

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8505 SENATE TRANSPORTATION

AIRPORT	On-A/P Rental Car	Off-A/P Rental Car	AIRPORT	On-A/P Rental Car	Off-A/P Rental Car
Lindberg Field San Diego	\$100 per vehicle/six months + 10% of gross	\$100 per vehicle/six months + 7% of gross with \$300,000 exemption	Minneapolis - St. Paul International Airport	8 1/5% of gross <b>OR</b> minimum guarantee	\$1.75/transaction + \$500 annual permit
Louisville	-----	10% of gross	Nashville	10% of gross <b>OR</b> minimum guarantee + rent of parking	\$75 per month
Massachusetts Port Authority -- Logan International Airport	10% of gross + Counter fee + service facility & vehicle storage lease	< 50 trips/month \$25 per vehicle 50-150 trips/mo \$50 per vehicle 151-500 trips/mo. \$100 per vehicle 501-1000 trips/mo. \$150 per vehicle	New Orleans Aviation Board	est. 8-9% of gross	7% of gross
Maryland Department of Transit - BWI	% of gross	\$25 per year per vehicle	Port Authority of NYNJ Aviation Department	12.5% of gross + Lease agreement	8.5% of gross
Memphis - Shelby County Airport Authority	8% of gross	8% of gross	Pearson International Airport	Counter rent + Parking + Min. guarantee <b>OR</b> 10.5% of gross	-----
Metropolitan Knoxville Airport Authority	10% of gross + \$10 sq/ft counter rent + ready car space rent	10% of gross	Phoenix Sky Harbor International Airport	10% of gross	7% of gross
Philadelphia International Airport	Rent + 10% of gross	-----			

INFORMATION TAKEN VERBATIM FROM THE PARKING PROFESSIONAL APRIL 1992 EDITION

AIRPORT	On-A/P Rental Car	Off-A/P Rental Car	AIRPORT	On-A/P Rental Car	Off-A/P Rental Car
Pittsburgh	-----	Same as shared ride hotel & motel	San Jose International	10% of gross	8% of gross
Port of Portland	Counter lease agreement	\$0.25 - 0.75 based on vehicle weight + 5% of gross	Santa Barbara Municipal Airport	9.5% of gross	-----
Quad City Airport Illinois	10% of gross with \$40,000/year min.	8% of gross with \$6,000/year min.	Sarasota Bradenton Airport	10% of gross + ready car space rent + counter space rent	10% of gross
Robert Mueller Municipal Airport, Austin	% of gross, sliding scale, depending on revenues	8% of gross	Port of Seattle	10% of gross	4% of gross with \$480,000 exclusion
Sacramento Metro Airport	10% of gross	-----	Springfield Regional Airport	10% of gross + \$4.25 sq/ft counter + \$10 ready space fee	7% of gross (In process of revising)
Salt Lake City Airport Authority RATES EFFECTIVE JULY 1992	Counter rent + car ready/return space + 10% of gross	Trip Fees: <5 pass. \$0.59 6-12 pass., \$0.74 13-24 pass., \$1.11 >24 pass., \$1.48	Stapleton International Airport	10% of gross + Trip fee if over 12 trips per hour TRIP FEE: Vehicle size: ( < 19 ft) \$0.28 first 15 mins./ \$0.75 each add'l 10 minutes  (19-30 ft) \$0.65 first 15 mins./ \$1.25 each add'l 10 minutes  (> 30 ft) \$0.90 first 25 mins./ \$1.75 each add'l 10 minutes	With telephone center \$10 per car with pass. arriving at airport <b>OR</b> Without telephone center, \$6 per car with pass. arriving at airport + trip fee same as airport car rental companies
City of San Antonio	Counter lease fee	-----			
City & County of San Francisco	est. 10% of gross	7% of gross with \$1 million exclusion			

INFORMATION TAKEN VERBATIM FROM THE PARKING PROFESSIONAL APRIL 1992 EDITION

AIRPORT	On-A/P Rental Car	Off-A/P Rental Car	AIRPORT	On-A/P Rental Car	Off-A/P Rental Car
Transport Canada Airports	Counter rent + parking space rent + min. Guarantee <b>OR</b> % of gross (small airports 5-10%; lg airports 10.5%)	-----	Washington National	Does not charge any type of vehicle except taxi, but this will be changing sometime in 1992.	
Tucson Airport	10% of gross	7.5% of gross	Airport Authority of Washoe County - Reno Cannon International Airport	10% of gross + \$20 ready return space rent + service facility rent + counter rent	Must choose 1 of 2 contract terms: a) Charge per contract written up to 3,000 contracts with 10% gross for > 3,000 contracts <b>OR</b> b) 7.5% of gross
Washington Dulles	-----	No Charge	Will Rogers' World Airport	-----	\$400 per year per vehicle

INFORMATION TAKEN VERBATIM FROM THE PARKING PROFESSIONAL APRIL 1992 EDITION

## OFF AIRPORT RENTAL CAR PERCENTAGE FEES AT U.S. AIRPORTS

<u>AIRPORT</u>	<u>PERCENTAGE</u>
<b><u>Large Hubs</u></b>	
Tampa	9% of gross; \$500K exclusion
Atlanta	8% of gross
Phoenix	7% of gross
Pittsburgh	8% of gross
DFW	8% of gross
San Francisco	7% of gross
Seattle	4% of gross; \$40K/mo exclusion
Orlando	8% of gross
<b><u>Medium Hubs</u></b>	
Burbank	8% of gross
El Paso	7% of gross
John Wayne	9% of gross
Memphis	8% of gross
Raleigh-Durham	10% of gross
Reno	7% of gross
San Jose	8% of gross plus \$200 per month permit fee; \$20,000 exclusion
Sacramento	10% of gross; \$12,500 exclusion
Norfolk	8% of gross; \$50,000 exclusion
Kansas City	7% of gross
Indianapolis	7% of gross
Portland	5% of gross plus \$.25 - \$.75 per vehicle/per trip based on weight
<b><u>Small Hubs</u></b>	
Austin Straubel	10% of gross
Birmingham	6% of gross
Charleston	8% of gross
Colorado Springs	5% of gross
Dayton	8% of gross (1st million) 9% of gross (2nd million) 9% of gross over 2 million
Fresno	7%; \$75,000 exclusion
Ft. Wayne	4% of gross
Knoxville	10% of gross
Louisville	10% of gross
Harrisburg	10% of gross
Quad City	8% of gross with \$6,000 minimum
Springfield Regional	7% of gross

**Partial List of Court Decisions  
Upholding Off-Airport Car Rental Operator Fees**

Alamo Rent-a-Car v. City of Palm Springs, 955 F.2d 30 (9th Cir. 1992)

Alamo Rent-A-Car v. Sarasota-Manatee Airport Authority, 906 F.2d 516 (11th Cir. 1990) cert. den. 111 S.Ct. 1073, 112 L.Ed.2d 1179 (1991)

Alamo Rent-A-Car, Inc. v. Sarasota-Manatee Airport Authority, 825 F.2d 367 (11th Cir. 1987). cert. den. 108 S. Ct. 1022, 484 U.S. 1063, 98 L.Ed.2d 987 (1988)

Budget Rent-a-Car Systems, Inc. v. County of Wayne, 742 F.Supp. 947 (E.D. Michigan, S.D. 1990)

Airline Car Rental, Inc. v. Shreveport Airport Authority, 667 F.Supp. 293 (W.D.La 1987)

Airline Car Rental, Inc. v. Shreveport Airport Authority, 667 F.Supp. 303 (W.D.La 1987)

Jacksonville Port Authority v. Alamo Rent-A-Car, Inc., 600 So.2d. 1159 (1st D. Ct. App. Fla, 1992)

Westrac, Inc. v. Walker Field, Colorado, Public Airport Authority, 812 P.2d 714 (Col. Ct. App. 1991)

Enterprise Management, Inc. v. Huntsville-Madison County Airport Authority, 601 So.2d. 897 (Ala. 1992)

Thrifty Rent-A-Car System, Inc. v. City and County of Denver, 833 P.2d 852 (Colo Ct. App. 1992)

**INDEMNIFICATION AND INSURANCE**

A. The Concessionaire shall indemnify, save harmless, and defend the State, its agents, and its employees from any and all claims or actions for injuries or damages sustained by any person or property arising directly or indirectly from the Concessionaire's use and occupancy of the Premises or from the Concessionaire's exercise of the rights and privileges granted by this Agreement; however, this provision has no effect if, but only if, the sole proximate cause of the injury or damage is the State's negligence.

B. At no expense to the State, the Concessionaire shall secure and keep in force throughout the term of this Agreement insurance with a carrier or carriers satisfactory to the State. The insurance must cover injury to person and/or property suffered by the State or a third party as a result of any act of commission or omission by the Concessionaire which arises both out of and during the term of this Agreement. The insurance must also provide protection against injuries to all people employed by the Concessionaire in connection with this Agreement.

(i) The Concessionaire must provide the State with evidence that the required insurance has been secured and the premiums paid. The evidence shall consist of policies or certificate(s) of insurance and shall show the types of coverage secured.

(ii) All insurance obtained by the Concessionaire in compliance with this Agreement must provide that the State be notified by the insurance carrier at least thirty (30) days prior to any termination, cancellation, non-renewal or material change.

C. The following coverages are required under this Agreement. Where specific limits are stipulated below, it is understood that they shall be the minimum acceptable limits. If the Concessionaire's policy, as provided, contains higher limits, the State shall be entitled to coverage to the extent of such higher limits.

(i) Worker's Compensation Insurance: The Concessionaire shall provide and maintain, for all employees of the Concessionaire engaged in work related to this Agreement, Worker's Compensation Insurance as required by the Worker's Compensation Act and the insurance laws of Alaska. The policies shall contain a Waiver of Subrogation Clause precluding the carrier(s) from compensation from the State.

(ii) Comprehensive General Liability Insurance with coverage of not less than \$300,000 combined single limit to include: Bodily Injury and Property Damage Liability for Premises-Operations, Products/Completed Operations, Blanket Contractual Liability, Broad Form Property Damage, and Liability; OR equivalent thereto. The State shall be named as an "Additional Insured" under all coverages of these policies as they pertain to this Agreement.

(iii) Automobile Liability Insurance: Such insurance shall cover all owned, hired and non-owned motor vehicles and provide coverage of not less than \$300,000 combined single limit.

D. The requirement for insurance coverage does not relieve the Concessionaire of any other obligation under this Agreement.

**AUDITS, REPORTS, BOOKS AND RECORDS**

1. In order to provide a satisfactory basis for being able to determine payment due the State hereunder, the Concessionaire must establish and maintain books and records with respect to the operation and services authorized by this Agreement, in accordance with generally accepted accounting principles. The Concessionaire's books and records must, in the determination of the State, enable the Concessionaire to accurately report, and the State to easily check, the payments due the State hereunder.

2. All books, ledgers, journals, accounts and records related to the Business performed under this Agreement shall be open for examination and audit by the State, during ordinary business hours. The State will have the option of either having the necessary books transported to a location on the Airport for said examination or audit or have the audit performed at a location where the Concessionaire maintains the records. If the Concessionaire's place of business and record keeping is outside Anchorage, Alaska, and if the State elects to have the audit performed at a location outside Anchorage, Alaska, the Concessionaire will pay the State for the audit costs incurred. The audit costs will include round trip air and ground transportation from the auditor's duty station to the location at which the books and records are maintained as well as per diem at the then current rate for each day of travel and on-site audit work. Subsequent to the audit, the State will bill the Concessionaire for the costs incurred and the billing will be supported by a copy of the travel authorization form then currently in use by the State.

