

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8919 SENATE JUDICIARY

But that lottery is a little bit of what I want to talk to you about. All this stuff about reinventing government and this stuff that's going on all over the place, it's no different than what went on at General Motors, and what goes on with most of corporate America now. Nor is it different than what has happened in most families, certainly in most Texas families, since about the mid-1980s.

And that is, that every family, virtually every business organization, big and small ones, in Texas, and I would assume in the United States, has had to provide the same services they have always had to provide, but they, in many cases, have had to do it with less resources. And that is what the Texas legislature ordered us to do.

What the Texas legislature ordered us to do was not to go in as it happens time and time again, as we all know and say when it is budget time — cut a billion here, a billion there, until we get to where we want. Maybe it will pass, maybe it won't, but at least we gave it a shot. They gave us some very specific orders and the orders that they gave us was that the services that we are now providing we want to continue to provide. We want to feed the same number of poor people. We want to take care of the same number of poor indigents. We want to send the same number of kids to school. We want to send the same number of kids to college, but we want to do it without it costing us much. And that is not much different than what is going on in most families. They have had to send the same kids to college, they have had to put the same three meals on the table every day, and in many cases have had to do it with less resources than they had in the 1980s. And so, that is basically the approach that we're talking about.

And the only real common denominator about all of this is one thing: who are your customers? The difference is that business remembers its customers a lot easier than government remembers its customers. Government, certainly Congress, would never allow any business to create a monopoly. But every time Congress meets, they create a monopoly. They just call it a federal agency or they call it a commission or a board, but it's a monopoly. It is a monopoly in many cases that has a difficult time remembering who it works for, and whoever it is they are supposed to be serving, including the people that pay for their salaries.

In this process, we think we learned a few things. One thing that everybody in this room knows, or it should be obvious to anybody who has served twenty four hours in a legislature, that the hardest thing to do in government is cut spending. The second hardest thing to do is to raise taxes. That's why the second hardest thing happens a lot more than the first hardest thing. There isn't anybody from your district who ever goes to Atlanta or Austin or Sacramento and says "I don't want so much money coming into my business." Nobody has ever experienced that. No member of the Senate Finance committee or House Appropriations committee has ever had your most conservative constituent say "Jimmy Joe, you're sending in too damn much money. That doesn't happen."

And it does not happen in the Congress of the United States. The difference between most of us and the Congress of the U.S. is that we have constitutional provisions that keep that kind of thing in check. It's called a balanced budget, and they don't.

Now, the other thing that we learned is that business and government, when they're in a pinch, act real differently, and I'm sure everybody in this room knows this too. When business has to cut back, they make sure that their customers never know, if it possible. If a bank had to let a teller go in Texas in 1985, the bank president would take care of that customer and would do what he had to do. When I had to lay people off in my real estate and restoration company in 1985 and previous to that, which is a lot of laying off, if that phone rang and there was not a receptionist there, the partners in that company would answer that phone. We could not afford, nor can any business, to let our customers know that we had trouble. Or that we weren't going to be able to serve them as well as we always had. Business knows that it has to make those customers happy to survive.

Now think about how your bureaucracies treat you. It can't be any different in your state or ours or Washington or any place else. These guys in Texas, or any place else, try to cut the budget and they are met with resistance. For example, the old Texas Water Commission. The water commission, all of a sudden, would not let permits go out for three years. It usually took no longer than three months to get a permit. And when the business, whether it was Houston Industries or whoever, went to complain to the agency, the agency would say, "Well, you know, we need 300 more people. If you can talk to chairman of the House Finance or House Appropriations Committee and have him give me 300 more people, we'll probably get to process your permits as fast as we always did, but since we're so short-handed, it's going to take three years to do it." It's all blackmail. It's bureaucratic blackmail and everybody in this room has had to put up with it.

The same thing occurs in hospitals. We were doing some things with one university here, and the chancellor stood up and said, "This is going to eliminate indigent funding in South Texas." It didn't have a damn thing to do with indigent health care funding, but it sure made the headlines.

And all kinds of things that you have to put up with because those agencies have forgotten who their customers are. They thought they were the customers and they forgot that the people out there were the customers. The agencies didn't really care how they got their money. They got their money by lying and stirring up people, and enraging people and causing 15,000 letters to come to the legislature, which was just as good as getting it by doing a good job. That's a big difference, and so you have to find ways to remind them who their customers are.

The third thing that we learned is the difference between the Republicans and Democrats when it comes to spending. Here it is. I have three years of research. Both of us would spend every dime in the Treasury, but Republicans feel bad about it. When you find anything else in this process, let us know.

The last thing that we learned was that competition works in government just as well as competition works in the private sector. The problem is government will always figure out a way to try to not make it work instead of making it work. Let's have one federal example. And I would hear about it when I was in the Army and it is true in every survey that you look at. If you ask the veterans of the U.S., what is the single best program the U.S. Congress ever passed that you are happy with, they would tell you, without question, it's the GI bill. What did we do with the GI bill? We didn't create a monopoly. We didn't build a bunch of U.S. veteran universities and say here's where these men and women have to go. We gave them a voucher and we said, make every college and university compete for your voucher until you're satisfied. And it remains the most satisfying program today.

When you ask those veterans what is the most unsatisfying program that the Federal government has ever passed, right or wrong, they will tell you in survey after survey, it's the VA hospitals. I always get in trouble when I say that, but the problem is that it is a fact. And what did we do with VA hospitals? We created a bricks and mortar monopoly and we told those veterans that that's where you're going to go. And the person that ran that hospital knew that they had a captured clientele, and sometimes the service is good and sometime it is bad, but that's where they went. It makes you wonder what would happen if the Congress would have said to the injured and disabled veterans, here is a voucher. Make every hospital in the United States of America compete crosswise with you for that voucher. I suspect that the result would have been very different. The satisfaction rate of those veterans would have been very different. And there are more examples in education or anything else that exists in government. The only difference is that government will try, in protecting its own interest, to find a way around that and try to make the competition not work. And that certainly is always a problem.

One of our recommendations had to do with food stamps. Just think about that particular program. Think about how it works. First thing you do is chop down the forest trees. Because that's how much

pulp you need to generate the paper to print billions and billions of dollars worth of food stamps. You still aren't feeding poor people and you have lots of paper. After you do that, you take the paper to Stanley Kragman, who is the CEO of the United States Bank Note Corporation in New York City. He's the only person in the world that prints food stamps. You paid Stanley \$84 million last year to do nothing but print food stamps. All right, you got the paper, you've paid Stanley and you still have not fed poor people.

After you do that, then you have to get distribution trucking companies and secure couriers because food stamps of course, are as good as cash. And you have to deliver them to your distribution centers in Dallas or Atlanta or wherever it is. In Texas we paid those companies \$6.1 million last year to deliver the stamps to the distribution centers. And then from the distribution centers, you have hundreds of people, if not thousands, that take the stamps and put them on envelopes and, until last December, delivered them to the U.S. Postal service, who never put a stamp on it, and distributed it from the post office. Still it was one of the top three things stolen by the U.S. postal service last year. It didn't take long to figure out who was stealing those stamps.

After you do that, you drive grocery stores crazy. In South Texas, among HGB stores, the number one turnover rate is among people at night who had to reconcile food stamps with actual purchases. I assume under the threat of federal indictment or something. And then you drive banks crazy. Nation's Bank in Austin Texas alone last year spent \$460,000 doing nothing but reconciling food stamps with its purchases down, in its basement, to deliver to the Federal Reserve in Houston so that they can trade it in. And Stanley can print another 400 million next year.

And then, all of your constituents lose faith in the program because they have seen on Prime Time Live where some guy bought a house with food stamps. And they have been to the grocery stores. And you have heard story after story about some old boy in a Cadillac that used food stamps.

We once followed one of those guys, by the way, and he would not have qualified for food stamps. He never received them. He ran a bar. And what he was doing in the bar was taking two dollar bills for drinks or five dollars worth of food stamps for the same drinks, and then using the money to buy food for his own family or sell them to somebody else.

And you see instance after instance where narcotics officers in major cities would tell you that as much as, or maybe more than, forty percent of the cash in drug busts is food stamps. That's a problem. You can buy almost anything with food stamps that you can buy with dollar bills. How do you eliminate that? How do you eliminate Stanley? How do you eliminate the trucking company and all those other things in the system? The technology has been here for fifteen years but our agencies have not moved, except for pilot projects in Maryland and Rochester, New York and some other places, and there has not been much press on it.

We decided to take that on a couple of years ago and we signed a contract about a month ago. This September the project will begin in Houston, and it will be state-wide and food stamps will be eliminated in Texas by about January of 1996. What will exist is a card, a Lone Star card, because that's what we decided to call it. It's a little card and it has a pin number on it that will work only in a grocery store and it will buy only food. Cigarettes, beer, nothing like that would scan through that card or it will be automatically rejected. And the money goes directly into the banker's account.

Sounds like a good deal. Who in the world would be against that? I promise you, Stanley was against that. Stanley and some of the check cashing folks in Chicago and other places had every lobbyist they could afford in Washington, D.C. And every time we went to the Department of Agriculture, every time we went to the HHS, we kept hitting their brick wall. Even with the Federal Reserve we had problems. And it finally dawned on us that we were up against this lobbying effort to protect foodstamps. So,

once we realized who we were really up against we were able to make our case. And by January 1996, if it goes according to schedule, food stamps and food stamps fraud as it exists, should be non-existent in the state of Texas. And we know that Florida, we know that New York and some other states have RFPs that are coming out in the next month that are pretty close or identical to ours. We think the same thing is going to happen all over the place.

I use that as an example because that is what the legislature told us to do. They told us, feed all the poor people that are being fed right now. You figure out a different way to do it. And that's what government has such a darn tough time in doing. I hope I never have the experience that I had with Congress when we were working on the national performance review. The people working on it were well-intentioned, they set up the right mechanism, but when you deliver that package and ask them to change what's going on, that's almost an impossible task.

Consider what's going on at Customs and the regulation of the Mexican border. There are about 20 agencies that control things coming back and forth across the border. Customs, INS, Agriculture, Treasury, all kinds of agencies in there. And when you go to the Congress and say we want to change that, we want to make it more functional and have only one group of people doing it, what you find is that the forums that Congress imposed upon itself a decade or so ago are causing complete and total disarray. Because you have 20 agencies sitting over there, each one of them getting their money from a separate subcommittee chairman who has used it as his own personal freedom, and he is not going to give that deal up. The chairman has a symbiotic relationship with that agency that resembles incest, and they are not going to let the thing go. And as a result, they all get together and say, better to have a mess than to have something like that.

And that's the problem with the Congress of the United States. The Congress of the United States should never have probably gone out and appointed all those subcommittee chairmen. It probably should have run it the way Mr. Mansfield used to run it a long time ago, and we wouldn't have that particular problem.

Another example, if I could, has to do with the lottery. One of the things that the leadership of the legislature told us to do is figure out a way how to run it cheaper than it is run in other places. This lottery in Texas has 7.1 percent overhead, which is unusual in that the average overhead for lotteries is about 15 percent. Florida has about 800 employees and California has close to a thousand, something like that. This one has 189, which happens to be the same number of people that were in Alamo, and has nothing to do with the way to run the lottery.

But the reason it has 189 is because it is a business-driven operation. Over 210 businesses, mostly in Texas, have contracts with the Texas lottery. We didn't go out and build a bunch of warehouses and we didn't hire a bunch of truck drivers and a bunch of delivery people. We found this company called United Parcel Service that amazingly enough knew how to deliver lottery tickets to a 7-11 store, having never done it in Texas. We didn't build a computer system. We don't own anything in those stores. It is owned by businesses, and every single one of those businesses know that they could be out of business in six months if somebody comes along with a better deal. It is called competition. And that is what makes the lottery operate with a 7 percent overhead. Nothing magic that anybody else has done. It is the competition that exists within that lottery that causes it to happen.

Now I want to talk about a very successful program, and unfortunately, it is not occurring in the state of Texas. It is occurring in North Carolina. It is occurring in South Carolina. And it is beginning to occur in Alabama. It is about remembering your customers when you talk about technical education.

All of us know one thing, and every economist in the country knows one thing — no business, no state, no nation has more than three things to sell. You either sell natural resources, you sell capital re-

sources, or you sell human resources. That's it. There's nothing else. And Texas, certainly, to a larger extent than most, and the United States as well, has been blessed with abundant natural resources that has done us proud. That's not going to be the future. It's not going to be the future of Texas unless we find a use for mesquite wood that is not readily apparent. It's not going to be true in other parts of the country. And capital resources, certainly, are dependent on the other two, and that leaves you with one thing to sell. That leaves you with human resources.

Human resources only becomes a good economy when you are able to produce the skilled laborers necessary, and competitively, in order to do it. We just finished in the legislature, at the governor's request, a 30 year study of Texas, looking at everything bad, everything good and how you maximize it. We interviewed hundreds of businesses that have looked at Texas and had come, and some that have looked at Texas and gone somewhere else. And the huge plurality of those businesses that chose not to locate in Texas, located in the North Carolina, South Carolina or Alabama triangle. So we are saying, "what's the problem?" And when we went there, we found out the reason. That what the businessman or woman finds when they go to North Carolina is they don't have to be worried so much about chemical engineers in chemical plants. Now, we do a fine job in this country educating degreed people. What they're concerned about is technicians, the chemical analysts that they can't find at Dow Chemicals in Freeport, that they can't find in Motorola, and they can't find in places in this country. But when they show up on the doorstep of the Triangle down there, what they are asked is how many employees do you have and how many do you want? Send them to us and our community college system and we will educate them to your specification, using your curriculum guides and we'll guarantee them at the end of that process. And that's when they bring the customers.

What do some of us do? I know what we did last year. We trained 6,552 cosmetologists when we needed 650. We're training people to be things that we know when they start the program don't have a cut dog's chance of getting a job at the end of that program. And that is what has to change. There are many of our community college systems and many of yours that are doing good jobs. There are many private agencies doing the same thing. Our Texas State technical colleges are moving in that direction. But there are too many that are not. There are too many that are spending hundreds of millions and billions of dollars because they don't remember who the customers are. And I don't want North Carolina and South Carolina and Alabama to get away with this very much longer. And neither should you. Because the future of what we have to be about is high skills labor. It's the manufacturing base that we lost.

We think we have somewhat of an advantage because we think we have an opportunity particularly in this city, of being the high skill labor side of low skills that occurred in Mexico. God has been very good to Texas. I mean when He first made sure we were all over a whole bunch of natural gas, and then He made sure about the time that started playing out we were located right between Montreal and Tierra del Fuego. So we have a little bit of an advantage. But human resources are going to be the economic future of not just Texas, but the United States. And those kinds of people who are responsible for training the surgeons are what we have to be about. And all it is really is one simple premise. They remember who the customers are. Their customers are not the community college, their customers, in some cases, are not even the students. Their customers are the businesses, and when you satisfy the businesses, then the students become satisfied as well. And that is all reinventing government or whatever the heck you want to call it, is all about. Thank you for giving me a chance to do this. ■

NATIONAL LEADERSHIP SUMMIT ON ECONOMIC GROWTH
APRIL 1994
SAN ANTONIO, TEXAS



HONORABLE GEORGE MCGOVERN

As a small business owner, former U.S. Senator and Presidential candidate George McGovern realized the damaging effect that excessive government regulation and the growth of frivolous lawsuits have on business. He speaks of the need to implement a cost/benefit analysis of government regulations to see if the good the regulation accomplishes is equal to the burden and difficulty it causes for small business owners. McGovern also gives examples of the drain that fraudulent and frivolous lawsuits have on the resources of businesses. McGovern believes that only in the states will real tort reform occur, which will reduce the explosion of civil suits that have damaged not only our economy, but also the "civility and decency of our society."

