

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9571 SENATE JUDICIARY

208

1 or child kidnapper's intended address.

2 (b) If a sex offender or child kidnapper fails to register or to verify the sex
3 offender's or child kidnapper's address and registration under this chapter, or the
4 department does not know the location of a sex offender or child kidnapper required
5 to register under this chapter, the department shall immediately notify the Federal
6 Bureau of Investigation.

7 * Sec. 9. AS 12.63.100(2) is amended to read:

8 (2) "sex offender or child kidnapper" means a person convicted of a
9 sex offense or child kidnapping in this state or another jurisdiction regardless of
10 whether the conviction occurred before, after, or on August 10, 1994;

11 * Sec. 10. AS 12.63.100(3) is amended to read:

12 (3) "sex offense" means a crime, or an attempt, solicitation, or
13 conspiracy to commit a crime, under the following statutes or a similar law of
14 another jurisdiction:

15 (A) AS 11.41.410 - 11.41.438, 11.41.440(a)(2), 11.41.450, or
16 11.41.455;

17 (B) [,] AS 11.61.125;

18 (C) [,] AS 11.66.110 or 11.66.130(a)(2) if the person who was
19 induced or caused to engage in prostitution was 16 or 17 years of age at
20 the time of the offense; or

21 (D) [,] former AS 11.15.120, former [OR] 11.15.134, or
22 assault with the intent to commit rape under former AS 11.15.160, [OR.]
23 former AS 11.40.110, or 11.40.200 [, OR A SIMILAR LAW IN ANOTHER
24 JURISDICTION];

25 * Sec. 11. AS 12.63.100 is amended by adding new paragraphs to read:

26 (5) "aggravated sex offense" means a crime, or an attempt to commit
27 a crime, under AS 11.41.410, 11.41.434, or a similar law of another jurisdiction;

28 (6) "child kidnapping" means a crime or an attempt, solicitation, or
29 conspiracy to commit a crime, under AS 11.41.300, or a similar law of another
30 jurisdiction, if the victim was under 18 years of age at the time of the offense.

31 * Sec. 12. AS 18.65.087(a) is amended to read:

1 (a) The Department of Public Safety shall maintain a central registry of sex
2 offenders and child kidnappers required to register under AS 12.63.010 and shall
3 adopt regulations necessary to carry out the purposes of this section and AS 12.63. A
4 post of the Alaska state troopers or a municipal police department that receives
5 information under AS 12.63.010 shall forward the information within five working
6 days of receipt to the central registry of sex offenders and child kidnappers.

7 * Sec. 13. AS 18.65.087(b) is amended to read:

8 (b) Information about a sex offender or child kidnapper that is contained in
9 the central registry, including sets of fingerprints, is confidential and not subject to
10 public disclosure except as to the sex offender's or child kidnapper's name, address,
11 photograph, place of employment, date of birth, crime for which convicted, date of
12 conviction, place and court of conviction, and length of sentence.

13 * Sec. 14. AS 18.65.087(d) is amended to read:

14 (d) The Department of Public Safety

15 (1) shall adopt regulations to

16 (A) allow a sex offender or child kidnapper to review sex
17 offender or child kidnapper registration information that refers to that sex
18 offender or child kidnapper, and if the sex offender or child kidnapper
19 believes the information is inaccurate or incomplete, to request the department
20 to correct the information; if the department finds the information is inaccurate
21 or incomplete, the department shall correct or supplement the information;

22 (B) ensure the appropriate circulation to law enforcement
23 agencies of information contained in the central registry;

24 (2) shall provide to municipal police departments the forms and
25 directions necessary to allow sex offenders and child kidnappers to comply with
26 AS 12.63.010;

27 (3) may adopt regulations to establish fees to be charged for registration
28 under AS 12.63.010 and for information requests; the fee for registration shall be based
29 upon the actual costs of performing the registration and maintaining the central registry
30 but may not be set at a level whereby registration is discouraged; the fee for an
31 information request may not be greater than \$10;

1 (4) shall remove from the central registry of sex offenders and child
2 kidnappers under AS 18.65.087 information about a sex offender or child kidnapper
3 required to register under AS 12.63.020(a)(2) at the end of the sex offender's or child
4 kidnapper's duty to register if the offender or kidnapper has not been convicted of
5 another sex offense or child kidnapping; in this paragraph, "sex offense" and "child
6 kidnapping" have the meanings [HAS THE MEANING] given in AS 12.63.100.

7 * Sec. 15. AS 33.30.012 is amended to read:

8 Sec. 33.30.012. Notice of release, parole, community placement, work
9 release placement, furlough or escape of sex offender or child kidnapper. (a) At
10 the earliest possible date, and in no event later than 10 days before release of a sex
11 offender or child kidnapper with a duty to register under AS 12.63, the
12 commissioner shall complete the registration of the sex offender or child kidnapper,
13 take the sex offender's or child kidnapper's photograph, and determine if legible
14 fingerprints of the sex offender or child kidnapper have been previously provided
15 to the Department of Public Safety; if legible fingerprints have not previously
16 been provided to the Department of Public Safety, the commissioner shall obtain
17 the sex offender's or child kidnapper's fingerprints in the manner required by the
18 Department of Public Safety and shall immediately forward the fingerprints to the
19 department. When completing the registration under this subsection, the
20 commissioner shall also send written notice of release, parole, community placement,
21 work release placement, or furlough of a sex offender or child kidnapper [SPECIFIC
22 INMATE CONVICTED OF A SEX OFFENSE] to:

23 (1) the chief of police of the community, if any, in which the inmate
24 will reside;

25 (2) the Alaska state trooper post located nearest to where the inmate
26 will reside; [AND]

27 (3) the village public safety officer of the rural community without a
28 municipal police department or Alaska state trooper post in which the inmate will
29 reside; and

30 (4) the Department of Public Safety.

31 (b) If an inmate convicted of a sex offense or child kidnapping escapes from

1 a correctional facility, the commissioner shall immediately notify the chief of police
2 of the community and Alaska state trooper post located closest to where the inmate
3 resided immediately before the inmate's arrest and conviction.

4 * Sec. 16. AS 33.30.035 is amended to read:

5 Sec. 33.30.035. Notice to sex offenders or child kidnappers of registration
6 requirement. The department shall provide written notice to a sex offender or child
7 kidnapper of the registration requirements of AS 12.63.010 [,] and shall obtain a
8 written [SIGNED ACKNOWLEDGMENT OF] receipt of notice from the sex offender
9 or child kidnapper [(1) AT THE TIME OF THE SEX OFFENDER'S RELEASE
10 FROM A STATE CORRECTIONAL FACILITY; (2)] immediately after taking
11 supervision of a sex offender or child kidnapper under the Interstate Corrections
12 Compact or AS 33.36.110. The department shall forward the written receipt to the
13 Department of Public Safety, along with a description of any identifying features
14 of the offender or kidnapper, the anticipated address of the offender or
15 kidnapper, and a statement concerning whether the offender or kidnapper has
16 received treatment for the offender's or kidnapper's mental abnormality or
17 personality disorder related to the sex offense or child kidnapping. In this
18 section, "sex offense" and "child kidnapping" have the meanings given in
19 AS 12.63.100.

20 * Sec. 17. AS 33.30.901(13) is amended to read:

21 (13) "sex offender or child kidnapper" and "sex offense" and "child
22 kidnapping" have the meanings [" HAS THE MEANING] given in AS 12.63.100.

23 * Sec. 18. COURT RULES. The provisions of AS 12.55.148, amended by sec. 2 of this
24 Act, have the effect of changing Alaska Rules of Criminal Procedure 11(c) and 32(c) relating
25 to judgment and sentences for defendants convicted of sex offenses or child kidnappings.

26 * Sec. 19. APPLICABILITY. (a) A sex offender or child kidnapper with (1) one
27 conviction for an aggravated sex offense, (2) two or more convictions for a sex offense or
28 child kidnapping, or (3) one conviction for a child kidnapping and one conviction for a sex
29 offense regardless of whether the offender or kidnapper has been unconditionally discharged
30 from that conviction or convictions before the effective date of this Act, shall register under
31 AS 12.63.010, amended by secs. 3 - 6 of this Act, by the 60th day after the effective date of

1 this Act. A sex offender or child kidnapper with only one conviction for a sex offense that
2 is not an aggravated sex offense or only one conviction for a child kidnapping who was
3 unconditionally discharged from that offense before July 1, 1984, does not have to register
4 under this Act. A sex offender or child kidnapper with only one conviction for a sex offense
5 that is not an aggravated sex offense or only one conviction for a child kidnapping who was
6 required to register under sec. 12, ch. 41, SLA 1994, shall continue to register as provided by
7 AS 12.63.010, amended by secs. 3 - 6 of this Act.

8 (b) A conviction for a sex offense or child kidnapping before the effective date of this
9 Act is a sex offense or child kidnapping for purposes of the duration of registration
10 requirement of AS 12.63.020(a), amended by sec. 7 of this Act.

11 (c) In this section, "aggravated sex offense," "sex offender or child kidnapper," "sex
12 offense," and "child kidnapping" have the meanings given in AS 12.63.100, amended by
13 secs. 9 - 11 of this Act.

TONY KNOWLES
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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 10, 1997

The Honorable Mike Miller
Senate President
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Mike
Dear President Miller:

Reducing the number of people, especially children, who are victimized by violent and repeat sex offenders is an important part of my goal of ensuring safe, healthy communities for Alaskans. This bill strengthens the sex offender registration statutes and broadens access to criminal records in an effort to better protect the public from these criminals.

The bill is prompted, in part, to comply with the requirements of the federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act which requires registration of sex offenders whose victims were under 18 years old. Compliance with the Act will maintain the state's eligibility for \$200,000 in grant funds.

The state already complies with much of the Wetterling Act by requiring registration of most sex offenders who victimize children. For full compliance with the act, this bill adds to the list of offenses that require registration to include kidnaping when the victim is under 18; sexual abuse of a minor in the fourth degree if the victim is 16 or 17 years old; and promoting prostitution in the third degree, if the offender induces a person 16 or 17 years of age to engage in prostitution.

The bill also enlarges the category of sex offenders who must register for life. Under present law, only repeat sex offenders must register for life while other sex offenders register for 15 years. This bill requires life registration for first-time offenders convicted of the most serious sex offenses, the unclassified felonies of sexual assault in the first degree and sexual abuse of a minor in the first degree. The state must verify the addresses of life registrants every 90 days.

The Honorable Mike Miller
March 10, 1997
Page 2

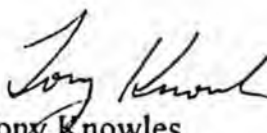
By requiring those most serious first-time offenders to register for life, the state is expecting to avoid the costly and time-consuming procedure recommended by the Wetterling Act. That is to require a sentencing court, with the advice of a statewide board of experts in the treatment and behavior of sex offenders, to determine whether each sex offender is a sexually violent predator. The expense of establishing such a board of experts and the costs of open-ended litigation concerning whether a sex offender continues to be a predator would be very high. Registration for life and address verification is not only less expensive, but will better protect the public.

Separate from the Wetterling Act requirements, the bill also changes when the time begins on the 15-year requirement for sex offender registration. Currently the clock starts at the time of unconditional discharge, which is an elusive date determined by a complex formula based on Department of Corrections information which is not available in the record system of the Department of Public Safety. The bill would start the clock at the time the offender registers, which will actually create an incentive for the offender to register as quickly as possible. It is a misdemeanor to fail to comply with the sex offender registration law; thus it is important the period of registration be absolutely clear.

Finally, the bill expands public access to information on all convictions by opening state criminal history records beyond the current 10-year limit. Broader information to the public will enable people to better protect themselves and their families.

This bill is one more step the state can take to keep our communities safe. I urge your favorable action.

Sincerely,


Tony Knowles
Governor

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 3/12/97

FURTHER: Judiciary
Finance

Date of 5-Day Notice: 3/20/97
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 4/16/97

HESS Committee considered

SENATE BILL NO. 132

"An Act relating to registration of sex offenders and central registry of sex offenders relating to access to, release of, and use of criminal justice information and systems; relating to notices concerning sex offender registrants; and providing for an effective date."

and recommends:

- PRM's*
- be replaced with _____ CS _____
 - 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>William L. Linn</i>	✓				
<i>John W. Ward</i>	✓				
<i>David E. ...</i>	✓				
<i>Lyda ...</i>	✓				
CHAIR: <i>Gary ...</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
Public Safety	3/10/97		9.5
Public Safety	2/5/97		15.0
Admin	2/5/97		indis
Admin	2/5/97		indis

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

S B

1 3 8

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 3/12/97

FURTHER: Finance

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 5-2-98

Judiciary Committee considered

SENATE BILL NO. 138

"An Act relating to regulation of alcoholic beverages; relating to alcoholic beverage licenses and to regulation of alcoholic beverage licensees; relating to liability of a person who provides alcoholic beverages; and providing for an effective date."

and recommends:

- be replaced with CS FOR SB 138 (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>Ch. Ellis</i>	<input checked="" type="checkbox"/>	<i>Mike Miller</i>	<input checked="" type="checkbox"/>		
<i>JJ</i>		<i>Keane</i>			<input checked="" type="checkbox"/>
		<i>Alan Farrell</i>	<input checked="" type="checkbox"/>		
CHAIR: <i>Christine Taylor</i>	<input checked="" type="checkbox"/>	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
<i>REVENUE - ABCB</i>	<i>4-28-98</i>	<input checked="" type="checkbox"/>	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

A M E N D M E N T

OFFERED IN THE SENATE

TO: SB 138

#1
ADOPTED

1 Page 6, following line 30:

2 Insert new bill sections to read:

3 **** Sec. 15.** AS 04.16.170(b) is amended to read:

4 (b) A person transporting alcoholic beverages into the state may not sell those
5 alcoholic beverages [TO A PERSON NOT LICENSED UNDER THIS TITLE,] unless
6 the alcoholic beverages are sold to a person licensed under AS 04.11.160 or are
7 used for religious, industrial, pharmaceutical, or medical purposes.