3. Should any examination, inspection or audit of Concessionaire's books and records by the State disclose an underpayment by Concessionaire, the Concessionaire shall promptly pay the difference including all costs incurred in the conduct of the examination or audit plus interest as specified in Article IV, Payments. If the difference is collected by the State through litigation, the Concessionaire shall be liable to the State for its full costs and attorney's fees incurred to collect such underpayment. Further, the Concessionaire shall be liable for such full costs and attorney's fees in the event of any legal action to levy and collect on the payment bond under Article V or any and all actions to collect monies due the State.

4. All books, figures, records, reports, and statements submitted to the State by the Concessionaire become public information which is available for public review.

5. Concessionaire shall furnish the State with such other financial or statistical reports as the State may require from time to time regarding the concession or components thereof. This subsection shall not be construed as requiring the Concessionaire to submit data to the State which is in the nature of confidential business information or trade secrets.

6. Within sixty (60) days after the end of the calendar year during the term of this Agreement, the Concessionaire must furnish the State's Airport Director with a true and accurate financial statement reflecting the Concessionaire's Gross Sales derived from Business transacted under this Agreement during the preceding calendar year. The statement must be verified and signed by a Certified Public Accountant.

7. In the event the State does not specifically object to the contents of any report or statement furnished to it by Concessionaire within three (3) years from the date on which the report or statement is furnished to the State, the contents of any report or statement will be conclusively deemed to be true and correct unless it can be established that the report or statement was fraudulently prepared.

8. The Concessionaire agrees to use serially numbered documents for each transaction and shall keep record of all such documents, both used and unused.

9. The Concessionaire hereby agrees to maintain the following information regarding Valet Parking Service, as part of the Certified Activity Report stated in Article IV:

Throughout the term of this Agreement and in accordance with generally accepted accounting principles, the Concessionaire must establish and maintain a separate set of books and records devoted exclusively to the Concessionaire's Valet Parking Service. These books and records shall enable the Concessionaire to accurately report, and enable the State to easily check, its monthly and annual reports of Gross Sales derived from Valet Parking Service. Included shall be such books, ledgers, journals, accounts and records wherein all entries are kept reflecting all of the Concessionaire's Valet Parking Service Transactions.

10. In addition to the reports and records specifically required by this Article, the Concessionaire shall supply to the State any other reasonable financial or statistical reports related to this Agreement that the State may require during the term of this Agreement.

H. "Gross Sales": Gross Sales, as used in this Agreement, shall include:

- (i) All monies paid or payable to the Concessionaire for Net Time and Mileage whether for cash or credit under a Transaction entered into on the Airport, regardless of when or whether paid for or not and regardless of location assignment of the Automobiles and without regard to the manner in which, or place at which, the Automobiles are furnished to Concessionaire's customers, and without regard to whether the Automobiles are returned to the Airport or to some other location.
- (ii) All Net time and Mileage revenue from any Automobile exchanged from Concessionaire's Anchorage area operations for an Automobile originally rented at the Airport.
- (iii) All monies paid or payable to Concessionaire as Valet Parking Service charges.

The following are exclusions from this definition:

- (i) The difference between the regular rental/sales price and the actual rental/sales price in the case of discount transactions. (Only the net rental/sales price will be included in "Gross Sales".)
- (ii) The amount of any rental/sales taxes, so-called "luxury taxes", consumer excise taxes, and other similar taxes imposed by any federal, state, municipal, or governmental authority directly upon the rent of vehicles, now or hereafter, when such taxes are added separately to the rental price thereof and collected from customers at the time of Transaction. All taxes must be properly recorded and accounted for. No franchise or capital stock tax and no income or similar tax based upon income or profits as such will be deducted from Gross Sales.
- (iii) Receipts from the sale of waste or scrap materials resulting from the Concessionaire's Business at the Terminal.
- (iv) Receipts from the sale or trade-in value of any furniture, fixture, equipment or vehicles used upon the Premises and owned by Concessionaire, which are not considered stock in trade.
- (v) The value of any merchandise, supplies, equipment or vehicles exchanged or transferred from or to other locations of Business of the Concessionaire where the exchange or transfer is not made for the purpose of avoiding a sale by Concessionaire which otherwise would be made at or from the Premises.
- (vi) Receipts in the form of refunds from, or the value of, merchandise, supplies or equipment returned to shippers, suppliers, or manufacturers.
- (vii) Receipts with respect to any Transaction where the subject of the Transaction or some part thereof is thereafter returned by

the purchaser to and accepted by Concessionaire, to the extent of any refund actually granted or adjustment actually made either in the form of cash or credit.

(viii) Receipts from the sale at cost of uniforms or clothing to Concessionaire's employees where the uniforms or clothing are required to be worn by the employees.

(ix) Charges for damages to Concessionaire's Automobiles collected from the customer, incurred while the Automobile was in the customer's custody, or illegal use of Concessionaire's Automobiles.

(x) Collision insurance revenues and "Rent It Here - Leave It There" service charges.

(xi) Fees from sales of automobile liability insurance and personal accident insurance.

(xii) Replacement fuel charges.

The Concessionaire will not be credited with, nor allowed to have, any reduction in the amount of the Gross Sales as hereinabove defined which results from any arrangements for illegal rebates or illegal kickbacks or illegal hidden credits given or allowed to customers.

# AVIS

Licensee

Alaska Rent A Car  
Inc.

P.O. Box 190028  
Anchorage, Alaska 99519-0028

Telephone: (907) 243-4300  
Fax: (907) 243-2294

March 14, 1994

Senator Sharp  
State Capitol  
Juneau, Alaska 99801-1182

Dear Senator Sharp:

**PLEASE STOP SENATE BILL #343 NOW!**

As an Alaskan owned and operated business since 1955 we have always paid our fair share to both State and City airports throughout Alaska for the privilege of being on airport.

In 1993, at the Anchorage Airport, six car rental companies: AVIS, Alamo, Budget, National, Hertz and Payless combined to pay the State of Alaska \$1,977,639 in concession fees. Meanwhile, our off-airport competitors have enjoyed free and unobstructed access to customers at the airport that we have to pay for.

Many states have legislation in place that levies an access charge to off-airport car rental companies who routinely pick up customers at state run airports. Let's turn this bill around to do the same.

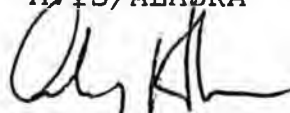
At a time when the State of Alaska needs every dime that it is entitled to, please don't handcuff the airports' ability to provide revenue enhancements by finally making our free-loading competitors start paying their fair share!

This bill is nothing more than a protectionist measure at a time when the State cannot afford to lose any legitimate revenue sources.

Thank you for your consideration.

Sincerely,

AVIS/ALASKA



Andrew J. Halcro  
Director of Sales & Marketing

:cm

LETTERS OF SUPP/OPP.



Sent Via Facsimile

March 24, 1994

Senator Bert Sharp  
State Capitol  
Juneau, AK 99801

RE: Senate Bill No. 343

"An Act relating to the operation of courtesy cars at certain airports."

I support the aforementioned Senate Bill. My company, Payless Car Rental of Alaska operates in both the Anchorage and Fairbanks International Airport Terminals. It may seem unusual for an in terminal operator to support this Bill. I will explain why this position is taken.

Most in-terminal operators will attempt to make the case that off airport operators pay nothing for the "privilege" to pick up their customers at the airport. The in terminals must pay a percentage of their revenue to the airport. This amounts to a substantial amount of revenue paid to the airport. It sounds like a convincing argument. They neglect to remind you that they pay for this fee voluntarily. Why should they do this? Because it is more of an advantage to be in terminal than off airport. The off airport fee has the opposite effect. It benefits the in terminal operators. The effects of the fees also reaches every business and their efforts to control costs. For example, a fishing charter service in Kenai who books rentals for their clients will see an increase of 10 to 15%. He will consider doing business with an in terminal company instead. This takes money out of the outlying communities.

The airport outlines their goals in the "Off Airport Rental Car Privilege Fees" publication. They want to preserve existing revenue and generate additional revenue. There is no evidence in terminal operators want to move off airport. In fact, rental car revenue is increasing considerably. Another goal of the airport is to ensure that businesses pay fees consistent with the benefits they derive from the airports. Even though they do not pay any fees, they are already receiving benefits consistent from business derived from the airports. Remember, the airport won't even allow off airport operators to conduct business in-terminal because this is reserved for the elite six (6) companies. Another airport goal is to provide a high level of service to the traveling public with convenient transfer from air to ground transportation. Again, they will accomplish the opposite. People who rent off airport want to rent off airport. The transfer from air to ground transportation conveniently is debatable. This certainly is not the case at the Anchorage International Airport. Finding the transportation lobby and then your car has its disadvantages.

The airport is concerned about in terminal companies moving off airport. They claim the loss of revenue will be substantial. There is not any indication this is happening in Anchorage. They are really concerned that a major company would move off airport. If this is the case, then the airport is protecting

*Alaska Dial-A-Car, Inc. d/b/a Payless Car Rental  
Fairbanks International Airport Terminal*

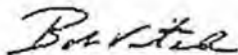
*P.O. Box 61500 • Fairbanks, Alaska 99706 • Telephone (907) 474-0177 Fax (907) 479-0190*

the major companies at the expense of the smaller ones. It is not right that the airport through the State of Alaska, Department of Transportation, should enact regulations protecting big business over small

This Bill amends the current Statute by adding Auto Rental Courtesy Cars as exempting from fees. Considering the limited number of off airport companies, isn't possible the imposition of fees could be devastating. The major rental companies will greatly benefit from these fees. I'm sure the Airport would like to tap into that industries revenue. The result would be many times what the off airport rental agencies will bring. It looks like the off airports are an easy target.

By passing this Bill, you will help off airport companies to provide the service needed and demanded of the traveling public. It would be an injustice if the Airports, in the name of the State Government, would intrude in a business that has been in existence for as long as anyone can remember.

Sincerely,



Bob Vitale  
President  
ALASKA DIAL-A-CAR, Inc.



# RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

  
Signature of Camera Operator

11/6/97  
Date

**SCR**

**2**

**BILL NO:** SCR 2

**DATE:** March 15, 1993

**TITLE:** "Relating to certification of the Alaska State Legislature's opposition to requiring suspension of a driver's license for drug offenses"

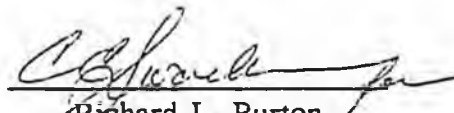
**CONTACT:** C.E. Swackhammer  
Deputy Commissioner  
465-4322

SCR 2 fulfills an urgent federal mandate that, if ignored, will result in the loss of millions of dollars in Federal Highway funding.

This bill ensures that the Department of Transportation and Public Facilities avoids federal penalty of the loss of highway funds in Federal Fiscal Years 1994 and 1995 of five percent, and ten percent in Federal Fiscal Years 1996 and beyond.

Federal law requires submission of laws requiring license revocation of drug offenders or a resolution stating they are opposed to the program by April 1, 1993, to avoid imposition of the penalty on October 1, 1993. Many of the states submitting laws are not meeting the requirements specified in the final Federal Rule published in August 1992.

The Department of Public Safety recommends the passage of any legislation which will ensure that the Department of Transportation funds are not penalized.