Thank you, Ladies and Gentlemen. I am proud to be the guest of the American Legislative Exchange Council, and glad that the meeting is here in San Antonio. I think until you have become thoroughly familiar with the operation of a state legislature, you really don't understand American politics. I've always regretted that I did not have that experience before I went to the Congress.

I apologize for showing up with one arm in a sling. I was hurrying down the street in Washington during an ice storm to see a movie, *Schindler's List*, and noticed as I got near the theater that there were probably four or five hundred people waiting to get in the theater. All that did was to ensure that 500 people saw me fall flat on my face when I hit a spot of ice in front of the theater. I managed to dislocate a shoulder. What I didn't know until six weeks later, when it did not seem to heal properly is that I also ripped the rotator cuff. I thought that people like Sam Bruneil were the only people that had rotator cuffs. He was trying to steal my thunder earlier in the night by saying that he tore both of his playing for the Denver Broncos and that it is still not quite right. My doctor told me the same thing. I said, "Does it mean I can't pitch for the Baltimore Orioles?" He said, "Well, I wouldn't go that far. I've seen their pitching staff."

I have an old conservative Republican friend who lives next door to me in Washington. He asked me which arm I hurt and I said it was the left arm. He said, "You know, McGovern, you can't even fall to the right."

But, what I have to say tonight is neither left nor right. To tell you the truth, I have never been very comfortable with either of those labels. I think they're too sweeping and all-inclusive. The press loves to put us politicians in pigeonholes and you're supposed to stay there in a certain category, so it is uncomfortable for me. I'd like to just talk here tonight as an American. I grew up in South Dakota during the Depression and World War II. I suppose you could say that we're more or less a conservative state with views not dissimilar to that of Texas. My parents happened to be lifelong Republicans. My father was a conservative Methodist minister and I was actually born in a parsonage, and they believed very strongly in the tradition of conservatism. Whether they would have voted for me in 1972 I'll never know, but I know it would have been a hard call.

There actually are two great political traditions, as all here know American politics that go back as far as Jefferson and Hamilton. The tradition of conservatism on one hand, and liberalism on the other. In

my view, perfectly respectable traditions, both intellectually sound, both morally grounded, and I think we need those two traditions. It is actually the creative tension between conservatism on one hand and liberalism on the other that is the real genius of American politics.

Most people embrace some elements of both of these traditions. I would like to point out here the earlier remarks of Representative Harold Brubaker, because he was really spelling out some of the greatest strengths of the conservative movement, which are its resistance to government that goes beyond what is necessary, a respect for personal freedom and personal initiative. Those are perfectly valid values for any politician or any American. On the other hand, we need a liberal tradition. Liberals, for better or for worse, tend to be more innovative, perhaps more experimental, more willing to use the power of government to accomplish certain purposes. And I think it is fair to say, and I don't believe this is a partisan judgment, that most of the public programs that are now generally accepted by both political parties began as liberal initiatives, sometimes over conservative opposition, whether you're talking about social security or Medicare or rural electrification or civil rights or the women's movement, or whatever. Most of those things began as liberal initiatives and we need that kind of newness and innovations in American politics as a companion to conservatism.

That said, I'd like to talk about the topic tonight, tort reform. Some years ago after leaving the Senate, I permitted an old friend of mine, who had been in the hotel business all his life, to convince me that I should take over a hotel in southern Connecticut where he had worked for many years. Since I had been out on the lecture circuit for a while and had earned a little money, the idea was that I would provide the money to acquire what he said was a "sure fire" investment. He would be the manager since I didn't know anything about the hotel and restaurant business. Well, to make a long story short, it didn't work out too well. I'm no longer in the hotel business. But I learned a lot of things in the two and a half to three years I was involved in that hotel.

I wish I had acquired, before I became a U.S. senator and certainly before I ran for the presidency of the U.S., an appreciation of the problems small business people have to put up with everyday of their lives. It's a very difficult thing to run a small business, even in a great country like the United States, and make it pay. And there are millions of people across this country whose livelihoods are dependent on the success of small businesses. That's where the new jobs come from for the most part. That's where the existing jobs are concentrated. And I discovered in the short time that I was in the hotel business, that these small businesses are beset with reporting requirements and complicated regulations and difficult tax forms and lawsuits, both frivolous and fraudulent, and all kinds of difficulty. This experienced old manager of mine was qualified, but he had to spend so much of his time trying to stay in compliance with all the regulations, state, local and federal, that there was no time to promote that hotel, no time for an advertising layout, or working with the customers in the community. He was burning the midnight oil just trying to keep us in compliance.

And I began looking at those regulations from the perspective of somebody who was on the receiving end. And I do not want to belabor the point tonight — I haven't abandoned the liberalism and its basic essence, its basic philosophy — but I have concluded that if I were back in the Congress today, or in the White House, I would examine every new proposal against the test of whether or not the good that the proposal accomplishes is equal to the aggravation and hardships and difficulties that it presents to American business. Because there's just no question in my mind that we are damaging our competitive position. We are making it more difficult for business to function successfully because of excessive and difficult regulations.

Now, one of the problems that I experienced as I mentioned to you, and I was only in this business for two and a half years, is that we underwent two lawsuits I thought were just off the wall. The first one was from the man who left a rather large commodious bar lounge connected with this hotel. It was the only thing that made any money. And it was well run, but he left the bar one night and went out into a

large parking lot around the hotel and managed to get into a fight with somebody. He fell down and hit his head on the ground. It's even worse than a shoulder. Anyway, we had a large lawsuit on our hands. He claimed that he was attacked by somebody out there. We never found out who the attacker was, but the argument was that we should have had more security so that when you leave the bar nothing happens to you. You get in your car and go home. We had a security man on duty out there, but a little hotel like that can't afford to bring the Marines in every night. I didn't think this incident was the hotel's fault. No one else familiar with the details thought it would cause us to go into an expensive lawsuit. Eventually, the charge was thrown out, but not until we had exhausted a lot of money in legal fees and a lot of time and anxiety that could have been better spent running that hotel.

A few months later, a lady was leaving this bar and tripped for reasons unknown to me or anybody else, and sprained a knee. Another lawsuit against the hotel. Again, one that we eventually won but not until after considerable expense to the hotel.

My view of all of this is that there are some things that happen that aren't the fault of the business where they happen. They may not be anybody's fault, it's just an accident. I suppose I could have sued the theater in Washington where I fell because there was ice on the sidewalk. It never occurred to me. I just figured I slipped and fell down. But there is a growing sentiment, I think, among both private citizens and among the lawyers to move to the courts every time an accident or something unfortunate happens. It is somebody's fault, and therefore, you go to court. And if that process continues, I think we're in great difficulty as an economy and as a society.

We have a great civil justice system in the United States. Nobody wants to weaken that certainly. Nobody wants to deny a legitimate claimant his or her right to go to court to make a legitimate claim. But if we are to preserve that civil justice system we have to avoid some of the abuses that have not only crept into the system, but seemed to have almost galloped into the system the last fifteen or twenty years. And those problems include frivolous lawsuits and fraudulent lawsuits.

I came across one statistic the other day at a recent meeting of the American Board of Trial Advocates. The participants in that large conference came to the conclusion that a fourth of all the filed lawsuits in the U.S. are either frivolous or fraudulent. A 1990 Harvard study, for example, of medical injury and malpractice litigation found that 80% of the participants in medical malpractice suits, suffered no real injury or jeopardy of any kind.

There is a case here recently where a young woman at Brown University, one of the coeds, was taking a shower with a young man, hopefully her boyfriend. In the course of this shower, she cut her arm on a broken glass soap tray. She sued the university, for \$700,000. The dormitory janitor testified under oath that she had cleaned that shower just a minute before it was used and there was nothing wrong with the soap tray. In any event, the jury rejected the case, rejected the claim and came out in favor of the university. But the university spent tens of thousands of dollars in legal fees, and more than a hundred hours of effort on the part of their own legal counsel. They finally won, but this type of thing is growing on campuses all over the country, lawsuits that are being filed by students for any kind of an accident that occurs in the dormitory or on the campus.

We all know the growth of these lawsuits in the health field, and what is happening is that we're driving up the cost of just about everything. But beyond that, we are discouraging companies from producing innovative new products for fear they'll result in lawsuits. We're discouraging doctors from performing what used to be routine procedures in delivering a child. We're discouraging many physicians from undertaking high risk cases at all. They just won't do it anymore. We're encouraging doctors, perhaps, to take excessive precautions or to abandon procedures that might otherwise relieve somebody from a health problem, if not death.

And all across the board, whether it is the automobile industry or the aviation industry, the excessive growth of lawsuits has brought about a discouragement of the kind of innovation and new procedures and new techniques that might benefit us all. Plus making it increasingly difficult for even once favored firms, like those in the aviation industry to compete with the firms of other countries.

I was not aware, until I began looking into this matter, of the number of fraudulent lawsuits that are growing in number and cost in this country. One practice is when a public transit car has an accident, people run to jump on the car and claim that they were part of those suffering from whiplash and other difficulties. Recently in the state of New Jersey, law enforcement people conducted a sting operation on those transit accidents and now have all kinds of film of supposedly respectable citizens rushing aboard a car that had an accident to try to claim fraudulent fees. And here again, a surprising percentage of these awards have been demonstrated to be fraudulent.

So what I would appeal for here tonight is the recognition that this is a serious problem for all Americans. And that it does affect our economy. It does affect our competitiveness and beyond that, I think it affects the civility and decency of our society. If we began looking at each other from the perspective of plaintiffs and defendants, and begin this divisive procedure of trying to hold somebody accountable for every unpleasant thing that happens in our life, this new emphasis on the victims of society, the growth of the crybaby industry in this country, then I think it results in a loss of decency and fairness and dignity in our country that we can ill afford.

So, what can be done? One possibility is self reform led by the American Bar Association. I don't think that's going to happen. I am not a lawyer, and I respect those who are, but I don't really think that route is very hopeful.

Another possibility is for the Congress to take on this question. I am told by people who have followed this issue for years, that's not very hopeful. Either on the House Judiciary Committee or the Senate Judiciary Committee.

A third possibility is tort reform in the states. And to me, that's really the only practical and hopeful alternative that is available. Now, if that's going to succeed, it's going to take an informed and concerned American public. You don't get much reform in the United States without genuine public understanding and concern of whatever the issue is. I believe this is a story, that if properly told, the American people would respond to. It does not make any difference whether they are liberals or conservatives. If they see the problem for what it is, a threat to our economy, a threat to the civil basis of our society, I think this is an issue that can be solved. I think that state legislators not only are in the forefront of this issue, but that's where they must remain. Because it is true, the reform of the tort system at the state level is where we have our best hope of success.

So, you state legislators and informed business and professional people who are here tonight, I just want to say regard it as a privilege to be among this group of concerned individuals. I think that we have to work together in the search for a civil justice system that is both just and civil. And that means tort reform at the state level. Thank you very much. ■

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ROY INNIS
CHAIRMAN
CONGRESS OF RACIAL EQUALITY

Roy Innis, Founder and Chairman of the Congress of Racial Equality (CORE), speaks candidly about the hypocrisy in the criminal justice system. Innis uses his own experience in New York City to show the unwillingness of those in the courts to truthfully confront the issue of crime. He expresses that the leniency given to repeat offenders and the hypocrisy of gun control are the results of a "neo-bolshevik" culture in

America that does not truthfully or logically deal with the problems of our society. He cites several examples of gun control advocates that have permits to carry the same guns they are trying to "get off the streets." Innis states that we must reject those that offer senseless solutions, and that those in the media, in academia and in politics must make a greater commitment to "truth, logic and courage."

At this time in American history, let us consider that we have defeated, recalling Ronald Reagan, "that evil empire," the great Soviet empire without firing a shot. We've solved one of the most vexing of social problems here domestically, and that is the racial problem in its worst form. That is, pre-1950s and 60s, what I call the pre-Civil Rights revolutionary period. We should be happy. We should be well on the way to maximizing the effects of these two great victories, but we are not. Because while we defeated the Bolsheviks, the Communists abroad, I am not completely certain that we have made enough headway domestically. This domestic variety I call neo-Bolsheviks.

Let me delve for a brief second into a little history. You remember the Russian revolution when the Russian people overthrew the yoke of the Czar. Most of the Bolshevik leaders, Lenin and many of the others, were in Switzerland. And when they got to Russia, after the revolution was well on its way, the Bolsheviks pulled a coup. And there was no communist revolution in Russia, that was a Bolshevik's coup. Now I said this to you because I want you to observe a similarity in style, and the root of many of the problems we'll talk about here today.

The great Civil Rights Revolution of the 1950s and 60s was a great event in America. It is one of the greatest and most successful social revolutions in the history of all mankind. In fact, one of the few real successful ones. And for that, all of us, Blacks, Whites, Hispanics, people of Asiatic ancestry, should be proud. We should not be at each other throats, because we have gotten rid of a very nasty social arrangement. But in the process of doing that, I think we, during the Civil Rights movement, maybe did the job too well. Because we so sensitized America to the evils of the past, and that is good. That is decent. But the American people have become over-sensitive, hyper-sensitive to racial questions. So that whenever a question of race impacts upon a solution, you can almost be certain that the solution is going to be polluted and confused and contorted. And that is a problem of development in the urban centers in general, and the central cities, these so-called ghettos, in particular. To come upon that problem, which is an expression of the decency of the American people, the fact that they are so sensitive and want to undo the record of the past, the hustlers have become aware of it. The racial racketeers, and they come in all colors, many of them come out of that Bolshevik culture. They are in fact, the neo-Bolsheviks.

And where do you find them? You find them in media, you find them in academia, and yes, even in politics. Many of your colleagues in state legislatures and city councils and county commissions. And in Congress, of course. This hypersensitivity is a decent expression of the American people about a sorry error, which is known as the McCarthy era. We are so sensitive that even when you see a neo-Bolshevik, even when they talk, walk and squawk like a Bolshevik, you can't call them a Bolshevik. Because he is an American.

I am here to say to you that if we are to save America, we are going to have to not become insensitive to racial questions, and insensitive to questions like the unfairness of McCarthyism, but we have to have a greater commitment to telling the truth. A greater commitment to what I call the TLC principle, that is truth, logic and courage.

The problem of crime and violence cannot be dealt with unless we take this approach. The reason for much of the crime and violence is that it is encouraged by the apologies and the alibis for criminals. And these apologies and alibis are being acquiesced by the rest of us. You cannot deal with the crime and the criminals unless you are prepared to confront it.

One of the great causes of crime is the fact that crime does pay. I once went to trial for catching the criminal who had broken into my car. Unfortunately for me, he resisted a citizen's arrest. I turned him over to the police and within 48 hours I was under arrest. I was asked to be in a line up and I refused to go to a line up. I agreed to stipulate that I was there, I caught the SOB. I don't need a line up for that. I gave him to you, that's the lot. I went to the appellate court and I had to go into a line up like a common criminal. I went on trial for three and a half weeks, on two counts of very serious assault. The system was very vigorous in this case. I won my case, but it left a very bitter taste in my mouth.

The criminal first of all, was testifying against me. Naturally, he was dressed in a nice blue suit and he was dried out for maybe a couple of weeks. He was referred to as "this family man," and if you check the New York City Supreme Court records, you will see it. This family man while plying his trade, was set upon brutally by Mister Innis. I couldn't believe my own ears. In a short break during the trial I asked some of my colleagues if I was hearing right. Did the prosecutor call, in fact, the bureau chief of the criminal division in Manhattan, did this man actually call this common criminal, who has had 20 arrests before he ran into me, a "family man"? A few days after he came out of the hospital, he was arrested again, this time by the police at Yankee stadium. He didn't come back to my area, which is part of the solution.

I went every time there was a court date for this fellow for the second arrest. I had my people there and I went myself. Then, one time we missed and the case was dismissed. To keep him pristine pure from the trial of Jesse James John Dillinger Innis.

