 AAC 32.720. TERM OF REGISTRATION. Weighing and measuring device registrations expire on June 30 of each year. Application for renewal of registration, and the registration fee, are due by July 1 of each calendar year. (Eff. 8/15/91, Reg. 119)

Authority: AS 45.75.040
 AS 45.75.050
 AS 45.75.380

3 AAC 32.730. SCHEDULE OF FEES. The following registration fees apply for weighing and measuring devices:

(1) Liquid Measuring Devices:	
(A) Maximum Flow Rate	Annual Fee
(Manufacturer's rate)	
25 gpm	\$15
150 gpm	30
greater than 150 gpm	60
(B) Retail Remote Control, Indicating or Recording Unit	50
(C) Key Lock or Card Reader System	
25 gpm	15
150 gpm	30
greater than 150 gpm	60
(D) Bulk Plant Remote Indicating or Recording Unit	50

Revision Date: _____ Dept. Affected: Community & Regional Affairs
 Title: "An Act changing the frequency of certain state inspections of weights and measures . . ." BRU: _____
 Sponsor: Senate Judiciary Committee Component: _____
 Requestor: _____ COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	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	0.0	0.0	0.0

POSITIONS:

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

Estimate of current (FY94) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Remond Henderson *Remond Henderson* Director Phone: 465-4703
 Division: Administrative Services Date: 3/21/94
 Approved for the Commissioner by: Bruce Geraghty *Bruce Geraghty* Deputy Commissioner Date: 3/21/94
 Agency: Community & Regional Affairs

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SB 152: "An Act changing the frequency of certain state inspections of weights and measures and relating to the issuance of citations for weights and measures violations."

Prior to 1986, weights and measures inspectors had the authority to issue citations for weights and measures violations. Changes were made to AS 45.75 in 1986 to authorize weigh station operators to issue citations for truck size and permit violations. When these changes were made, the weights and measures inspectors were inadvertently stripped of their authority to issue citations. During the last year, the Division of Measurement Standards promulgated regulations that provide for the registration of all weighing and measuring devices with the division and the payment of an annual fee. To allow the division to adequately enforce AS 45.75, it is necessary for the weights and measures inspectors to have the authority to issue citations for those persons who choose to violate the law. Most, if not all, weights and measures jurisdictions in the United States and Canada possess this authority. This does not mean that a rash of new citations will be issued, but it does give the weights and measures official an effective enforcement tool.

Within current budget constraints, the division is unable to maintain semiannual inspections in all locations in Alaska. Amending AS 45.75.080 will allow the Director to establish inspection priorities based on inspection history of various device types, inspecting most devices at least annually, and others more often if necessary.


Paul Fuhs, Commissioner

Date

dgl/126pp.ms

SB

155

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450

FAX (907) 465-2029

Mail Stop 3101

130 Seward Street, Suite 409

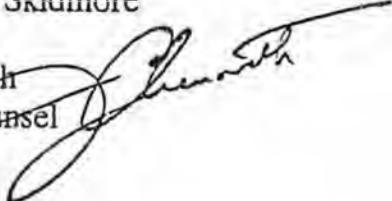
Juneau, Alaska 99801-2105

MEMORANDUM

March 22, 1993

SUBJECT: Senate Bill 155: Landlord-tenant law changes, orders of abatement, and omitted references to court rules changes (Work Order No. 8LS-0376\K.14)

TO: Senator Steve Frank
ATTN: David Skidmore

FROM: Jack Chenoweth
Legislative Counsel 

Chris Christensen of the Alaska Court System alerted me to the omission of two court rule references from Senate Bill 155. I think his observation is correct. The enclosed amendment is intended to respond to his communication.