  
Richard L. Burton  
Commissioner



STATE OF UTAH  
OFFICE OF THE GOVERNOR  
SALT LAKE CITY  
84114

NORMAN H. BANGERTER  
GOVERNOR

March 16, 1992

Mr. Andrew H. Card  
Secretary of Transportation  
U.S. Department of Transportation  
400 7th Street, S.W.  
Washington, D.C. 20590

Dear Secretary Card:

Section 333 of the FY-1991 U.S. Department of Transportation Appropriations Act (Public Law 101-516, Sec. 333) requires withholding of certain Federal-aid Highway Funds if certain legislation is not passed by individual states. However, this same act provides for exclusion from the penalties if the State Legislature and Governor certify that they oppose enactment of the specified legislation.

This letter is to inform you that the Utah State Legislature considered legislation which would have required the revocation or suspension of a person's driver's license if convicted on any drug-related offense. The legislation was not passed by either house. The Legislature passed a resolution, in which I concurred, which outlined our opposition to the suggested legislation. A copy is enclosed for your inspection and record.

I would like to point out that our failure to enact the legislation suggested by Congress does not indicate any laxness on our part in fighting drug and alcohol use and their impacts on traffic safety. Utah has some of the most stringent DUI laws in the country and very aggressive enforcement of them. We also have a law which revokes or suspends the driver's license of juveniles convicted of any drug-related offense. We feel that our current laws provide for sufficient deterrence of drug abuse.

Sincerely,

Norman H. Bangarter  
Governor

NHB/ehf

Enclosure

cc: Don Steinke, Federal Highway Administration  
Doug Bodrero, Department of Public Safety



" ORIGINAL SIGNED BY  
PRESIDENT AND SPEAKER, 901

SIGNED BY GOVERNOR

DATE: 2-21-91CHAPTER NO: NoneORIGINAL SENATE  
JOINT RESOLUTION  
NO. 0021

## ENROLLED JOINT RESOLUTION NO. 5, SENATE

FIFTY-FIRST LEGISLATURE OF THE STATE OF WYOMING  
1991 GENERAL SESSION

A JOINT RESOLUTION requesting Congress to allow each state the right to determine and impose appropriate sanctions upon the driving privileges of drug offenders within state boundaries.

WHEREAS, Congress has imposed sanctions upon the several states through the withholding of apportioned federal aid highway funds in an attempt to strengthen and encourage state efforts in preventing drug abuse through penalizing drug offenders; and

WHEREAS, while drug abuse remains to be a paramount and priority national problem, the imposition of federal highway fund sanctions upon states does not appropriately address or respond to the problem; and

WHEREAS, state officials are eminently more qualified to regulate and control the privilege of operating motor vehicles on roadways within their respective state jurisdictions.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE LEGISLATURE OF THE STATE OF WYOMING:

Section 1. That the legislature opposes enactment or enforcement in this state of a federally mandated law relating to revocation, suspension, issuance or reinstatement of driver's licenses to convicted drug offenders as described in 23 U.S.C. 104(a)(3)(A).

Section 2. That Congress repeal 23 U.S.C. 104(a)(2) and (3) and allow states the right to determine and impose appropriate sanctions upon driving privileges of drug offenders within state boundaries.

Section 3. That this resolution is intended to satisfy the requirement under 23 U.S.C. 104(a)(3)(B)(11) which will protect

ORIGINAL SENATE  
JOINT RESOLUTION  
NO. 0021

ENROLLED JOINT RESOLUTION NO. 5, SENATE  
FIFTY-FIRST LEGISLATURE OF THE STATE OF WYOMING  
1991 GENERAL SESSION

the state of Wyoming from the loss of federal highway funds  
under 23 U.S.C. 104(a)(3).

Section 4. That the Secretary of State of Wyoming transmit  
copies of this resolution to the President of the United States,  
to the President of the Senate and the Speaker of the House of  
Representatives of the United States Congress, to the United  
States Secretary of Transportation and to the Wyoming Congres-  
sional Delegation.

(END)

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Governor

TIME APPROVED: \_\_\_\_\_

DATE APPROVED: \_\_\_\_\_

(ORIGINAL SIGNED BY  
PRESIDENT AND SPEAKER)

SIGNED BY GOVERNOR

DATE: 2-21-91

CHAPTER NO: None

SEC. 330. (a) **AUXILIARY FLIGHT SERVICE STATION PROGRAM.**—The Administrator of the Federal Aviation Administration shall develop and implement a system of manned auxiliary flight service stations. The auxiliary flight service stations shall supplement the services of the planned consolidation to 51 automated flight service stations under the flight service station modernization program. Auxiliary flight service stations shall be located in areas of unique weather or operational conditions which are critical to the safety of flight. Not later than 180 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall report to Congress with the plan and schedule for implementation of this section.

(b) **NATIONAL WEATHER GRAPHICS SYSTEM.**—None of the funds made available in this Act may be used by the Federal Aviation Administration for a new National Weather Graphics System.

SEC. 331. **NATIONAL 55 MPH SPEED LIMIT ENFORCEMENT PENALTIES.**—Notwithstanding sections 141(a) and 154 of title 23, United States Code, none of the funds in this or any previous or subsequent Act shall be used for the purpose of reducing or reserving any portion of a State's apportionment of Federal-aid highway funds as required by section 154(f) of title 23, United States Code, for reason of noncompliance with the criteria of that subsection during fiscal year 1989. The Secretary shall promptly restore any apportionments which, prior to enactment of this Act, were reduced or reserved from obligation for reason of noncompliance under section 154(f) during said fiscal year.

SEC. 332. Unless specifically provided in this Act, none of the funds in this Act shall be available to initiate multiyear contracts for a program which meets the criteria of a Level I or Level II major system acquisition as defined by Department of Transportation Order 4200.14 if the total value of procurement end items in the contract, including options, exceeds \$100,000,000: *Provided*, That for the purposes of this section, a multiyear contract is defined as one which provides for more than one year's requirements of systems, subsystems, or components within a single contract: *Provided further*, That none of the funds in this Act shall be available to initiate contracts for major systems acquisition which include procurement options where funding for those options is scheduled to be provided prior to delivery to the Federal Government of at least fifty per centum of all units previously ordered under that contract.

SEC. 333. For each fiscal year the Secretary of Transportation shall withhold five per centum of the amount required to be apportioned to any State under each of paragraphs (1), (2), (5), and (6) of section 104(b) on the first day of each fiscal year which begins after the second full calendar year following the date of enactment of this section if the State does not meet the requirements of paragraph (3) on such date.

Subsections (a)(2), (a)(3), (b), and (c) of section 104 of title 23, United States Code, are amended as follows:

"(2) The Secretary shall withhold 10 per centum (including any amounts withheld under paragraph (1)) of the amount required to be apportioned to any State under each of paragraphs (1), (2), (5), and (6) of section 104(b) on the first day of each fiscal year which begins after the fourth full calendar year following the date of enactment of this section if the State does not meet the requirements of paragraph (3) on the first day of such fiscal year.

"(3) A State meets the requirements of this paragraph if—

ON PROGRAM.—The  
ation shall develop  
the service stations.  
nent the services of  
the service stations  
program. Auxiliary  
f unique weather or  
safety of flight. Not  
nt of this Act, the  
stration shall report  
lementation of this

None of the funds  
is Federal Aviation  
physics System.

ENFORCEMENT PEN-  
id of title 23, United  
vious or subsequent  
ig or reserving any  
id highway funds as  
itea Code, for reason  
section during fiscal  
any apportionments  
ced or reserved from  
section 154(f) during

is Act, none of the  
multiyear contracts  
el I or Level II major  
it of Transportation  
nt end items in the  
0: Provided, That for  
act is defined as one  
irements of systems,  
ntract: Provided fur-  
e available to initiate  
include procurement  
sduled to be provided  
of at least fifty per  
at contract.

ry of Transportation  
required to be appor-  
(1), (2), (5), and (6) of  
ar which begins after  
s of enactment of this  
ents of paragraph (3)

ction 104 of title 23.

entum (including any  
amount required to be  
graphs (1), (2), (5), and  
ical year which begins  
the date of enactment  
the requirements of  
r.  
paragraph if—

~~“(A) the State has enacted and is enforcing a law that re-  
quires 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, or~~

~~“(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 sus-  
pended, at the time the individual is so convicted, or~~

~~“(B) The Governor of the State—~~

~~“(i) submits to the Secretary no earlier than the adjourn-  
ment sine die of the first regularly scheduled session of the  
State's legislature which begins after the date of enactment  
of this section a written certification stating that he is  
opposed to the enactment or enforcement in his State of a  
law described in subparagraph (A) relating to the revoca-  
tion, suspension, issuance, or reinstatement of driver's li-  
censes 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 clause (i).~~

~~“(b)(1)(A) Any funds withheld under subsection (a) from appor-  
tionment to any State on or before September 30, 1995, shall remain  
available for apportionment to such State as follows:~~

~~“(i) If such funds would have been apportioned under section  
104(b)(5)(A) but for this section, such funds shall remain avail-  
able until the end of the fiscal year for which such funds are  
authorized to be appropriated.~~

~~“(ii) If such funds would have been apportioned under section  
104(b)(5)(B) but for this section, such funds shall remain avail-  
able until the end of the second fiscal year following the fiscal  
year for which such funds are authorized to be appropriated.~~

~~“(iii) If such funds would have been apportioned under para-  
graph (1), (2), or (6) of section 104(b) but for this section, such  
funds shall remain available until the end of the third fiscal  
year following the fiscal year for which such funds are au-  
thorized to be appropriated.~~

~~“(B) No funds withheld under this section from apportionment to  
any State after September 30, 1995, shall be available for appor-  
tionment to such State.~~

~~“(2) If, before the last day of the period for which funds withheld  
under subsection (a) from apportionment are to remain available for  
apportionment to a State under paragraph (1), the State meets the  
requirements of subsection (a)(3), the Secretary shall, on the first  
day on which the State meets the requirements of subsection (a)(3),  
apportion to the State the funds withheld under subsection (a) that  
remain available for apportionment to the State.~~

~~“(3) Any funds apportioned pursuant to paragraph (2) shall  
remain available for expenditure as follows:~~

~~“(A) Funds originally apportioned under section 104(b)(5)(A)  
shall remain available until the end of the fiscal year succeed-~~

Will  
BAKUS-366-  
202-13916  
174

ing the fiscal year in which such funds are apportioned under paragraph (2).

"(B) Funds originally apportioned under paragraph (1), (2), (5)(B), or (6) of section 104(b) shall remain available until the end of the third fiscal year succeeding the fiscal year in which such funds are so apportioned.

Sums not obligated at the end of such period shall lapse or, in the case of funds apportioned under section 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with section 118(b).

"(4) If, at the end of the period for which funds withheld under subsection (a) from apportionment are available for apportionment to a State under paragraph (1), the State does not meet the requirements of subsection (a)(3), such funds shall lapse or, in the case of funds withheld from apportionment under section 104(b)(5), such funds shall lapse and be made available by the Secretary for projects in accordance with section 118(b).

"(c) For purposes of this section—

"(1) The term 'driver's license' means a license issued by a State to any individual that authorizes the individual to operate a motor vehicle on highways.

"(2) The term 'drug offense' means any criminal offense which proscribes—

"(A) 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

"(B) the operation of a motor vehicle under the influence of such a substance.

"(3) The term 'convicted' includes adjudicated under juvenile proceedings."

(b) The table of contents for chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following new item:

"159. Revocation or suspension of the driver's license of individuals convicted of drug offenses."