That kind of attitude was so wrong, so conspiratorial with its indecency. The young man stated, when he was asked how many crimes he had committed "for each of the arrests you've had, how many crimes have you committed when you were not caught?" And he boldly stated "fifty." In other words, you can assume he did something like a thousand crimes for which he was caught only 22 times. That gives this guy one hell of a batting average, a 98% batting average. Would you like to have him on your team? The fact is these guys don't have to worry, because of the 22 arrests, he did not go to jail very many times. And he did not stay there very long.

But what is more damaging is the fact that there is a veritable reign of terror, intellectually and physically, in many of the central cities. Now, it started in the black community, in the Hispanic community, but it's spreading throughout all our cities, throughout our urban areas. And the reason is that increasingly, there are silly solutions being offered by these Bolsheviks to crime, such as gun control. And when these people get on their horse, they lose sight of all logic.

The TLC principle of truth, logic and courage, is completely lost. For instance, the two cities with the toughest gun laws, New York City and Washington, D.C., are the places that you have more fear for your life. The places where the criminals are more safe from us. The people who are murdered are the decent people, because they are the ones who are unarmed.

And let me show you how this thing proliferates. And how this whole lack of logic and honesty and courage detracts from this problem. There's a fellow that's running around the country right now named is Fernando Mateo. He is the new superstar of the media set, a pure media creation. He has a big campaign to give gifts for guns and some very nice, hypersensitive old ladies in New York and other parts of the country, went along with this gimmick, giving their guns up for a gift. Certain stores and corporations joined this fuss. Only one problem. Not one criminal has given up his gun for a gift. He uses his guns to get all the gifts he needs.

This shows you the hypocrisy of this gun solution, and this goes beyond Fernando alone, but to the media establishment and these anti-gun politicians. New York City, with its gun law, has allowed only about twenty-six thousand carry permits. And, of course, most of those permits are in the hands of people like Donald Trump, a man who fears for his life with a chauffeur and a bodyguard. The publisher of the New York Times, the greatest anti-gun newspaper in the world, has a full carry permit, for fear of his life. And, people of that sort and this fellow Fernando Mateo, who is running around and getting senior citizens to disarm themselves, has a full carry permit. I want to ask Fernando, how can you ask people to give up their guns and you have yours? Fernando says, "I tell you the truth. My gun saves lives." But listen to the hypocrisy, and listen to the lack of logic. The fact that he knows and won't tell you that his gun has saved a life. His life, I suppose. He does not extrapolate his need for gun, the efficacy of a gun in his hand, to the greater efficacy of the gun in the hand of a defenseless senior citizen.

And it is that kind of bolshevik, and his hypocritical thinking, that is the root cause of crime. If you check with the media establishment, you will find that almost every one of those media pretty boys carries a gun.

There was a journalist in Washington D.C., Carl Rowan, a black journalist, one of the great anti-gun journalist of all time. Two young white kids slipped into his swimming pool to skinny dip, and for that crime, pistol-packing Carl Rowan came out and shot the kid. In Washington, D.C.

I have combined my efforts with the NRA, I stand with them at this time when they are being attacked by all sources. I heard Henry Waxman just five minutes ago equate the NRA with the tobacco monopoly. One of the bad guys. I heard in a newscast, to show this neo-bolshevik thinking, in which they were talking about today being the anniversary of the great, great Jimmy Doolittle and the fire bombing of Tokyo. Great moment in American history. Guess what the media bolshevik said. "The infamous greed of Jimmy Doolittle." Thank you ■



HONORABLE JOE BARTON
U.S. HOUSE OF REPRESENTATIVES

The telecommunications revolution we are experiencing, and how that revolution has drastically changed the way in which we communicate, was the subject of the address given by Congressman Joe Barton. Barton points out the unequalled progress we have made in the past ten years, such as the invention of the cellular telephone, the explosion in data processing capabilities and satellite communications. He explained what Congress has been doing in telecommunications policy, both the mistakes and the successes. Barton believes that the marketplace should decide the price and quality of the new technological capabilities which will be offered in the future, but that Congress and state government must work together for that to happen.

I have been asked to speak a little bit about telecommunications policy. I am on the Energy and Commerce committee, I am on the Telecommunications Finance subcommittee, I am an engineer and I have worked in the past for telecommunications companies, and so, I'm going to do that. But I have to state right up front that our next speaker is the president of Southwestern Bell and she made the mistake of showing me a copy, actually faxing me a copy of the outline of her speech. Now, if I were a typical politician, I'd take her speech, give it and take credit for it. But I'm not going to do that because she is much more knowledgeable than I am on the details. So what I want to do is just give those of you here from the various state legislatures an overview of where we are going on telecommunications policy in Washington. And I will impose a point of personal privilege by giving you some of my personal perspectives on where we need to go, which is not necessarily the same as where the Congress is going

In general, I think that when we talk about telecommunications policy, we really are talking about two different aspects of telecommunications. One is personal, the telephones that we use in our homes or the communicated private conversations with our families and our friends. Cable television, perhaps, that comes into our homes for entertainment purposes. That kind of traditional Ma Bell reach-out and touch someone mentality. And even in that area, even in personal communications, telecommunications systems and the ability to communicate not just across the street or across town or across the state, but literally across the world, is changing very rapidly.

And obviously, the second aspect would be in business. Now when you talk about telecommunications policy in a business perspective, you're talking about the ability to transmit large amounts of data, to communicate and coordinate marketing strategies and production strategies across, again not just the local area but, literally, the world. And while there are elements in telecommunications policy that are mutually inclusive in each of those areas, obviously there are things that are more important in one area than in the other.

Now, in both areas, we are experiencing a revolution, a revolution as compared to even 10 years ago. How many people today in this room have a cellular telephone? It's a legitimate expense in Congress, so every Congressman has one. And it's probably a legitimate expense for each state representative and state senator. How many of those that raised your hands had a cellular telephone ten years ago? You probably had a mobile radio phone, but you could not have had a cellular phone because it hadn't

come to the market ten years ago. The kind of technology that we know today was not yet available ten years ago. How many of you have a beeper or a pager? I have one. We don't have any doctors or drug dealers in the room then, because they would. How many of you have cable television in your home? That's all part of the revolution. How many of you have a personal computer in your office? How many of you have a modem in your office so that you can communicate with other computers that are not in your office? How many of you are hooked up to Internet or some sort of national information network system?

We had a Republican Congressional retreat about three months ago, there's 176 Republicans in the House of Representatives, and about 110 came to the retreat. You know how many Republican Congressmen were hooked up outside of their own congressional offices to Internet or something like that? One. You're looking at him. So, we're only about fifteen years behind the curve in the Congress, which may mean we're making up ground. Well, I just used those as examples to make a point, because you tend to think we've always had a telephone. Now, Alexander Graham Bell invented the telephone in the late 1800s, so we've always had telephones. In my generation, I was born in 1949, we've always had televisions. But if you just look at the way things are today as compared to even ten years ago, the revolution on the business side is amazing.

A man named George Gilder, a noted author who wrote "Wealth and Poverty," which was one of the books that fueled the Reagan Renaissance in the 1980s, spoke at a conference several weeks ago that I attended. He pointed out that with the fiber optics technology available today, you can communicate literally around the world in trillions of bits a second. I am speaking at about fifty five bits a second. Most people communicate in the South, I guess we communicate a bit slower, at forty bits a second, and in the North, seventy-five bits a second. But average humans speak at fifty-five bits a second of data. As a Congressman I listen at about twenty-six bits a second. I understand about ten bits a second, unless it is a committee hearing in which it drops down to the square of that, or about three and a half bits a second. And those of you who have testified before Congress can relate to that because most of us on the side of the podium that I am on, tend to be asleep or reading the newspapers or communicating on our cellular telephones, now that we have cellular telephones.

But, the ability to communicate is expanding exponentially. There is technology available today in the marketplace, the radio transmission where you don't have to have a specified frequency, that you literally have transmitters and receivers that look at what's available in the spectrum and that's where they send it. That's where it goes out and that's where it is received. So, you don't even need to have the regulations like we have on the books today where you allocate for KRLD Radio in Dallas or WBAP in Fort Worth in a specific spectrum. You can literally communicate in that arena as if it is a total commodity and there is no scarcity. That technology is available today. The ability to communicate in massive amounts of data to literally anywhere in the world with wireless transmissions is a bonus.

One of the things that's going to be investigated, for example, in the tragic shooting down of the two helicopters yesterday in the no-fly zone over Iraq by American F-15 fighter pilots, is what went wrong with the telecommunications line. We have got military satellites that can locate all our military assets within a classified geographic area that are extremely small. I can't tell you how small, but it is much smaller than this room. And there is an AWACS plane at 35,000 feet and there are the F-15s at 10,000 and there are the helicopters at a thousand feet on a clear day in the morning where everybody is speaking English on the same frequency. Something went wrong with the communications line, because there is no way if they have all those systems working that those two helicopters should have been shot down. And that's because we have this huge ability to interplay by communications anywhere in the world.

But what are we doing in Washington legislatively that is going to impact on the state level? One of the things that we did last year that I think was a mistake was to re-regulate cable. And that was a purely

political decision because the majority party in the House and the Senate wanted to embarrass the President and try to create a campaign issue. The majority party made a lot of promises about re-regulations that would benefit consumers, and we didn't. We were not strong enough. Those of us who held the alternative position felt that we could prevail. The result was for a third of the cable rate payers, rates went up, it didn't go down. And for those that didn't go down, they were transferred bottom line. Very few rates went down and the market took a real hit. And it has impacted some of the emerging mergers between telephone companies and cable companies and media companies, some of those mergers have been called off and it just sets back the transition to marketplace even further. So, I think what we did last year was a mistake. Admittedly, I was in the minority side of that, but I think we will undo it.

This year, we're working on a more positive note. There are two bills in the House and there's one bill in the Senate. In the House it is the Brooks/Dingell bill, which allows the RBOCs, (and that's not a brand of tennis shoes, RBOCs is short for regional bill operating companies), to get into manufacturing and telecommunications equipment and subject to state approval, to get into long distance market intrastate and also allows competition intrastate, intralata. Now, I could give you a quick quiz on what a lata is. And I wouldn't have been able to answer that question two years ago, but being an aging yuppie and working for two years, I know what a lata is. It is a local access transport area, and it's a little bit like an area code, although not exactly like an area code.

And one of the things that we're going to do is allow intralata competition. Wherever you live there is probably only one telephone company that can transfer telephone calls. It might be an RBOC, it might be an independent telephone company, it might be a GTE, or a Contel, but there is normally only one telephone company. What we're trying to do is open up that area to competition, so one of the things that U.S. state regulators are going to have to do is determine whether that's a good thing. Because there are currently only two states, Alaska is one, and I think Connecticut may be the other, that allow competition intrastate and intralata. Now, there are eight states, Michigan is one, that are looking at it. Under Brooks-Dingell and Markey-Field, which is a competition bill, we say that there can be competition if the state approves it. If the state law does not prohibit it. So that's one of the things that state legislators are going to get involved in.

We're also changing the definition of universal service in market fields. Now, when we passed the Telecommunications Act in 1934, and believe it or not, that's the last time the federal government passed a major comprehensive bill on telecommunications policy, there was a goal stipulated for universal access for telephone service. And through a very complicated series of subsidies and cost shifts, about 94% of the country has access to telephone service. Interestingly enough, about 98% of the country has television sets. And there has been absolutely no government effort at all to make sure that every American had a television set, which is a kind of an interesting statistic. But universal service as it is defined today, is simply "dial tone." You pick up the phone, you get a little tone and then you can dial the telephone. Or actually, you don't dial it anymore unless you're in a rural area.

But there are members of Congress that think that universal service ought to include a lot more than dial tones. It ought to have some of these network capabilities, these electronic publishing capabilities, whether you want it or not. Now, that's an issue that your state legislatures are going to have to deal with. In my case, my family is a very low tech family. I have worked hard to get my wife, Janet, to accept the concept of the cordless telephone. I have given her for Christmas a cordless telephone which did not exactly endear me to her as a romantic gift. But, she finally accepted that the telephone didn't have to be on a cord. But she keeps the cordless telephone on the cradle and does not take it anywhere else in the home. So, when the phone rings she has to walk into the bedroom to pick up the cordless telephone. That same station has an answering machine capability. My wife refuses to use the answering machine capability.

She sees no need for it, so one of the things that we've got to do in this information revolution is make sure that what we provide, or what we mandate, is something that the people really want. When my wife tells me she really wants a cordless telephone and she really wants answering machine capability, I may consider initiating federal legislation to require it. But until that time, I think we ought to let the marketplace operate.

But where are we? The Markey-Field's bill and the Dingell-Brooks' bill have passed the relevant committees, the Energy and Commerce committee and the Judiciary Committee, and are waiting for activity. They're doing what is called report language right now, and all you folks are very familiar with what report language is. That's where you put in the stuff that you were not bold enough to put in the legislation itself, but you still want it in so you put in report language and hope that nobody notices it and opposes it. In the Senate there's going to be a lot of negotiations between the majority leader and the minority leader, and the relevant committee chairman and ranking minority members, to bring the Hollings or the Danforth bill up in the Senate. But because this is such an important issue, I think that it will move this year.

Again, to go back to my original thesis. We're in a revolution. In the legislatures, at least at the federal level, we simply can't comprehend the capability the marketplace has to offer. And my guess is, at the state level, unless you're a state senator or state representative who has really studied this issue for a number of years and really have a personal interest in it, you probably don't have a grasp of all the capabilities that are out there and all the changes that are being made. And I will predict that within ten years we do have this information superhighway and we do have this seamless communication system, I will predict that you, in your own home, will be able to choose both local competition for who transfers your local telephone calls and you will be able to order all these various services by telephone or through the TV set. You will have a number of people that will provide this information and this communication capability to you and that the market place will dictate the price and the quality of the service. But in order for that to happen, both the federal government and the state governments are going to have to really work together. I don't think the federal government ought to tell the states how to run things. I think we, at the federal level, ought to set the ground rules for interstate commerce and if there needs to be technical standards, if we have to have spectrum allocation, if we have to have some sort of a federal regulation on transmitters and receivers and international data uplinks, then, fine. But there is absolutely no reason for anybody on the telecommunications and finance subcommittee in Washington, D.C. to tell a state representative in Austin Texas, or in Oklahoma City, Oklahoma or Sacramento, California, what to do within your state, and especially when you have your PUCs (Public Utility Commissions) that are involved in all of that.

So, I would have to say that I think we're moving that way. John Dingell, Jack Brooks in the House and Mr. Hollings over in the Senate, Vice President Gore, appear to be realizing that markets do work and that regulation while sometimes necessary, is not as necessary as it was in the past, if you can have a real market competition situation. Thank you for letting me be a part of your conference. ■



AMERICAN LEGISLATIVE EXCHANGE COUNCIL
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National Chairman

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Ronald F. Scheberle
GTE
Private Enterprise Board Chairman

HB

202

SENATE CS FOR CS FOR HOUSE BILL NO. 202(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the participation and accountability of parents and
2 guardians and the enforcement of restitution orders entered in juvenile
3 delinquency proceedings; relating to claims on permanent fund dividends for
4 certain court-ordered treatment in juvenile delinquency proceedings; and
5 amending Alaska Delinquency Rules 3(b) and 8(b); and providing for an
6 effective date."