8 *** Sec. 16.** AS 04.16.170 is amended by adding new subsections to read:

9 (c) If the director determines that a person has violated (b) of this section, the
10 director shall by certified mail order the person to cease and desist further violations.
11 If a person receiving the notice to cease and desist does not, within 30 days after
12 receiving the notice, produce evidence that the applicable alcoholic beverage tax
13 imposed under AS 43.60 has been paid, it shall be presumed that the person has
14 violated (b) of this section. This subsection does not apply to a person who holds a
15 permit issued by the Federal Bureau of Alcohol, Tobacco and Firearms authorizing
16 interstate shipment of alcoholic beverages.

17 (d) If the director determines that a person holding a permit issued by the
18 Federal Bureau of Alcohol, Tobacco and Firearms authorizing interstate shipment of
19 alcoholic beverages has violated (b) of this section, the director shall notify the
20 Federal Bureau of Alcohol, Tobacco and Firearms of the violation by certified mail
21 and request the bureau to take appropriate action."

22 Renumber the following bill sections accordingly.

23 Page 7, line 12:

1 Delete "sec. 17"

2 Insert "sec. 19"

A M E N D M E N T

#12
NOT ADOPTED

OFFERED IN THE SENATE
TO: SB 138

1 Page 3, following line 9:

2 Insert a new bill section to read:

3 **** Sec. 4.** AS 04.11.100(g) is amended to read:

4 (g) A restaurant or eating place licensee

5 (1) operating under a license issued under (f) of this section shall offer
6 a full-service menu of food items available to the public during all times that beer or
7 wine is served or consumed; the menu must be approved by the board;

8 (2) may only provide entertainment on the licensed premises between
9 the hours of 6:00 p.m. [3:00 P.M.] and 9:00 p.m. [11:00 p.m. UNLESS APPROVED
10 BY THE DIRECTOR AFTER WRITTEN REQUEST BY THE LICENSEE FOR A
11 SPECIFIC OCCASION]; in this paragraph, "entertainment" includes dancing, karaoke,
12 live performances, or similar activities, but does not include recorded or broadcast
13 performances without live participation."

14 Renumber the following bill sections accordingly.

15 Page 3, line 12, following "license":

16 Insert "if the restaurant or eating place license was issued before October 1,
17 1996."

18 Page 5, following line 22:

19 Insert a new bill section to read:

20 **** Sec. 10.** AS 04.11.340 is amended by adding a new paragraph to read:

21 (10) the license was issued under AS 04.11.135 to a holder of a
22 restaurant or eating place license."

1 Renumber the following bill sections accordingly.

2 Page 7, line 11:

3 Delete "Section 12"

4 Insert "Section 14"

5 Page 7, line 12:

6 Delete "sec. 17"

7 Insert "sec. 19"

0-LS0773VE.5
Ford
5/1/98

AMENDMENT #3

ADOPTED

OFFERED IN THE HOUSE
TO: SB 138

1 Page 6, following line 4:

2 ** Sec. 11. AS 04.11.400(d) is amended to read:

3 (d) The board may approve the issuance or transfer of ownership of a
4 beverage dispensary or restaurant or eating place license without regard to (a) of this
5 section if it appears that the issuance or transfer will encourage the tourist trade by
6 encouraging the construction or improvement of

7 (1) a hotel, motel, resort, or similar business relating to the tourist
8 trade with a dining facility or having kitchen facilities in a majority of its rental rooms
9 and at least a minimum number of rental rooms required according to the population
10 of or number of existing beverage dispensary or club licenses in the established
11 village, incorporated city, unified municipality, or population area established under
12 (a) of this section in which the facility will be located, as follows:

- 13 (A) 10 rental rooms if the population is less than 1,501;
- 14 (B) 20 rental rooms if the population is 1,501 - 2,500;
- 15 (C) 25 rental rooms if the population is 2,501 - 5,000;
- 16 (D) 30 rental rooms if the population is 5,001 - 15,000;
- 17 (E) 35 rental rooms if the population is 15,001 - 25,000;
- 18 (F) 40 rental rooms if the population is 25,001 - 50,000; and
- 19 (G) 50 rental rooms if the population is greater than 50,000;

20 and

21 (H) 35 rental rooms if the total number of existing beverage
22 dispensary or club licenses in the established village, incorporated city,
23 unified municipality, or population area is greater than four times the
24 number of beverage dispensary licenses that is allowed under (a) of this
25 section; or

0-LS0773VE.5

1 (2) an airport terminal."

2 Renumber the following bill sections accordingly.

3 Page 7, line 11:

4 Delete "Section 12"

5 Insert "Section 13"

6 Page 7, line 12:

7 Delete "sec. 17"

8 Insert "sec. 18"

0-LS0773E.6
Ford
5/1/98

A M E N D M E N T

#4
ADOPTED

OFFERED IN THE HOUSE

TO: SB 138

1 Page 6, lines 17 - 22:

2 Delete "[THE PROHIBITION AGAINST ISSUANCE OF A RESTAURANT OR
3 EATING PLACE LICENSE IMPOSED UNDER THIS SUBSECTION DOES NOT APPLY
4 TO A RESTAURANT OR EATING PLACE LICENSE ISSUED ON OR BEFORE
5 OCTOBER 1, 1996 OR A RESTAURANT OR EATING PLACE LICENSE ISSUED
6 UNDER AN APPLICATION FOR A RESTAURANT OR EATING PLACE LICENSE
7 APPROVED ON OR BEFORE OCTOBER 1, 1996]"

8 Insert "The prohibition against issuance of a restaurant or eating place license imposed
9 under this subsection does not apply to a restaurant or eating place license issued on or before
10 October 1, 1996, or a restaurant or eating place license issued under an application for a
11 restaurant or eating place license approved on or before October 1, 1996."

ALSO - DELETED SECTION 15 - ADOPTED

Revision Date: April 28, 1998 Dept. Affected: Revenue
 Title: Regulation of Alcohol BRU: Alcoholic Beverage Control Board
 Component: Alcoholic Beverage Control Board
 Sponsor: (S) FIN
 Requestor: (S) JUD COMPONENT SERIAL NO. 100

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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						
1001 CBRF						
1048 University of AK receipts						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year cost \$ 0.0

POSITIONS:

FULL-TIME					
PART-TIME					
TEMPORARY					

ANALYSIS: (Attach a separate page if necessary)

This legislation represents priority changes recommended by the Alcoholic Beverage Control Board (ABC).
 There is no fiscal impact on ABC's program operating budget.

Prepared by: Doug Griffin, Director
 Division: Alcoholic Beverage Control Board
 Approved by Commissioner: Wilson L. Condon
 Agency: Revenue

Phone: 277-8638
 Date: April 28, 1998
 Date: April 28, 1998

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STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF REVENUE

550 W. 7TH AVENUE, STE. 350

ALCOHOLIC BEVERAGE CONTROL BOARD

Anchorage, Alaska 99501-6698

Phone 907-277-8638

FAX: 907-272-9412

March 18, 1997

Senator Honorable Robin Taylor
Chairman, Senate Judiciary Committee
State Capitol
Juneau, Alaska 99801-1182

FAXED
3-19-97

RE: SB 138

Dear Senator Taylor:

The Senate Finance Committee introduced SB 138 at the request of the Alcoholic Beverage Control Board and its initial referral is to the Senate Judiciary Committee. This letter briefly explains the need for the bill.

This legislation amends Title 4 of Alaska Statutes to accomplish four different purposes: (1) to clarify that "bootleggers" have no civil liability immunity; (2) to clarify what is required of a limited liability company that applies for or holds a liquor license; (3) to modify the brewpub provision and other provisions of the statute to allow restaurant or eating place liquor licensees as well as beverage dispensary licensees to operate as brewpubs; and (4) to modify the package store license statutes to allow package stores to make deliveries for weddings and other types of social gatherings and to allow package stores to deliver wine or champagne with a floral arrangement gift basket to a hotel or cruise ship guest.

First, this bill clarifies that while social hosts continue to have immunity for civil liability for serving alcoholic beverages, those who illegally traffic in alcoholic beverages will not be afforded that immunity. A case decided by the Alaska Supreme Court in 1996, *Chokwok v. Worley*, 912 P.2d 1248 (Alaska 1996), upheld civil immunity for social hosts even when serving minors. Section 15 of this bill makes it clear that "bootleggers" would not have the same civil liability immunity as the social host. This bill would amend the social host immunity provision at AS 04.21.02. to specifically hold "bootleggers" liable for injuries resulting from the intoxication of someone to whom they illegally sell or provide alcoholic beverages. Representative Ivan and other representatives introduced a similar provision this session as HB 22. House Bill 22, in amended form, has passed the House and was recently heard by your committee.

Second, this bill clarifies (in Sections 1,2,3,8,10,11,13, and 16) what is required of a limited liability company (LLC) applying or holding a liquor license in Alaska. Although a new chapter to Title 10 (AS 10.50.010-10.50.995) was enacted in 1994 to establish limited liability companies in Alaska, the new law did not address liquor license application procedures or reporting requirements under Title 4 merely because the entity is an LLC. This bill would impose the same requirements on LLC's as are now set out for corporations under Title 4. There is nothing in the legislative history of AS 10.50 that would suggest that there was any intent to allow an LLC to escape the responsibilities and obligations imposed on a liquor licensee in Alaska under Title 4. Hence, that is stated in this bill in Section 16.

Third, this proposed legislation amends the brewpub statute to allow for growth in Alaska of businesses wishing to manufacture beer and ale as part of a bona fide restaurant operation. There is a national trend of growth

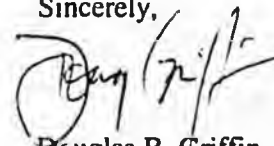
in small batch craft breweries and often they are associated with a restaurant. In Alaska, a restaurant selling beer and wine could only be licensed to engage in this type of business if it also became licensed as a brewery. In 1996, with the passage of HB 372, the Legislature prohibited the restaurant/brewery combination and directed the Alcoholic Beverage Control Board to hold public hearings to determine if and how brewpubs should be licensed and regulated in Alaska. The ABC Board held a series of public meetings that were well attended. And many people in the hospitality industry testified on how brewpubs should be addressed under Alaska's beverage alcohol laws. The brewpub portion found in Sections 4,5,9,12,14, and 17 of this bill represents the product of this public process.

This bill continues the prohibition of co-owning a restaurant and brewery and instead allows a restaurant licensee to obtain a brewpub permit under AS 04.11.135. Presently, only beverage dispensary licensees may have a brewpub license. The bill attempts to preserve to the greatest extent possible the proven three tier for manufacture, wholesale distribution, and retail sales of alcoholic beverages. It does this by taking restaurants out of the brewery business, limiting brewpub production to 75,000 gallons a year (unless a waiver is granted by the ABC Board), requiring brewpub beer not sold on premises to be distributed through wholesalers, and prohibiting the sale of up to five gallons of beer per person per day from brewpubs for off premise consumption. The bill eliminates the "grandfathered" restaurant/brewery businesses and provides additional time for them to "convert" their licenses to the more appropriate restaurant/brewpub license. The ABC Board believes that this proposal strikes the right balance between flexibility for this new manufacturing industry and a clear and orderly regulatory framework to protect the public.

Fourth, this bill would allow package stores to make deliveries of a certain type in a very controlled manner. Package stores would be allowed to deliver a bottle or two of wine as part of gift basket to tour ships and hotels. During normal business hours the package store could deliver alcohol that has already been paid for to the site of weddings, wedding receptions, or other special occasions. Again, the ABC Board has attempted to allow this benefit to businesses and the consumer to be tempered with conditions and requirements that will protect the public safety and welfare from abuse or inappropriate use of alcoholic beverages.

I hope that the Legislature will give this important proposal its full consideration. I will be happy to answer any questions you have on this proposal.

Sincerely,



Douglas B. Griffin
Director

cc: Governors Office, Legislative Liaison
Senate Finance Committee

A M E N D M E N T

OFFERED IN THE SENATE

TO: SB 138

NOT OFFERED
~

1 Page 3, following line 9:

2 Insert a new bill section to read:

3 **** Sec. 4.** AS 04.11.100(g) is amended to read:

4 (g) A restaurant or eating place licensee

5 (1) operating under a license issued under (f) of this section shall offer
6 a full-service menu of food items available to the public during all times that beer or
7 wine is served or consumed; the menu must be approved by the board;

8 (2) may only provide entertainment on the licensed premises between
9 the hours of 6:00 p.m. [3:00 P.M.] and 9:00 p.m. [11:00 p.m. UNLESS APPROVED
10 BY THE DIRECTOR AFTER WRITTEN REQUEST BY THE LICENSEE FOR A
11 SPECIFIC OCCASION]; in this paragraph, "entertainment" includes dancing, karaoke,
12 live performances, or similar activities, but does not include recorded or broadcast
13 performances without live participation."