Sec. 334. Unobligated funds authorized to be appropriated by section 131(dx2) of the Highway Improvement Act of 1982, Public Law 97-424, shall be available for obligation for the project described in section 149(a)(88) of the Federal Aid Highway Act of 1987, Public Law 100-17, in the same manner and to the same extent provided in section 131(dx3) of the Highway Improvement Act of 1982.

Sec. 335. Notwithstanding section 127 of title 23, United States Code, the State of Wyoming may permit the use of the National System of Interstate and Defense Highways located in Wyoming by vehicles in excess of 50,000 pounds gross weight, but meeting axle and bridge formula specifications in section 127 of title 23, United States Code: *Provided*, That this section shall remain in effect until December 31, 1991.

Sec. 336. 23 U.S.C. 410(e)(1)(C) is hereby amended by striking the words "within the time period specified in subparagraph (F)"; 23 U.S.C. 410(e)(2) is hereby amended by adding the words "a significant portion of" after the word "which", the first time it appears,

No  
an  
th.  
Fe  
stt  
lin  
as  
stu  
He  
Tr.  
tar  
199  
ass  
inc  
pre  
96  
me  
ha  
tio:  
app  
pro  
poi  
cor  
lev  
for  
E  
obl  
tion  
the  
wit  
sup  
suc  
ativ  
(C  
the  
rest  
ind:  
deta  
aut:  
this  
Fed.  
pub.  
the  
(b  
Act  
mir  
fore  
for  
fun



proposed to be made. That the institution-affiliated party has violated or conspired to violate section 213, 624, 637, 1003, 1006, 1007, 1014, 1032, 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 § 359.1(a)(1)(u) 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]

BILLING CODE 6714-01-4

## 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 1986 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 interstate 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 100-690.* 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 non-compliance 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 non-compliance. S.Rep.No. 298, 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. *Id.*

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 (III), 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 about the effect, if any, a prison term would have on the suspension or revocation. A drug offender, for example, may be sentenced to serve on year in prison. Must that individual be deprived of his or her driver's license for a 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 659.

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)(B) 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 29, 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 101-516, 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 certification 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 101-516.

#### 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) 338-4949. 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 101-516. The law requires a driver's license suspension, or revocation, for individuals convicted of any drug-related offense; **FREQUENCY:** Annual; **BURDEN ESTIMATE:** 260 hours; **RESPONDENTS:** State/local government; **FORM(S):** None, but Forms HS-62, 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 101-516, 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 101-516.

#### § 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 (6), (7) & (33) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802 (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 6 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 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, 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 101-516 and this regulation.

(b) If the State believes it meets the requirements of section 333 of Public Law 101-516 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 101-516 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 101-516 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.

(d) 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.

**§ 1212.5 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).

**§ 1212.8 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 101-516, 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. 91-23941 Filed 10-4-91; 8:45am]  
BILLING CODE 4910-53-4

**DEPARTMENT OF HEALTH AND  
HUMAN SERVICES**

Health Care Financing Administration

42 CFR Part 409

[BPD-626-P]

RIN: 0938-AE34

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: BPD-626-P, P.O.  
Box 26678, Baltimore, Maryland 21207

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

# Alaska State Legislature

SENATOR  
**BERT SHARP**  
CHAIRMAN



## FAIRBANKS

DENALI BANK BUILDING  
119 N. CUSHMAN, SUITE 201  
FAIRBANKS, ALASKA 99701  
(907) 452-7885/7886

## SESSION ADDRESS

STATE CAPITOL, ROOM 514  
JUNEAU, ALASKA 99801-1182  
(907) 485-3004/4921

## 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

required to send a letter each year, the legislature is not required to pass a resolution. Certification takes place through the normal federal apportionment process in October.

The legislature must act on resolution or bill by April 1, 1993, (by federal regulation to allow time for certification). Many states have opted for the resolution as they resent the federal governments intervention in this issue, or philosophically disagree with driver licensing penalties for any drug conviction. We know of 16 states that have passed the bill, sixteen federal agencies participate in the certification process, and of those that have passed legislation, only 3 have been certified.

5% of ISTEAs if \$212 million total available = \$10.6 million  
10% of ISTEAs if \$212 million total available = \$21.2 million



*Department of Transportation  
and Public Facilities*

# POSITION PAPER

BILL NO: SCR 2

APPROVED:

W. J. Gentan

TITLE: Federal-Aid Hy Funding/Drug  
Enforcement

DATE: March 1, 1993

This bill fulfills an urgent federal mandate, that, if ignored, will result in the loss of millions of dollars in federal highway funding. It is based on Public Law 101-516, Nov. 5, 1990, which directs each state to enact a law which requires the revocation of driving privileges of those persons convicted of any type of drug offense, or alternatively, the state must indicate formal opposition to such a law in a manner defined below.

In responding to this federal mandate (some would say blackmail) the state has three options. First, on or before April 1, 1993 the state may enact legislation requiring the revocation of a person's driving privileges upon conviction for a drug offense. Enactment must be accompanied by enforcement, provided there have been circumstances calling for the law's penalties to be imposed. That is the intent of this bill.

Alternatively, on or before April 1, 1993, if the Governor and both houses of the Legislature indicate by certification and resolutions respectively, that they are opposed to the enactment or enforcement of such a law, then the fiscal sanctions will not be imposed on the state. Several other states have selected this option, in most instances as a symbolic act against federal intrusion into states' sovereignty.

Finally, in the absence of the state taking positive, timely action to either enact and enforce the mandatory license revocation law, or indicating formal opposition, a 5% withholding of highway federal-aid funds will begin in Federal Fiscal Year 1994. The penalty would remain the same in FFY '95. Further, funds withheld in these two years would be returned to the state if prior to September 30, 1995 the state achieves compliance with the federal act.

In subsequent federal fiscal years, the penalty rises to 10% and there is no further restoration provision for withheld funding. The approximate magnitude of these penalties is significant, and would be on the order of \$9.6 million in FFYs '95 & '96, and \$19.2 million thereafter. I would therefore urge favorable action on either approach to comply with Public Law 101-516.

*For Further Information contact Katy McHugh at 465-3900.*

# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO: SCR 2

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: "Relating to suspension of driver's license BRU: Motor Vehicles  
for drug offenses" Component: Driver Services  
 Sponsor: Senate Transportation  
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 500

**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						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>REVENUE FUND SOURCE:</b>	-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						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

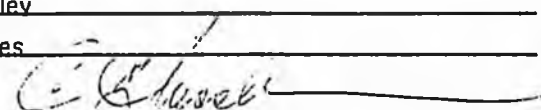
**POSITIONS:**

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 Division of Motor Vehicles is anticipated.

Prepared By: Juanita Hensley Phone: 465-4361  
 Division: Motor Vehicles Date: 3/9/93  
 Approved by Commissioner:  Date: 3/9/93  
 Agency: Richard L. Burton, Dept. of Public Safety

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**

For further distribution information call the Governor's Legislative Office

FISCAL NOTE

Revision Date: 03/08/93  
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
<b>TOTAL OPERATING:</b>	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 **	-9,615,346	-9,615,346	-19,230,692	-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
<b>TOTAL FUNDING:</b>	-9,615,346	-9,615,346	-19,230,692	-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: \$0

ANALYSIS: (Attach a separate page if necessary)

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

Prepared by: Katy McHugh

Phone: 465-3902

Division: Office of the Commissioner

Date: March 8, 1993

Approved by Commissioner: 

Phone: 465-3901

Frank C. Thrpín

Agency: Department of Transportation and Public Facilities

Date: March 8, 1993

FISCAL NOTE

Revision Date: 03/03/93  
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
REVENUE FUND SOURCE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

1002 FEDERAL RECEIPTS **	-9,615,346	-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:	-9,615,346	-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: \$0

ANALYSIS: (Attach a separate page if necessary)

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

Prepared by: Katy McHugh

Phone: 465-3902

Division: Office of the Commissioner

Date: March 3, 1993

Approved by Commissioner:   
Frank G. Turpin

Phone: 465-3901

Agency: Department of Transportation and Public Facilities

Date: March 3, 1993

**FISCAL NOTE**

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

Department Affected: DOT&PF  
BRU:

Sponsor: Transportation  
Requestor:

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
<b>TOTAL OPERATING:</b>	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 **	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
<b>TOTAL FUNDING:</b>	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)**

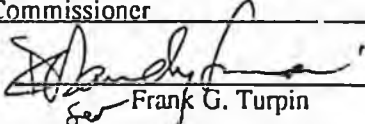
\*\* Failure to pass legislation will result in the loss of federal ISTEPA funds.

Prepared by: Katv 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

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
For further distribution information call the Governor's Legislative Office

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE JOINT RESOLUTION 11  
40TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1991

INTRODUCED BY

*Handwritten signature: Daniel B. 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

under-scored material = new  
[bracketed material] = deletion

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.

underscored material = new  
~~[bracketed material]~~ = deletion

RESOLUTION TO THE SECRETARY OF TRANSPORTATION  
ON REVOCATION OF DRIVER LICENSES

1992

GENERAL SESSION

Enrolled Copy

S. C. R. No. 7

By Dix H. McMullin

A CONCURRENT RESOLUTION OF THE LEGISLATURE AND THE GOVERNOR EXPRESSING  
OPPOSITION TO A FEDERAL REQUIREMENT FOR THE STATE TO PASS A LAW  
REQUIRING REVOCATION OR SUSPENSION OF A PERSON'S DRIVER LICENSE FOR  
ANY DRUG-RELATED OFFENSE.

Be it resolved by the Legislature of the state of Utah, the Governor  
concurring therein:

WHEREAS Section 333 of the Fiscal Year 1991 United States Department  
of Transportation Appropriation Act entitled "Revocation or Suspension of  
the Driver's License of Individuals Convicted of Drug Offenses" requires  
states to enact legislation requiring the revocation or suspension of an  
individual's driver license upon conviction of any drug-related offense;

WHEREAS Section 333 requires withholding 5% of certain federal-aid  
highway funds in Fiscal Year 1994 and 1995 and 10% in subsequent years  
from states that fail to enact legislation;

WHEREAS Section 333 provides the following procedure to avoid the  
sanctions without enacting the legislation:

"(B) 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 the date of enactment of this section a written  
certification stating that he is opposed to the enactment or enforcement

5. C. R. No. 7

in his state of a law described in subparagraph (A) relating to 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 clause (i)";

WHEREAS S.B. 102, "Suspension of Driver License", providing for the revocation or suspension of an individual's driver license upon conviction of any drug-related offense, has been introduced during the 1992 General Session of the Legislature and has failed to pass;

WHEREAS the federal government should not dictate policy or legislation of this kind for the state; and

WHEREAS the Tenth Amendment to the Constitution of the United States provides that: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people";

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the governor concurring therein, certify opposition to the enactment or enforcement in this state of a law requiring the revocation or suspension of an individual's driver license upon conviction of any drug-related offense.

BE IT FURTHER RESOLVED that this resolution be prepared and delivered to the governor of the state of Utah and that the governor submit to the United States Secretary of Transportation:

S. C. R. No. 7

(1) a written certification that he is opposed to the enactment or enforcement of a law related to revocation of a person's driver license for any drug-related offense; and

(2) a written certification that the legislature has adopted this resolution.

BE IT FURTHER RESOLVED that a copy of this resolution be prepared and delivered to the United States Secretary of Transportation.

