

ALASKA LEGISLATIVE COMMITTEE FILES 1999-2000 8072

9849 HOUSE JUDICIARY

10

Sec. 41.21.960. Form and issuance of citation.

(a) When a peace officer stops or contacts a person concerning the commission of a misdemeanor offense committed within a park or recreational facility subject to the department's supervision, the officer may issue a citation to the person, subject to the provisions of AS 12.25.180 - 12.25.230. The person receiving the citation may not be required to endorse the citation.

(b) The state supreme court shall identify those offenses that are amenable to disposition without court appearance and shall establish by rule or order a schedule of bail amounts, not to exceed fines prescribed by law, for those offenses. Before establishing or amending the schedule of bail amounts required by this subsection, the supreme court shall appoint and consult with an advisory committee consisting of two persons from the department, two district court judges, one member of the House Resources Committee, and one member of the Senate Resources Committee of the legislature. If the offense for which the citation is issued is one that may be disposed of without court appearance, the citing officer shall write on the citation the amount of bail applicable to the cited offense.

(c) A person cited for an offense for which a bail amount has been established under (b) of this section may, within 15 days from the date of the citation, mail or personally deliver to the clerk of the court having jurisdiction over the place where the offense occurred

(1) the amount of bail indicated on the citation for that offense; and

(2) a copy of the citation indicating the offender's waiver of appearance, plea of no contest, and direction to forfeit the bail and any items seized from the offender.

(d) When bail has been forfeited under this section, a judgment of conviction shall be entered. Forfeiture under this section of bail and items seized from the offender is a complete satisfaction for the offense, and the clerk of the court shall provide the offender with a receipt stating that fact if requested.

(e) If the person cited fails to pay the bail amount or appear in court as required, the citation shall be considered a summons for a misdemeanor charge and the offender shall be proceeded against in the manner prescribed by law.

(f) Notwithstanding other provisions of law, if a person cited for a misdemeanor for which a bail amount has been established under (b) of this section appears in court and is found guilty, the penalty that is imposed for the offense may not exceed the bail amount for that offense established under (b) of this section.

Sec. 11.81.900. Definitions.

(a) For purposes of this title, unless the context requires otherwise,

(1) a person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;

(2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;

(3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk;

(4) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

(b) In this title, unless otherwise specified or unless the context requires otherwise,

(1) "affirmative defense" means that

(A) some evidence must be admitted which places in issue the defense;

and

(B) the defendant has the burden of establishing the defense by a preponderance of the evidence;

(2) "benefit" means a present or future gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary;

(3) "building", in addition to its usual meaning, includes any propelled vehicle or structure adapted for overnight accommodation of persons or for carrying on business; when a building consists of separate units, including apartment units, offices, or rented rooms, each unit is considered a separate building;

(4) "cannabis" has the meaning ascribed to it in AS 11.71.900(10), (11), and (14);

(5) "conduct" means an act or omission and its accompanying mental state;

(6) "controlled substance" has the meaning ascribed to it in AS 11.71.900(4);

(7) "correctional facility" means premises, or a portion of premises, used for the confinement of persons under official detention;

(8) "credit card" means any instrument or device, whether known as a credit card, credit plate, courtesy card, or identification card or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining property or services on credit;

(9) "crime" means an offense for which a sentence of imprisonment is authorized; a crime is either a felony or a misdemeanor;

(10) "criminal street gang" means a group of three or more persons

(A) who have in common a name or identifying sign, symbol, tattoo or other physical marking, style of dress, or use of hand signs; and

(B) who, individually, jointly, or in combination, have committed or attempted to commit, within the preceding three years, for the benefit of, at the direction of, or in association with the group, two or more offenses under any of, or any combination of, the following:

(i) AS 11.41;

(ii) AS 11.46; or

(iii) a felony offense.

(11) "culpable mental state" means "intentionally", "knowingly", "recklessly", or with "criminal negligence", as those terms are defined in (a) of this section;

(12) "dangerous instrument" means any deadly weapon or anything that, under the circumstances in which it is used, attempted to be used, or threatened to be used, is capable of causing death or serious physical injury;

(13) "deadly force" means force that the person uses with the intent of causing, or uses under circumstances that the person knows create a substantial risk of causing, death or serious physical injury; "deadly force" includes intentionally discharging or pointing a firearm in the direction of another person or in the direction in which another person is believed to be and intentionally placing another person in fear of imminent serious physical injury by means of a dangerous instrument;

(14) "deadly weapon" means any firearm, or anything designed for and capable of causing death or serious physical injury, including a knife, an axe, a club, metal knuckles, or an explosive;