14 Renumber the following bill sections accordingly.

15 Page 3, line 12, following "license":

16 Insert ", if the restaurant or eating place license was issued before October 1,
17 1996."

18 Page 5, following line 22:

19 Insert a new bill section to read:

20 **** Sec. 10.** AS 04.11.340 is amended by adding a new paragraph to read:

21 (10) the license was issued under AS 04.11.135 to a holder of a
22 restaurant or eating place license."

1 Renumber the following bill sections accordingly.

2 Page 7, line 11:

3 Delete "Section 12"

4 Insert "Section 14"

5 Page 7, line 12:

6 Delete "sec. 17"

7 Insert "sec. 19"

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF REVENUE

ALCOHOLIC BEVERAGE CONTROL BOARD

550 W. 7TH AVENUE, STE. 350

Anchorage, Alaska 99501-6698

Phone 907-277-8638

FAX: 907-272-9412

March 18, 1997

Senator Honorable Robin Taylor
Chairman, Senate Judiciary Committee
State Capitol
Juneau, Alaska 99801-1182

RE: SB 138

Dear Senator Taylor:

The Senate Finance Committee introduced SB 138 at the request of the Alcoholic Beverage Control Board and its initial referral is to the Senate Judiciary Committee. This letter briefly explains the need for the bill.

This legislation amends Title 4 of Alaska Statutes to accomplish four different purposes: (1) to clarify that "bootleggers" have no civil liability immunity; (2) to clarify what is required of a limited liability company that applies for or holds a liquor license; (3) to modify the brewpub provision and other provisions of the statute to allow restaurant or eating place liquor licensees as well as beverage dispensary licensees to operate as brewpubs; and (4) to modify the package store license statutes to allow package stores to make deliveries for weddings and other types of social gathering; and to allow package stores to deliver wine or champagne with a floral arrangement gift basket to a hotel or cruise ship guest.

First, this bill clarifies that while social hosts continue to have immunity for civil liability for serving alcoholic beverages, those who illegally traffic in alcoholic beverages will not be afforded that immunity. A case decided by the Alaska Supreme Court in 1996, *Chokwok v. Worley*, 912 P.2d 1248 (Alaska 1996), upheld civil immunity for social hosts even when serving minors. Section 15 of this bill makes it clear that "bootleggers" would not have the same civil liability immunity as the social host. This bill would amend the social host immunity provision at AS 04.21.02. to specifically hold "bootleggers" liable for injuries resulting from the intoxication of someone to whom they illegally sell or provide alcoholic beverages. Representative Ivan and other representatives introduced a similar provision this session as HB 22. House Bill 22, in amended form, has passed the House and was recently heard by your committee.

Second, this bill clarifies (in Sections 1,2,3,8,10,11,13, and 16) what is required of a limited liability company (LLC) applying for or holding a liquor license in Alaska. Although a new chapter to Title 10 (AS 10.50.010-10.50.995) was enacted in 1994 to establish limited liability companies in Alaska, the new law did not address liquor license application procedures or reporting requirements under Title 4 merely because the entity is an LLC. This bill would impose the same requirements on LLC's as are now set out for corporations under Title 4. There is nothing in the legislative history of AS 10.50 that would suggest that there was any intent to allow an LLC to escape the responsibilities and obligations imposed on a liquor licensee in Alaska under Title 4. Hence, that is stated in this bill in Section 16.

Third, this proposed legislation amends the brewpub statute to allow for growth in Alaska of businesses wishing to manufacture beer and ale as part of a bona fide restaurant operation. There is a national trend of growth

FAXED
3-19-97

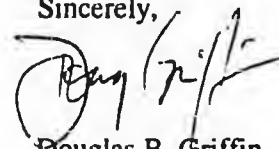
in small batch craft breweries and often they are associated with a restaurant. In Alaska, a restaurant selling beer and wine could only be licensed to engage in this type of business if it also became licensed as a brewery. In 1996, with the passage of HB 372, the Legislature prohibited the restaurant/brewery combination and directed the Alcoholic Beverage Control Board to hold public hearings to determine if and how brewpubs should be licensed and regulated in Alaska. The ABC Board held a series of public meetings that were well attended. And many people in the hospitality industry testified on how brewpubs should be addressed under Alaska's beverage alcohol laws. The brewpub portion found in Sections 4,5,9,12,14, and 17 of this bill represents the product of this public process.

This bill continues the prohibition of co-owning a restaurant and brewery and instead allows a restaurant licensee to obtain a brewpub permit under AS 04.11.135. Presently, only beverage dispensary licensees may have a brewpub license. The bill attempts to preserve to the greatest extent possible the proven three tier for manufacture, wholesale distribution, and retail sales of alcoholic beverages. It does this by taking restaurants out of the brewery business, limiting brewpub production to 75,000 gallons a year (unless a waiver is granted by the ABC Board), requiring brewpub beer not sold on premises to be distributed through wholesalers, and prohibiting the sale of up to five gallons of beer per person per day from brewpubs for off premise consumption. The bill eliminates the "grandfathered" restaurant/brewery businesses and provides additional time for them to "convert" their licenses to the more appropriate restaurant/brewpub license. The ABC Board believes that this proposal strikes the right balance between flexibility for this new manufacturing industry and a clear and orderly regulatory framework to protect the public.

Fourth, this bill would allow package stores to make deliveries of a certain type in a very controlled manner. Package stores would be allowed to deliver a bottle or two of wine as part of gift basket to tour ships and hotels. During normal business hours the package store could deliver alcohol that has already been paid for to the site of weddings, wedding receptions, or other special occasions. Again, the ABC Board has attempted to allow this benefit to businesses and the consumer to be tempered with conditions and requirements that will protect the public safety and welfare from abuse or inappropriate use of alcoholic beverages.

I hope that the Legislature will give this important proposal its full consideration. I will be happy to answer any questions you have on this proposal.

Sincerely,

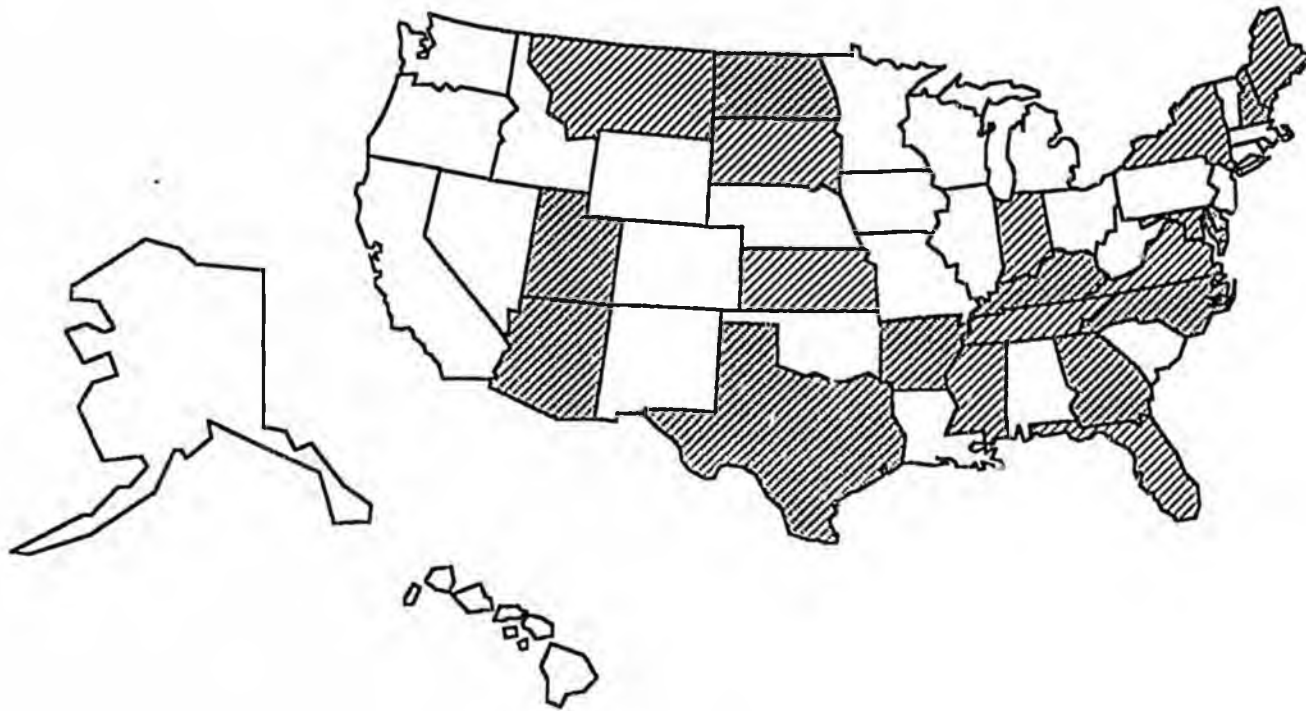


Douglas B. Griffin
Director

cc: Governors Office, Legislative Liaison
Senate Finance Committee

Americans for Responsible Alcohol Access

Twenty-One States Prohibit Direct Shipping



Arizona, Arkansas, Delaware, Florida, Georgia, Indiana, Kansas, Kentucky, Maine, Maryland, Mississippi, Montana, New Hampshire, New York, North Carolina, North Dakota, South Dakota, Tennessee, Texas, Utah and Virginia

Source: National Conference of State Legislators, October/November 1997

Americans for Responsible Alcohol Access

818 Connecticut Ave., NW / 2nd Floor / Washington, DC 20006 / Toll-free (888) 660-ARAA / DC (202) 216-9300 / araa@his.com

Americans for Responsible Alcohol Access

Members and Supporters

December 1997

Members

Honorary National Chairman

The Honorable Dennis C. Vacco
Attorney General, State of New York

SADD (Students Against Destructive Decisions)

American Trauma Society

Emergency Nurses Association

National Association of Governors' Highway Safety Representatives (NAGHSR)

American Coalition for Traffic Safety

National Licensed Beverage Association

Emergency Nurses CARE (ENCARE)

National Association of Beverage Retailers

National Beer Wholesalers Association

National Association of Alcoholism & Drug Abuse Counselors

Virginia Alcoholic Beverage Control Board

Wine & Spirits Wholesalers of America

American Association of Motor Vehicle Administrators

Campaign for Alcohol Free Kids, Inc.

Coalitions for America

Supporters

National Highway Traffic Safety Administration (NHTSA)

Mothers Against Drunk Driving (MADD)



DENNIS C. VACCO
Attorney General

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

December 12, 1997

Hon. James E. Doyle
National Association of Attorneys General, President
Attorney General of Wisconsin
State Capitol
P.O. Box 7857, Suite 114 East
Madison, Wisconsin 53707-7857

Dear Attorney General Doyle:

I am writing to ask you to join me in a common sense effort to promote public safety by stopping the practice of direct shipping of beer, wine and liquor because this practice makes it easier for those under age to obtain these beverages.

What started many years ago as a cottage industry to provide connoisseurs with small quantities of micro-brew beer and wines from small vintners, has burgeoned into a *billion dollar-a-year* enterprise that is marketing beer, wine and liquor over the Internet and through toll-free telephone ordering services.

These direct-marketers cleverly play on the American love of convenience to argue for the free trade in alcohol beverages. But what they fail to mention is that direct shipping enables them to reap larger profits because they bypass the wholesale and retail control system and, in many cases, escape state taxation as well.

What's really at issue is something very fundamental -- the responsible, lawful control of and access to alcohol beverages. How far are we going to go to allow technology and expediency to usurp safeguards against underage access and state revenues?

In New York, we are going to take a very firm stand against this illegal activity because it is wrong on a number of fronts, not the least of which that it puts young people at greater risk.

At a time when alcohol abuse is rampant on college campuses, and alcohol-related traffic fatalities involving teenagers are up 5 percent, bucking the downward trend for the general population, the last thing state leaders should do is make it easier for young people to acquire alcohol.

Recently I was asked to serve as honorary national chairman of Americans for Responsible Alcohol Access (ARAA), an organization comprised of a number of prominent national safety organizations that are concerned about how direct shipping facilitates underage access to alcohol beverages.

Today, I am participating in a national news conference to document for the first time just how easy it is for the underage to acquire alcoholic beverages via the Internet and toll-free direct ordering.

Direct alcohol shippers like to argue that the underage access issue is a "red herring." I disagree. As part of ongoing efforts to discourage direct shipping of alcohol into New York, my office has conducted a series of sting operations, each of which documented receipt of the alcohol shipment by someone under age 21, no questions asked.

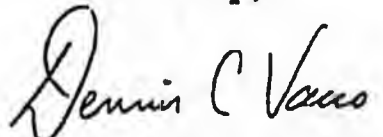
At the news conference, I showed videotape of one such sting and announced enforcement action against those involved.

I also released the results of a new national survey conducted for ARAA by Wirthlin Worldwide, a well-known and respected polling firm, that found that the American people overwhelmingly oppose the direct, uncontrolled shipping of alcohol beverages outside the licensed system.

Fully 85 percent agree that the sale of alcohol beverages over the Internet or through the mail should not be allowed because it would give minors easier access and could result in more abuse. They do not object to the Internet or toll-free phones as a means of placing an order, but they want the merchandise to be delivered through the licensed system, not to the doorstep. Sixty-four percent were concerned about the issue of revenue lost to states by direct shipping and recognized that revenue lost would need to be made up in other taxes for in-state residents.

I urge you to review your state laws and policies on this issue in the interest of ensuring that they are consistent with ensuring that young people do not access alcohol, a product that many years ago all states decided wisely to control and track in the interest of public health and safety.