---



STATE OF MAINE  
OFFICE OF THE GOVERNOR  
AUGUSTA, MAINE  
04893

JOHN R. MCKERMAN, JR.  
GOVERNOR



August 13, 1991

Samuel K. Skinner, Secretary  
U. S. Department of Transportation  
400 Seventh Street, S.W.  
Washington, D.C. 20590

Dear Mr. Secretary:

I write to you regarding P.L. 101-516 of the FY '91 U.S. DOT Appropriations Act. This section of law concerns revocation or suspension of the driver licenses for individuals convicted of drug offenses. I am opposed to the enactment or enforcement in the State of Maine of such a law described in sub-paragraph (A) of the above cited Section 333.

Further, I take this opportunity to submit this written certification that the 1st Regular Session of the 115th Maine Legislature recently adopted a resolution opposing the same sub-paragraph (A) of Section 333. I have attached a true copy of that resolution which was passed on June 4, 1991 by the 115th Legislature. The session adjourned on July 18, 1991.

I believe that the State of Maine is now in compliance with P.L. 101-516, Section 333. Thank you for your attention to this matter.

Sincerely,

John R. McKernan, Jr.  
Governor

JRM/lba

cc: Dana P. Connors, MDOT  
William D. Richardson, FHWA



## STATE OF MAINE

---

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND NINETY-ONE

---

JOINT RESOLUTION EXPRESSING THE LEGISLATURE'S OPPOSITION  
TO FEDERAL LEGISLATION REQUIRING SUSPENSION OF  
LICENSES FOR INDIVIDUALS CONVICTED OF VIOLATIONS OF  
THE FEDERAL CONTROLLED SUBSTANCES ACT

WHEREAS, the Federal Government has enacted legislation to withhold federal aid to highways in this State unless the Legislature and the Governor consider and act upon state legislation related to the suspension or revocation of the driver's license of any person convicted of drug offenses; and

WHEREAS, the Joint Standing Committee on Legal Affairs has considered proposed legislation consistent with the federal requirement and has voted to recommend that the legislation ought not to pass; and

WHEREAS, the reasons for the negative recommendation include a belief that the granting or withholding of driving privileges is and always has been a prerogative of the states to decide for themselves, not the Federal Government; and

WHEREAS, the federal law provides that a state may avoid loss of federal highway funds "if the legislature enacts a resolution expressing its opposition to such legislation and the governor conveys the governor's disapproval and the legislature's resolution to the United States Secretary of Transportation; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Fifteenth Legislature, now assembled in the First Regular Session, express our opposition to the enactment of legislation required by the Federal Government to revoke or suspend the drivers' licenses of individuals convicted of violations of the Controlled Substances Act or any drug offense or to delay the issuance or reinstatement of a driver's license for a person so convicted; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable John R. McKernan, Jr., Governor, for conveyance to the United States Secretary of Transportation.

5-10732

HOUSE OF REPRESENTATIVES  
READ AND ADOPTED

JUN 5 1991  
IN CONCURRENCE

*Edwin D. ...*  
CLERK

IN SENATE CHAMBER  
READ AND ADOPTED

JUN 4 1991

JAY J. O'BRIEN  
SECRETARY

SENT DOWN FOR CONCURRENCE

9503W-LR2723(1)



# RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

  
Signature of Camera Operator

11/6/97  
Date

**SJR**

**18**

WALTER J. HICKEL  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 22, 1993

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

*5/2/18*

Dear President Halford:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a resolution to amend the Alaska Constitution to provide for a dedicated transportation fund.

Section 1 of the resolution repeals and readopts art. IX, sec. 7, of the Alaska Constitution so that it permits the dedication of revenue under a new sec. 18 of art. IX, which is created by sec. 2 of the resolution. No other substantive change is made to sec. 7.

Section 2 of the resolution amends art. IX of the Alaska Constitution by adding a new sec. 18. New sec. 18(a) requires that certain revenue received after June 30, 1995 that is derived from transportation-related functions be placed into a transportation fund. The revenue that is to be dedicated to the transportation fund is

- 1) revenue from state licenses and fees for the registration, operation, and use of motor vehicles, aircraft, and watercraft;
- 2) revenue from the use of state transportation facilities, including the state ferry system;
- 3) revenue from state taxes on fuel used in and on watercraft and on fuel used by motor vehicles and aircraft.

Refunds or credits from state fuel taxes, as provided by law, and costs for the collection of license, fee, and tax revenue, as provided for by law, would not be required to be placed in the transportation fund.

New sec. 18(a) also provides that the legislature may appropriate revenue from the transportation fund only for

- 1) the maintenance and operation of a state or local government transportation facility (including a highway or marine highway

The Honorable Rick Halford  
Page 2

system vessel) if the facility is related to the mode of transportation from which the tax, license, or fee revenue to be appropriated was originally received;

- 2) the construction and improvement of harbor facilities if the tax, license, or fee revenue to be appropriated was obtained from the use of watercraft; and
- 3) the administration and enforcement of motor vehicle laws.

Section 18(b) exempts the following transportation-related revenue from the requirement that it be placed into the new transportation fund:

- 1) revenue received from taxes, licenses, or fees that the state collects on behalf of a local government;
- 2) revenue received by a public corporation whose revenue must, by federal law, be retained and managed by the corporation; and
- 3) revenue received from the use or operation of a transportation facility constructed with bond proceeds if law or bond covenants require that the revenue be used for some other purpose.

Section 18(c) requires the legislature to provide by law for the management and investment of the fund and provides further that income earned from the management and investment of the fund be deposited into the fund.

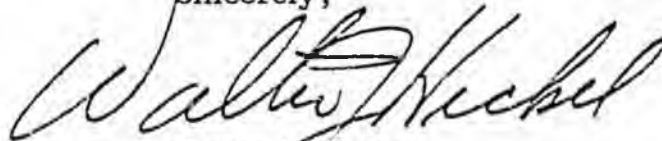
Section 18(d) allows the legislature, upon three-fourths majority vote of both houses, to make appropriations from the fund for any other public purpose.

Section 3 of the resolution requires that the amendment proposed by this resolution be placed before the voters of the state at the next general election in accord with the election laws of the state.

Because transportation facility maintenance and operation, like other state services, is currently a general fund expenditure, declining oil revenue will surely mean a reduction in the funding available for those critical activities. I believe that the most appropriate means to guard against such a reduction, and to provide for stability and continuity in the provision of transportation services, is to permit "user fees" from transportation-related facilities to be dedicated to maintaining and operating Alaska's transportation system.

I urge your favorable consideration of this resolution.

Sincerely,



Walter J. Hickel  
Governor



## Department of Transportation & Public Facilities

# POSITION PAPER

**BILL NO:** SJR 18

**APPROVED:**

A handwritten signature in cursive, appearing to read "J. J. Dunne".

**TITLE:** Proposing amendments to the  
Constitution of the State of Alaska  
creating a transportation fund.

**DATE:** February 4, 1993

---

The Department of Transportation and Public Facilities endorses this Resolution proposing a constitutional amendment establishing a dedicated transportation fund. The department has the statutory responsibility for the maintenance and operation of Alaska's transportation system. The department believes that maintaining the state's transportation system in a responsible manner is of vital importance to the economic well-being of all Alaskans. Consequently, the department is concerned that the volatility of current revenue sources make it increasingly difficult to insure that the necessary funds are available to maintain the system in a responsible manner.

The department believes that user fees are one of the more equitable and appropriate methods of attaining a stable funding source for transportation facilities. The department also recognizes that a direct linkage between the expenditures of a fee and the services provided, raises the credibility of the user fee concept and may make increasing those fees more acceptable to system users. Moreover, establishing a direct linkage between the fees collected and the expenditures authorized would provide the consuming public with the ability to make an informed decision about the cost of the services they expect. Since a dedicated fund would create the direct linkage between expenditures authorized and the fees collected, the department believes that establishment of a dedicated fund is the most significant, long-term step needed to better manage the capital assets the State has in its transportation infrastructure.

# HARBORS UNDER STATE MANAGEMENT

## INDEX OF HARBOR FACILITIES

<u>NAME OF FACILITY</u>	<u>REGION</u>	<u>CAPACITY</u>
ALEGNAGIK DOCK	CENTRAL	N/A
BARANOF FLOAT	SOUTHEAST	19
CHENEGA BAY BOAT HARBOR	CENTRAL	21
COFFMAN COVE HARBOR	SOUTHEAST	28
COLD BAY DOCK	CENTRAL	N/A
EDNA BAY REFUGE FLOAT	SOUTHEAST	15
ELFIN COVE INNER HARBOR	SOUTHEAST	47
ELFIN COVE OUTER HARBOR	SOUTHEAST	18
ENTRANCE ISLAND REFUGE FLOAT	SOUTHEAST	6
FUNTER BAY FLOAT	SOUTHEAST	8
FUNTER BAY REFUGE FLOAT	SOUTHEAST	8
GUSTAVUS DOCK & FLOAT	SOUTHEAST	7
HALIBUT COVE FLOAT	CENTRAL	27
HELM BAY REFUGE FLOAT	SOUTHEAST	5
HOLLIS FLOAT	SOUTHEAST	11
HYDER HARBOR & FLOAT	SOUTHEAST	29
JAKOLOF BAY FLOAT	CENTRAL	13
JUNEAU TAKU HARBOR	SOUTHEAST	18
KASAAN FLOAT	SOUTHEAST	10
LORING FLOAT	SOUTHEAST	10
MEYERS CHUCK HARBOR	SOUTHEAST	20
NINILCHIK BOAT HARBOR	CENTRAL	32
KUPREANOF FLOAT	SOUTHEAST	8
PETERSBURG PAPKE'S LANDING	SOUTHEAST	9
POINT BAKER FLGAT	SOUTHEAST	27
PORT ALEXANDER INNER HARBOR	SOUTHEAST	15
PORT ALEXANDER OUTER HARBOR	SOUTHEAST	24
PORT LIONS SMALL BOAT HARBOR	CENTRAL	119
PORT PROTECTION REFUGE FLOAT	SOUTHEAST	15
PORT PROTECTION SKIFF FLOAT	SOUTHEAST	6
SWANSON HARBOR REFUGE FLOAT	SOUTHEAST	9
TATITLEK DOCK	NORTHERN	N/A
UNALASKA SMALL BOAT HARBOR	CENTRAL	30
	<b>TOTAL</b>	<b>614</b>



STATE OF ALASKA  
OFFICE OF THE GOVERNOR

**BILL ANALYSIS**

DEPARTMENT DOT&PF	DIVISION Office of the Commissioner	BILL NUMBER SJR 18	SPONSOR Senate Rules
DEPARTMENT POSITION Fully support legislation.			
PREPARED BY M. Clyde Stoltzfus	DATE 2/4/93	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 2-4-93

**SUMMARY**

OTHER AGENCIES AFFECTED BY BILL Department of Revenue	CONSTITUENT GROUP(S) AFFECTED BY BILL No particular group.
ORGANIZATIONAL SUPPORT FOR BILL Associated General Contractors of Alaska Alaska Highway Users Federation	ORGANIZATIONAL OPPOSITION TO BILL Air Carriers Association

FISCAL IMPACT:  NONE  FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT  
This resolution would send a proposed constitutional amendment before the voters for approval. The amendment would create a dedicated fund for maintenance of transportation facilities.