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

8 • Section 1. AS 43.23 is amended by adding a new section to read:

9 Sec. 43.23.066. CLAIMS ON REIMBURSEMENT FOR COURT-ORDERED
10 TREATMENT. (a) AS 09.38 does not apply to permanent fund dividends taken under
11 AS 47.10.079(c). Notwithstanding AS 09.35, execution on a dividend claimed under
12 AS 47.10.079(c) is accomplished by delivering a certified claim to the department
13 containing the following information:

1 (1) the name and social security number of the individual whose
2 dividend is being claimed;

3 (2) the amount the individual owes on the reimbursement claim; and

4 (3) a statement that

5 (A) the Department of Health and Social Services has notified
6 the individual that future permanent fund dividends of the individual will be
7 taken to satisfy the reimbursement claim;

8 (B) the individual was notified of the right to request a hearing
9 and allowed 30 days after the date of the notice described in (A) of this
10 paragraph to request the Department of Health and Social Services to hold a
11 hearing on the reimbursement claim;

12 (C) the reimbursement claim has not been contested, or, if
13 contested, that the issue has been resolved in favor of the Department of Health
14 and Social Services; and

15 (D) if the reimbursement claim has been contested and resolved
16 in favor of the Department of Health and Social Services, no appeal is pending,
17 the time limit for filing an appeal has expired, or the appeal has been resolved
18 in favor of the Department of Health and Social Services.

19 (b) The Department of Health and Social Services shall notify the individual
20 if a dividend is claimed under (a) of this section. The notice shall be sent to the
21 address provided in the individual's permanent fund dividend application and must
22 provide the following information:

23 (1) the amount of the reimbursement claim;

24 (2) notice that the permanent fund dividend, or that portion of the
25 permanent fund dividend that does not exceed the amount of the reimbursement claim,
26 shall be paid to the Department of Health and Social Services; and

27 (3) notification that the individual has a right to request a hearing and
28 has 30 days after the date the notice is mailed in which to file with the Department of
29 Health and Social Services an objection to the dividend claim if a mistake has been
30 made.

31 (c) AS 44.62.330 - 44.62.630 apply to a hearing requested by an individual

1 under (b)(3) of this section.

2 * Sec. 2. AS 47.10 is amended by adding a new section to read:

3 Sec. 47.10.079. PARENTAL OR GUARDIAN ACCOUNTABILITY AND
4 PARTICIPATION. (a) The parent or guardian of a minor who is alleged to be a
5 delinquent under AS 47.10.010(a)(1) or found to be a delinquent under
6 AS 47.10.080(b) shall attend each hearing held during the delinquency proceedings
7 unless the court excuses the parent or guardian from attendance for good cause.

8 (b) If a minor is found to be a delinquent under AS 47.10.080(b), the court
9 may order that the minor's parent or guardian

10 (1) personally participate in treatment reasonably available in the
11 parent's or guardian's location as specified in a plan set out in the court order;

12 (2) notify the department if the minor violates a term or condition of
13 the court order; and

14 (3) comply with any other conditions set out in the court order.

15 (c) If a court orders a minor's parent or guardian to participate in treatment
16 under (b) of this section, the court also shall order the parent or guardian to use any
17 available insurance or another resource to cover the treatment, or to pay for the
18 treatment if other coverage is unavailable. If the court determines that the parent or
19 guardian is unable to pay for the treatment due to indigence and the department pays
20 for the treatment, the department may seek reimbursement only from the indigent
21 parent or guardian's permanent fund dividend.

22 (d) The permanent fund dividend of an indigent parent or guardian
23 participating in treatment ordered under (b) of this section may be taken under
24 AS 43.23.065(b)(6) and 43.23.066 to satisfy the balance due on a reimbursement claim
25 by the department under (c) of this section.

26 (e) If a parent or guardian fails to attend hearing as required in (a) of this
27 section, the court shall hold the hearing without the attendance of the parent or
28 guardian.

29 * Sec. 3. AS 47.10.080(b) is amended to read:

30 (b) If the court finds that the minor is delinquent, it shall

31 (1) order the minor committed to the department for a period of time

1 not to exceed two years or in any event extend past the day the minor becomes 19,
2 except that the department may petition for and the court may grant in a hearing (A)
3 two-year extensions of commitment that do not extend beyond the child's 19th
4 birthday if the extension is in the best interests of the minor and the public; and (B)
5 an additional one-year period of supervision past age 19 if continued supervision is in
6 the best interests of the person and the person consents to it; the department shall place
7 the minor in the juvenile facility that the department considers appropriate and that
8 may include a juvenile correctional school, juvenile work camp, treatment facility,
9 detention home, or detention facility; the minor may be released from placement or
10 detention and placed on probation on order of the court and may also be released by
11 the department, in its discretion, under AS 47.10.200;

12 (2) order the minor placed on probation, to be supervised by the
13 department, and released to the minor's parents, guardian, or a suitable person; if the
14 court orders the minor placed on probation, it may specify the terms and conditions
15 of probation; the probation may be for a period of time, not to exceed two years and
16 in no event extend past the day the minor becomes 19, except that the department may
17 petition for and the court may grant in a hearing

18 (A) two-year extensions of supervision that do not extend
19 beyond the child's 19th birthday if the extension is in the best interests of the
20 minor and the public; and

21 (B) an additional one-year period of supervision past age 19 if
22 the continued supervision is in the best interests of the person and the person
23 consents to it;

24 (3) order the minor committed to the department and placed on
25 probation, to be supervised by the department, and released to the minor's parents,
26 guardian, other suitable person, or suitable nondetention setting such as a family home,
27 group care facility, or child care facility, whichever the department considers
28 appropriate to implement the treatment plan of the predisposition report; if the court
29 orders the minor placed on probation, it may specify the terms and conditions of
30 probation; the department may transfer the minor, in the minor's best interests, from
31 one of the probationary placement settings listed in this paragraph to another, and the

1 minor, the minor's parents or guardian, and the minor's attorney are entitled to
2 reasonable notice of the transfer; the probation may be for a period of time, not to
3 exceed two years and in no event extend past the day the minor becomes 19, except
4 that the department may petition for and the court may grant in a hearing

5 (A) two-year extensions of commitment that do not extend
6 beyond the child's 19th birthday if the extension is in the best interests of the
7 minor and the public; and

8 (B) an additional one-year period of supervision past age 19 if
9 the continued supervision is in the best interests of the person and the person
10 consents to it;

11 (4) order the minor and the minor's parent to make suitable
12 restitution in lieu of or in addition to the court's order under (1), (2), or (3) of this
13 subsection; under this paragraph,

14 (A) except as provided in (B) of this paragraph, the court
15 may not refuse to make an order of restitution [UNDER THIS PARAGRAPH]
16 to benefit the victim of the act of the minor that is the basis of the delinquency
17 adjudication; and

18 (B) the court may not order payment of restitution by the
19 parent of a minor who is a runaway or missing minor for an act of the
20 minor that was committed by the minor after the parent has made a
21 report to a law enforcement agency, as authorized by AS 47.10.131(a), that
22 the minor has run away or is missing; for purposes of this subparagraph,
23 "runaway or missing minor" means a minor who a parent reasonably
24 believes is absent from the minor's residence for the purpose of evading
25 the parent or who is otherwise missing from the minor's usual place of
26 abode without the consent of the parent;

27 (5) order the minor committed to the department for placement in an
28 adventure based education program established under AS 47.21.020 with conditions
29 the court considers appropriate concerning release upon satisfactory completion of the
30 program or commitment under (1) of this subsection if the program is not satisfactorily
31 completed; [OR]

1 (6) in addition to an order under (1) - (5) of this subsection, if the
2 delinquency finding is based on the minor's violation of AS 11.71.030(a)(3) or
3 11.71.040(a)(4), order the minor to perform 50 hours of community service; for
4 purposes of this paragraph, "community service" includes work

5 (A) defined as community service under AS 33.30.901; or

6 (B) that, on the recommendation of the city council or
7 traditional village council, would benefit persons within the city or village who
8 are elderly or disabled; or

9 (7) in addition to an order under (1) - (6) of this subsection, order
10 the minor's parent or guardian to comply with orders made under AS 47.10.079,
11 including participation in treatment under AS 47.10.079(b)(1).

12 * Sec. 4. AS 47.10 is amended by adding a new section to read:

13 Sec. 47.10.086. ENFORCEMENT OF RESTITUTION. A person who is a
14 recipient of a restitution order involving a minor found delinquent under AS 47.10.080
15 may enforce an order for restitution under AS 47.10.080 against the minor and the
16 minor's parent under AS 09.35 as if the order were a civil judgment enforceable by
17 execution. This section does not limit the authority of the court to otherwise enforce
18 orders of payment for restitution. An order of restitution enforced under this section
19 does not limit under other law the civil liability of the minor or the minor's parent as
20 a result of the delinquent conduct.

21 * Sec. 5. Rule 3(b), Alaska Delinquency Rules, is amended to read:

22 (b) PRESENCE OF JUVENILE AND OTHER PARTIES. The presence of
23 the juvenile is required unless the juvenile:

24 (1) waives the right to be present and the juvenile's presence is excused
25 by the court; or

26 (2) engages in conduct which justifies exclusion from the courtroom.
27 The presence of the parent or guardian is required [PREFERRED, BUT NOT
28 REQUIRED] unless excused by the court for good cause [SO ORDERS].

29 * Sec. 6. Rule 8(b), Alaska Delinquency Rules, is amended to read:

30 (b) SUMMONS. Upon the filing of a petition for adjudication, the court shall
31 set a time for the arraignment on petition and shall, if the juvenile is not in custody,

1 issue a summons to be served with the petition compelling the attendance of the
2 juvenile. The court shall [MAY] issue a summons compelling the attendance of the
3 juvenile's parents or guardian at the hearing. If the summons and petition are not
4 contained in one document, the petition must be attached to and incorporated by
5 reference into the summons. The summons must contain a statement advising the
6 parties of their right to counsel.

7 * Sec. 7. Sections 5 and 6 of this Act take effect only if those sections receive the two-
8 thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
9 Alaska.

10 * Sec. 8. Sections 1 - 4 of this Act take effect only if secs. 5 and 6 of this Act take effect.

11 * Sec. 9. If this Act takes effect, it takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

No. 1
Bill Version: HB 202
(H) Publish Date: 2/27/95

Revision Date: _____
Title: "An Act relating to parental and guardian participation and accountability and the enforcement of..."
Sponsor: Governor
Requestor: _____

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

COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ()	0	0	0	0	0	0

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact.

Prepared by: Brant McGee
Division: Office of Public Advocacy

Phone: 274-1684
Date: 2-17-95

Approved by Commissioner: Mark Boyan
Agency: Department of Administration

Date: 2-17-95

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FISCAL NOTE

No. 2

Bill Version: HR

(H) Publish Date: 11-17-95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date: _____
Title: An Act relating to the participation and accountability of parents and the enforcement of restitution orders entered in juvenile proceedings.
Sponsor: _____
Requestor: _____

Department Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$ 0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: John B. Salemi, Director
Division: Public Defender Agency

Phone: (907) 264-4412
Date: 2-17-95

Approved by Commissioner: Mark Royer
Agency: Department of Administration

Date: 2-17-95

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STATE OF ALASKA
1995 LEGISLATIVE SESSION

No. 3
Bill Version: HB 202
(H) Publish Date: 2/27/95

Revision Date: _____
Title: Parental and Guardian participation & accountability
and enforcement of restitution in Juvenile Proceedings
Sponsor: Governor
Requestor: Governor

Dept. Affected: Health and Social Services
BRU: Family and Youth Services
Component: Southeastern Region
COMPONENT SERIAL NO. 25H
See also (SN#): 254,255

Expenditures/Revenues:

	(Thousands of Dollars)					
OPERATING	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES

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CHANGES IN REVENUES

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FUND SOURCE

	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY95) cost: 0.0

ANALYSIS: (Attach a separate page if necessary)

There would be no fiscal impact for the Department if this bill were to become law.

Prepared by: Kathy Tibbles, Acting Director
Division: Family & Youth Services
Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Phone: 465-3191
Date: 02/17/95
Date: 2/17/95

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STATE OF ALASKA
1995 LEGISLATIVE SESSION

No. 2
Bill Version: HB 202
(H) Publish Date: 2/27/95

Revision Date: _____
Title: Parental and Guardian participation & accountability
and enforcement of restitution in Juvenile Proceedings
Sponsor: Governor
Requestor: Governor

Dept. Affected: Health and Social Services
BRU: Family and Youth Services
Component: Northern Region
COMPONENT SERIAL NO. 255
See also (SN#): 254,258

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES

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CHANGES IN REVENUES

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY95) cost: 90.0

ANALYSIS: (Attach a separate page if necessary)

There would be no fiscal impact for the Department if this bill were to become law

Prepared by: Kathy Tibbles, Acting Director
Division: Family & Youth Services
Approved by Commissioner: Karen Petrus, Commissioner
Agency: Department of Health & Social Services

Phone: 465-3191
Date: 02/17/95
Date: 2/17/95

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FISCAL NOTE

No. 5
 Bill Version: HB 292
 (H) Publish Date: 2/17/95

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Department of Law
 Title: ...relating to the participation and accountability BRU: Legal Services
of parents and guardians in juvenile delinquency proceedings... Component: Operations
 Sponsor: Rules by Request of the Governor
 Requester: Office of the Governor/OMB COMPONENT SERIAL NO. 0093

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends the statutes governing orders in delinquency proceedings to authorize the court to require that parents or guardians of juvenile offenders personally participate in treatment when appropriate, to require attendance of these persons at hearings that concern their children, and to require that parents be responsible for payment of restitution for harm caused by their children. The bill also specifies that the recipient of such a restitution order may enforce payment under the civil code as if the order were a civil judgment. Although the bill will require that the department's attorneys prepare summonses for parents and guardians to attend juvenile proceedings, this additional work is more a matter of organization than added cost. Currently, some parents voluntarily attend these proceedings and some do not. Parents who ignore a summons or fail to participate in court-ordered treatment would be subject to a contempt citation; the department may be called upon to initiate contempt proceedings in these circumstances. At this point in time, we do not anticipate a substantial additional burden handling contempt actions because of the sanctions the court could impose against a parent or guardian who ignored a court order.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 2/17/95
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/17/95
 Agency: Department of Law

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

No.
Bill Version:
(H) Publish Date:

Revision Date:
Title: Juvenile Delinquency Proceedings
Sponsor:
Requestor: Governor

Department Affected: Revenue
BRU: Child Support Enforcement Division
Component: Child Support Division

COMPONENT SERIAL NO. 111

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	00	00	00	00	00	00
CAPITAL EXPENDITURES	00	00	00	00	00	00
CHANGE IN REVENUES ()	00	00	00	00	00	00

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	00	00	00	00	00	00

Estimate of any current year (FY 95) cost: \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Glenda Straube
Division: Child Support Enforcement Division

Phone: 269-6801
Date: February 17, 1995

Approved by Commissioner: Deborah Vogt, Deputy
Agency: Department of Revenue

465-2302
Date: February 17, 1995

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 202

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: An Act relating to participation and BRU: Trial Courts
accountability of parents and guardians... Components: _____
 Sponsor: House Rules by request of Governor
 Requestor: _____ COMPONENT SERIAL NO. 788

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	5.0	5.0	5.0	5.0	5.0	5.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	5.0	5.0	5.0	5.0	5.0	5.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	5.0	5.0	5.0	5.0	5.0	5.0
1005 GF/Program Receipts						
1008 GF/MHTA						
Other						
TOTAL	5.0	5.0	5.0	5.0	5.0	5.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 95) cost: 3 None

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal note.

Prepared by: C. S. Christenson III, Staff Counsel *CS* Phone: 254-8223
 Agency: Alaska Court System Date: 04/10/95

Approved by: Arthur H. Snowden, II, Administrative Director *AS*
 Agency: Alaska Court System Date: 04/10/95

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Alaska Court SystemFiscal AnalysisHB 202Personal Services

Overtime for clerical staff

\$5,000

During FY 94, 1,113 delinquency petitions were filed statewide. This legislation will require serving a summons on each parent in every delinquency case. Thus, 2,226 additional summonses must be issued. Also notices of all subsequent hearings will have to be sent to the parents. This legislation will also authorize issuance of writs of execution to enforce restitution orders against both parent and the child. In order to issue these writs, clerical staff will have to set up new (non-confidential) case files, answer questions from victims about execution procedure, research files, accept payments, and disburse payments to victims. This fiscal note does not include funding for an expected increase in length in disposition hearings to address issues of parental treatment and restitution orders.