Sincerely,



DENNIS C. VACCO
ATTORNEY GENERAL

The Washington Post

SATURDAY, DECEMBER 13, 1997

Online Beer, Wine Ads Gain Teens' Attention

Critics Call Direct-to-Home Sales Too Easy

By Beth Berselli
Washington Post Staff Writer

Log on to the World Wide Web and pull up the site for Beer Across America, a Chicago-based beer-of-the-month club. There, you can order a six-pack of the club's featured beer, Neptune 66, a pale ale billed as "rich and full-bodied" with "a pleasantly bitter finish."

Hop to another site, the Best Buy Wine Club, and you'll find an \$89.95 bottle of an old-style California chardonnay, which has "a vivacious, crisp, well-delineated personality." Punch in your credit card number and a shipping address, and mark a box indicating you're older than 21, and within a few weeks the wine will be delivered to your doorstep.

While many customers appreciate the convenience of these direct-to-

home deliveries, some groups have begun a campaign against these cyber sales as being *too* convenient, saying the Internet makes alcohol too available to underage drinkers.

These critics railed against the "direct shippers" at a news conference in Washington yesterday. A newly formed coalition, Americans for Responsible Alcohol Access, outlined its opposition to what it calls the business of "cyberbooze."

"These Internet bootleggers routinely ignore state laws, making no attempt to determine if purchasers are of legal age," said New York State Attorney General Dennis C. Vacco, the coalition's honorary chairman. "As a result, teenagers who can't legally buy a can of beer at the corner store can get virtually any type of

See ADS, F2, Col. 1

Online Direct-to-Home Sales of Alcohol Targeted by Teens

ADS, From F1

alcoholic beverage delivered right to their doorstep." He added that teenagers are among the most prolific Internet users and are likely to be home alone in the afternoon when deliveries are made.

At the press conference, Vacco showed footage of a recent sting operation conducted by his office, which uncovered 12 wine and liquor distributors that delivered alcohol to minors, Vacco said, with "no questions asked, no ID checked." Vacco said he is seeking civil charges against the companies as well as three delivery companies, United Parcel Service, FedEx and Airborne Express.

However, operators of beer and wine of the month clubs, many of which take orders over the Internet, dispute the characterizations. They say they police their sales, asking customers if they're 21 when they place the order and requiring them to show identification when the products are delivered. Most of the dozens of Web sites operating include warnings that underage drinkers cannot place or receive orders.

Furthermore, they say teenagers aren't likely to be among their customers. "No kid is going to want to buy a \$50 bottle of wine out of Napa Valley," said Todd Holmes, co-owner



A videotape of the sting by New York Attorney General Dennis Vacco shows a 19-year-old opening an alcohol order placed over the Internet.

of Beer Across America and International Wine Cellars, a company targeted by Vacco.

Another deterrent for teens, Holmes said, is that "there's no immediate gratification at all. What kid in their right mind would ever wait a month for a 12-pack of expensive beers to be delivered, to their parents' home? It's a joke."

The clubs said their target customer is usually older than 35 and has an annual income of at least \$50,000.

Underlying this debate, though, is the complex relationship between direct shippers, such as the beer and wine clubs, and alcohol wholesalers.

The U.S. alcohol industry operates in what's known as a "three-tier system" including producers, wholesal-

ers and retailers. In most states, only licensed wholesalers are permitted to distribute alcohol, and only to licensed retailers and restaurants. Through this system, states collect sales and excise taxes and enforce the legal drinking age.

The wine and beer clubs, which usually are licensed retailers in the states where they're located, say the wholesalers are using the underage drinking issue as an excuse to protect their own interests—and profits. They say the wholesalers don't want a wine club in California to ship their products to a customer who lives in say, Vermont, thereby leaving the wholesaler in that state out of the transaction.

"They're concerned about us for one reason and one reason only—it bypasses them," said Jim Lowe, owner of Hog's Head Beer Cellars, a Greensboro, N.C., beer club. "They can't go to the state and say, 'We're not getting our cut,' so they say, 'Look how easy it is for minors to get it.'"

Indeed, Americans for Responsible Alcohol Access acknowledges that it is funded by the Wine & Spirits Wholesalers of America, a national trade group. The coalition also includes the National Beer Wholesalers Association, as well as several safety groups such as Students Against De-

structive Decisions and the Emergency Nurses Association.

The wholesalers say they oppose direct selling of alcohol because it threatens the three-tier system, which was set up after Prohibition to ensure that states got their taxes and underage drinking laws were followed. They said up to \$100 million in state taxes are lost every year because of the direct sales.

Even alcohol awareness groups agree that direct shippers jeopardize the controls imposed by state and federal policies.

"This undoes the entire fabric of our social policy on alcohol control," said David L. Rosenbloom, director of Join Together, a Boston-based organization that helps community groups fight drug and alcohol abuse.

He and other opponents said they don't believe the clubs' claims of policing. "The notion that they're checking for ID is self-serving nonsense," he said. "It just doesn't happen; the deliveries are left at front doors."

FOR MORE INFORMATION

For a list of the liquor distributors facing civil charges from the New York State Attorney General's Office, click on the above symbol on the front page of The Post's Web site at <http://www.washingtonpost.com>

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF REVENUE

ALCOHOLIC BEVERAGE CONTROL BOARD

550 W. 7TH AVENUE, STE. 350

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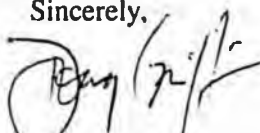
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Sincerely,



Douglas B. Griffin
Director

cc: Governors Office, Legislative Liaison
Senate Finance Committee

Fact Sheet: Underage Access Resulting From DIRECT SHIPPING OF ALCOHOLIC BEVERAGES

A Pandora's Box to Underage Access

Most Americans agree that direct shipping is a Pandora's Box to underage access. It's no secret that today's teenagers are savvy when it comes to acquiring alcohol. And direct shipment of alcohol to customers is an open invitation for youngsters to log on to the Internet, download "cyberliquor" or order via toll-free calls that don't show up on their parents' phone bill. A recent poll confirmed that most Americans believe this is a bad idea—85 percent believe "the sale of alcohol over the Internet or through the mail should not be allowed because it would give minors easier access to alcohol and could result in more abuse."¹

Alcohol-Related Teen Highway Fatalities On the Rise

At a time when alcohol-related teen highway fatalities are on the rise, *we should not be making it easier for teens to buy alcohol*. Ironically, direct shipping advocates say that concern about underage access to alcohol is a "red herring." Stings conducted by state officials from Colorado to New York prove that teens can readily obtain alcohol through the Internet and other direct shipping schemes. The facts point not to a "red herring," but should be a red flag for the public:

- Youth (ages 15-20) alcohol-related traffic fatalities increased by almost 5 percent in 1996. This is the first increase since 1990.²
- This increase bucks the alcohol trends: Alcohol-related traffic fatalities have been declining for many years among the general population and even among teens (down 50% over the past decade). There can be only one reason why alcohol-related teen traffic fatalities were up in 1996—more teens are getting access to alcohol and driving.
- Almost two out of five youth highway fatalities in 1996 involved alcohol. Young drivers were twice as likely as adult drivers to be involved in a fatal crash in 1996.
- In future years, demographics will place more teens at risk: By 2005, the youth population is expected to increase by 14 percent.
- More than half of high school seniors drank alcohol in 1996. Nearly a third were binge drinkers (five or more drinks in a row during the past two weeks)³

¹ Source: Wirthlin Worldwide / November 1997

² Source: National Highway Traffic Safety Administration

Direct Shipping Removes Safeguards to Underage Access

With direct shipping, teens don't have to worry about risks associated with purchasing from local outlets. No longer do they have to forge fake ID's and chance getting caught and arrested for buying alcohol at a store monitored by the police. All they have to do is dial a toll-free number or log on the Internet and mouse-click "Yes" to the question of whether they are of age. They can pay by credit card or even the new checking account debit cards which function much the same as a credit card. Indeed, most students go off to college these days with a credit card, yet most are not of legal drinking age until their junior year. Delivery truck drivers are not in the business of checking ID's – and in any case many direct shippers don't label their packages or intentionally list contents deceptively, such as "olive oil."

Direct Shipping Creates a Coast-to-Coast *Blood Border* for Underage Drinking

Every state has set age 21 as the legal drinking age. This unity was intended to save lives by eliminating the former situation in the U.S. in which states had differing legal drinking ages. This created "blood borders" across which underage drinkers would drive to get access to alcohol. Passage of "21" laws in all states effectively eliminated the "blood borders." But Internet and toll-free direct shipment creates a new, *technological blood border* that touches every state.

Why Make It Easier for Young People to Acquire Alcoholic Beverages?

The Internet was supposed to be an information superhighway...not a bootleggers bypass to easier alcohol access that detours around state and local regulations that encourage responsible control and usage of alcohol. Direct shippers say that kids cannot order alcohol on the Internet, but that's what was said about pornography. The truth is, you can get whatever you want on the Internet...without restriction. The Internet cannot verify age...and delivery truck drivers are not in the business of "carding" the recipients of packages they deliver.

America's View: Alcohol Is Different

Most Americans don't regard beer, wine, and liquor in the same manner as other consumer products and don't think it should be sold in the same way. But those lobbying to legalize direct alcohol shipment to customers argue that ordering wine, beer, and liquor should be no different than ordering a garment from a clothing catalogue. A recent Wirthlin survey confirmed that they're out of step with most of America: Four out of five respondents believe "the sale and shipment of beer, wine, or liquor over the Internet or through the mail directly to consumers should not be allowed." Large majorities support the current licensed distribution system because, while not perfect, it does a relatively effective job of responsibly regulating alcohol and discouraging access to minors.

¹ Source: National Institute on Drug Abuse

Direct Shippers Deliberately Confuse the Issue With False Arguments

Supporters of direct shipping to consumers argue that kids aren't going to be ordering \$60 bottles of Chardonnay. That's true, but it's a false argument. Obviously, teenagers aren't going to order fine wine. Nor do they have to—virtually anything is available. Instead, they order lower-priced beer, wine, and liquor which also are available by direct shipment. Whether a \$60 bottle or \$4 bottle it's all ordered the same way and delivered the same way--right to the doorstep, often during after-school hours when parents are working. No wonder 85 percent of the American people oppose direct shipment because they know it makes it easier for underage access and abuse.

Wine Aficionados or Adolescents? "Reforms" Can't Tell the Difference

"Reform" and "compromise" proposals pushed by the direct shipping lobby are fundamentally flawed because they rely on an honor system which cannot prevent shipments to minors and "dry" counties around the country. State agencies have neither the resources nor the authority to ensure that all shipped packages that might contain alcoholic beverages are not delivered to minors. The bottom line is that there is no way to devise a system of direct shipment to customer homes that effectively differentiates between connoisseurs and kids.

There is No Need for Direct Shipping

Consumers in most states *already are able* to legally obtain brands not regularly available at their local outlets. Small producers have marketing and distribution vehicles such as Cellar Masters to get their brands to consumers through the existing licensed system. Also, wholesalers and retailers are willing to represent any of the brands of small producers that are being shipped illegally to consumers. But many direct-shippers are deliberately not cooperating because their goal is to dismantle the licensed alcohol control system.

*For additional information contact: Americans for Responsible Alcohol Access
Toll-free (888) 660-ARAA / DC line (202) 216-9300 / FAX (202) 289-1327 / araa@his.com*

SB

158

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

No. 2
BILL NO: Bill Version: CS SB 158 (L+C)
 (S) Publish Date: 2/20/98

Revision Date: _____	Dept. Affected: <u>Administration</u>	_____
Title: <u>"An Act relating to motor vehicle liability Insurance..."</u>	BRU: <u>Motor Vehicles</u>	_____
Sponsor: <u>Senate Judiciary</u>	Component: <u>Driver Services</u>	_____
Requestor: <u>(S) L&C</u>	COMPONENT SERIAL NO. <u>2150</u>	_____

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

OPERATING	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

CHANGE IN REVENUES () Revenue Code						
--	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 98) impact: \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill will not fiscally impact the Division of Motor Vehicles

Prepared By:	<u>Juanita M. Hensley</u>	Phone:	<u>465-5648</u>
Division:	<u>Motor Vehicles</u>	Date:	<u>2/4/98</u>
Approved by Commissioner:	<u>Mark Boyer</u> <i>Mark Boyer</i>	Date:	<u>2/4/98</u>
Agency:	<u>Department of Administration</u>		

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 158 | _____

Revision Date (Note if correction) _____ Dept. Affected Commerce & Economic Development
 Title Insurance Changes For Driver's License BRU Insurance
 Revocation _____ Component Insurance
 Sponsor Senate Judiciary Committee
 Requester Senate Labor & Commerce Component Serial No. 354

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: 0.0

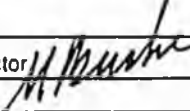

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Section 1 amends the existing statute to prohibit canceling a personal automobile insurance policy when a minor's license is revoked for possession of alcohol.

Section 2 adds a new section that prohibits an insurer from canceling, nonrenewing, denying a claim, or increasing the premium on a motor vehicle liability insurance policy when a minor's license has been revoked for possession or consumption of alcohol.

Prepared by Marianne K. Burke, Director  Phone 465-2515
 Division Insurance Date 2/2/98
 Approved by Commissioner Deborah B. Sedwick  Date 2-3-98
 Agency Commerce and Economic Development

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ALASKA STATE LEGISLATURE



Sen. Robin Taylor, Chair
Sen. Drue Pearce, Vice Chair
Sen. Mike Miller
Sen. Sean Parnell
Sen. Johnny Ellis

State Capitol
Juneau, AK 99801-1182
(907) 465-3717
Fax: (907) 465-3922

Senate Judiciary Committee

SPONSOR STATEMENT FOR

CS FOR SENATE BILL 158 () "An Act relating to motor vehicle liability insurance covering a person who has had the person's driver's license revoked."