Proposed for addition to the forcible entry and detainer law (AS 09.45.070 - 09.45.160) in SB 155 is a new section, bill section 6. It would add AS 09.45.125 and, in essence, give a landlord who prevails in a forcible entry and detainer action the right to apply to the court immediately for a writ of assistance to secure the eviction of the tenant. Chris pointed out that there are two civil rules--one generally applicable and one in the District Court rules--that impose automatic stays on court judgments, for ten and two days, respectively, in which a courts will not provide relief or otherwise support a prevailing party's efforts to secure relief under the judgment. Depending on whether a forcible entry and detainer action is heard and disposed of in superior court (in which case the ten day delay under the civil rule would apply) or in the district court (in which case the two day delay of the district court civil rule would be applicable), AS 09.45.125 sets aside the effect of the automatic stay in either case.

The proposed statute would modify the respective rules, so the court rule change process of article IV, section 15 of the state constitution should be followed and a two-thirds vote secured on the provision. Since that may not happen, I have added a provision that would set proposed AS 09.45.125 aside if that vote is not obtained.

JBC:gc
93-259.glc
Enclosure

PROPOSED AMENDMENT

A M E N D M E N T

OFFERED IN THE SENATE

TO: SB 155

Page 1, line 5, after "premises":

Insert "; and amending Rule 62(a) of the Alaska Rules of Civil Procedure and Rule 24(a) of the Alaska District Court Rules of Civil Procedure"

Page 12, following line 16:

Insert new bill sections to read:

"* Sec. 27. AS 09.45.125, added by sec. 6 of this Act, allowing orders to vacate and writs of assistance to issue at the same time as the entry of judgment c.: at any later date, has the effect of amending Rule 62(a) of the Alaska Rules of Civil Procedure and Rule 24(a) of the Alaska District Court Rules of Civil procedure by eliminating the respective periods of automatic stays of enforcement upon judgment for orders to vacate premises.

* Sec. 28. AS 09.45.125, added by sec. 6 of this Act, takes effect only if sec. 27 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska."

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 Anchorage Ph. (907) 561-7272 • Fax (907) 561-7278

770 8th Avenue, Suite D
 P.O. Box 72739
 Fairbanks, AK 99707

100 West International Airport Rd.
 Suite 207
 Anchorage, Alaska 99518

March 23, 1993

Sen. Steve Frank
 P.O. Box V
 Juneau, AK 99801-1182

RE: Support for SB155

Dear Sen. Frank:


I have read SB155, I have listened to several hundred landlords in Fairbanks, Anchorage and Juneau, I have had discussions with several organizations which help consumers, and I have read the discussions surrounding Sen. Pourchet's bill, SB35. To borrow text from Mr. Clockson, "this letter is submitted by me on my own behalf and on behalf of the thousands of tenants who live in" Alaska and on behalf of the approximately two hundred landlords who use our services.

I support SB155; it is reasonable. Furthermore, SB155 is beneficial to our communities. When tenants understand that their responsibility to their landlords is as important as paying their charge cards, or their automobile, bills on time--and certainly far more important than buying more beer and partying--then perhaps we'll have more civil neighborhoods. As property destruction is reduced, so, too, rents may be reduced because landlords won't have to pay out of pocket for unrecoverable damages. Our communities will become more livable, once again when tenants understand that landlords have been empowered to more quickly respond to tenants' negligent, illegal, or malicious behavior.

I will be available to testify via teleconference at tomorrow's State Affairs Committee hearing and may address further, more substantial, comments in a follow-up letter.

Thank you for your sponsorship and continued support of this bill.

Sincerely,


 Douglas W. Isaacson
 Alaska Statewide Director

phone 463-5580

MYRON W. KLEIN
3264 PIONEER AVENUE
JUNEAU, ALASKA 99801-1964

March 18, 1993

Honorable Steve Frank
P. O. Box V
Juneau, Alaska 99811

Dear Senator Frank:

I am writing in support of passage of SB 155, an act relating to landlords and tenants. I am in the business of renting apartments, mobile homes, mobile home space and commercial space in Juneau and Anchorage to over 150 tenants.