TONY KNOWLES
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

3027
P O Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500
Fax (907) 465-3532

HB 202

February 27, 1995

The Honorable Gail Phillips
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Phillips:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to parental participation and accountability, and the enforcement of restitution orders, in juvenile delinquency proceedings. This bill amends the statutes governing orders in delinquency proceedings to authorize the court to require that parents or guardians of juvenile offenders personally participate in treatment when appropriate, to require attendance of those persons at hearings that concern their children, and to require that parents be responsible for payment of restitution for harm caused by their children. The bill also specifies that the recipient of such a restitution order may enforce payment under the civil code, AS 09.35, as if the order were a civil judgment.

This bill is intended to increase the effectiveness of the juvenile justice system by increasing parental or guardian involvement and responsibility. Juvenile courts currently lack authority to compel parents or guardians to engage in treatment even though the parent's or guardian's behavior may be associated with the juvenile's delinquent behavior. The bill not only requires parental or guardian participation in treatment, but also contains a provision that makes the parent or guardian responsible for covering the cost of that treatment, either through using insurance or other such resource, or paying for the treatment. Under certain circumstances, if the Department of Health and Social Services pays for the treatment, that department may claim the parent's or guardian's permanent fund dividend in reimbursement. It is intended that the provisions in this bill will be enforceable by the contempt powers of the court under AS 09.50.

The provision in sec. 4 of the bill, which will allow enforcement of a restitution order under the civil code, parallels a provision that already exists in AS 12.55.051 of the criminal code for restitution orders entered in adult cases. This will simplify the process

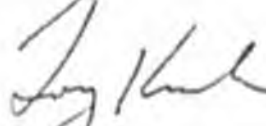
SUPPORTING DOCUMENTS

The Honorable Gail Phillips
February 27, 1995
Page 2

for collection under such a restitution order. A victim of a crime perpetrated by a juvenile will be able to seek recovery under a restitution order even after the juvenile reaches age 18 and the juvenile court typically would no longer have jurisdiction over that person.

I urge your favorable action on this bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tom Knowles".

Tom Knowles
Governor

CSHB 202(HES)
PARENTAL PARTICIPATION IN DELINQUENCY HEARINGS
AND ACCOUNTABILITY FOR DELINQUENTS
SECTIONAL ANALYSIS

Section one establishes the procedure for making a claim on the permanent fund dividend of a parent ordered by the court in a juvenile delinquency proceeding to pay for treatment for the parent. The procedure is the same as that adopted by the legislature for making a claim on the permanent fund dividend to recover for overpayment of public assistance (Chapter 35, SLA 1995). It is also similar to the procedure for claiming a permanent fund dividend of a person for failure to repay a scholarship loan.

Section two requires the parent of a minor alleged to be or found delinquent to attend each hearing of the delinquency proceedings, absent an excuse from the court for good cause.

If the minor is found to be delinquent, Section two also gives the court the ability to order the parent to personally participate in treatment if it is reasonably available in the area where the parent resides, to order the parent to notify the Department of Health and Social Services if the minor violates a provision of the court order, and provides that the parent must pay for treatment services if able to do so. If the parent is found to be indigent by the court, the department may seek reimbursement only from the permanent fund dividend of the parent, under the procedures described in Section 1.

Section three amends the statute addressing the court's authority in delinquency cases to allow the court to order the minor's parent to make restitution to the victim of the minor's delinquent act, except that the court may not order the parent to pay restitution for the act of a runaway or missing child if the parent had reported to the police under AS 47.10.141(a) that the child had run away or was missing.

Section four specifically gives the victim of a minor's act of delinquency the power to enforce an order of restitution against the minor or the minor's parents as a civil order enforceable by execution. This is similar to the power of a victim of a crime committed by an adult.

Section five amends Rule 3(b), Alaska Delinquency Rules, to reflect the provision in the bill which requires parents to attend the delinquency hearings of their children, absent an excuse from the court for good cause.

Section six amends Rule 8(b), Alaska Delinquency Rules, to require the court to issue a summons to parents of a minor involved in delinquency proceedings to attend the proceedings.

Section seven provides that sections five and six, which amend court rules, must pass by a two-thirds majority vote.

Section eight provides that the substantive provisions of the bill take effect only if the court rule changes take effect.

Section nine provides for an immediate effective date.

A M E N D M E N T

Chanowitz

TO: CSHB 202 (HES)

Page ~~2~~, after line 25:

3

Insert the following

"(c) If a parent or guardian fails to attend the hearing as required in (a) of this section, the court shall hold the hearing without the attendance of the parent or guardian."

HB

203

HOUSE BILL NO. 203

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the meaning of the phrase "previously convicted" as that phrase
2 applies to the operation of a motor vehicle, commercial motor vehicle, aircraft, or
3 watercraft while intoxicated."

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

5 * Section 1. AS 28.15.201(d) is amended to read:

6 (d) A court revoking a driver's license, privilege to drive, or privilege to obtain a license
7 under AS 28.15.181(c), or the department when revoking a driver's license, privilege to drive,
8 or privilege to obtain a license under AS 28.15.165(c), may grant limited license privileges for
9 the final 60 days during which the license is revoked if

10 (1) the revocation was for a violation of AS 28.15.181(a)(5) and not for a
11 violation of AS 28.15.181(a)(8);

12 (2) the person has not been previously convicted; in this paragraph, "previously
13 convicted" has the meaning given in AS 28.35.030 [AND ALSO INCLUDES CONVICTIONS
14 BASED ON LAWS PRESUMING THAT THE PERSON WAS UNDER THE INFLUENCE

1 OF INTOXICATING LIQUOR IF THERE WAS 0.08 PERCENT OR MORE BY WEIGHT OF
2 ALCOHOL IN THE PERSON'S BLOOD];

3 (3) the court or the department determines that the person's ability to earn a
4 livelihood would be severely impaired without a limited license;

5 (4) the court or the department determines that a limitation under (a) of this
6 section can be placed on the license that will enable the person to earn a livelihood without
7 excessive danger to the public; and

8 (5) the court or the department determines that the person is enrolled in and is in
9 compliance with, or has successfully completed, an alcoholism education and rehabilitation
10 treatment program.

11 * Sec. 2. AS 28.33.140(e) is amended to read:

12 (e) A court convicting a person of an offense described in (a)(1) - (5) of this section shall
13 disqualify that person from driving a commercial motor vehicle for life if the person has been
14 previously convicted. As used in this subsection, "previously convicted" means having been
15 convicted in this or another jurisdiction of an offense described in (a)(1) - (5) of this section, or
16 of another law or ordinance with substantially similar elements, including a law or ordinance
17 of another jurisdiction that presumed that the person was under the influence of
18 intoxicating liquor at a lower percentage by weight of alcohol in the person's blood than
19 that required in this state.

20 * Sec. 3. AS 28.35.036(a) is amended to read:

21 (a) After conviction of an offense under AS 28.35.030 or 28.35.032, the state may move
22 the court to order the forfeiture of the motor vehicle, or aircraft involved in the commission of
23 the offense if the convicted person has been previously convicted in this or another jurisdiction
24 of more than one of the following offenses or has more than once been previously convicted of
25 one of the following offenses:

26 (1) driving while intoxicated under AS 28.35.030 or another law or ordinance
27 with substantially similar elements, including a law or ordinance of another jurisdiction that
28 presumed that the person was under the influence of intoxicating liquor at a lower
29 percentage by weight of alcohol in the person's blood than that required in this state; or

30 (2) refusal to submit to a chemical test under AS 28.35.032 or another law or
31 ordinance with substantially similar elements.

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO

CRIMINAL DIVISION CENTRAL
OFFICE
P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE (907) 465-3428
FAX (907) 465-4043

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE ALASKA 99501-2064
PHONE (907) 269-6250
FAX (907) 269-6270

DEPARTMENT OF LAW

CRIMINAL DIVISION

January 12, 1996

The Hon. Robin Taylor
Chair, Senate Judiciary Committee
Alaska State Legislature
Juneau, AK 99801

RECEIVED

JAN 17 1996

Ans'd.....

Re: HB 203 (Prior DWI Convictions)

Dear Senator Taylor:

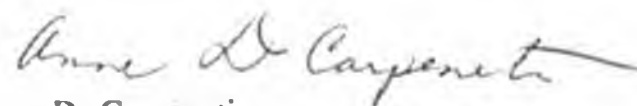
As you may recall, when the legislature adjourned last year, HB 203, the Governor's crime bill relating to prior DWI convictions, was awaiting hearing in the Senate Judiciary Committee. The passage of HB 159, creating the crime of felony drunk driving, has mooted part of HB 203, but not all of it. In particular, HB 159 did not address prior convictions for purposes of commercial motor vehicle DWI offenses.

Enclosed is a proposed committee substitute that amends the bill to reflect the passage of HB 159. It does this by deleting section 3 of the bill. This is to ask you to schedule HB 203 for hearing this coming year and to consider adopting the enclosed version of the bill. If you have any questions about the bill or require any further information, please do not hesitate to contact us. Your courtesy and cooperation are much appreciated.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:


Anne D. Carpeneti
Assistant Attorney General

ADC:jf
Enclosure

DEPARTMENT OF LAW

CRIMINAL DIVISION

June 12, 1995

The Hon. Robin Taylor
Alaska State Legislature
Juneau, AK 99801

Re: Double Jeopardy Arguments in DWI Cases

Dear Senator Taylor:

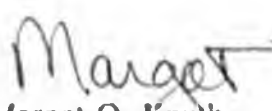
Joe Ambrose called me this week and indicated that you have taken a special interest in the double jeopardy arguments that are being raised by DWI defendants who are prosecuted after their licenses have been revoked by the DMV for driving with a BAC of over .10%. We have received mixed rulings from the trial courts around the state. There is one lead case on appeal to the court of appeals, *State v. Zerkel*. I am enclosing a copy of our opening brief in that case.

Although trial courts around the United States have been divided on this issue, it is my understanding that all appellate courts that have addressed the issue have ruled in the government's favor. We are optimistic at this point that we will receive a similar favorable ruling in this state.

If there is more information or if there are more materials that you would like, please feel free to contact me. In the meantime, take care not to hug too many trees this summer.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Margot O. Knuth
Assistant Attorney General

MOK:rew

Enclosure

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO

CRIMINAL DIVISION CENTRAL
OFFICE
P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE (907) 465-3428
FAX (907) 465-4033

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501-2008
PHONE (907) 269-6250
FAX (907) 269-6270

HB

204

TONY KNOWLES
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

3031
P O Box 110001
Juneau, Alaska 99811-0001
1907 465-3500
Fax (907) 465-3532

HD 204

February 27, 1995

The Honorable Gail Phillips
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Phillips:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to minors operating vehicles after consuming alcohol. Despite our best efforts to date, the number of drunk drivers continues to rise in Alaska. The state needs new tools to respond to the problem of drunk driving.

An important step in making our roads and other avenues of transportation safe is to focus on high-risk drivers and let the police take them off the road before tragedy strikes. Two particularly high-risk groups of drivers are those who operate commercial motor vehicles and minors. The legislature addressed commercial motor vehicle operators in 1992, passing stringent laws that keep commercial drivers off the roads when they are under the influence of alcohol. The time has come to do the same with underage drivers, who generally are not allowed under the law to possess or consume any alcohol.

This bill establishes a "zero tolerance level" for minors who consume alcohol and then operate a motor vehicle, aircraft, or watercraft. It does this by creating three new criminal violations: "minor operating a vehicle after consuming alcohol," "minor's refusal to submit to a chemical test," and "driving within the 24 hours after being cited for minor operating a vehicle after consuming alcohol."

These new offenses are only infractions and cannot result in jail time being imposed. Instead, the penalty is a fine of not more than \$1,000, an order that the minor perform community work service, or a combination of the two. An important feature of the proposed new law is that the minor can be taken off the road and to a police station or other location for the administration of a chemical test to determine the presence of

SUPPORTING DOCUMENTS

The Honorable Gail Phillips
February 27, 1995
Page 2

alcohol in the minor's blood or breath. If the minor refuses to take the test, that is a separate infraction, much like the misdemeanor crime of refusal we have for driving-while-intoxicated cases.

This bill's amendments to AS 28.15.183 and 28.15.184 would make the minor's driver's license or permit, privilege to drive, or privilege to obtain a license subject to administrative revocation under those "use it, lose it" statutes.

Under the bill, a minor who is cited for driving after consuming alcohol is prohibited from operating a motor vehicle, aircraft, or watercraft during the 24 hours after the citation is issued. This will help ensure that the minor stays off the road or other avenues of transportation while under the influence of alcohol.

I urge your favorable action on this bill.

Sincerely,



Tony Knowles
Governor

**MADD**Telephone: (907) 522-6233
FAX: (907) 522-6234

Mothers Against Drunk Driving

Anchorage Chapter
615 East 82nd Avenue, Ste. B 1
Anchorage, AK 99518-3157

20 February 1996

Representatives Mark Hanley & Richard Foster
Co-Chairs, House Finance Committee
State Capitol
Juneau, Alaska 99801-1182

Dear Representatives Hanley & Foster:

I write on behalf of our members, the Board of Directors, victims of drunk driving and all of us potential victims. We strongly support Governor Knowles' six-point anti-crime package, particularly the sections dealing with the alcohol problem. At this time I am particularly referring to HB 204.

Trusting we get our background data from the same sources, I will refrain from reciting a long list of familiar statistics. Suffice to acknowledge the tragedy that half the accidental deaths of our youth are alcohol or other drug related. We all must be ever vigilant in finding ways to eliminate this shameless waste of young talent. HB 204 is another step in that direction. It also seems to tie in well with "use it/lose it" and gives law enforcement officials a more specific law with which to deal with offenders under 21. Calls to this office from the general public very frequently address the youth and substance abuse problem.

As I interpret HB 204, it would essentially enact what is commonly called a "Zero Tolerance" statute. It simply makes rational sense since the use or possession of alcohol by anyone under 21 years of age is already illegal.

Your committee's positive acceptance and action on this bill will be loudly applauded by MADD.

Sincerely,


David H. Herndon
Executive Director

Modifying Attitudes toward Drinking and Driving

SUPPORTING DOCUMENTS



February 20, 1996

Representative Mark Hanley
House Finance Committee
Room 507
State Capitol
Juneau, AK 99801-1182

Dear Representative Hanley,

On behalf of the Alaska Council on PREVENTION of Alcohol and Drug Abuse, I would like to offer our complete support for HB 204.

This important bill provides new tools to respond to the adolescent drinking and driving problem currently present in Alaska. A "zero-tolerance level" acknowledges that it is illegal for those under 21 to consume alcohol ever. It should not matter if their BAC is under .1 while operating a motor vehicle, aircraft, or watercraft. This bill allows for adolescents to be held accountable and responsible for their choice to use alcohol.

The Alaska Council supports all other aspects of this bill as it is written. We urge your favorable action on it. Thank you for your time and attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'C-Joe DiMatteo'.

C-Joe DiMatteo
Executive Director



National Transportation Safety Board

Washington, D.C. 20594

March 29, 1995

Office of the Chairman
Honorable Tony Knowles
Governor
State of Alaska
P. O. Box 110001
Juneau, Alaska 99811

DEPT. OF LAW

APR 03 1995

CRIMINAL DIVISION

RECEIVED

APR 03 1995

Attorney General's Office
Juneau

Dear Governor Knowles:

It is my understanding that you have proposed legislation making it illegal for any minor to operate a vehicle after consuming alcohol. I am pleased that you are addressing the problem of alcohol-involved crashes among young drivers. Let me share with you the findings and recommendations of the National Transportation Safety Board regarding young drivers.