(15) "deception" means to knowingly

(A) create or confirm another's false impression that the defendant does not believe to be true, including false impressions as to law or value and false impressions as to intention or other state of mind;

(B) fail to correct another's false impression that the defendant previously has created or confirmed;

(C) prevent another from acquiring information pertinent to the disposition of the property or service involved;

(D) sell or otherwise transfer or encumber property and fail to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether or not that impediment is a matter of official record; or

(E) promise performance that the defendant does not intend to perform or knows will not be performed;

(16) "defense", other than an affirmative defense, means that

(A) some evidence must be admitted which places in issue the defense;

and  
(B) the state then has the burden of disproving the existence of the defense beyond a reasonable doubt;

(17) "defensive weapon" means an electric stun gun, or a device to dispense mace or a similar chemical agent, that is not designed to cause death or serious physical injury.

(18) "drug" has the meaning ascribed to it in AS 11.71.900(9);

(19) "dwelling" means a building that is designed for use or is used as a person's permanent or temporary home or place of lodging;

(20) "explosive" means a chemical compound, mixture, or device that is commonly used or intended for the purpose of producing a chemical reaction resulting in a substantially instantaneous release of gas and heat, including dynamite, blasting powder, nitroglycerin, blasting caps, and nitrojelly, but excluding salable fireworks as defined in AS 18.72.050, black powder, smokeless powder, small arms ammunition, and small arms ammunition primers;

(21) "felony" means a crime for which a sentence of imprisonment for a term of more than one year is authorized;

(22) "fiduciary" means a trustee, guardian, executor, administrator, receiver, or any other person carrying on functions of trust on behalf of another person or organization;

(23) "firearm" means a weapon, including a pistol, revolver, rifle, or shotgun, whether loaded or unloaded, operable or inoperable, designed for discharging a shot capable of causing death or serious physical injury;

(24) "force" means any bodily impact, restraint, or confinement or the threat of imminent bodily impact, restraint, or confinement, "force" includes deadly and nondeadly force;

(25) "government" means the United States, any state or any municipality or other political subdivision within the United States or its territories; any department, agency, or subdivision of any of the foregoing; an agency carrying out the functions of government; or any corporation or agency formed under interstate compact or international treaty;

(26) "highway" means a public road, road right-of-way, street, alley, bridge, walk, trail, tunnel, path, or similar or related facility, as well as ferries and similar or related facilities;

(27) "includes" means "includes but is not limited to";

(28) "incompetent person" means a person who is impaired by reason of mental illness or mental deficiency to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that person;

(29) "intoxicated" means intoxicated from the use of a drug or alcohol;

(30) "law" includes statutes and regulations;

(31) "leased" includes "rented";

(32) "metal knuckles" means a device that consists of finger rings or guards made of a hard substance and designed, made, or adapted for inflicting serious physical injury or death by striking a person;

(33) "misdemeanor" means a crime for which a sentence of imprisonment for a term of more than one year may not be imposed;

(34) "nondeadly force" means force other than deadly force;

(35) "offense" means conduct for which a sentence of imprisonment or fine is authorized; an offense is either a crime or a violation;

(36) "official detention" means custody, arrest, surrender in lieu of arrest, or actual or constructive restraint under an order of a court in a criminal or juvenile proceeding, other than an order of conditional bail release;

(37) "official proceeding" means a proceeding heard before a legislative, judicial, administrative, or other governmental body or official authorized to hear evidence under oath;

(38) "omission" means a failure to perform an act for which a duty of performance

is imposed by law:

(39) "organization" means a legal entity, including a corporation, company, association, firm, partnership, joint stock company, foundation, institution, government, society, union, club, church, or any other group of persons organized for any purpose;

(40) "peace officer" means a public servant vested by law with a duty to maintain public order or to make arrests, whether the duty extends to all offenses or is limited to a specific class of offenses or offenders;

(41) "person" means a natural person and, when appropriate, an organization, government, or governmental instrumentality;

(42) "physical injury" means a physical pain or an impairment of physical condition;

(43) "police dog" means a dog used in police work under the control of a peace officer;

(44) "possess" means having physical possession or the exercise of dominion or control over property;

(45) "premises" means real property and any building;

(46) "propelled vehicle" means a device upon which or by which a person or property is or may be transported, and which is self-propelled, including automobiles, vessels, airplanes, motorcycles, snow machines, all-terrain vehicles, sailboats, and construction equipment;

(47) "property" means an article, substance, or thing of value, including money, tangible and intangible personal property including data or information stored in a computer program, system, or network, real property, a credit card, a domestic pet or livestock regardless of value, choses-in-action, and evidence of debt or of contract; a commodity of a public utility such as gas, electricity, steam, or water constitutes property but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits, or other equipment is considered a rendition of a service rather than a sale or delivery of property;