The "use it or lose it" provisions of current statute have had an unintended consequence. Minors who lose their drivers licenses for minor consuming offenses often find themselves and their families with increased insurance premiums and occasionally a policy cancellation.

Senate Bill 158 would correct this situation by prohibiting an insurer from raising rates and/or cancelling existing policies solely for suspension of a minor's drivers license as a result of minor consuming (where not involving driving).

This narrowly focused version of SB 158 does not address other offenses such as DWI, using false ID, or possession of controlled substances.

Sectional Analysis

CSSB 158

Section 1 adds language to the existing statute stating that AS 21.36.210 (a) (2) does not apply to an administrative revocation as described in AS 21.89.027, the new section which begins on page 2 of the bill.

AS 21.36.210 (a) specifies why an insurer may cancel a policy: nonpayment of premium or suspension or revocation of a drivers license.

Section 2 is the operative section of the bill and adds a new provision to state law. (a) says an insurer may not refuse to issue or renew motor vehicle liability insurance, cancel an existing policy, deny a covered claim, or increase the premium only because of an administrative or court ordered suspension for minor consuming. (b) says that (a) does not prevent an insurer from underwriting or rating a loss in the same manner as it would have had the suspension not occurred.

Section 3 says the bill would apply to policies issued or renewed on or after the effective date. This would mean that policies currently being charged a higher rate would have to be adjusted at the next renewal

prepared 1/29/98 by Joe Ambrose

3-2-98

SB 307 -- FILL U.S. SENATE VACANCIES.

DILL STUTZ TESTIFIES FOR SENATOR HALFORD.

PASSED OUT WOO

SB 158 MINOR CONSUMING / DR. LIC. REVOC.

DIRECTOR OF INSURANCE DIV. SUPPORTS THE
CLARIFICATION.

INDUSTRY DOES NOT SUPPORT THE BILL EVEN THOUGH
IT'S NARROWLY FOCUSED. THEY FEEL THAT THE
INDUSTRY MUST BE FREE TO ASSESS RISK FOR WHAT
THEY FEEL ARE RELATED RISK FACTORS.

SENATOR MILLER MOVES - SB 158 WITH INDIV. RECS.
NO OBJECTION.

SENATE COMMITTEE REPORT

DATE: 2/20/98

FURTHER:

DATE TURNED
IN TO OFFICE: 3-2-98

Judiciary Committee considered

SENATE BILL NO. 158

"An Act relating to motor vehicle liability insurance covering a person who has had the person's driver's license revoked."

and recommends:

- be replaced with _____ CS _____
- adopt previous _____ CS FOR SB 158 (LIC)
- 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>Mike Miller</i>	<input checked="" type="checkbox"/>	<i>Alan Farrell</i>			
CHAIR: <i>[Signature]</i>	<input checked="" type="checkbox"/>	CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

<i>Co</i>			

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

<i>COMPLETED</i>	<i>2-20-98</i>	<input checked="" type="checkbox"/>	
<i>ADMIN. DMV/PA. SVCS.</i>	<i>2-20-98</i>	<input checked="" type="checkbox"/>	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

SB

1900

cc:Mail for: Senator Robin Taylor

Subject: CSSB 190

From: dda@amc-engineers.com (AMC - Adams, Dave) at CC2MHS1 3/11/98 8:30 AM

To: Senator Robin Taylor at LAA_STAY

To: Senator_Jerry_Mackie@legis.state.ak.us at CC2MHS1

cc: Representative_Joe_Green@legis.state.ak.us at CC2MHS1

Dear Senator Taylor:

I am requesting your support for CSSB 190.

It is not clear why CSSB 190 was submitted, but it appears to provide excellent NEW protections to private property owners from the taking of easements "by the Gov., for the Guv."

In specific, local government has for many years now been extorting easements from property owners for an extension of THE TONY KNOWLES COASTAL TRAIL. People wanting to subdivide their land have been denied a replat w/o 'giving' an easement for the trail. All of these easements are in alignment, along a specific route.

Interestingly, the Guv's hacks, certain muni-crats and their hired guns (consultants) are THIS VERY DAY doing a "study" to determine the route of the "South 'Coastal' Trail." They have to do this to meet the requirements of Fed ISTEAFUNDING. They don't really take the study seriously. Sir, the "SCT" route has been determined and the 'study' is a farce.

The route they want will cut through the Anchorage Coastal Wildlife Refuge and also threaten the Rabbit Creek Rifle Range. At the same time, they will be "taking" easements all along the bluff in order to build or access the trail. ADF&G professional staff vigorously opposes a trail in the marsh, but the political cards are stacked against them. Remember that the professional staff at ADF&G work for appointed leaders who work for the man after whom the trail is named..... 'nuf said.

It would be easier if you contact Jeff Logan at Rep. Green's office. Jeff is 100% up to speed on what is going on, he can confirm what I've said about the trail, and can fill you in on more details.

In any case, please move CSSB 190 out of your committee with a "do pass" recommendation. Any other help you can offer to protect the ACWR from intrusion (and loss of use as a hunting area) and protect the RCRR from being shut down would be greatly appreciated, but I understand the issue is outside of your district.

Thank you
Dave Adams



April 13, 1998

The Honorable Robin Taylor
Chairman, Senate Judiciary Committee
The State Senate
State Capitol Rm 30
Juneau AK 99801-1182

Re: CS SB 190
An Act Relating to Eminent Domain

Dear Senator Taylor:

Thank you for the opportunity to testify before the Senate Judiciary Committee on April 8. During my testimony in favor of CS SB 190, relating to certain amendments to Alaska's eminent domain laws, committee members asked two questions that I could not readily answer. Please accept this letter to supplement my testimony and provide a response to the members' inquiries.

First, does the addition of the language "property interest to be taken" or "interest in the property" as used in the bill expand the right of the government to take property? I consulted with Sealaska's legal counsel, who is of the opinion that the references to interests in property do not expand the scope of the government's right to take property. Rather, this phrase is consistent with existing law, that a taking may consist of something less than the entire fee simple interest in property, and that such a taking should also be subject to just compensation. In that sense, the "interest in property" language is a narrowing or clarifying phrase, and simply reinforces the idea that the government must pay a

Senator Robin Taylor
April 13, 1998
Page 2

property owner for the taking of any compensable interest in property, even if it is not a complete taking.

The second issue discussed was whether similar language is contained in the laws of other states. As I mentioned in my testimony, the suggested language is found in the Model Eminent Domain Code. This Code is published by a national organization on uniform laws and is intended to be a consensus of the best laws from several jurisdictions. Our inquiry reveals that many states have adopted eminent domain language that includes the "interest in property" clause, including particularly the states of Washington, California, and Oregon. Accordingly, it is Sealaska's position that adoption of the recommended amendments would bring Alaska's eminent domain law more in line with the trend in the United States. Attached are examples from the Model Code and from the three states mentioned above.

Thank you for the opportunity to testify before the Committee, and for allowing me to expand on that testimony by this letter.

Sincerely,

SEALASKA CORPORATION



Richard P. Harris
Senior Vice President
Natural Resources

cc: Senate Judiciary Committee
Sam Kito
Robert W. Loescher, President and Chief Executive Officer
Senator Jerry Mackie

UNIFORM LAWS ANNOTATED
UNIFORM LAW COMMISSIONERS' MODEL EMINENT DOMAIN CODE 1974 ACT
ARTICLE IV. COMMENCEMENT OF ACTION BY CONDEMNOR

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Current through Annual Meeting Nat Conf
of Commissioners Unif State Laws (8/96).

§ 404. [Contents of Complaint].

(a) In addition to other allegations required or permitted by law, the complaint shall:

(1) designate as a plaintiff each person on whose behalf the property is sought to be taken;

(2) name as defendants all persons who to the plaintiff's knowledge are owners of or who have or claim any interest in the property sought to be taken; defendants whose names are not known may be included under the designation "unknown claimants";

(3) contain a legal description of the property and of the interest therein sought to be taken; and

(4) allege the basis of the plaintiff's right to take the property by eminent domain and maintain the action, including (i) a reference to the plaintiff's legal authority to take the property; and (ii) a statement of the purpose for which the property is sought to be taken.

(b) If a plaintiff claims any interest in the property sought to be taken or that the property is devoted to a public use, the complaint must describe that interest or public use.

(c) For purposes of information and notice, the complaint shall be accompanied by a map or diagram portraying as far as practicable the property sought to be taken and the property that will be affected by the taking, showing their location in relation to the project for which the property is to be taken.

<General Materials (GM) - References, Annotations, or Tables>

COMMENT

1986 Main Volume

Section 404 describes the essential minimum contents of the complaint in a condemnation action. A complaint that does not contain all of the elements provided in this section is subject to preliminary objection. See Section 502. Allegations not required by Section 404 (e.g., market value; necessity for the taking) may, but need not, be made.

Under Subsection (a)(1), each condemnor must be identified, since this information may be relevant to the issue of the right to exercise the power of eminent domain. For example, if a joint and cooperative condemnation action is brought by agreement between different agencies, each condemnor must be named as a plaintiff. Similarly, a condemnor taking property to convey it to a specific private developer, in furtherance of an authorized community redevelopment project, must designate the person for whose benefit the plaintiff is condemning the property.

Under Subsection (a)(2), the complaint is required to name as defendants all persons who are known or believed to be owners of or to have or claim any interest, including a lien or other security interest, in the property sought

to be taken by the condemnor. Under this rule, it would not be necessary to join a lessee if the plaintiff seeks to take the property "subject to" the lease, for the lessee's interest would not be described in the complaint as property sought to be taken. Since persons who have an interest in the property, but who are not named and served with process either personally or constructively, ordinarily are not bound by the judgment, this rule permits the condemnor to secure full title without collateral litigation.

Subsection (a)(3) requires a "legal" description of the property sought to be taken. Present practice in this regard varies from state to state; the Code seeks to provide a uniform rule of accurate description as a means for giving the defendants notice of the scope of the take. In this respect, notice through the pleadings is deemed more efficient than to rely on discovery, as in other civil litigation. The complaint is not required to describe the interest which each defendant has or claims in the property; specification of the defendants' individual interests is a matter for their several responses. The complaint is sufficient if it merely alleges that each defendant has or claims to have some interest in the property described.

Clauses (i) and (ii) of Subsection (a)(4) require allegations of legal authority and purpose in order to show the plaintiff's right to take. Since there may be many different statutory provisions of varying scope that relate to the right to take, specification of the source of authority and public use claimed by the condemnor should assist in reducing the number of unnecessary challenges to the right to take by clarifying that issue from the inception of the action. Compare Section 310(a) (similar requirement for condemnation authorization).

Subsection (b) is intended to provide notice of any claim by the condemnor of an existing interest in the property, and of any issue of "higher public use" arising from the fact that the property sought to be taken is already devoted to public use.

Subsection (c), requiring a map or diagram to be annexed to the complaint, is designed for informational assistance only. Practice currently varies in this regard, with some states requiring a map, others making no such requirement, and still others requiring a map to be filed and made available for examination to interested parties. Since a well prepared map may explain graphically and give better notice than a legal description of the property which the plaintiff seeks to take, or which may be affected by the taking, its attachment to the complaint is required. The map or diagram, however, need only attempt to portray the property sought to be taken "as far as practicable" thereby recognizing that certain interests, such as mineral or water rights, air rights, or development easements, may not be capable of fully accurate representation by cartographic means. The map or diagram, as part of the complaint, is subject to amendment as are other pleadings; and it may constitute an admission of the plaintiff to the same extent as other parts of the complaint.

This section does not prescribe an explicit rule for designating condemnees whose interests may be affected by death, pendency of probate proceedings, or other analogous circumstances. The determination of who should be named as a defendant in an action affecting the property of a decedent, or property under guardianship, conservatorship, or included within a trust, should be conformed to the requirements of acceptable title practice in the state where the action is pending. The appointment of a guardian or other representative for a minor, an incompetent person, or some other similarly situated condemnee, is also left to local practice and procedure.

LIBRARY REFERENCES

1986 Main Volume

Eminent Domain ↪ 191(1) to (8).

Pretrial Procedure ↪ 650.

C.J.S. Pleading § 457 et seq.

C.J.S. Eminent Domain § 251 et seq.

NOTES OF DECISIONS

Parties 1

1. Parties

Where rights of those owning dominant tenements in right-of-way across lot were not obstructed in any way by condemnation of small, noncontiguous portion of lot, they did not have to be joined as necessary and indispensable parties in condemnation

proceeding. *Weldon v. State*, Ala.Civ.App.1985, 495 So.2d 1113, affirmed as modified 495 So.2d 1121.

Model Eminent Domain Code § 404

ULA EM DOMAIN § 404

END OF DOCUMENT

UNIFORM LAWS ANNOTATED
UNIFORM LAW COMMISSIONERS' MODEL EMINENT DOMAIN CODE 1974 ACT
ARTICLE I. GENERAL PROVISIONS AND DEFINITIONS

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of Commissioners Unif State Laws (8/96).

§ 103. [Definitions].