Young drivers are over-represented in traffic crashes and deaths. In 1990, drivers aged 15-20 years comprised only 7.1 percent of licensed drivers, but accounted for 14.9 percent of all driver fatalities. Further, while young drivers do only 20 percent of their driving at night, over half the crash fatalities of adolescent drivers occur during nighttime hours. First-year drivers (primarily ages 16 and 17) have twice the average number of crashes and, on a miles-driven basis, four times the number of crashes involving more experienced drivers.

After analyzing a large body of research involving young driver highway accidents and actions to prevent crashes by young drivers, the Safety Board has called for a major reassessment by the states to reduce crashes among drivers under 21. Nearly 20 years ago, safety researchers identified two major factors that contribute to the high fatality rate among youth: their lack of driving experience and their tendency to engage in risk-taking behavior. When alcohol is added to this already dangerous situation, the traffic risks are greatly enhanced.

The Safety Board's experience shows that the most effective deterrents are tough and fair laws as well as energetic enforcement combined with intensive and targeted education campaigns. Therefore, the Safety Board recommended adoption of a series of state legislative and policy actions that can be effective in reducing automobile crashes involving young drivers. Among these is the enactment of a comprehensive law that prohibits drivers under the age of 21 from driving with any measurable blood alcohol concentration.

Many States permit drivers under age 21 to drive legally with alcohol in their system, as long as their BAC does not exceed the State's adult legal limit (usually 0.10 percent). One study concludes, "Although young people drink and drive less often than people of other age groups, the young who do choose to drink and drive

are at significantly higher risk of fatal crash than other age groups of drinking drivers." The Safety Board believes that underage drivers with any measurable alcohol should not drive.

To combat the underage drinking-driving problem, by the end of last year, 30 States had enacted laws to prohibit vehicle operation by underage drivers with a BAC level lower than the BAC level specified for drivers over 21.

A law lowering the BAC for underage drivers has been found to be effective in reducing nighttime fatal crashes among teenagers in Maine, even though only 40 to 50 percent of teenagers knew about the law. A study of the Maryland 0.02 percent BAC law found statistically significant reductions (a minimum 11 percent reduction) in alcohol-related crashes in the affected age group. When combined with a public information and education campaign, the Maryland law resulted in a nearly 50 percent reduction in underage alcohol-related crashes over a 2-year period, 1989-1990.

Laws reducing the legal BAC for youth can be strengthened by imposing administrative license revocation when they are arrested with any measurable BAC. State laws should be enacted to administratively suspend or revoke the driver's license of an alcohol-positive driver who is under the age of 21. Further, enforcement and public information efforts should accompany implementation of these laws. Often, when impaired driving law sanctions are implemented through the judicial process, penalties are imposed very slowly or not at all, especially where juvenile courts have jurisdiction. A substantial body of research supports the effectiveness of both administrative adjudication and license revocation in reducing crashes among drivers of all ages. The driver's license is an important possession for a young person, and it is reasonable to expect a significant benefit from revoking the license of underage drivers caught driving with any measurable BAC.

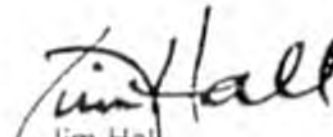
The Uniform Vehicle Code published by the National Committee on Uniform Traffic Laws and Ordinances contains a model law, Section 6-208, that provides guidance in drafting license revocation legislation for persons under 21 (copy enclosed). However, the Safety Board supports a zero alcohol tolerance for young drivers rather than the 0.02 percent level contained in Section 6-208. States that have laws with a BAC of 0.00 or 0.02 percent for young drivers are significantly more effective in reducing youth fatalities than are States that have laws with higher BACs (0.04, 0.05 or 0.06 percent). States that have zero tolerance laws for underage drivers appear to be more effective in reducing youth fatalities than States with a 0.02 percent BAC law for young drivers.

Our young people are this nation's most valuable resource. Too many of them are being killed and injured in highway crashes. We need to act forcefully now to reduce this loss and to continue the gains that were made during the early 1980's. Thus, the Safety Board strongly supports legislation lowering the allowable blood alcohol limit for drivers under age 21.

The National Transportation Safety Board is an independent Federal agency charged by Congress to investigate transportation accidents, determine their probable cause and make recommendations to prevent their recurrence. The Safety Board also conducts special studies of significant transportation safety problems. The recommendations that arise from our investigations and safety studies are our most important product.

Enclosed is a copy of the Safety Board's recommendation letter to the States. Please do not hesitate to contact me if you would like further information about these recommendations, or if there is any other way that the National Transportation Safety Board can be of assistance to you.

Sincerely,


Jim Hall
Chairman

Enclosures

cc: Attorney General Bruce Botelho ✓

FISCAL NOTE

No.
 Version: HB 204
 (H) Publish Date: 2/27/95

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date: _____
 Title: An Act relating to the administrative revocation of a
minor's license to drive
 Sponsor: _____
 Requestor: _____

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1531

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE:

(Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$ 0

POSITIONS:

POSITION TYPE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.) There are two variables which will determine impact: 1) the number of projected arrests related to these newly created infractions and 2) a legal determination regarding the right to legal representation for said infractions. Ordinarily an individual is not entitled to public counsel services for mere infractions. On the other hand, the possible sanctions go beyond the normal range for infractions to include loss of driver's license. As such, it is an open question regarding court-appointed legal representation and therefore fiscal impact, if any.

Prepared by: John B. Salvo, Director
 Division: Public Defender Agency

Phone: (907) 264-4412
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 2/22/95

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FISCAL NOTE

No. 3
 Bill Version: HB 204
 (H) Publish Date: 2/27/95

**STATE OF ALASKA
 1995 LEGISLATIVE SESSION**

Revision Date: _____ Dept. Affected: Department of Law
 Title: Administrative revocation of a minor's license BRU: Prosecution
to drive... operating a motor vehicle after consuming alcohol... Component: All
 Sponsor: Rules on Request of the Governor
 Requester: Office of the Governor/OMB COMPONENT SERIAL NO. 0085-0090

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends As 28 to establishes a "zero tolerance level" for minors who consume alcohol and then operate a motor vehicle, aircraft, or watercraft by creating three new criminal violations: "minor operating a vehicle after consuming alcohol", "minor's refusal to submit to a chemical test," and "driving within the 24 hours after being cited for minor operating a vehicle after consuming alcohol." These new offenses would be infractions and would not result in jail time being imposed. However, the penalty would be a fine of not more than \$1,000, an order that the minor perform community work service, or a combination of the two. The bill also provides that a minor convicted of these violations will also be subject to administrative revocation of the minor's driver's license under the state's "use it, lose it" statutes. The bill will not have a fiscal impact for the Department of Law because infractions are presented in district court by the arresting officer, which does not require the presence or assistance of a prosecutor.

Prepared by: Richard I. Peques, Director Phone: 465-3672
 Division: Administrative Services Division Date: 2/17/95
 Approved by Commissioner: Bruce M. Botwin, Attorney General Date: 2/17/95
 Agency: Department of Law

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FISCAL NOTE

No. 2
 Bill Version: 48 204
 (H) Publish Date: 1/27/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO

Revision Date: _____ Dept. Affected: Public Safety
 Title: An Act relating to alcohol related driving
 offenses of minors... BRU: Alaska State Troopers
 Sponsor: Governor Component: Detachments
 Requestor: _____ COMPONENT SERIAL NO. 0799

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

	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0-	0-	0-	0-	0-	0-
CAPITAL EXPENDITURES	0-	0-	0-	0-	0-	0-
CHANGE IN REVENUES ()	0-	0-	0-	0-	0-	0-
Revenue Code						

FUNDING: (Thousands of Dollars)

*002 Federal Receipts						
*003 GE Match						
*004 GE						
*005 GE Program Receipts						
*006 GE MHTIA						
Other						
TOTAL	0-	0-	0-	0-	0-	0-

Estimate of current year (FY 95) impact: \$ _____

POSITIONS:

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

ANALYSIS (Attach a separate page if necessary.)

This bill would not impact the programs of the Alaska State Troopers. Currently, troopers are enforcing the alcohol laws as they pertain to minors including serving revocation notices to drivers.

Prepared By: 1st Sgt. Joe D'Amico Phone: 289-5412
 Division: Alaska State Troopers Date: 2/21/95
 Approved by Commissioner: *Ronald L. Crite* Date: 2/21/95
 Agency: Ronald L. Crite, Dept. of Public Safety

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FISCAL NOTE

No. _____
 Bill Version: _____
 (H) Publish Date: _____

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO: _____

Revision Date: _____ Dept. Affected: Public Safety
 Title: An Act relating to alcohol related driving BRU: Motor Vehicles
offenses of minors... Component: Driver Services
 Sponsor: Governor
 Requestor: _____ COMPONENT SERIAL NO. 0500

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

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GE Match						
1004 GE						
1005 GE Program Receipts						
1006 GE/MTA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 95) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)
 This bill will not impact the programs of the Division of Motor Vehicles. Current law requires DMV to administratively revoke the driver's license for the offense of minor in possession or consumption of alcohol.

Prepared By: Juanita M. Henisey Phone: 465-2650
 Division: Motor Vehicles Date: 2/21/95
 Approved by Commissioner: *Ronald L. Otte* Date: 2/21/95
 Agency: Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

No. 6

Version: HB 204

B (H) Fiscal Date: 3/29/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Session Date: _____ Dept. Affected: Alaska Court System
 Title: No Drink Before Driving if Under 21 BRU: Trial Courts
 Sponsor: House Rules by request of Governor Components: _____
 Requester: _____ COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES		(Thousands of Dollars)					
OPERATING EXPENDITURES		FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES							
TRAVEL							
CONTRACTUAL							
SUPPLIES							
EQUIPMENT							
LAND & STRUCTURES							
GRANTS & CLAIMS							
TOTAL OPERATING	
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ()							

FUND SOURCE		(Thousands of Dollars)					
1002 Federal Receipts							
1003 GF Match							
& GF	
1005 GF: Program Receipts							
1006 GF/MHTIA							
Other							
TOTAL	

POSITIONS							
FULL-TIME							
PART-TIME							
TEMPORARY							

Estimate of current year (FY 95) cost: \$ None

ANALYSIS: (Attach a separate page if necessary)

* - see attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel *[Signature]* Phone: 264-8229
 Agency: Alaska Court System Date: 03/24/95

Approved by: Arthur H. Snowden, II, Administrative Director *[Signature]* Date: 03/24/95
 Agency: Alaska Court System

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 462

Revision Date: _____ Dept. Affected: Department of Law
 Title: "...relating to the offense of driving while BRU: Criminal Division
intoxicated and refusal to submit to a chemical test..." Component: Criminal Division
 Sponsor: Representative Porter
 Requester: Representative Porter COMPONENT SERIAL NO. 2085

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends various statutes to conform to HB 159 approved last year, which treats third-time DWI offenders as felons. These include amending sentencing provisions when an offender fails to satisfactorily complete an alcohol treatment program, authorizes use of information received through the Alaska Public Safety Information Network regarding prior DWI convictions in grand jury proceedings, and provides that a presentence investigation is not required for a defendant convicted of felony DWI or felony refusal, unless the defendant is subject to presumptive sentencing as a repeat felony offender.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 2/21/96
 Approved by Commissioner: R. I. Pegues / R.I.P. Date: 2/21/96
 Agency: Bruce M. Botelho, Attorney General
Department of Law

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file

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 204

Revision Date: 02/21/96 Dept. Affected: Alaska Court System
 Title: No Drink before Driving if Under 21 BRU: Trial Courts
 Sponsor: House Rules by request of Governor Component: _____
 Requester: _____ COMPONENT SERIAL NO. 758

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES:	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL						

Estimate of any current year (FY 96) cost: None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

* - see attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 284-8228
 Agency: Alaska Court System Date: 02/21/96
 Approved by: Arthur H. Snowden, II, Administrative Director Date: 02/21/96
 Agency: Alaska Court System

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H-1

Ford

M E N D M E N T

TO: CSHB 204(FIN) AM

Page 8, line 17: delete "within 24 hours"

Page 8, line ~~18~~⁴: delete "13" and insert "14"

Page 8, line 27: delete "(a) of this"

Page 9, line 20: delete "(a) of this"



Pg 8 line 32

SENATE CS FOR CS FOR HOUSE BILL NO. 204(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the administrative revocation of a minor's license to drive;
2 creating criminal offenses of minor operating a vehicle after consuming alcohol,
3 a minor's refusal to submit to chemical test, and driving during the 24 hours
4 after being cited for minor operating a vehicle after consuming alcohol or refusal
5 to submit to chemical test; establishing penalties for these offenses; relating to
6 court ordered drug and alcohol screening, evaluation, referral, and programs;
7 relating to implied consent to certain testing if operating a motor vehicle, aircraft,
8 or watercraft; relating to an instrument's working tolerance in a chemical breath
9 test; relating to the authority of a court to impose a suspended sentence after
10 failure to complete a treatment program upon conviction of felony driving while
11 intoxicated or felony refusal to submit to a chemical test; relating to the period
12 of time a court may consider for determining prior convictions in sentencing a

1 person convicted of felony driving while intoxicated or felony refusal to submit
2 to a chemical test; amending Rules 6 and 32.1, Alaska Rules of Criminal
3 Procedure, to allow the use of hearsay evidence before a grand jury in a
4 prosecution for felony driving while intoxicated or felony refusal to submit to a
5 chemical test and to not require a presentence report for a first felony driving
6 while intoxicated or first felony refusal to submit to a chemical test; and
7 providing for an effective date."

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

9 * Section 1. AS 28.15.183(a) is amended to read:

10 (a) If a peace officer has probable cause to believe that a person who is at least
11 14 years of age but not yet 21 years of age has possessed or used a controlled substance
12 in violation of AS 11.71, or a municipal ordinance with substantially similar elements,
13 or possessed or consumed alcohol in violation of AS 04.16.050 or a municipal ordinance
14 with substantially similar elements, operated a vehicle after consuming alcohol in
15 violation of AS 28.35.280, or refused to submit to a chemical test under
16 AS 28.35.285 and the peace officer has cited the person or arrested the person for a
17 violation of AS 11.71, AS 04.16.050, AS 28.35.280, or 28.35.285 or the municipal
18 ordinance with substantially similar elements, the peace officer shall read a notice and
19 deliver a copy to the person. The notice must advise that

20 (1) the department intends to revoke the person's driver's license or
21 permit, privilege to drive, or privilege to obtain a license or permit;

22 (2) the person has the right to administrative review of the revocation;

23 (3) if the person has a driver's license or permit, the notice itself is a
24 temporary driver's license or permit that expires seven days after it is delivered to the
25 person;

26 (4) revocation of the person's driver's license or permit, privilege to
27 drive, or privilege to obtain a license or permit, takes effect seven days after delivery of
28 the notice to the person unless the person, within seven days, requests an administrative
29 review;

1 (5) If the person has been cited under AS 28.35.280 or under
2 AS 28.35.285, that person, under AS 28.35.290, may not operate a motor vehicle,
3 aircraft, or watercraft during the 24 hours following issuance of the citation.