(48) "public place" means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, and hallways, lobbies, and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence;

(49) "public record" means a document, paper, book, letter, drawing, map, plat, photo, photographic file, motion picture, film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card or other document of any other material, regardless of physical form or characteristic, developed or received under law or in connection with the transaction of official business and preserved or appropriate for preservation by any agency, municipality, or any body subject to the open meeting provision of AS 44.62.310, as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the state or municipality or because of the informational value in it; it also includes staff manuals and instructions to staff that affect the public;

(50) "public servant" means each of the following, whether compensated or not, but does not include jurors or witnesses:

(A) an officer or employee of the state, a municipality or other political subdivision of the state, or a governmental instrumentality of the state, including legislators, members of the judiciary, and peace officers;

(B) a person acting as an advisor, consultant, or assistant at the request of, the direction of, or under contract with the state, a municipality or other political subdivision of the state, or another governmental instrumentality; in this subparagraph "person" includes an employee of the person;

(C) a person who serves as a member of the board or commission created by statute or by legislative, judicial, or administrative action by the state, a municipality or other political subdivision of the state, or a governmental instrumentality;

(D) a person nominated, elected, appointed, employed, or designated to act in a capacity defined in (A) - (C) of this paragraph, but who does not occupy the position;

(51) a "renunciation" is not "voluntary and complete" if it is substantially motivated, in whole or in part, by

(A) a belief that circumstances exist which increase the probability of detection or apprehension of the defendant or another participant in the criminal enterprise, or which render more difficult the accomplishment of the criminal purpose; or

(B) a decision to postpone the criminal conduct until another time or to transfer the criminal effort to another victim or another but similar objective;

(52) "serious physical injury" means

(A) physical injury caused by an act performed under circumstances that create a substantial risk of death; or

(B) physical injury that causes serious and protracted disfigurement, protracted impairment of health, protracted loss or impairment of the function of a body member or organ, or that unlawfully terminates a pregnancy;

(53) "services" includes labor, professional services, transportation, telephone or other communications service, entertainment, including cable, subscription, or pay television or other telecommunications service, the supplying of food, lodging, or other accommodations in hotels, restaurants, or elsewhere, admission to exhibitions, the use of a computer, computer time, a computer system, a computer program, a computer network, or any part of a computer system or network, and the supplying of equipment for use;

(54) "sexual contact" means

(A) the defendant's

(i) knowingly touching, directly or through clothing, the victim's genitals, anus, or female breast; or

(ii) knowingly causing the victim to touch, directly or through clothing, the defendant's or victim's genitals, anus, or female breast;

(B) but "sexual contact" does not include acts

(i) that may reasonably be construed to be normal caretaker responsibilities for a child, interactions with a child, or affection for a child; or

(ii) performed for the purpose of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the physical or mental health of the person being treated;

(55) "sexual penetration" means

(A) genital intercourse, cunnilingus, fellatio, anal intercourse, or an intrusion, however slight, of an object or any part of a person's body into the genital or anal opening of another person's body;

(B) but "sexual penetration" does not include acts performed for the purpose of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the physical health of the person being treated;

(C) each party to any of the acts defined as "sexual penetration" is considered to be engaged in sexual penetration:

(56) "solicits" includes "commands";

(57) "threat" means a menace, however communicated, to engage in conduct described in AS 11.41.520(a)(1) - (7) but under AS 11.41.520(a)(1) includes all threats to inflict physical injury on anyone;

(58) "violation" is a noncriminal offense punishable only by a fine, but not by imprisonment or other penalty; conviction of a violation does not give rise to any disability or legal disadvantage based on conviction of a crime; a person charged with a violation is not entitled

(A) to a trial by jury; or

(B) to have a public defender or other counsel appointed at public expense to represent the person;

(59) "voluntary act" means a bodily movement performed consciously as a result of effort and determination, and includes the possession of property if the defendant was aware of the physical possession or control for a sufficient period to have been able to terminate it.

# FISCAL NOTE

**STATE OF ALASKA**  
**1999 LEGISLATIVE SESSION**

**BILL NO. HB 134**

Revision Date: \_\_\_\_\_ Dept Affected: Natural Resources  
 Title: Authority of the Department of Natural BRU: Land Development  
Resources to issue citations for certain skiing violations... Component: Land Development  
 Sponsor: REP. HUDSON  
 Requestor: (H)JUD Component Serial No. 431

Expenditures/Revenues (Inflation not included unless otherwise noted below) (Thousands of Dollars)

OPERATING EXPENDITURES	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CHANGE IN REVENUES (fund code)</b>	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: \$ none

**POSITIONS**

POSITIONS	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
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)

There is no anticipated fiscal impact to DNR associated with implementation of this legislation.