Prior to 1990, I rented apartments to tenants if the tenant could pay a security deposit of \$300. With such a small security deposit, over 70% of the tenants would move out owing unpaid rent, cleaning charges and damages. After applying the security deposit against the unpaid balance the average unpaid balance was about \$500. Even after sending the accounts to a collection agency, I am still owed over \$50,000 by former tenants.

Beginning in 1990, I required a tenant to pay a security deposit of approximately 1.5 times the monthly rent rate. Tenants who pay these larger deposits exhibit better financial and living conduct while living in my apartments. Tenants with large deposits leave an apartment owing very little rent, cleaning charges or damages. These tenants usually receive most of their security deposit back. I seldom lose money to tenants with large deposits.

Unfortunately for potential tenants, many can not find a place to live because of the large security deposit requirement. My records show that approximately 1 in eighteen callers is able to afford the security deposit and out of the 1 in eighteen callers, only half will qualify for the apartment based on income and rent history.

SB 155 will benefit landlords because it will enable them to protect their assets against losses and will benefit tenants because the amount of security deposit can be reduced. The shorter time cycles to evict non-paying, disruptive or abusive tenants will help reduce the potential loss a landlord may have to incur. Indeed, if a landlord could remove a non-paying, disruptive or abusive tenant as promptly as a hotel can, the amount of security deposit could be drastically reduced from its present level. Any reduction in the amount of time required to remove a non-paying,

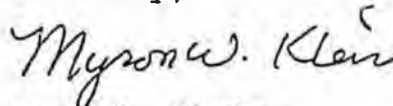
disruptive or abusive tenant reduces the cost of doing business. By reducing the cost and risk of doing business, the return on investment for rental property will improve and it will be that much sooner when new rental property is constructed.

A landlord is in the credit granting business because a consumer is allowed to take possession of an asset typically worth up to 100 times the amount of monthly rent. An apartment renting for \$850 in Juneau, presently costs about \$42,500 to acquire and about \$68,000 to build new. There is no other business where a consumer can take possession of such a valuable asset on so little security. A \$25,000 rental car can not be rented unless a major credit card is posted as security or a significant cash deposit is made. However, the rental company has a clause in its contract that treats the unauthorized retention of the car beyond the rental period as a theft. Consequently, the rental car company need only call the police and report the car as stolen to obtain prompt return. If prompt return is not obtained, the rental car company can claim a full loss against its insurance carrier. On the other hand, a landlord with twice as valuable an asset in the possession of a consumer, is required to go to court to repossess his asset. It is ironic that a landlord is the largest consumer credit grantor in the business community, but is denied the legal right to promptly repossess his property when its use is not being compensated for or the property is undergoing daily damage by the possessor.

SB will help reduce that disparity. It will reduce the cost of doing business for landlords. It will improve the opportunity for potential tenants to find affordable living accommodations. Prompt pay, non-disruptive or non-abusive tenants will have better access to housing and will not have to tolerate a noisy disruptive neighbor for as long a period as under present law. A landlord will be able to take quicker action to evict a tenant whose drug or alcohol activity is affecting children in neighboring apartments.

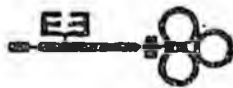
I urge passage of SB 155.

Sincerely,



Myron W. Klein

Helms Properties



1434 Fairbanks, Alaska 99701
1434 Lacey Street

Fairbanks, Alaska 99701
(907) 452-2905

March 7, 1993

SENATOR: STEVE FRANK

I have been a landlord in Alaska for over thirty years. I have come to the conclusion that there needs to be some changes made in the current law to give protection to the landlord. As the law reads now the landlord has basically no rights.

I would like to encourage you to support the working draft introduced by Senator Steve Frank. The proposed changes are fair and reasonable. I hope you would also come to the same conclusion as I and give this proposed bill your enthusiastic support.