4 * Sec. 2. AS 28.15.183(c) is amended to read:

5 (c) Unless the person has requested an administrative review, the department
6 shall revoke the person's driver's license or permit, privilege to drive, or privilege to
7 obtain a license or permit, effective seven days after delivery to the person of the notice
8 required under (a) of this section, upon receipt of a sworn report of a peace officer

9 (1) that the officer had probable cause to believe that the person is at
10 least 14 years of age but not yet 21 years of age and has possessed or used a controlled
11 substance in violation of AS 11.71, or a municipal ordinance with substantially similar
12 elements, or possessed or consumed alcohol in violation of AS 04.16.050 or a municipal
13 ordinance with substantially similar elements, operated a vehicle after consuming
14 alcohol in violation of AS 28.35.280, or refused to submit to a chemical test of
15 breath under AS 28.35.285;

16 (2) that the peace officer has cited the person or arrested the person for

17 (A) a violation of AS 11.71, [OR] AS 04.16.050, AS 28.35.280,
18 or 28.35.285; or

19 (B) possession or use of a controlled substance or alcohol in
20 violation of a municipal ordinance with substantially similar elements;

21 (3) that notice under (a) of this section was provided to the person; and

22 (4) describing the circumstances surrounding the violation of the
23 controlled substances provisions of AS 11.71, the alcoholic beverages provisions of
24 AS 04.16.050, or the municipal ordinance with substantially similar elements, the minor
25 operating a vehicle after consuming alcohol provisions of AS 28.35.280, or the minor
26 refusing to submit to a chemical test of breath under provisions of AS 28.35.285.

27 * Sec. 3. AS 28.15.183(g) is amended to read:

28 (g) Except as provided under (h) of this section, the department may not issue
29 a new license or reissue a license to a person whose driver's license, permit, or privilege
30 to drive has been revoked under this section unless the person is enrolled in and is in
31 compliance with, or has successfully completed

32 (1) an alcoholism education or rehabilitation treatment program, if the

1 revocation resulted from possession or consumption of alcohol in violation of
2 AS 04.16.050 or a municipal ordinance with substantially similar elements, from
3 operating a vehicle after consuming alcohol in violation of AS 28.35.280, or from
4 refusal to submit to a chemical test of breath in violation of AS 28.35.285; or

5 (2) a drug education or rehabilitation treatment program, if the revocation
6 resulted from possession or use of a controlled substance in violation of AS 11.71 or a
7 municipal ordinance with substantially similar elements.

8 * Sec. 4. AS 28.15.184(g) is amended to read:

9 (g) The hearing for review of a revocation by the department under
10 AS 28.15.183 shall be limited to the issues of whether the person was at least 14 years
11 of age but not yet 21 years of age and whether the person possessed or used a controlled
12 substance in violation of AS 11.71 or a municipal ordinance with substantially similar
13 elements, or possessed or consumed alcohol in violation of AS 04.16.050 or a municipal
14 ordinance with substantially similar elements, operated a vehicle after consuming
15 alcohol in violation of AS 28.35.280, or refused to submit to a chemical test of
16 breath in violation of AS 28.35.285.

17 * Sec. 5. AS 28.35.030(h) is amended to read:

18 (h) The court shall order a person convicted under this section to satisfy the
19 screening, evaluation, referral, and program requirements of an alcohol safety action
20 program if such a program is available in the community where the person resides,
21 or a private or public treatment facility approved by the Division of Alcoholism and
22 Drug Abuse, of the Department of Health and Social Services, under AS 47.37 [AN
23 AGENCY AUTHORIZED BY THE COURT] to make referrals for rehabilitative
24 treatment or to provide rehabilitative treatment. If a person is convicted under (n) of this
25 section, the court shall order the person to be evaluated as required by this subsection
26 before the court imposes sentence for the offense.

27 * Sec. 6. AS 28.35.030(j) is amended to read.

28 (j) If a person fails to satisfy the requirements of an authorized agency under (i)
29 of this section, the court

30 (1) may impose any portion of a suspended sentence; however, if the
31 person was convicted under (n) of this section, the court shall impose a part or all of
32 the remaining portion of any suspended sentence;

1 (2) may punish the failure as contempt of the authority of the court under
2 AS 09.50.010 or as a violation of a condition of probation; and

3 (3) shall order the revocation or suspension of the person's driver's
4 license, privilege to drive, and privilege to obtain a driver's license until the requirements
5 are satisfied.

6 * Sec. 7. AS 28.35.030(n) is amended to read:

7 (n) A person is guilty of a class C felony if the person is convicted of driving
8 while intoxicated and has been previously convicted two or more times within the five
9 years preceding the date of the present offense. For purposes of determining
10 minimum sentences based on previous convictions [IF A PERSON HAS BEEN
11 PREVIOUSLY CONVICTED], the provisions of (o)(4) of this section apply [EXCEPT
12 THAT ONLY CONVICTIONS OCCURRING WITHIN FIVE YEARS PRECEDING
13 THE DATE OF THE PRESENT OFFENSE MAY BE INCLUDED]. Upon conviction,
14 the court

15 (1) shall impose a fine of not less than \$5,000 and a minimum sentence
16 of imprisonment of not less than

17 (A) 120 days if the person has been previously convicted twice;

18 (B) 240 days if the person has been previously convicted three
19 times;

20 (C) 360 days if the person has been previously convicted four or
21 more times;

22 (2) may not

23 (A) suspend execution of sentence or grant probation except on
24 condition that the person serve the minimum imprisonment under (1) of this
25 subsection; or

26 (B) suspend imposition of sentence;

27 (3) shall revoke the person's driver's license, privilege to drive, or
28 privilege to obtain a license under AS 28.15.181(c);

29 (4) may order as a condition of probation or parole that the person take
30 a drug, or combination of drugs, intended to prevent the consumption of an alcoholic
31 beverage; a condition of probation imposed under this paragraph is in addition to any
32 other condition authorized under another provision of law; and

1 (5) may also order forfeiture under AS 28.35.036 of the vehicle or
2 aircraft used in the commission of the offense, subject to remission under AS 28.35.037.

3 * Sec. 8. AS 28.35.031(a) is amended to read:

4 (a) A person who operates or drives a motor vehicle in this state or who operates
5 an aircraft as defined in AS 28.35.030(o) or who operates a watercraft as defined in
6 AS 28.35.030(o) shall be considered to have given consent to a chemical test or tests of
7 the person's breath for the purpose of determining the alcoholic content of the person's
8 blood or breath if lawfully arrested for an offense arising out of acts alleged to have been
9 committed while the person was operating or driving a motor vehicle or operating an
10 aircraft or a watercraft while intoxicated or if lawfully arrested under AS 28.35.280
11 for the offense of minor operating a vehicle after consuming alcohol. The test or
12 tests shall be administered at the direction of a law enforcement officer who has
13 reasonable grounds to believe that the person was operating or driving a motor vehicle
14 or operating an aircraft or a watercraft in this state while intoxicated or that the person
15 was a minor operating a vehicle after consuming alcohol.

16 * Sec. 9. AS 28.35.032(l) is amended to read:

17 (l) The court shall order a person convicted under this section to satisfy the
18 screening, evaluation, referral, and program requirements of an alcohol safety action
19 program if such a program is available in the community where the person resides,
20 or a private or public treatment facility approved by the Division of Alcoholism and
21 Drug Abuse, of the Department of Health and Social Services, under AS 47.37 [AN
22 AGENCY AUTHORIZED BY THE COURT] to make referrals for rehabilitative
23 treatment or to provide rehabilitative treatment. If a person is convicted under (p) of this
24 section, the court shall order the person to be evaluated as required by this subsection
25 before the court imposes sentence for the offense.

26 * Sec. 10. AS 28.35.032(n) is amended to read:

27 (n) If a person fails to satisfy the requirements of an authorized agency under
28 (m) of this section, the court

29 (1) may impose any portion of a suspended sentence, however, if the
30 person was convicted under (p) of this section, the court shall impose a part or all of
31 the remaining portion of any suspended sentence;

32 (2) may punish the failure as contempt of the authority of the court

1 under AS 09.50.010 or as a violation of a condition of probation; and

2 (3) shall order the revocation or suspension of the person's driver's
3 license, privilege to drive, and privilege to obtain a driver's license until the
4 requirements are satisfied.

5 * Sec. 11. AS 28.35.032(p) is amended to read:

6 (p) A person is guilty of a class C felony if the person is convicted under this
7 section and has been previously convicted two or more times within the five years
8 preceding the date of the present offense. For purposes of determining minimum
9 sentences based on previous convictions [IF A PERSON HAS BEEN PREVIOUSLY
10 CONVICTED], the provisions of AS 28.35.030(o)(4) apply [, EXCEPT THAT ONLY
11 CONVICTIONS OCCURRING WITHIN FIVE YEARS PRECEDING THE DATE OF
12 THE PRESENT OFFENSE MAY BE INCLUDED]. Upon conviction,

13 (1) the court shall impose a fine of not less than \$5,000 and a
14 minimum sentence of imprisonment of not less than

15 (A) 120 days if the person has been previously convicted twice;

16 (B) 240 days if the person has been previously convicted three
17 times;

18 (C) 360 days if the person has been previously convicted four
19 or more times;

20 (2) the court may not

21 (A) suspend execution of the sentence required by (1) of this
22 subsection or grant probation, except on condition that the person serve the
23 minimum imprisonment under (1) of this subsection; or

24 (B) suspend imposition of sentence;

25 (3) the court shall revoke the person's driver's license, privilege to
26 drive, or privilege to obtain a license under AS 28.15.181(c);

27 (4) the court may order as a condition of probation or parole that the
28 person take a drug, or combination of drugs, intended to prevent consumption of an
29 alcoholic beverage; a condition of probation imposed under this paragraph is in
30 addition to any other condition authorized under another provision of law;

31 (5) the sentence imposed by the court under this subsection shall run

1 consecutively with any other sentence of imprisonment imposed on the person; and
2 (6) the court may also order forfeiture under AS 28.35.036, of the
3 vehicle or aircraft used in the commission of the offense, subject to remission under
4 AS 28.35.037.

5 * Sec. 12. AS 28.35.039 is amended to read:

6 Sec. 28.35.039. DEFINITIONS FOR AS 28.35.029 - 28.35.039. In
7 AS 28.35.029 - 28.35.039,

8 (1) "controlled substance" has the meaning given in AS 28.33.190;

9 (2) "alcohol safety action program" means a program designated by
10 the commissioner of health and social services as an alcohol safety action program.

11 * Sec. 13. AS 28.35 is amended by adding new sections to read:

12 ARTICLE 6. CERTAIN OFFENSES RELATING TO MINORS.

13 Sec. 28.35.280. MINOR OPERATING A VEHICLE AFTER CONSUMING
14 ALCOHOL. (a) A person who is at least 14 years of age but not yet 21 years of age
15 commits the offense of minor operating a vehicle after consuming alcohol if the person
16 operates or drives a motor vehicle or operates an aircraft or a watercraft after having
17 consumed any quantity of alcohol. A peace officer who has probable cause to believe
18 that a person has committed the offense of minor operating a vehicle after consuming
19 alcohol may

20 (1) place the person under arrest;

21 (2) request that the person submit to a chemical test or tests of the
22 person's breath for the purpose of determining the alcoholic content of the person's
23 blood or breath; and

24 (3) transport the person to a location at which a chemical or other test
25 authorized under (2) of this subsection may be administered.

26 (b) If a chemical test under this section reveals any alcohol concentration within
27 the person's blood or breath, the person shall be cited for violating this section and then
28 released unless there is a lawful reason for further detention. A person who is 18 years
29 of age or older shall be released on the person's own recognizance. A person who is
30 under the age of 18 shall be released to a parent, guardian, or legal custodian.

31 (c) A person who is cited for violating this section shall be advised by a peace
32 officer that it is unlawful under AS 28.35.290 for the person to operate a motor vehicle.

1 aircraft, or watercraft during the 24 hours following the issuance of the citation.

2 (d) The offense of a minor operating a vehicle after consuming alcohol is an
3 infraction. Upon conviction, the court shall impose a fine of not more than \$1,000,
4 community work service, or both. The court may offer the minor the option of
5 performing community work in place of a fine or a portion of the fine. The value of
6 community work in place of a fine is as specified in AS 12.55.055(c).

7 (e) In this section,

8 (1) "operate an aircraft" has the meaning given in AS 28.35.030(o);

9 (2) "operate a watercraft" has the meaning given in AS 28.35.030(o).

10 Sec. 28.35.285. MINOR'S REFUSAL TO SUBMIT TO CHEMICAL TEST.

11 (a) If a person under arrest for minor operating a vehicle after consuming alcohol
12 refuses the request of a peace officer to submit to a chemical test or tests of the person's
13 breath authorized under AS 28.35.031(a) and 28.35.280(a), after being advised by the
14 officer that the refusal will result in the denial or revocation of the driver's license,
15 privilege to drive, or privilege to obtain a license, that the refusal may be used against
16 the person in a civil or criminal action or proceeding arising out of an act alleged to have
17 been committed by the person while operating a vehicle after consuming alcohol, and
18 that the refusal is a violation, a chemical test may not be given.

19 (b) A person who is cited for violating this section shall be advised by a peace
20 officer that it is unlawful under AS 28.35.290 for the person to operate a motor vehicle,
21 aircraft, or watercraft during the 24 hours following the issuance of the citation.

22 (c) The refusal of a minor to submit to a chemical test authorized under
23 AS 28.35.031(a) and 28.35.280(a) is admissible evidence in a civil or criminal action or
24 proceeding arising out of an act alleged to have been committed by the person while
25 operating a vehicle after consuming alcohol.

26 (d) Refusal to submit to a chemical test or tests of the person's breath requested
27 under AS 28.35.280 is an infraction. Upon conviction, the court shall impose a fine of
28 not more than \$1,000, or community work service, or both. The court may offer the
29 minor the option of performing community work in place of a fine or a portion of the
30 fine. The value of community work in place of a fine is as specified in AS 12.55.055(c).

31 Sec. 28.35.290. DRIVING DURING THE 24 HOURS AFTER BEING CITED
32 FOR ALCOHOL OR BREATH TEST OFFENSES. (a) A person who has been cited

1 for minor operating a vehicle after consuming alcohol under AS 28.35.280 or for refusal
2 to submit to a chemical test of breath under AS 28.35.285 may not operate a motor
3 vehicle, aircraft, or watercraft during the 24 hours following issuance of the citation.

4 (b) Operating a motor vehicle, aircraft, or watercraft during the 24 hours after
5 being cited for minor operating a vehicle after consuming alcohol or for minor's refusal
6 to submit to a chemical test is an infraction. Upon conviction, the court shall impose a
7 fine of not more than \$1,000, or community work service, or both. The court may offer
8 the minor the option of performing community work in place of the fine or a portion of
9 the fine. The value of community work in place of a fine is as specified in
10 AS 12.55.055(c).

11 (c) In this section,

12 (1) "operate an aircraft" has the meaning given in AS 28.35.030(o);

13 (2) "operate a watercraft" has the meaning given in AS 28.35.030(o).

14 * Sec. 14. AS 28.35.280(d) is repealed and reenacted to read:

15 (d) The offense of a minor operating a vehicle after consuming alcohol is an
16 infraction. Upon conviction, the court shall impose a fine of not more than \$1,000. The
17 court may offer the minor the option of performing community work in place of a fine
18 or a portion of a fine. The value of community work in place of a fine is as specified
19 in AS 12.55.055(c).

20 * Sec. 15. AS 28.35.285(d) is repealed and reenacted to read:

21 (d) Refusal to submit to a chemical test or tests of the person's breath requested
22 under AS 28.35.280 is an infraction. Upon conviction, the court shall impose a fine of
23 not more than \$1,000. The court may offer the minor the option of performing
24 community work in place of a fine or a portion of the fine. The value of community
25 work in place of a fine is as specified in AS 12.55.055(c).

26 * Sec. 16. AS 28.35.290(b) is repealed and reenacted to read:

27 (b) Operating a motor vehicle, aircraft, or watercraft during the 24 hours after
28 being cited for minor operating a vehicle after consuming alcohol is an infraction. Upon
29 conviction, the court shall impose a fine of not more than \$1,000. The court may offer
30 the minor the option of performing community work in place of the fine or a portion of
31 the fine. The value of community work in place of a fine is as specified in
32 AS 12.55.055(c).

1 * Sec. 17. AS 28.40 is amended by adding a new section to read:

2 Sec. 28.40.060. BREATH TEST RESULT VALIDITY. If an offense described
3 under this title requires that a chemical test of a person's breath produce a particular
4 result, and the chemical test is administered by a properly calibrated instrument approved
5 by the Department of Public Safety, the result described by statute is not affected by the
6 instrument's working tolerance.