ANALYSIS OF BILL/PROGRAM EFFECTS  
Transportation infrastructure is one of the basic building blocks of an economic system. In this regard, the condition of the transportation infrastructure has been clearly shown to be directly linked to the productivity of an economy. Under the current system, funding to maintain Alaska's transportation infrastructure varies greatly depending on the competing demand for state general fund dollars and fluctuating state revenues. As a basic underpinning of a healthy growing economy, maintaining our basic transportation infrastructure is too important to allow continued fluctuation. As a result of past funding variations, today we are facing an overwhelming backlog of deferred maintenance just to keep from losing our capital assets. Aside from the threat to our capital assets, the poor condition of our transportation system has had an untold impact on the productivity of our economy. In the final analysis, poor maintenance on our transportation system is a hidden cost for all businesses and ultimately all consumers in the state. This legislation would stabilize our maintenance funding so that long-term management decisions could be made that would eventually benefit all Alaskans.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

FISCAL NOTE

Revision Date: February 4, 1993  
Title: Proposing amendments to the  
Constitution of the State of Alaska  
creating a transportation fund

Agency Affected: DOT&PF  
BRU:

Sponsor: Senate Rules Committee  
Requestor: Governor

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: This resolution would put before the voters a ballot measure to amend the constitution to allow for a dedicated transportation fund. The Legislature could appropriate from the fund for maintenance and operation of the Alaska Marine Highway System, the highway system, the aviation system and for construction, maintenance, and operation of the harbor system. Revenue for the fund would be derived from user fees on each system. Revenue from the Alaska Railroad Corporation and the Alaska International Airport System is exempt from the fund.

Prepared by: M. Clyde Stoltzfus  
Division: Office of Strategic Management, Policy and Planning

Phone: 465-3900  
Date: February 4, 1993

Approved by Commissioner: Frank G. Turpin  
Agency: Department of Transportation and Public Facilities

Date: February 4, 1993

Distribution (by preparer):

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

**FISCAL NOTE**

Revision Date:  
Title: Dedicated Transportation Fund

Department Affected: DOT&PF  
BRU: DOT&PF

Sponsor: Rules Committee  
Requestor: Governor

Component: ALL  
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
<b>TOTAL OPERATING:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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

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

**FUNDING: (Thousands of Dollars)**

1002 FEDERAK 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
<b>TOTAL FUNDING:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**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)**

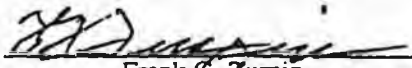
This resolution would put before the voters a ballot measure to amend the constitution to allow for a dedicated transportation fund. The Legislature could appropriate from the fund for maintenance and operation of the Alaska Marine Highway System, the highway system, the aviation system and for construction, maintenance, and operation of the harbor system. Revenue for the fund would be derived from user fees on each system. Revenue from the Alaska Railroad Corporation and the Alaska International Airport System is exempt from the fund.

Prepared by: M. Clyde Stoltzfus, Chief

Phone: 465-3900

Division: Office of Strategic Management, Planning & Policy

Date: November 19, 1992

Approved by Commissioner:   
Frank G. Turpin

Phone: 465-3900

Agency: Department of Transportation and Public Facilities

Date: November 20, 1992

# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

No. 3

Bill Version: STR 18

(S) Publish Date: 1/22/93

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety

Title: Dedicated Transportation Fund BRU: Motor Vehicles

Component: Driver Services, Vehicle Services

Sponsor: Rules Field Services

Requestor: Governor COMPONENT SERIAL NO. 500, 501, 502

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:						

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 Division of Motor Vehicles is expected.

Prepared By: Juanita Hensley, Chief of Driver Services Phone: 465-4335

Division: Division of Motor Vehicles Date: 11/17/92

Approved by Commissioner: [Signature] Date: 11/19/92

Agency: Richard T. Burton, Dept. of Public Safety

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information call the Governor's Legislative Office



**Analysis:**

This resolution proposes a constitutional amendment to allow revenues derived from taxes on motor fuel, marine fuel and aviation fuel; revenue derived from license fees for the registration and operation of motor vehicles, aircraft and watercraft; and, revenue derived from the use of state transportation facilities, to be placed into a transportation fund dedicated for the maintenance and operation of transportation facilities.

When passed by the legislature and approved by the voters, this amendment would allow revenues to be deposited into the Transportation Fund beginning July 1, 1995.

FISCAL NOTE

BILL NO. SJR 18

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
Title: Amendment to the Constitution RE: Creating  
Transportation Fund  
Sponsor: Senate Rules Committee  
Requestor: \_\_\_\_\_

Department Affected: Office of the Governor  
BRU: Division of Elections  
Component: General and Primary Elections  
COMPONENT SERIAL NO. 22

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	2.2*	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	2.2*	0	0	0	0	0

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

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

FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	2.2*	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	2.2*	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: 0

ANALYSIS: (Attach a separate page if necessary.)\* This figure covers cost of inclusion of information about this issue in the Official Elections Pamphlet as required by AS 15.58, and programming for DataVote counting of votes cast on the measure. However, only 4 measures can be printed on a single ballot card. Should this measure require printing and additional ballot card, the fiscal impact would be 53.4.

Prepared by: Charlot E. Thickstun, Director *Charlot E. Thickstun* Phone: 465-4611  
Division: Division of Elections Date: 2/10/93

Approved by Commissioner: John B. Coghill, Lieutenant Governor  
Agency: Office of the Governor Date: 2/10/93

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
For further distribution information call the Governor's Legislative Office

**SENATE JOINT RESOLUTION NO. 18**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**EIGHTEENTH LEGISLATURE - FIRST SESSION**

**BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**

Introduced: 1/22/93  
Referred: TRA, JUD, FIN

**A RESOLUTION**

1 Proposing amendments to the Constitution of the State of Alaska creating a  
2 transportation fund.

3 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* Section 1. Article IX, sec. 7, Constitution of the State of Alaska, is repealed and  
5 readopted to read:

6 SECTION 7. DEDICATED FUNDS PROHIBITED. The proceeds of any  
7 State tax or license shall not be dedicated to any special purpose. This provision does  
8 not prohibit the continuance of any dedication for special purposes existing on  
9 April 24, 1956, and does not prohibit the dedication of revenue under Section 15 or  
10 Section 18 of this article or when required by the federal government for State  
11 participation in federal programs.

12 \* Sec. 2. Article IX, Constitution of the State of Alaska, is amended by adding a new  
13 section to read:

14 SECTION 18. TRANSPORTATION FUND. (a) The revenue received after  
15 June 30, 1995, from State licenses and fees for the registration, operation, and use of  
16 motor vehicles, aircraft, and watercraft, from the use of State transportation facilities,

1 including the State ferry system, and from State taxes on fuel used in and on  
2 watercraft and for the propulsion of motor vehicles and aircraft, less refunds or credits,  
3 and costs of collection, for State taxes on fuel as provided by law, and less costs for  
4 collection of revenue from the licenses and fees as provided by law, shall be placed  
5 in a transportation fund. Except as provided in (d) of this section, the legislature may  
6 appropriate money from the fund only for *+ constr.?*

7 (1) the maintenance and operation of a State or local government  
8 transportation facility if the facility is related to the mode of transportation from which  
9 the tax, license, or fee revenue to be appropriated was originally received;

10 (2) the improvement and construction of harbor facilities if the tax,  
11 license, or fee revenue to be appropriated was originally received from the use of  
12 watercraft;

13 (3) the administration and enforcement of motor vehicle laws.

14 (b) This section does not apply to

15 (1) revenue received from taxes, licenses, or fees that the State collects  
16 on behalf of a local government;

17 (2) revenue received by a public corporation whose revenue must by  
18 federal law be retained and managed by the corporation; *?? example?*

19 (3) revenue received from the use or operation of a transportation  
20 facility constructed with bond proceeds to the extent that law or bond covenants  
21 require that the revenue be used for other purposes.

22 (c) The legislature shall provide by law for the management and investment  
23 of the fund balance. The income earned from the management and investment of the  
24 fund shall be deposited into the fund.

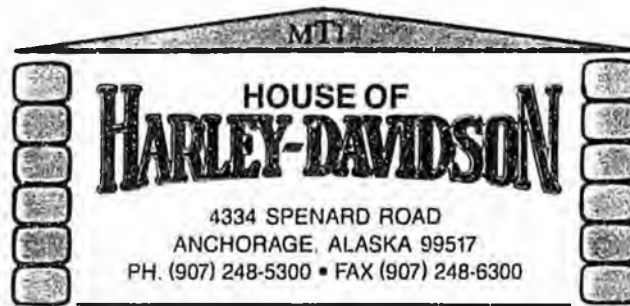
25 (d) An appropriation from the fund for a public purpose other than one  
26 described in (a)(1) - (3) of this section may be made upon an affirmative vote of three-  
27 fourths of the members of each house of the legislature.

28 \* Sec. 3. The amendments proposed by this resolution shall be placed before the voters of  
29 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the  
30 State of Alaska, and the election laws of the state.

*why not here*

**SJR**

**29**



FEB 22 RECD

February 18, 1993

RE: SB110

Dear Senator Taylor,

I wish to encourage you to vote against SB110. The Federal Government is asking Alaska to impose a "mandatory helmet law" on her population or have re-directed a certain percentage of designated Federal highway funds. As I understand it, we would not lose the money, it would merely need to be used for safety programs if we did not pass a "mandatory helmet law".

As a motorcycle dealer, I can tell you that most of our customers use helmets now, but are opposed to a law mandating their use. I am personally opposed to SB110 even though it's passage would mean added revenue to my business. We sponsor a motorcycle training course here in Anchorage because we KNOW that education and training are far more effective in the prevention of accidents and injuries than "helmet laws". There is lots of documentation to back up my claim, and I would be happy to send it to you if you so request. The Motorcycle Safety Foundation Training Program that we sponsor has trained 110 motorcycle operators in the Anchorage area in 1992. We expect to train 250 or more in 1993. It is a fact that States that have Motorcycle Safety Training programs have less accidents, injuries, and fatalities, regardless of whether they have a helmet law or not.

The money the State would have to re-direct would not be enough to build one mile of road. It would however, be enough to train hundreds of motorcycle, ATV, snowmobile, and automobile drivers. Let's educate, not legislate. Let's put the money where it will do the most good.

Please take the time to look into SB110. There are already laws on the books making helmets mandatory for teenagers, who unfortunately are responsible for most of the injury and fatality statistics. Do not allow our great State to be coerced into this law by the Federal Government.

Sincerely yours,

*Barry Matteson*  
Barry Matteson  
Owner

THINGS ARE DIFFERENT ON A HARLEY.®



3537 McKenzie Drive  
Anchorage AK 99517

February 19, 1993

FEB 23 1993

Senator Robin Taylor  
Alaska State Senate  
Alaska State Capitol (MS 3100)  
Juneau AK 99801-1182

Re: **SB110, Helmet Law**

Dear Senator Taylor:

Please oppose *SB110* which proposes a mandatory helmet law. We believe wearing a helmet should be a personal choice. As Alaskans, freedom and personal choice are very important to us, as is the lack of federal dictation and intervention.

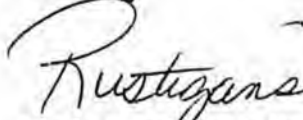
The state will not lose the 1.5% federal highway funds. By opposing *SB110*, the state stands to gain. You now have the opportunity to implement education and training programs without spending *any* state money. This can be accomplished by redirecting the 1.5% federal highway funds to driver and rider education and training programs—be it motorcycle, 4-wheel, snowmobile or student driver training.

We know that education and training saves lives. States with helmet laws show little change in rider casualties (from 7% decreases to 5% *increases*), while states with rider training report decreases in casualties from 36% to 88%. **Training saves lives!**

Please join with four other states in rejecting the federal government's attempt to blackmail the states. Let's take the federal money, but let's use it to set up rider and driver training and education here in Alaska.

Thank you for your attention to this matter.