As used in this Act:

- (1) "action" means condemnation action;
- (2) "appraisal" means an opinion as to the value of or compensation payable for property, prepared by or under the direction of an individual qualified by knowledge, skill, experience, training, or education to express an opinion as to the value of property;
- (3) "business" means a lawful activity, whether or not for profit, other than a farm operation, conducted primarily for the purchase, sale, lease, rental, manufacture, processing, or marketing of products, commodities, or other property, or for providing services;
- (4) "condemn" means to take property under the power of eminent domain;
- (5) "condemnation action" includes all acts incident to the process of condemning property after commencement of suit;
- (6) "condemnee" means a person who has or claims an interest in property that is the subject of a prospective or pending condemnation action;
- (7) "condemnor" means a person empowered to condemn;
- (8) "costs" means the reasonable fees, charges and expenses necessarily incurred in an action, including the fees and charges of expert witnesses, the cost of transporting the court and jury to view the premises, and other recoverable costs;
- (9) "court" means a [] court of this state, and includes, when the context requires, any [judge] [justice] of the court;
- (10) "crops" means any form of vegetation intended to be removed and used or sold for commercial purposes, including grass, flowers, fruits, vegetables, trees, vines, and nursery stock;
- (11) "farm operation" means any activity conducted primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing those products or commodities in sufficient quantity to be capable of contributing materially to the operator's support;
- (12) "improvement" includes any building or structure, and any facility, machinery, or equipment that cannot be removed from the real property on which it is situated without substantial damage to the real property or other substantial economic loss;
- (13) "lien" means a security interest in property arising from contract, mortgage, deed or trust, statute, common

law, equity, or creditor action;

(14) "litigation expenses" means the sum of the costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, necessary to prepare for anticipated or participation in actual court proceedings;

(15) "local public entity" means a public entity other than the State;

(16) "person" includes a natural individual, partnership, corporation, association, other legal or fiduciary entity, and a public entity;

(17) "personal property" means any property other than real property;

(18) "property" means an interest in real or personal property under the law of this State;

(19) "real property" means land and any improvements upon or connected with land; and includes an easement, servitude, or other interest therein; and

(20) "work" includes construction, alteration, repair, remodeling, excavation, demolition, rehabilitation, relocation and landscaping.

< General Materials (GM) - References, Annotations, or Tables >

COMMENT

1986 Main Volume

The definitions in the Uniform Code are designed to carry out the purpose of the Code to make uniform the eminent domain procedures of the enacting state in all condemnation actions by either public or private condemners.

The pivotal term "property" is defined in paragraph (18) to include "any interest" in real or personal property. This terminology is intended to be accorded a broad interpretation so that it is coextensive with the state law of property and, if state law admits, will include such interests as air rights, subsurface rights, mineral interests, estates in submerged lands, water rights of any character, flowage or flooding easements, easements or servitudes for aircraft noise or operations, rights or permits for the temporary use and occupancy, franchises, rights to limit land use and development, leaseholds, liens, future interests, copyrights, etc.

LIBRARY REFERENCES

1986 Main Volume

Eminent Domain ☞ 1 et seq.
 Statutes ☞ 179.
 C.J.S. Eminent Domain §§ 1, 2.
 C.J.S. Statutes § 315.

NOTES OF DECISIONS

"Condemnor" 1
 "Taking" 2

1. "Condemnor"

"Condemnor," within meaning of Eminent Domain Code, could be "empowered to condemn" pursuant to statutes authorizing pipeline companies to acquire by

CORRECTION

THE FOLLOWING DOCUMENT(S)
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ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

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Department of Education
State of Alaska

law, equity, or creditor action;

(14) "litigation expenses" means the sum of the costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, necessary to prepare for anticipated or participation in actual court proceedings;

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 Statutes ☞ 179.
 C.J.S. Eminent Domain §§ 1, 2.
 C.J.S. Statutes § 315.

NOTES OF DECISIONS

"Condemnor" 1
 "Taking" 2

1. "Condemnor"

"Condemnor," within meaning of Eminent Domain Code, could be "empowered to condemn" pursuant to statutes authorizing pipeline companies to acquire by

condemnation rights of way for pipelines. Walker v. Gateway Pipeline Co., Ala.1992, 601 So.2d 970.

2. "Taking"

Although regulations which do not physically invade private property may be considered "taking" under Fifth Amendment, "taking" is more likely to be found where government action is physical invasion. Jones Truck Lines, Inc. v. Price Rubber Corp., M.D.Ala.1995, 182 B.R. 901.

In determining whether government action constitutes "taking" under Fifth Amendment, court looks to economic impact of regulation on claimant and extent to which action interferes with investment-backed expectations. Jones Truck Lines, Inc. v. Price Rubber Corp., M.D.Ala.1995, 182 B.R. 901.

Government action which is not reasonably related to proper purpose is insufficient, by itself, to constitute taking; deprivation of all beneficial use of property is required. Estate and Heirs of Sanchez v. County of Bernalillo, N.M.1995, 902 P.2d 550, 120 N.M. 395.

Model Eminent Domain Code § 103

ULA EM DOMAIN § 103

END OF DOCUMENT

8.08.100 Mode of appropriation. The right of eminent domain for the purposes intended in RCW 8.08.090 through 8.08.130 is hereby extended to all counties in this state and every such county for any purpose of condemnation, appropriation or disposition such as is mentioned in RCW 8.08.090 is hereby authorized and empowered to condemn and appropriate all necessary lands and all rights, properties and interests in or appurtenant to land under the same procedure as is or shall be provided by the laws of this state for the case of any similar condemnation or appropriation by other corporations. [1895 c 2 § 3; RRS § 903.]

8.08.110 Tax levy to pay costs. The board of county commissioners is hereby authorized and empowered in aid of the powers granted or prescribed in RCW 8.08.090 to levy, annually, a tax as large as may be necessary, but not exceeding the rate of one mill on the dollar, upon all the taxable property in the county, such tax to be assessed, levied and collected at the same time and in the same manner as taxes for general county purposes, but the proceeds of said taxes, when collected, shall constitute and be a special fund, applicable solely to the cost of such condemnation, appropriation or disposition, as is mentioned in RCW 8.08.090, and the expenses incident thereto. [1895 c 2 § 2; RRS § 902.]

8.08.120 Indebtedness is for general county purposes. Any county purpose mentioned in RCW 8.08.090 through 8.08.130 shall be deemed and held to be a general county purpose and any indebtedness contracted or to be contracted therefor shall be deemed and held to be an indebtedness for general county purposes, and all the provisions of law of this state relative to indebtedness for general county purposes or the contracting of such indebtedness or the bonds for funding the same shall be deemed applicable to any indebtedness contracted or to be contracted or any bonds issued by any county under RCW 8.08.090 through 8.08.130, but the accounts of the county with respect to the receipts and disbursements of all moneys received or disbursed by the county under the provisions of RCW 8.08.090 through 8.08.130 shall, for each condemnation, appropriation and disposition, be so kept as to clearly and fully exhibit such accounts separate and apart from the other accounts of the county. [1895 c 2 § 4, RRS § 904.]

Public contracts and indebtedness Title 39 RCW

8.08.130 Limitation. Any condemnation, appropriation or disposition intended in RCW 8.08.090 through 8.08.130 shall be deemed and held to be for a county purpose and public use within the meaning of RCW 8.08.090 through 8.08.130 when it is directly or indirectly, approximately or remotely for the general benefit or welfare of the county or of the inhabitants thereof, or when it is otherwise within the meaning of the phrase "for a county purpose" as occurring in the Constitution of this state. [1895 c 2 § 5; RRS § 905.]

8.08.140 Condemnation for military purposes. See RCW 8.04.170.

8.08.141 Condemnation for military purposes—Construction. See RCW 8.04.180.

8.08.150 Appointment of guardian ad litem for minors, alleged incapacitated persons—Protection of interests. See RCW 8.25.270.

Chapter 8.12

EMINENT DOMAIN BY CITIES

Sections

CONDEMNATION

8.12.010	"City" defined
8.12.020	Other terms defined
8.12.030	Condemnation authorized—Purposes enumerated.
8.12.040	Ordinance to specify method of payment—Limitations.
8.12.050	Petition for condemnation.
8.12.060	Contents of petition
8.12.070	Summons—Service.
8.12.080	Service when state or county lands are involved.
8.12.090	Waiver of jury—Adjudication of public use—Procedure.
8.12.100	Trial—Jury—Right to separate juries.
8.12.120	Interested party may be brought in.
8.12.130	Jury may view preuses.
8.12.140	Damages to building—Measure.
8.12.150	Separate findings where there are several interests— Interpleader of adverse claimants.
8.12.160	Verdict—New trial—Continuance—New summons.
8.12.170	Change of ownership—Powers of court.
8.12.190	Findings by jury.
8.12.200	Judgment—Appellate review—Payment of award into court.
8.12.210	Title vests upon payment.

PAYMENT FOR IMPROVEMENT

8.12.220	Payment from general fund.
8.12.230	Payment by special assessment.
8.12.240	Petition for assessment—Appointment of commissioners.
8.12.250	Advancement from general funds against assessments.

ASSESSMENTS—IMMEDIATE PAYMENT

8.12.260	Appointment of board of eminent domain commissioners— Terms of office
8.12.270	Oath of commissioners—Compensation
8.12.280	Duties of commissioners—Assessment of benefits— Apportionment.
8.12.290	Assessment roll.
8.12.300	Hearing on assessment roll—Notice.
8.12.310	Proof of service.
8.12.320	Continuance of hearing.
8.12.330	Objections to assessment roll.
8.12.340	Modification of assessment.
8.12.350	Judgment, effect—Lien.
8.12.360	Certification of roll to treasurer.
8.12.370	Treasurer's notice to pay when assessments immediately payable.
8.12.380	Notice by mail—Penalty for default.

BONDS—INSTALLMENT PAYMENT

8.12.390	Bonds authorized.
8.12.400	Maturity—Interest—Payment.
8.12.410	Sale—Application of proceeds.
8.12.420	Installment payment of assessments.
8.12.430	Notice to pay—Due date of installments—Penalty—Interest.
8.12.440	Bond owner may enforce collection.
8.12.450	Bondholder's remedy limited to assessments.
8.12.460	Payment of bonds—Call—Notice.

DELINQUENCY—REDEMPTION

8.12.470	Enforcement of collection—Interest on delinquency.
8.12.480	Assessment fund to be kept separate.
8.12.490	Record of payment and redemption.

ARTICLE 2

Rights Included in Grant of Eminent Domain Authority

- § 1240.110. Interests in property which may be acquired
- § 1240.120. Property necessary to carry out principal purpose; Acquisition with intent to sell or otherwise dispose of property
- § 1240.125. Local public entities; Property outside territorial limits; Purpose of acquisition
- § 1240.130. Acquisition of property by other means
- § 1240.140. Joint exercise of power by public agencies
- § 1240.150. Acquisition of remainder of property
- § 1240.160. Authorizations distinct and separate

Collateral References:

- 29 Cal Jur 3d Eminent Domain § 5.
- 19 Cal Practice Rev, Ch 386, Eminent Domain Proceeding.

§ 1240.110. [Interests in property which may be acquired]

(a) Except to the extent limited by statute, any person authorized to acquire property for a particular use by eminent domain may exercise the power of eminent domain to acquire any interest in property necessary for that use including, but not limited to, submerged lands, rights of any nature in water, subsurface rights, airspace rights, flowage or flooding easements, aircraft noise or operation easements, right of temporary occupancy, public utility facilities and franchises, and franchises to collect tolls on a bridge or highway.

(b) Where a statute authorizes the acquisition by eminent domain only of specified interests in or types of property, this section does not expand the scope of the authority so granted.

Added Stats 1975 ch 1275 § 2, operative July 1, 1976.

Prior Law:

(a) Former § 1239, as enacted 1872, amended by Code Amdts 1873-74 ch 383 § 161, Stats 1911 ch 356 § 1, Stats 1913 ch 394 § 1, Stats 1949 ch 978 § 1.

(b) Former § 1240 subds 1, 7, 8, as enacted 1872, amended by Stats 1901 ch 144 § 1, Stats 1905 ch 124 § 1, Stats 1907 ch 271 § 1, Stats 1911 ch 115 § 1, ch 358 § 1, Stats 1913 ch 292 § 1, Stats 1915 ch 429 § 1, Stats 1933 ch 465 § 1, Stats 1967 ch 751 § 1.

CA CCP

Citation
 OR ST s 366.340
 O.R.S. § 366.340

Search Result

Rank 30 of 58

Database
 OR-ST-ANN

TEXT

1996 OREGON REVISED STATUTES
 TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
 CHAPTER 366. STATE HIGHWAYS
 STATE HIGHWAYS

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 Current through End of 1995 Sp. Sess.

366.340. Acquisition of real property generally.

The department may acquire by purchase, agreement, donation or by exercise of the power of eminent domain real property, or any right or interest therein, including any easement or right of access, deemed necessary for:

(1) Construction of shops, equipment sheds, office buildings, maintenance sites, patrolmen accommodations, snow fences, quarry sites, gravel pits, storage sites, stock pile sites, weighing stations and broadcasting stations.

(2) Appropriation, acquisition or manufacture of road-building materials, approach or hauling roads, connecting roads, frontage road, highway drainage and drainage tunnels.

(3) Maintenance of an unobstructed view of any state highway so as to provide for the safety of the traveling public.

(4) Any other use or purpose deemed necessary for carrying out the purposes of this Act.

(5) Elimination or prevention of hazardous or undesirable points of entry from adjacent property to state highways.