Sincerely,

Charles Helms
1434 Lacey St.
Fbks, AK 99701

March 5, 1993

RECEIVED MAR - 6 1993

Senator Steve Frank
State Capitol
Juneau, Alaska 99801-1182

Hon. Frank Alaska State Senator;

I am writing asking your support of the bill dealing with tenant landlord relations.

I along with my son-inlaw and daughter own one hundred and twenty four rental units--located in apartments from a twenty seven unit down to four plexs in the Fairbanks area.

The present law is totally inadequate. Good tenants have no fear of the proposed new law--only the drunks and irresponsible people who create unreasonable situations.

In 1988 I purchased my first 4/plex. It had two tenants and three bitch dogs who had produced thirty-six pups in the apartment that year. After taking possession I hand gave them a ten day eviction notice. With the help of a lawyer and a judge they were finally evicted seventy days after my eviction notice.

The cost to redo the two bedroom apartment extended well over \$5,000. Welcome to being a landlord.

I believe this new bill could address some of these problems.

Thanks for your consideration.

Sincerely yours,


Donald R. Blanc

415 5th Ave.

Fairbanks, Alaska 99701

PETITION

We, the undersigned, are supporters of SB155/HB222, as introduced. These bills revise the Landlord Tenant Act to make the laws apply more equally between landlords and tenants.

#	Signature	Print Name	Address	Landlord	No. Units	Tenant	Other
1	<i>Holly Hoff</i>	HOLLY HOFF	99801 JUNEAU 1050 Salmon Ct NW B202	✓	26		
2	<i>[Signature]</i>	DOUGLAS W. ISAACSON	PO BOX 72739 FEB 99707				✓
3	<i>Cathy Crawford</i>	Cathy Crawford	8085 Glacier Hwy #101				
4	<i>Jim Wilcox Sr</i>	Jim Wilcox Sr	1914 Churchill St #104	✓	200		
5	<i>Victoria Wilson</i>	Victoria Wilson	P.O. Box 21847	✓	2		✓
6	<i>Maria Mattson</i>	Maria Mattson	8800-219 Glacier Hwy	✓	100		
7	<i>John Williams</i>	John Williams	" " " "	✓			
8	<i>Marty Holmberg</i>	Marty Holmberg	7833 N. Douglas Hwy	✓	9		
9	<i>J. Linnert</i>	J. Linnert	4193 Columbia Blvd.				✓
10	<i>Dale R. Mazzei</i>	Dale R. MAZZEI	1717 Douglas Hwy #10	✓	10		
11	<i>Cindy K. Flanigan</i>	Cindy K. Flanigan	8363 Old Glacier Rd				✓
12	<i>Lorilyn E. Swanson</i>	Lorilyn E. Swanson	" " "		75		✓
13	<i>Donald R. Schultz</i>	DONALD R. SCHULTZ	P.O. Box 34662, JUNO 99803	✓	200		
14	<i>Judy Schultz</i>	JUDY SCHULTZ	P.O. Box 34662, JAN 99803				✓
15							
16							
17							
18							

March 19, 1993

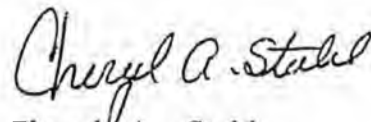
Senator Steve Frank
State Capitol
Juneau, AK 99801-1182

Dear Senator Frank:

I am in support of SB155 to change the landlord/tenant laws. These changes are not meant to hurt the good tenant, but would help support the landlords in keeping their apartments in good shape for all tenants when and if there is one bad apple in the bunch. As it stands right now, the good tenants are also in jeopardy when there is someone that is being obnoxious and knows that the landlord can't do anything legally to evict them.

The new changes are not meant to help the landlord have the upper hand but to make the laws more equal, both for the good tenant and the landlord. I do not believe that these laws are too outrageous as most other states have similar and sometimes stricter laws to protect the landlord from vandalism, violence and non-payment of rent.

Sincerely,



Cheryl A. Stahl
P.O.B 56627
North Pole, AK 99705