Sincerely



Linda Rustigan & Baxter Rustigan

Voter ID Numbers 04323022 & 00535645

The Honorable *Mr Taylor*

This letter is a request that you oppose Senate bill SB110, which would impose a mandatory helmet law on all adult Alaskan motorcyclists. While not rejecting helmets themselves, I believe helmet use should be a matter of personal choice, not dictated by law. I strongly oppose SB110 for this and the following other reasons:

First, if you reject SB110 Alaska will lose no federal highway funds at all. Only 1.5% of these funds would be redirected to traffic safety programs, money which could be used to fund motorcycle safety/rider education training and other vehicle safety education at no cost to the state.

Forty (40) other states already provide training for motorcyclists which has directly reflected in there traffic safety records. As stated by senator Mr. Durenberger (MN) in his address to the 103rd congress of S295. "Of the ten (10) safest states to ride a motorcycle based on fatalities per 10,000 registrations, seven (7) are states which do not require mandatory helmet use for adults." The state of Minnesota rated the second safest state in the nation in which to ride a motorcycle by the Motorcycle Industry Council. Is a prime example of what traffic safety/rider education and tough licensing provisions can do. During the period when Minnesota had a mandatory helmet law fatalities per 10,000 registrations went up every year. After repealing the mandatory helmet law combined with tougher licensing provisions and continued ongoing traffic safety/rider education Minnesota's 1992 fatality rate fell to a 25 year low, in spite of doubling the number of licensed motorcyclists.

This is a unique opportunity for Alaska to constructively further motorcycle and vehicle safety based on verifiable proven safety statistics (not unproven helmets are safer rhetoric) for the cost of less than one mile of Alaska paved road.

Second, the federal government has no business blackmailing any state into passing laws in areas that are constitutionally the province of state authority, not federal. This current requirement is a direct infringement on a states rights as guaranteed by the Tenth Amendment to the U.S. Constitution. As you are acutely aware this is not a new situation here in Alaska as the federal government has continually interfered with the rights of the state of Alaska ever since statehood. We have an opportunity here to send the federal government a message that we still have our state rights here in Alaska. For the good of all Alaskans let us join the growing list of other states sending the same message by rejecting SB110.

Please take a bold and farsighted step by rejecting SB110 and use the generated federal money to promote traffic safety/rider education training a proven program to reduce traffic fatalities. In addition you will be sending the federal government a message that Alaska will no longer stand for federal infringement of its state rights.

Sincerely,



February 21, 1993

FEB 24 RECD

Sen. Robin Taylor  
Alaska State Capitol, Room 30  
MS 3100  
Juneau, Alaska 99801-1182

Dear Sen. Taylor:

I am writing to ask you to oppose Senate Bill 110 imposing a mandatory helmet law on Alaskan motorcyclists. I feel using a helmet should be a matter of choice not law.

I strongly oppose SB 110 additionally because rejecting this bill does not cost Alaska any federal funds. The funds would be diverted from use for roads to use for safety programs. The funds only amount to less than a mile of paved road, a mere drop in the bucket compared to what Alaskans really need in the way of roads.

I also reject laws which interfere with my freedom of choice and laws which come into being from blackmail.

States with helmet laws report minor changes in motorcycle casualties. Some states have reported an increase in casualties rather than the high expectations of a lower percentage of casualties. States conducting rider training report casualties decreasing from 36 to 88 percent.

Education is by far the best teacher. Please reject SB 110 as it does nothing to help decrease motorcycle casualties. Your help in appropriating funds for rider safety training would be appreciated.

Sincerely,



William E. Hobbs  
7801 Blackberry  
Anchorage, Alaska 99502  
Voter #

Juneau, Alaska  
March 17, 1993

MAR 17 RECD

Senator Robin Taylor  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Dear Senator Taylor:

As an Alaskan and a avid motorcyclist who uses a helmet, I am writing state my opposition to Senate Bill 110, which as you know imposes mandatory helmet usage upon the states Motorcyclists. You may have read Mr. James F. Andrus's article in the March 15th issue of the Anchorage Daily News concerning this issue and I wish to submit that he expresses my feelings and those of the 33 member Motorcycle club to which I belong.

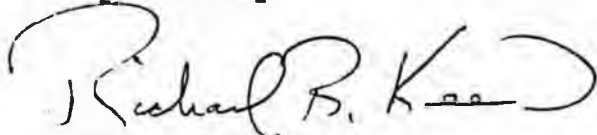
We encourage our members to wear their helmets but, We also feel they should be free to decide. What I, in particular am most excited about is the opportunity we now have in this state to institute motorcycle Safety programs that are proven to reduce accidents and deaths among Motorcyclists. (see article attached)

Last year, our motorcycle club raised funds to have a two certified Motorcycle Safety Foundation instructors come to Juneau to conduct the Novice Rider Course. Twelve of us completed and all agreed it was very useful and well worth the dollars spent.

Again this year we plan to have another course locally and are hoping to see as many as 40 motorcyclists complete it. Once completed, the student does not have to take the riding skills portion of the State exam as the State recognizes completion of the MSF course as satisfactory for licensing purposes.

I am submitting the newspaper article for your use and if you haven't read it, I encourage you to do so. Education is Prevention.

Respectfully



Richard R. Keen  
11691 Auke ST  
Juneau, Alaska 99801  
Day Ph: 465-4468

Testimony from the public has been  
— overwhelmingly OPPOSED to MANDATORY —  
helmet laws.

MAR 24 RECD

To The Honorable Robin Taylor!

I am an avid motorcycle enthusiast and a voting resident of the State of Alaska. I am concerned with motorcyclist rights and motorcycle rider safety. My belief is that motorcycle rider awareness and safety training are going to save more lives than a mandatory helmet law will. Most motorcycle fatalities are alcohol, drug, or excessive speed related.

I am taking this time to write to you to express my opinion on the upcoming issue of the mandatory helmet bill for the State of Alaska. I believe the issue of **freedom of choice** is what is really at question here. It is my opinion that accepting the federal government's threat to reduce highway funds is allowing the federal government one more control over what we consider to be the last frontier.

I would strongly suggest you consider your decision based upon all the available statistics on this matter and make your decision based upon those facts, not the possibility of the government rerouting a small percentage of federal funds to highway safety.

In closing, I am strongly against S.B. 110 and would appreciate your support and consideration of this matter.

Sincerely,

Steven Rasmussen  
2771 Engineers cutoff  
Juneau AK 99801

## No to any helmet law, but do spend on rider education

by JAMES F. ANDRUS

On Feb. 11, a bill was introduced in the Alaska Senate Transportation Committee which presents Alaskans a most unique set of choices on the issue of motorcycle safety.

Senate Bill 110 would require all Alaska motorcyclists to wear helmets while operating or riding on a motorcycle. Currently, operators over 17 years old need not wear one.

The impetus for SB110 is a requirement imposed on all states by the federal Intermodal Surface Transportation Efficiency Act of 1991. Section 1031 of this law requires all states to enact mandatory helmet and seatbelt laws by certain dates or lose control of part of their federal highway funds.

Here's the unique part. In the past, similar federal laws tried to blackmail states into passing such laws by threatening to take back federal funds if they didn't comply. This tactic is still used for other purposes, raising the thorny issue of states' rights. Many senators and representatives objected to taking this approach again.

That's why this 1991 law is different. Rather than take away federal money, the act specifies that helmet and seatbelt laws must be in place by October 1993 or states must divert 1.5 percent of their federal highway funds into safety programs instead. By October 1994 this percentage would double to 3 percent.



Call it "graymail." Alaska would keep all its federal money but would be forced to spend part of it on safety programs rather than road construction if SB110 doesn't become law. These safety programs are called "section 402" programs, which are enumerated in earlier federal legislation bearing this name.

What kind of money are we talking here? Alaska received over \$150 million from the 1991 law, so 1.5 percent is about \$2.5 million and 3 percent about \$5 million. A good chunk of change — and now Alaska gets to choose how it will be spent!

If SB110 becomes law, Alaska can spend all its money building roads if it likes. If SB110 doesn't become law, Alaska must divert \$5 million into safety programs. What kind of programs could these be?

Section 402 programs can include driver training programs for student drivers as well as motorcycle operators. Section 402 funds could finance public safety messages and aggressive drunk driver interdiction programs like Anchorage's "drunkbusters" or state trooper sobriety roadblocks that were suspended last year for lack of funds. These are only several examples.

Old-timers tell me Anchorage schools stopped driver training in the 1960s to save money. Driving is one of our most essential and most-used skills, yet Alaska takes no interest in formalized professional training that could produce generations of seasoned, responsible drivers less prone to accidents.

Forty states now provide formal training for motorcycle operators, yet Alaska does nothing to follow their lead. All we can think to do is slap helmets on untrained riders. How much good does that do?

The American Motorcyclist Association is a national public interest group representing a million members which protects political interests of motorcyclists in the U.S. Congress. The AMA has surveyed the effectiveness of helmet laws and safety education in many states over many years.

How well do helmet laws work? The AMA reports that in states with such laws, motorcycle casualties remain essentially unchanged. Some states report decreases in casualties up to 7 percent, while other states report increases up to 5 percent. It's a wash, and helmet laws don't achieve their goal of saving lives.

How well does rider training work? California began mandatory rider training in 1986, and motorcycle casualties declined 36 percent there in the next three years. After Ohio began mandatory training for teen-age motorcycle riders, casualties in that age group declined 88 percent! Proof positive that educa-

*At no cost to the state, Alaska can finance \$5 million of safety education and training programs that hold far more promise to save lives than helmet laws.*

tion works better than coercion.

But motorcyclists in states with rider training programs face a chronic problem. Under the crush of budget pressures, state legislators raid whatever programs they can to balance state budgets. Frequent casualties of these raids are rider training programs, even though they are financed from dedicated sources like motorcycle registrations or driver licenses. The battle to save these good programs never ends.

Alaska faces an even bigger legal obstacle to financing rider training. Our state constitution forbids dedicated revenues, so money from license plates and driver licenses must be plowed into the general treasury and cannot be dedicated to training programs.

Federal section 402 funds sidestep this obstacle entirely. At no cost to the state, Alaska can finance \$5 million of safety education and training programs that hold far more promise to save lives than helmet laws.

Here's another way to look at \$5 million. The Alaska Department of Transportation estimates that it

costs \$5 million to \$12 million to build a mile of road in this state. Taking their most conservative estimate, \$5 million worth of safety programs will cost us only one mile of road. *One mile of road. Think of it as an insurance premium.*

All it will take is citizens and legislators (and newspaper editor with enough vision to see the greater good that can be achieved). People who believe that education works better than coercion. People who believe that government's only legitimate purpose is to protect us from each other, not to protect us from ourselves.

So far this year, at least states have taken this bold step: resisted federal graymail and refused to enact helmet laws. Alaska can follow their lead.

Which will it be, Alaska: education or coercion?

[ ] James F. Andrus is the legislative affairs representative for the Anchorage chapter of Alaska Bikers Advocating Training and Education.

### Ordinance creates special class

We will have the opportunity to vote on the sexual orientation ordinance on April 20. If not overturned, this policy will set a precedence. It is not about discrimination. It is about sanctioning homosexuals as a "special class" of people.