CREDIT

(Amended by 1953 c. 252 § 2)

<General Materials (GM) - References, Annotations, or Tables>

NOTES, REFERENCES, AND ANNOTATIONS

NOTES, REFERENCES, AND ANNOTATIONS

366.340

NOTES OF DECISIONS

Proposed use of property acquired by condemnation need not be lawful use at time of acquisition. Oregon Department of Transportation v. Schrock Farms, 140 Or App 140, 914 P2d 1116 (1996)

O. R. S. § 366.340
 OR ST § 366.340
 END OF DOCUMENT

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

No. 1
Bill Version: CS SB 190(CRA)
BILL (S) Publish Date: 2/26/98

Revision Date _____	Dept. Affected <u>DOT&PF</u>
Title <u>Attempt to Purchase Before Eminent Domain</u>	BRU <u>Commissioners Office</u>
Sponsor <u>Senator Mackie</u>	Component <u>Office of the Commissioner</u>
Requester <u>(S) CRA</u>	Component Serial No. <u>530</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
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 ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: *(Attach a separate page if necessary)*

Prepared by <u>Dennis Poshard, Special Assistant</u>	Phone <u>465-3900</u>
Division <u>Commissioners Office</u>	Date <u>2/18/98</u>
Approved by <u>[Signature]</u> Commissioner	Date <u>2/18/98</u>
Agency <u>Department of Transportation and Public Facilities</u>	

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SENATOR JERRY MACKIE

ALASKA STATE LEGISLATURE

SPONSOR STATEMENT

SB 190, Require Negotiations Prior to Eminent Domain Taking.

I introduced SB 190 to bring fairness and expediency to state and municipal government actions which require the acquisition of private land for public purposes. The usual practice is to acquire private property through condemnation proceedings. This is a process where the governmental entity exercises the power of eminent domain to take the property and compensate the owner with or without the private owner's consent or agreement. The only recourse for an unwilling owner is to challenge in court the validity of the taking's public purpose and the amount of compensation. In most cases the court's consideration is principally to determine the appropriate level of compensation. For both the governmental entity and the private property owner, this can be an expensive and time consuming procedure. For many landowners the prospect of contesting a condemnation proceeding in court is often beyond the landowner's financial abilities to pursue. In these situations, the landowner is at the mercy of the governmental entity, the extent of its property desires, and its method of determining compensation.

SB 190 would simply require that, prior to condemnation, a "reasonable and diligent" effort is made to purchase private property through negotiations with the property owner. At least 23 states have similar requirements.

***Issue: Should the State be Required to Undertake
Good Faith Negotiations With a Private Landowner
Before Taking Property by
Eminent Domain (SB 190)***

Description of the Issue: Should the State of Alaska be required to conduct good faith negotiations with a private landowner before initiating eminent domain proceedings against that landowner?


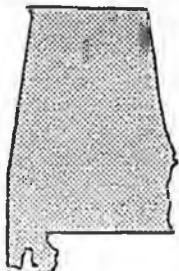


Discussion of the Issue: At least 23 states require that the State, before taking property through eminent domain, make a good faith effort to acquire the property by consensual purchase. And, the drafters of the Uniform Eminent Domain Code recommend such a requirement in model state legislation. Although Alaska agencies will often undertake negotiations as a matter of practice, there is no current requirement in Alaska law that they do so.

A "good faith negotiations" requirement sets a cooperative tone in the state's dealings with its private sector. Moreover, supporters believe that it minimizes the likelihood of contested litigation, since the government and the private party begin their relationship as negotiators rather than adversaries.

Moreover, because the clause is common, there is considerably judicial precedent giving the clause a common sense interpretation. No prolonged face-to-face negotiations are required. A reasonable offer, based on full disclosure, and a willingness to consider timely counteroffers, is sufficient. And, the requirement does not apply where it is not practical--such as where the owner can't be found, or is incapable of conveying title.

Recommendation: In a state with so limited a private property base, the use of eminent domain should be a last resort in Alaska. SB 190 would establish precisely such a policy by requiring that a good faith effort to purchase be made before property is involuntarily taken. The bill would also require the state to justify the particular interest in the property taken, in order to avoid a more intrusive interest being taken than is necessary to accomplish the state's goal.

Appendix A: The Requirement to Negotiate in Other States

	<u>State</u>	<u>Citation</u>	<u>Language</u>
	Model Eminent Domain Code	Uniform Law Commissioner's Model Eminent Domain Code 1974 Act §306	<i>Except as provided in Section 308, an action to condemn property may not be maintained over timely objection by the owner unless the condemnor made a good faith effort to acquire property by purchase before commencing the action.</i>
	Alabama	Ala. Code §18-1A-22	<i>Before commencing a condemnation action, the condemnor shall establish an amount based on an appraisal which it believes to be just compensation therefor and promptly shall submit to the owner an offer to acquire the property for the full amount so established. The amount shall not be less than the condemnor's established amount of just compensation for the property.</i>
	Colorado	Colo. Rev. Stat. §38-1-102	<i>In all cases where the right to take private property for public or private use without the owner's consent...is conferred by general laws...and the compensation to be paid for, in respect of property sought to be appropriated or damaged for the purposes mentioned, cannot be agreed upon by the parties interested; or in the case the owner of the property is incapable of consenting, or his name or residence is unknown, or he is a nonresident of the state, it is lawful for the party authorized to take or damage the property to apply to the judge...</i>
	Connecticut	Conn. Gen. Stat. §48-12	<i>The procedure for condemning land or other property for any of the purposes specified in sections..., if those desiring to take such property cannot agree with the owner upon the amount to be paid him for any property taken, shall be as follows:</i>



Idaho

Idaho Code
§7-707(6)

The complaint [for condemnation] must contain:

...
(6) In all cases where the owner of the lands sought to be taken resides in the county in which said lands are situated, a statement that the plaintiff has sought, in good faith, to purchase the lands so sought to be taken, or settle with the owner for the damages which might result to his property from the taking thereof, and was unable to make any reasonable bargain therefor, or settlement of such damages, but in all other cases these facts need not be alleged in the complaint, or proved.



Illinois

Ill. Rev. Stat.
§5/7-102

Where the right to take private property for public use... has been heretofore and shall hereafter be conferred by general law or special charter... and the compensation to be paid for or in respect of the property sought to be appropriated or damaged for the purposes mentioned cannot be agreed upon by the parties interested, or in case the owner of the property is incapable of consenting, or the owner's name or residence is unknown, or the owner is a nonresident of the state, the party authorized to take or damage the property... may apply to the circuit court...



Indiana

Ind. Code
§32-11-1-1

Before proceeding to condemn, such person, corporation or other body may enter upon any land for the purpose of examining and surveying the property sought to be appropriated or right sought to be acquired; and shall make an effort to purchase for the use intended such lands, right-of-way, easement or other interest therein or other property or right.



Kentucky

Ky. Rev. Stat. Ann. §416.550

Whenever any condemnor cannot, by agreement with the owner thereof, acquire the property right, privileges or easements needed... the condemnor may condemn such property... It is not a prerequisite to an action to attempt to agree with an owner who is unknown or who, after reasonable effort, cannot be found within the state or with an owner who is under a disability.



Michigan

Mich. Comp. Laws §213.55

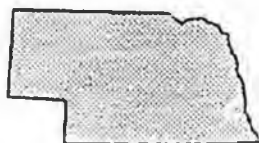
Except as provided in section 25(4), before initiating negotiations for the purchase of property, the agency shall establish an amount which it believes to be just compensation and promptly shall submit to the owner a good faith offer to acquire the property for the full amount so established... If an agency is unable to agree with the owner for the purchase of the property, after making a good faith written offer to purchase the property, the agency may file a complaint for the acquisition of the property in the circuit court in the county in which the property is located.



Missouri

Mo. Rev. Stat. §523.010

In case land, or other property, is sought to be appropriated... and such corporation and the owners cannot agree upon the proper compensation to be paid, or in the case the owner is incapable of contracting, be unknown, or be a nonresident of the state, such corporation may apply to the circuit court...



Nebraska

Neb. Rev. Stat. §76-704

If any condemnee shall fail to agree with the condemnor with respect to the acquisition of property sought by the condemnor, a petition to condemn the property may be filed by the condemnor in the county court of the county where the property or some part thereof is situated.



**New
Hampshire**

N.H. Rev. Stat.
Ann. §498-A:4

Before making the offer provided for in paragraph II, the condemnor shall make reasonable efforts to negotiate with the condemnees or their personal representatives for the purchase of the property, but failure to confer or negotiate shall not be a defense to condemnation of the property.

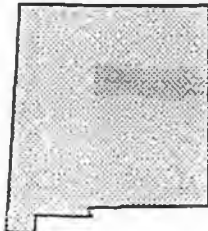
...No property shall be taken unless the condemnor shall serve upon the condemnee a written notice of offer to purchase...



New Jersey

N.J. Rev. Stat.
§20:3-5

...[W]henever any condemnor...shall have determined to acquire land or other property pursuant to law...but cannot acquire title thereto or possession thereof by agreement with a prospective condemnee, whether by reason of disagreement concerning the compensation to be paid or for any other cause...the condemnation of such property...shall be governed...in the manner provided by this act;



**New
Mexico**

N.M. Stat. Ann.
§42A-1-4

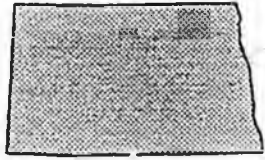
A condemnor shall make reasonable and diligent efforts to acquire property by negotiation.



New York

N.Y. Em. Dom.
Law §303

The condemnor shall make a written offer to acquire the property for one hundred per centum of the valuation so established. In no event shall such amount be less than the condemnor's highest approved appraisal. Wherever practicable, the condemnor shall make the offer prior to acquiring the property, and shall also, wherever practicable, include within the offer an itemization of the total direct, the total severance or consequential damages and benefits as each may apply to the property.



**North
Dakota**

N.D. Cent. Code
§32-15-06.1

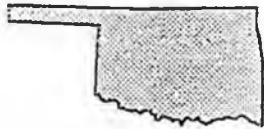
A condemnor shall make every reasonable and diligent effort to acquire property by negotiation.



Ohio

Ohio Rev. Code
Ann §163.04

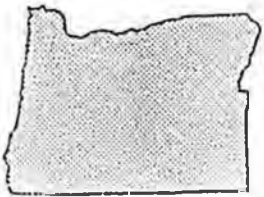
Appropriation shall be made only after the agency is unable to agree, for any reason, with the owner...or when any owner is incapable of contracting...or is unknown, or is not a resident of this state, or his residence is unknown to the agency and cannot with reasonable diligence be ascertained.



Oklahoma

Okla. Stat.
tit. 27, §13

Every reasonable effort shall be made to acquire, expeditiously, real property by negotiation.



Oregon

Or. Rev. Stat.
§35.235

...[T]he condemnor shall...attempt to agree with the owner with respect to the compensation to be paid therefor, and the damages, if any, for the taking thereof.



Texas

Tex. Prop. Code
Ann. §21.012

If the United States, [or] this state...wants to acquire real property for public use but is unable to agree with the owner of the property on the amount of damages, the condemning entity may begin a condemnation proceeding by filing a petition in the proper court.

The petition must...state that the entity and the property owner are unable to agree on the damages.



Vermont

Vt. Stat. Ann.
tit. 24, §2805

When the location of a municipal building is determined...and the owner refuses to release or convey the same to such municipality for a reasonable price... the mayor... shall set out the necessary lands and cause the same to be surveyed. They shall appoint a time and place for hearing...



Virginia

Va. Code Ann.
§26-46.5

No proceedings shall be taken to condemn property until a bona fide but ineffectual effort has been made to acquire from the owner by purchase the property sought to be condemned, except where such consent cannot be obtained because of the incapacity of one or more of the owners or because one or more of such owners is unable to convey legal title to such property or is unknown or cannot with reasonable diligence be found in this State.



Wisconsin

Wis. Stat.
§32,06(2a)

Before making the jurisdictional offer under sub. (3) the condemnor shall attempt to negotiate personally with the owner or one of the owners...for the purchase of the property.



Wyoming

Wyo. Stat.
§1-26-509

A condemnor shall make reasonable and diligent efforts to acquire property by good faith negotiation.

And at the federal level...



**Federal
Uniform
Relocation and
Assistance and
Real Property
Acquisition
Policies Act of
1970**

Sec. 301, P.L. 91-646

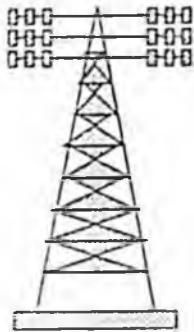
Note: Pursuant to §102 of the Act, the policies of §301 do not affect the vailidity of individual condemnation actions. However, they do govern the use of federal funds by states "to the greatest extent practicable under State law." Sec. 305(1).

In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts... and to promote public confidence in Federal land acquisition practices...

(1) The head of a Federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner... shall be given an opportunity to accompany the appraiser during his inspection of the property.

When a licensee cannot acquire by contract or pledges an unimproved dam site or the right to use or damage the lands or property of others... it may acquire the same by the exercise of the right of eminent domain...



**Federal Energy
Regulatory
Commission**

16 U.S.C. §814

0-LS0890\K
Cook
3/3/98

CS FOR SENATE BILL NO. 190()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR MACKIE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to eminent domain and to negotiations to purchase property
2 before it is taken through eminent domain; and providing for an effective date."