7 * Sec. 18. Rule 6(r)(1), Alaska Rules of Criminal Procedure, is amended to read:

8 (1) Evidence which would be legally admissible at trial shall be
9 admissible before the grand jury. In appropriate cases, however, witnesses may be
10 presented to summarize admissible evidence if the admissible evidence will be
11 available at trial. Except as stated in subparagraphs (2), [AND] (3), and (6), hearsay
12 evidence shall not be presented to the grand jury absent compelling justification for
13 its introduction. If hearsay evidence is presented to the grand jury, the reasons for its
14 use shall be stated on the record.

15 * Sec. 19. Rule 6(r), Alaska Rules of Criminal Procedure, is amended by adding a new
16 paragraph to read:

17 (6) In a prosecution for driving while intoxicated under
18 AS 28.35.030(n) or for refusal to submit to a chemical test under AS 28.35.032(p),
19 hearsay evidence received through the Alaska Public Safety Information Network or
20 from other governmental agencies of prior convictions of driving while intoxicated or
21 refusal to submit to a chemical test may be presented to the grand jury.

22 * Sec. 20. Rule 32.1(a), Alaska Rules of Criminal Procedure, is amended to read:

23 (a) Scheduling. At the time guilt in a felony case is established by verdict or
24 plea, the judge shall establish the date for a sentencing hearing and a presentencing
25 hearing, if appropriate, and except as provided under subsection (f) of this rule,
26 shall order a presentence investigation by the Department of Corrections. If the judge
27 elects to schedule a single hearing, all of the procedures for the presentencing and
28 sentencing hearings shall be applicable at the single hearing.

29 * Sec. 21. Rule 32.1, Alaska Rules of Criminal Procedure, is amended by adding a new
30 subsection to read:

31 (f) When Presentence Investigation Not Required. Unless a person may be
32 sentenced to a presumptive term of imprisonment under AS 12.55.125(e)(1) or (2), a

1 presentence investigation by the Department of Corrections is not required for a
2 defendant convicted of driving while intoxicated under AS 28.35.030(n) or refusal to
3 submit to a chemical test under AS 28.35.032(p).

4 • Sec. 22. Sections 1 - 13 and 17 - 21 of this Act apply only to acts committed on or after
5 the effective date of secs. 1 - 13 and 17 - 21 of this Act, except that to the extent that the
6 amendments made by secs. 6, 7, 10, 11, and 18 - 21 of this Act involve prior convictions,
7 those prior convictions may have occurred before, on, or after the effective date of this Act.

8 • Sec. 23. Sections 14 - 16 of this Act take effect only upon a final decision by the Alaska
9 Court of Appeals and the Alaska Supreme Court that the possibility of imposing community
10 work service by the court for the offenses prohibited under AS 28.35.280, 28.35.285, and
11 28.35.290 gives rise to the right to court appointed counsel and trial by jury.

HB

226

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 226(FIN)

Revision Date: _____
Title: An Act permitting the provision of different retirement and health benefits to certain employees by differentiating
Sponsor: Kelly Rokeberg
Requestor: State Affairs, Health, Education & Social Services

Department Affected: All State Agencies
BRU: All State Agencies
Component: All State Agencies
COMPONENT SERIAL NO. 64

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE:

(Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$ zero

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

The state's health insurance plan already extends coverage by statute (AS 39 30.090(a)(2)) to employees, their spouses, and their eligible dependent children.

Prepared by Robert F. Stalnaker *Robert F. Stalnaker* Phone 465-4470
Division Retirement & Benefits Date _____

Approved by Commissioner Mark Boyer *Mark Boyer*
Agency Department of Administration Date 1/31/96

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SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 3/8/96

FURTHER: *has no further*

DATE TURNED INTO OFFICE: 3-26-96

The Judiciary Committee considered CS FOR HOUSE BILL NO. 226(FIN) am

Permitting the provision of different retirement and health benefits to certain employees by differentiating between benefits provided to employees with spouses or children and to other employees.

and recommends:

be replaced with CS HB 226 (JUD)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Linda Green</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>		<input checked="" type="checkbox"/>	
<i>Mike Miller</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>			
		<i>[Signature]</i>	<input checked="" type="checkbox"/>		
CHAIR: <i>[Signature]</i>		CHAIR: <i>[Signature]</i>			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>11500</i>	<i>[Date]</i>	<i>[Zero]</i>	<i>[Fiscal]</i>

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

POSITION PAPER ~ Opposing CS-226 ~ March 25, 1996

Against Marital Discrimination in University Health Benefits

Organization: Committee for Equality -- Statewide organization.
PO Box 34202, Juneau, AK 99803

Board Contacts: Anchorage: Jackie Buckley, 279-5001 (w); 279-5437 (fax); 562-0046 (h).
Fairbanks: Louise Barnes, 479-0618 (w/h).
Juneau: Sara Boesser, 581-5230 (w); 789-7450 (home fax); 789-9604 (h).

Position: CFE Opposes House CS-226 as written, because it attacks State Human Rights Statute by discriminating on the basis of marital status. Either amend this bill as recommended by the courts to extend health benefits to financially interdependent partners, or stop it in this committee now.

Committee for Equality opposes CS-226 as written. There is not a financial or legal reason to pass a bill such as this. The court decision it addresses is under appeal, and this body should not interfere in that process. Rather than attack state human rights law, as this bill now does, it would serve all Alaskans better to follow the court's initial ruling and extend benefits to all financially interdependent domestic partners.

It is important for you to know that coverage for domestic partners would not cost the state money. In fact, it could well save money, because by allowing more employees to pay for the health care coverage of their financially interdependent partners, more Alaskans would be covered by private insurance, and there would be fewer citizens left to seek Medicaid at state expense.

Studies at universities and businesses across the country show that extending domestic partner health benefits does not lead to large numbers of people joining the health care plan or to significantly increased premium costs. You have access to studies done by many businesses and universities. All find from 1-3% increase in enrollment -- with no negligible premium increase. AETNA serves over 25 universities and businesses, and their study finds only 2% enrollment increase the first year, and less than 1% each year following; AETNA sees no increase in premiums as a result of domestic partners inclusion.

So -- amending this bill to include domestic partners could get more people off Medicaid and paying for their health care coverage -- at no premium increase.

Opponents to domestic partner health care coverage have stated many concerns that in the end don't stand up to research.

For example, Representative Kolly in the past attempted to suggest that the domestic partners language discriminated on the basis of economic status. In fact, since CS-226 addresses *employees* (not indigent people, not unemployed people), any *employee* regardless of income level could qualify for at least five of the domestic partner criteria -- all that is needed for domestic partner status -- at no cost. So for employees, there is no economic barrier to receiving health benefits for a domestic partner.

And to claims that the domestic partner list of criteria is too lax -- look again. It is actually more stringent than marriage requirements. For example, married persons do not have to live together -- in fact they can live in different countries and still give each other health benefits. And as to the issue of "fraud" potential with domestic partner benefits -- the current married person benefits program already experiences fraud -- with people claiming to be married when they're not, and with people continuing to claim marriage status even after they're divorced. Fraud is fraud -- it can be dealt with equally for any form of relationship.

At another House hearing, it was further suggested that the domestic partners language might somehow discriminate on the basis of race, or on the number of children a person might have. It is unfathomable what was meant by such comments. Because, once again, 226 deals with all employees. It would not deal with employees of only certain races, or those with only certain numbers of children, receiving health benefits for their domestic or married partners. Quite the contrary: with the domestic partners' amendment, it would clearly say the university must offer health benefits to *all* employees' married or domestic partners. All. Equally. That's what a good law would do -- treat all financially interdependent couples fairly, without special benefits only for married people.

[continues]

I hope you are aware that this issue is not rare in America. You have access to a lengthy and fast-growing list of jurisdictions, companies and colleges that have some form of domestic partnership benefits. Universities on the list include Columbia University, General Theological Seminary, Harvard, Teachers College in New York, Thomas Jefferson University and Hospital, University of Washington, Yale, and many others. Companies offering health benefits range from phone companies like Nynex Corp, to breweries like Coors, to Children's Hospital of Boston, to Dow Chemical, Xerox Corp, and even to the Walt Disney Company. Why are benefits extended? A Nynex phone company spokesman says, "this helps us retain and attract the best employees."

I would hope you'd recognize that extending domestic partner benefits would thereby actually increase the value of the University system, while discriminatory bills like 226 lessen the program when good employees look elsewhere to find employment. If pro-family companies like Walt Disney can see this, I'm sure you can too.

One final but very important point. The Alaska Legislature is extending its ethics bill coverage to include the domestic partners of lobbyists. Thus the state finally recognizes that domestic partners are equivalent to married persons in regards to the ethics of lobbying. So, to be ethical in health benefits at the University, domestic partners should be considered equivalent as well.

In conclusion: CS-226 as written is a bad bill, and unnecessary due to court actions at this time. You can do the public and the legislature a favor by either amending it for domestic partner benefits as recommended by the courts, or by letting it die, today. Save the state money by not passing a bad bill that would cause more court cases to arise. The legislature does not need unnecessary contentious bills before it when matters of genuine concern need its time and attention. Refocus your energies. Hold hearings on bills that would intentionally protect people from physical violence -- such as the Governor's Domestic Violence Bill -- instead of spending time on a bill like this that intentionally attacks the physical well-being of Alaskan citizens.



Alaska State Legislature

Please enter into the record my testimony to the Senate Judiciary
 committee name
 committee on HB 226, dated 25 March 96
 bill/subject

*I ask your support of HB 226.
 Employers need their burden (put on them by govt) lightened.*

Signed: Mark N. Moldenhauer MARK N. MOLDENHAUER
 Testifier

Representing (Optional)

PO Box 595 Sterling, Ak. 99672

Address

262-9319

Phone No.

SENATE CS FOR CS FOR HOUSE BILL NO. 226(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES KELLY, Rokeberg

A BILL

FOR AN ACT ENTITLED

1 "An Act permitting the provision of different retirement and health benefits to
2 certain employees by differentiating between benefits provided to employees with
3 spouses or children and to other employees."

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

5 * Section 1. AS 18.80.220(a) is amended to read:

6 (a) Except as provided in (c) of this section, it [IT] is unlawful for

7 (1) an employer to refuse employment to a person, or to bar a person
8 from employment, or to discriminate against a person in compensation or in a term,
9 condition, or privilege of employment because of the person's race, religion, color, or
10 national origin, or because of the person's age, physical or mental disability, sex, marital
11 status, changes in marital status, pregnancy, or parenthood when the reasonable demands
12 of the position do not require distinction on the basis of age, physical or mental
13 disability, sex, marital status, changes in marital status, pregnancy, or parenthood;

14 (2) a labor organization, because of a person's sex, marital status,

1 changes in marital status, pregnancy, parenthood, age, race, religion, physical or mental
2 disability, color, or national origin, to exclude or to expel a person from its membership,
3 or to discriminate in any way against one of its members or an employer or an
4 employee:

5 (3) an employer or employment agency to print or circulate or cause to
6 be printed or circulated a statement, advertisement, or publication, or to use a form of
7 application for employment or to make an inquiry in connection with prospective
8 employment, that expresses, directly or indirectly, a limitation, specification, or
9 discrimination as to sex, physical or mental disability, marital status, changes in marital
10 status, pregnancy, parenthood, age, race, creed, color, or national origin, or an intent to
11 make the limitation, unless based upon a bona fide occupational qualification;

12 (4) an employer, labor organization, or employment agency to discharge,
13 expel, or otherwise discriminate against a person because the person has opposed any
14 practices forbidden under AS 18.80.200 - 18.80.280 or because the person has filed a
15 complaint, testified, or assisted in a proceeding under this chapter;

16 (5) an employer to discriminate in the payment of wages as between the
17 sexes, or to employ a female in an occupation in this state at a salary or wage rate less
18 than that paid to a male employee for work of comparable character or work in the same
19 operation, business, or type of work in the same locality; or

20 (6) a person to print, publish, broadcast, or otherwise circulate a
21 statement, inquiry, or advertisement in connection with prospective employment that
22 expresses directly a limitation, specification, or discrimination as to sex, physical or
23 mental disability, marital status, changes in marital status, pregnancy, parenthood, age,
24 race, religion, color, or national origin, unless based upon a bona fide occupational
25 qualification.

26 • Sec. 2. AS 18.80.220 is amended by adding new subsections to read:

27 (c) Notwithstanding the prohibition against employment discrimination on the
28 basis of marital status or parenthood under (a) of this section,

29 (1) an employer may, without violating this chapter, provide greater
30 health and retirement benefits to employees who have a spouse or dependent children
31 than are provided to other employees;

32 (2) a labor organization may, without violating this chapter, negotiate

1 greater health and retirement benefits for employees of an employer who have a spouse
2 or dependent children than are provided to other employees of the employer.

3 (d) In this section, "dependent child" means an unmarried child, including an
4 adopted child, who is dependent upon a parent for support and who is either

5 (1) less than 19 years old;

6 (2) less than 23 years old and registered at and attending on a full-time
7 basis an accredited educational or technical institution recognized by the Department of
8 Education; or

9 (3) of any age and totally and permanently disabled.

Alaska State Legislature

REPRESENTATIVE
PETER KELLY

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(907) 456-8161



White in Juneau
State Capitol
Juneau, Alaska
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House District 3:

House Of Representatives

March 19, 1996

Memorandum

To: Senator Robin Taylor, Chairman
Senate Judiciary Committee

From: Representative Pete Kelly *Pete*

Re: HB 226, Draft CS.

Enclosed is a blank committee CS for your consideration.

This draft answers two questions initially posed by the Alaska Human Rights Commission. First it replaces the word "different" with "greater." The bill now reads:

"an employer may, without violating this chapter, provide greater health and retirement benefits to employees who have a spouse or dependent children than provided to other employees;"

Secondly the blank CS add a definition of "dependent children" excerpted from the employee benefits portion of Title 14. This definition reads:

- (d) In this section, "dependent child" means an unmarried child, including an adopted child, who is dependent upon a parent for support and who is either
- (1) less than 19 years old;
 - (2) less than 23 years old and registered at and attending on a full-time basis an accredited educational or technical institution recognized by the Department of Education; or
 - (3) of any age and totally and permanently disabled."

I believe these changes address important concerns raised in discussion of the bill on the floor of the House.

cc: Representative Caren Robinson

9-LS0595D
Cramer
3/15/96

SENATE CS FOR CS FOR HOUSE BILL NO. 226()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES KELLY, Rokeberg

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11 status, changes in marital status, pregnancy, or parenthood when the reasonable demands
12 of the position do not require distinction on the basis of age, physical or mental
13 disability, sex, marital status, changes in marital status, pregnancy, or parenthood;

14 (2) a labor organization, because of a person's sex, marital status,

1 changes in marital status, pregnancy, parenthood, age, race, religion, physical or mental
2 disability, color, or national origin, to exclude or to expel a person from its membership,
3 or to discriminate in any way against one of its members or an employer or an
4 employee;

5 (3) an employer or employment agency to print or circulate or cause to
6 be printed or circulated a statement, advertisement, or publication, or to use a form of
7 application for employment or to make an inquiry in connection with prospective
8 employment, that expresses, directly or indirectly, a limitation, specification, or
9 discrimination as to sex, physical or mental disability, marital status, changes in marital
10 status, pregnancy, parenthood, age, race, creed, color, or national origin, or an intent to
11 make the limitation, unless based upon a bona fide occupational qualification;

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14 practices forbidden under AS 18.80.200 - 18.80.280 or because the person has filed a
15 complaint, testified, or assisted in a proceeding under this chapter;

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18 than that paid to a male employee for work of comparable character or work in the same
19 operation, business, or type of work in the same locality; or

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