Discrimination in any form is wrong. Nevertheless, we should not set apart a group of people for special "protection" based upon their sexual desires and practice. The homosexual community does not meet recognized requirements to qualify as a "special class." They are not a race of people. They are not set apart by economic or political issues. Homosexuals are from every race, ethnic and economic background, and of multi-cultural descent. They are our family, friends and neighbors. We should love them and have compassion. This com-

### The Sword in the Stone



### Cut wages before raising taxes

I have yet to hear one logical argument in favor of a sales tax. Those espousing it say that it will hit the tourists, the transients, the military. But so does a property tax. Property tax is a business expense that is passed on to the consumer as a part of the price paid for the merchandise or service. Anyone who purchases anything in Anchorage borough, regardless of where they live, contributes to the borough coffers by way of our already-in-existence property tax.

Secondly, the property tax I pay is deductible from my federal income tax. A sales tax is not.

Finally, if we really only need a 2 percent sales tax to make up the anticipated deficit, why are our illustrious assemblymen asking for 4 percent? To pay for the additional borough employees that will be needed?

103D CONGRESS  
1ST SESSION

# S. 295

To amend title 23, United States Code, to remove the penalties for States that do not have in effect safety belt and motorcycle helmet traffic safety programs, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

FEBRUARY 3 (legislative day, JANUARY 5), 1993

Mr. DURENBERGER (for himself, Mr. KOHL, Mr. BAUCUS, Mr. SMITH, Mr. GRASSLEY, Mr. CAMPBELL, Mr. LEAHY, Mr. KEMPTHORNE, Mr. ROTK, Mr. LUGAR, Mr. COHEN, Mr. BROWN, Mr. SIMPSON, Mr. CONRAD, Mr. BURNS, Mr. DORGAN, Mr. COATS, Mr. JEFFORDS, and Mr. WALLOP) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

---

## A BILL

To amend title 23, United States Code, to remove the penalties for States that do not have in effect safety belt and motorcycle helmet traffic safety programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. USE OF SAFETY BELTS AND MOTORCYCLE HEL-**  
4 **METS.**

5 Section 153 of title 23, United States Code, is  
6 amended—

As of 4/06/93, 27 Senators  
have signed as co-sponsors of —  
S. 295.



**MOTORCYCLE RIDERS FOUNDATION, INC.**



© 1992 MRF, Inc. All Rights Reserved

**S.295**

**Sponsor - Senator Durenberger  
Introduced February 3, 1993**

**Co-Sponsors**

<u>Senator</u>	<u>Party/State</u>	<u>Date Signed-on</u>
Baucus, Max	D-Montana	02/03/93
Brown, Hank	R-Colorado	02/03/93
Burns, Conrad	R-Montana	02/03/93
Campbell, Ben	D-Colorado	02/03/93
Coats, Dan	R-Indiana	02/03/93
Cohen, William	R-Maine	02/03/93
Conrad, Kent	D-North Dakota	02/03/93
Dorgan, Byron	D-North Dakota	02/03/93
Durenberger, Dave	R-Minnesota	02/03/93
Gregg, Judd	R-New Hampshire	02/16/93
Grassley, Charles	R-Iowa	02/03/93
Jeffords, James	R-Vermont	02/03/93
Kempthorne, Dirk	R-Idaho	02/03/93
Kohl, Herb	D-Wisconsin	02/03/93
Leahy, Patrick	D-Vermont	02/03/93
Lugar, Richard	R-Indiana	02/03/93
Roth, William	R-Delaware	02/03/93
Simpson, Alan	R-Wyoming	02/03/93
Smith, Robert	R-New Hampshire	02/03/93
Thurmond, Strom	R-South Carolina	02/16/93
Wallop, Malcolm	R-Wyoming	02/03/93

**Total Sponsors = 21    02/16/93**

**INFORMATION ★ COMMUNICATION ★ ASSISTANCE**

P.O. Box 1808, Washington, D.C. 20013-1808 • (202) 546-0983 • FAX# (202) 546-0986

103D CONGRESS  
1ST SESSION

# H. R. 799

To amend title 23, United States Code, to repeal a penalty for noncompliance by States with a program requiring the use of safety belts and motorcycle helmets.

---

## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 3, 1993

Ms. SNOWE (for herself, Mr. RAMSTAD, Mr. FRANK of Massachusetts, Mr. GRANDY, Mr. PALLONE, Mr. BOEHNER, Mr. FAWELL, Mr. HANSEN, Mr. LIVINGSTON, Mr. MYERS of Indiana, Mr. KOPETSKI, Mr. PETRI, Mr. CRANE, Mr. JACOBS, Mr. SWETT, Mr. GILLMOR, Mr. INHOFE, Mrs. VUCANOVICH, Mr. ROEMER, Mr. ROHRBACHER, Mr. HASTERT, Mr. DOOLITTLE, Mr. STUMP, Mr. GOSS, Mr. THOMAS of Wyoming, Mr. PETERSON of Minnesota, Mr. GALLEGLY, Mr. GRAMS, Mr. MINGE, Mr. LEHMAN, Mr. LIGHTFOOT, Mr. PENNY, Mr. HANCOCK, Mr. ORTON, Ms. KAPTUR, Mr. BEREUTER, Mr. SENSENBRENNER, Ms. DANNER, Mr. ZIMMER, Mr. BURTON of Indiana, Mr. ZELIFF, Mr. SHARP, Mrs. THURMAN, and Mr. POSHARD) introduced the following bill; which was referred to the Committee on Public Works and Transportation

---

## A BILL

To amend title 23, United States Code, to repeal a penalty for noncompliance by States with a program requiring the use of safety belts and motorcycle helmets.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

**MRF****MOTORCYCLE RIDERS FOUNDATION, INC.**

© 1993 MRF, Inc. All Rights Reserved

**H.R. 799**  
**Sponsor - Congresswoman Snowe**  
**Introduced February 3, 1993**

**Co-Sponsors**

<u>Representative</u>	<u>Party/State</u>	<u>Date Signed-on</u>
Abercrombie, Neil	D-Hawaii	02/04/93
Bereuter, Doug	R-Nebraska	02/03/93
Boehner, John	R-Ohio	02/03/93
Burton, Dan	R-Indiana	02/03/93
Crane, Philip	R-Illinois	02/03/93
Danner, Pat	D-Missouri	02/03/93
Doolittle, John	R-California	02/03/93
Fawell, Harris	R-Illinois	02/03/93
Frank, Barney	D-Massachusetts	02/03/93
Franks, Gary	R-Connecticut	02/16/93
Gallegly, Elton	R-California	02/03/93
Gillmor, Paul	R-Ohio	02/03/93
Goss, Porter	R-Florida	02/03/93
Grams, Rod	R-Minnesota	02/03/93
Grandy, Fred	R-Iowa	02/03/93
Gunderson, Steve	R-Wisconsin	02/16/93
Hamilton, Lee	D-Indiana	02/04/93
Hancock, Mel	R-Missouri	02/03/93
Hansen, James	R-Utah	02/03/93
Hastert, J. Dennis	R-Illinois	02/03/93
Hoke, Martin	R-Ohio	02/16/93
Hyde, Henry	R-Illinois	02/04/93
Inhofe, James	R-Oklahoma	02/03/93
Jacobs, Andrew	D-Indiana	02/03/93
Kaptur, Marcy	D-Ohio	02/03/93
Klug, Scott	R-Wisconsin	02/18/93
Kolbe, Jim	R-Arizona	02/18/93
Kopetski, Mike	D-Oregon	02/03/93
LaRocco, Larry	D-Idaho	02/16/93
Lehman, Richard	D-California	02/03/93

(Page 1 of 2)

**INFORMATION ★ COMMUNICATION ★ ASSISTANCE**

<u>Representative</u>	<u>Party/State</u>	<u>Date Signed-on</u>
Lightfoot, Jim	R-Iowa	02/03/93
Livingston, Bob	R-Louisiana	02/03/93
Long, Jill	D-Indiana	02/16/93
Manzullo, Donald	R-Illinois	02/16/93
McCloskey, Frank	D-Indiana	02/04/93
Minge, David	DFL-Minnesota	02/03/93
Myers, John	R-Indiana	02/03/93
Orton, Bill	D-Utah	02/03/93
Pallone, Frank	D-New Jersey	02/03/93
Peterson, Collin	DFL-Minnesota	02/03/93
Perry, Timothy	DFL-Minnesota	02/03/93
Petri, Thomas	R-Wisconsin	02/03/93
Poshard, Glenn	D-Illinois	02/03/93
Ramstad, Jim	R-Minnesota	02/03/93
Roemer, Tim	D-Indiana	02/03/93
Rohrabacher, Dana	R-California	02/03/93
Sensenbrenner, Jim	R-Wisconsin	02/03/93
Sharp, Philip	D-Indiana	02/03/93
Snowe, Olympia	R-Maine	02/03/93
Spence, Floyd	R-South Carolina	02/18/93
Stump, Bob	R-Arizona	02/03/93
Swett, Dick	D-New Hampshire	02/03/93
Thomas, Craig	R-Wyoming	02/03/93
Thurman, Karen	D-Florida	02/03/93
Vucanovich, Barbara	R-Nevada	02/03/93
Zeliff, Bill	R-New Hampshire	02/03/93
Zimmer, Dick	R-New Jersey	02/03/93

Total Sponsors = 57      02/18/93

HR - 108

LR00712149SPbP

MAR 12 1993

1 HOUSE JOINT RESOLUTION 10

2 WHEREAS, The Tenth Amendment to the U.S. Constitution, 16  
3 part of the original Bill of Rights, reads as follows, "The 17  
4 powers not delegated to the United States by the 18  
5 Constitution, nor prohibited by it to the states, are 19  
6 reserved to the states respectively, or to the people"; and

7 WHEREAS, The limits on Congress' authority to regulate 22  
8 states activities, prescribed by the Tenth Amendment, have 23  
9 gradually been eroded, and federal mandates to the states 24  
10 which infringe on these protected areas have become almost  
11 commonplace; and

12 WHEREAS, The regulation of traffic and motor vehicle 27  
13 safety laws is constitutionally the province of state, not 28  
14 congressional, authority; and

15 WHEREAS, A recently-passed federal mandate would require 31  
16 a percentage of federal highway funds to be transferred from 32  
17 states which do not enact statutes requiring the use of 33  
18 helmets by motorcyclists by October 1, 1994; and

19 WHEREAS, While the stated goals of such federal mandates, 36  
20 to reduce highway fatalities and injuries through increased 37  
21 use of motorcycle helmets, is certainly praiseworthy, it is 38  
22 the opinion of this General Assembly that the passage of such 39  
23 legislation by the U.S. Congress would be a blatant 40  
24 transgression upon the states' regulatory authority under the  
25 Tenth Amendment; therefore, be it 41

26 RESOLVED, BY THE HOUSE OF REPRESENTATIVES OF THE 43  
27 EIGHTY-SEVENTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE 44  
28 SENATE CONCURRING HEREIN, that this General Assembly most 45  
29 fervently urges the U.S. Congress to repeal those sections 46  
30 which impinge upon the states' constitutional authority to 47  
31 regulate traffic and motor vehicle safety within their  
32 respective boundaries, and, specifically, to refrain from 48

As of 4/06/93, 15 states have  
passed resolutions opposing  
federally mandated helmet laws.

1 mandating the passage of state laws requiring the use of 49  
2 motorcycle helmets; and be it further

3 RESOLVED, THAT suitable copies of this preamble and 51  
4 resolution be presented to the Speaker of the U.S. House of 52  
5 Representatives, the President Pro Tempore of the U.S. 53  
6 Senate, and to each member of the Illinois Congressional 54  
7 Delegation, urging them in the performance of their elected 55  
8 responsibilities, to protect and strengthen the position of  
9 the states in the federal union, avoid intrusion upon states 56  
10 prerogatives and afford protection to the proper governing 57  
11 authorities of the states.