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

4 * Section 1. AS 09.55.270 is amended to read:

5 Sec. 09.55.270. Prerequisites. Before property can be taken, it shall appear
6 that

7 (1) the use to which it is to be applied is a use authorized by law;

8 (2) the taking and the property interest to be taken are [IS]
9 necessary to the use;

10 (3) if already appropriated to a public use, the public use to which it
11 is to be applied is a more necessary public use.

12 * Sec. 2. AS 09.55.270 is amended by adding a new subsection to read:

13 (b) Except when negotiation is not possible because of the incapacity, inability
14 to convey legal title, or absence of one or more of the property's owners, a good faith

1 effort at negotiation to acquire the property interest by purchase shall be made. In a
2 proceeding involving the taking of a property interest through eminent domain, the
3 burden of proof is on the party opposing the taking to show that a good faith effort to
4 acquire the property interest by purchase was not made.

5 * Sec. 3. AS 09.55.430 is amended to read:

6 Sec. 09.55.430. Contents of declaration of taking. The declaration of taking
7 must contain

8 (1) a statement of the authority under which the property or an interest
9 in it is taken;

10 (2) a statement of the public use for which the property or an interest
11 in it is taken;

12 (3) a description of the property sufficient for the identification of it;

13 (4) a statement of the estate or interest in the property;

14 (5) a map or plat showing the location of the property;

15 (6) a statement of the amount of money estimated by the plaintiff to
16 be just compensation for the property or the interest in it;

17 (7) a statement that the property or interest in the property is taken
18 by necessity for a project located in a manner that is most compatible with the greatest
19 public good and the least private injury; and

20 (8) a statement that a good faith effort at negotiation to acquire the
21 property by purchase has been made or that negotiation is not possible because
22 of the incapacity, inability to convey legal title, or absence of one or more of the
23 property's owners.

24 * Sec. 4. AS 09.55.460(b) is amended to read:

25 (b) The plaintiff may not be divested of a title or possession acquired except
26 where the court finds that

27 (1) the property or interest in the property was not taken by necessity
28 for a public use or purpose in a manner compatible with the greatest public good and
29 the least private injury; or

30 (2) a good faith effort at negotiation to acquire the property by
31 purchase has not been made and negotiation was not made impossible by the

1 incapacity, inability to convey legal title, or absence of one or more of the
2 property's owners.

3 (c) In the event of a finding under (b) of this section [THAT FINDING], the
4 court shall enter the judgment necessary to (1) compensate the persons entitled to it
5 for the period during which the property was in the possession of the plaintiff, (2)
6 recover for the plaintiff any award paid to any person, and (3) order the plaintiff to
7 restore the property to the condition in which it existed at the time of the filing of the
8 declaration of taking unless such restoration is impossible, in which case the court
9 shall award damages to the proper persons as compensation for any diminution in the
10 value of the property caused by the plaintiff's wrongful possession.

11 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

SENATE COMMITTEE REPORT

DATE: 2/26/98

FURTHER:

DATE TURNED IN TO OFFICE: 4-28-98

Judiciary Committee considered

SENATE BILL NO. 190

"An Act relating to eminent domain and to negotiations to purchase property before it is taken through eminent domain; and providing for an effective date."

and recommends:

be replaced with CS FOR SB 190 (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 <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>Mike Miller</i>	X		
		<i>John Hamell</i>	X		
		<i>A Pearce</i>	✓		
		<i>Mike Miller</i>	✓		
CHAIR:		CHAIR: <i>W. Taylor</i>	X		

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

<i>DOT/PF - COMMISSIONER</i>	<i>2-26-98</i>	✓	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

SENATE COMMITTEE REPORT

DATE: 2/26/98

FURTHER:

DATE TURNED IN TO OFFICE: 4-28-98

Judiciary Committee considered

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"An Act relating to eminent domain and to negotiations to purchase property before it is taken through eminent domain; and providing for an effective date."

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- be replaced with CS FOR SB 190 (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>John Jones</i>	X		
		<i>John Karmell</i>	X		
		<i>A. Pearce</i>	✓		
		<i>Mike Miller</i>	✓		
CHAIR:		CHAIR: <i>Christ. Taylor</i>	X		

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>DOT/PF - COMMISSIONER</i>	<i>2-26-98</i>	✓	

#1

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

SB

195

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 195

Revision Date (Note if correction) _____	Dept. Affected _____	Law _____
Title <u>An Act relating to common law liens, to remedies,</u>	BRU _____	Criminal Division/Civil Division _____
<u>costs, and fees imposed for the registration, filing or recording ...</u>	Component _____	<u>1st-4th Jud Dist., OSPA; Collections</u>
Sponsor <u>Senate Rules Committee</u>		<u>& Support, Gov't Affairs, Special Lit.</u>
Requester <u>Senate Labor and Commerce Committee</u>	Component Serial No. _____	<u>2198-99, 2261, 79, 01, 03;</u>

Expenditures/Revenues	(Thousands of Dollars)					2210, 2207, 2213
OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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 ()						
------------------------	--	--	--	--	--	--

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

SB 195 makes it easier, and faster, to remove a nonconsensual common law lien against the personal property of a public servant that was not filed accompanied by a specific court order. In addition, a person filing such a lien would be liable for actual and punitive damages, as well as cost and reasonable attorneys fees. Criminal penalties for offering a false instrument for recording are created by this bill.

If the nonconsensual lien was filed against the property of a public servant employed by the Executive or Judicial Branch based on their performance or nonperformance of their duties, the Department of Law would represent them. Unless someone were to file wholesale liens against many public servants at once, as has happened in Montana and Texas, the department believes the effect of the bill to be minimal and is not submitting a fiscal note with costs.

Prepared by <u>Joan M. Kasson</u> <i>Joan M. Kasson</i>	Phone <u>465-5370</u>
Division <u>Attorney General's Office</u>	Date <u>1/25/98</u>
Approved by Commissioner <u>Bruce M. Botelho</u> , Attorney General	Date <u>1/26/98</u>
Agency <u>Department of Law</u>	

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FISCAL NOTE

No. 2
 Bill Version: SB 195
 (S) Publish Date: 1-28-98

STATE OF ALASKA
 1998 LEGISLATIVE SESSION

Revision Date (Note if correction) _____ Dept. Affected Law
 Title An Act relating to common law liens, to remedies, BRU Criminal Division/Civil Division
costs, and fees imposed for the registration, filing or recording ... Component 1st-4th Jud Dist., OSPA, Collections
 Sponsor Senate Rules Committee & Support, Gov't Affairs, Special Lit.
 Requester Senate Labor and Commerce Committee Component Serial No. 2198-99, 2261, 79, 01, 03;

Expenditures/Revenues	(Thousands of Dollars)						2210, 2207, 2213
OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04	
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						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

SB 195 makes it easier, and faster, to remove a nonconsensual common law lien against the personal property of a public servant that was not filed accompanied by a specific court order. In addition, a person filing such a lien would be liable for actual and punitive damages, as well as cost and reasonable attorneys fees. Criminal penalties for offering a false instrument for recording are created by this bill.

If the nonconsensual lien was filed against the property of a public servant employed by the Executive or Judicial Branch based on their performance or nonperformance of their duties, the Department of Law would represent them. Unless someone were to file wholesale liens against many public servants at once, as has happened in Montana and Texas, the department believes the effect of the bill to be minimal and is not submitting a fiscal note with costs.

Prepared by Joan M. Kasson Phone 465-5370
 Division Attorney General's Office Date 1/26/98
 Approved by Commissioner Bruce M. Botelho, Attorney General Date 1/26/98
 Agency Department of Law

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SENATE COMMITTEE REPORT

DATE: 1/28/98

FURTHER:

DATE TURNED
IN TO OFFICE: 2-16-98

Judiciary Committee considered

SENATE BILL NO. 195

"An Act relating to common law liens, to remedies, costs, and fees imposed for the registration, filing, or recording of certain nonconsensual common law liens, and to penalties for recording common law liens."

and recommends:

- be replaced with _____ CS _____ (_____)
- 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. BASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
Mike Miller	✓	John R. Farrell Deacono	✓		
CHAIR: <i>Adrian Lopez</i>		CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Department	Date	Zero	Fiscal
#1 Court System TRIAL COURTS	1-28-98	φ	
#2 LAW - CRIM./CIVIL	1-28-98	φ	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

No. 1

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL # Bill Version: SB 195
(S) Publish Date: 1-28-98

Revision Date: 01/23/98 Dept. Affected: Alaska Court System
 Title: Common Law Liens BRU: Trial Courts
 Sponsor: Senate Rules by Request Component: _____
 Requestor: Senate L&C COMPONENT SERIAL NO. 768

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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 98) cost: \$ None

Positions						
Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Doug Wooliver, Administrative Attorney
 Agency: Alaska Court System

Approved by: Stephanie J. Cole, Administrative Director
 Agency: Alaska Court System

Phone: 264-8265
 Date: 01/23/98

Date: 01/23/98

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ALASKA COURT SYSTEM
State of Alaska
Office Of The Administrative Director

Doug Wooliver
Administrative Attorney

820 West 4th Avenue
Anchorage, Alaska 99501-2005
(907) 264-8265
FAX (907) 264-8291

February 3, 1998

Senator Robin Taylor, Chair
Senate Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801

Dear Senator Taylor:

The Alaska Court System respectfully requests that SB 195 be scheduled for a hearing before the Senate Judiciary Committee at your earliest convenience.

This bill seeks to address the growing problem of bogus common law liens being filed against the real and personal property of Alaskans. It has become common in recent years for patriot groups to record such liens against the property of public officials and private citizens with whom they disagree. The person generally finds out about the lien when he or she attempts to obtain a loan or sell property, and discovers that he or she cannot do so until the lien has been released. This may take many months.

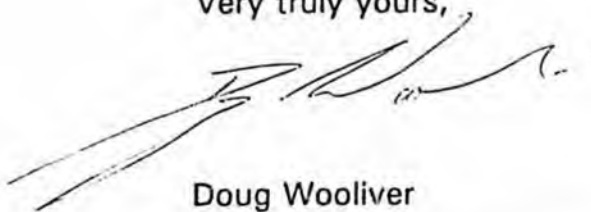
Until recently, this activity has not been of major concern in Alaska. Last year, however, a number of employees and elected officials of the Municipality of Anchorage discovered that nonconsensual common law liens had been recorded against their property. The long list of persons who were targeted by these liens included Mayor Rick Mystrom, and the members of the Anchorage Assembly.

SB 195 forbids and makes it a misdemeanor to record a nonconsensual common law lien without specific authorization from a court. It streamlines the judicial process for releasing a lien, and authorizes the attorney for a public servant to record a notice of invalid lien if such a lien is recorded against the property of a public servant. Finally, it provides for civil penalties against persons who record or benefit from nonconsensual common law liens.

SUPPORTING
DOCUMENTS

Thank you for your consideration of this bill. If I can be of any assistance or provide you with any additional information please let me know.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Wooliver', with a long, sweeping horizontal stroke extending to the left.

Doug Wooliver
Administrative Attorney

Alaska Court System

Doug Wooliver
Administrative Attorney

Telephone: (907) 264-8265
Facsimile: (907) 264-8291

SECTIONAL ANALYSIS OF SB 195

Section 1 is a conforming amendment to AS 09.38.500(9) (the definition section of the Alaska Exemptions Act) that adds a reference to common law liens within the definition of "lien." The new reference states that, to be valid, a common law lien must either be consented to by the owner or accompanied by a court order.

Section 2 adds article 2A to AS 9.45 (Actions Relating to Real Property). The new article is entitled "Actions Relating to Nonconsensual Common Law Liens" and contains 4 sections.

- A) Section 09.45.161 states that if a nonconsensual common law lien is recorded or filed against the property of a public servant and is not accompanied by a court order, an attorney representing the public servant may submit for recording or filing a notice of invalid lien. A copy of the notice is sent to the person who recorded or filed the common law lien.
- B) Section 09.45.164 provides for an expedited court proceeding to have an invalid nonconsensual common law lien released. Under the provisions of this section, a person submits a request to the court containing an affidavit setting out the facts upon which the request is based. If the facts support the need for an expedited hearing, the court can order the person who recorded or filed the lien to appear at a hearing within 20 days. If the court finds that the lien is invalid, or if the person who recorded or filed the lien does not appear, the court can grant the order releasing the lien and order the lien claimant to pay the costs and actual reasonable attorney fees incurred by the party making the request.
- C) Section 09.45.167 states that a person who records or files an invalid nonconsensual common law lien is liable to the owner for actual and punitive damages as well as actual reasonable attorney fees. This section also provides for the liability of a person who is a grantee of an invalid nonconsensual common law lien if he or she refuses to release the lien when requested by the owner of the property affected.

- D) Section 09.45.169 provides definitions for "filed," "nonconsensual common law lien," "public servant," "record," and "recorder."

Section 3 amends AS 11.46.550 (offering a false instrument for recording) by making this current crime the crime of offering a false instrument for recording in the first degree. This section is a conforming amendment that is necessary for the creation of the new crime of "offering a false instrument for recording in the second degree" added by section 4 of the bill. Section 3 does not make any substantive changes.

Section 4 amends AS 11.46.550 by creating the new crime of offering a false instrument for recording in the second degree. This section makes it a class A misdemeanor to record or file an invalid common law lien against real or personal property.

Section 5 amends AS 34.35 (the liens chapter in title 34) by adding a new section entitled "Nonconsensual common law liens." This section prohibits the recording or filing of nonconsensual common law liens against real or personal property without an accompanying court order. This section also provides definitions for the terms "filed," "nonconsensual common law liens," "record," and "recorder."