Prepared by: Jane Angvik, Director *[Signature]* Phone: 907-269-8503  
 Division: Land Date: 26-Mar-99  
 Approved by Commissioner: John Shively *[Signature]* Date: 3-26-99  
 Agency: Natural Resources

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# Alaska State Legislature

REPRESENTATIVE BILL HUDSON

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## Background Information on HB 134 Ski Violations Bail Schedule

- In 1994, the 18<sup>th</sup> Alaska State Legislature enacted the Alaska Ski Safety Act which itemized the responsibilities of both the ski areas and the skiers and more clearly defined the rights and responsibilities of both parties.
- The amendments that are being proposed in HB 134 are to clarify the statutes and they are considered to be consistent with the original provisions of the Alaska Ski Safety Act.

### Section 1:

- ❖ AS 05.45.100 (h) is amended by deleting "over which the state has jurisdiction"
- This amendment is needed because existing law limits the department's authority to those ski areas over which the state has jurisdiction. There has been discussion as to what constitutes "state jurisdiction". One interpretation of this language is those areas that are on state lands and the other being those areas that are required to submit an operations plan to DNR as is stipulated in AS 05.45.040 of the Alaska Ski Safety Act.
- The deletion of ambiguous language as proposed in Section 1 of HB 134 will bring clarification to the Statute. Additionally, it will create a level playing field, allowing all ski areas to be included in the provisions under AS 05.45.100 (h) of the Alaska Ski Safety Act.

## Section 2:

- ❖ AS 05.45.100 is amended by adding a new subsection (i)

This language is a technical amendment that will give the Courts the necessary authority to establish a bail schedule so that the existing provisions can be enforced.

- A provision within the current Alaska Ski Safety Act gives the Commissioner of DNR the authority to fine skiers who disregard specific provisions of the Act. It is for the purpose of establishing the bail schedule and providing for the full implementation of the Act that this legislation has been introduced.
- The Alaska Supreme Court ruled that the language in the original legislation was not specific enough to give them the authority to establish a bail schedule.
  - In December of 1994 DNR requested the Courts to adopt a bail forfeiture schedule for specific violations of the Alaska Ski Safety Act as included in AS 05.45.100 (c) & (g).
  - The Alaska Supreme Court responded to this request by declining to create such a schedule because: "there is no clear authorization in the statute for such a schedule" based on the fact that Administrative Rule 43(a) states: "The Supreme Court will consider adopting a bail forfeiture schedule only when so authorized by statute . . . ". The Court decided the language in AS 05.45.100 (h) is not an adequate authorization.
  - It should be noted that AS 05.45.100 (h) does contain a reference to AS 41.21.960 which is the Statute that pertains to "Form and Issuance of Citation". At the time the Alaska Ski Safety Act was written, it was thought that this would be adequate authority for the Courts to establish the bail schedule. Nonetheless, the Courts didn't feel that this gave them sufficient authority.

## Section 3:

- ❖ amend AS 12.25.190 (c) to include citations for skiing violations

This language is added in order to be consistent with provisions regarding other similar types of citations.

**HB**

**135**

1-LS0427H  
Luckhaupt ✓  
4/28/99

4/29

**CS FOR HOUSE BILL NO. 135( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FIRST LEGISLATURE - FIRST SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): REPRESENTATIVE KOTT**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to use of eavesdropping and recording devices by peace  
2 officers."

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

4 \* **Section 1. FINDINGS AND INTENT.** (a) The legislature finds that, in State v. Glass,  
5 583 P.2d 872 (Alaska 1978), the Alaska Supreme Court held that a peace officer must obtain  
6 a warrant from a judicial officer before monitoring or recording a conversation between an  
7 informant and a person being investigated for having committed a crime. In its decision,  
8 however, the court acknowledged the possibility of an exception to the warrant requirement  
9 under certain circumstances. Glass, supra, at 881, n. 34. The legislature finds that the safety  
10 of peace officers conducting undercover investigations is such a circumstance.

11 (b) The legislature finds that, in 1978, undercover peace officers rarely encountered  
12 suspects armed with a firearm. However, in the ensuing years, the investigation of certain  
13 crimes, particularly drug offenses, has become much more hazardous to peace officers. Drug  
14 dealers are usually armed.

1 (c) The legislature finds that it is not always possible to obtain a warrant to monitor  
2 a conversation during the beginning phases of an investigation. An officer may have  
3 suspicions that do not rise to the level of probable cause, the standard for obtaining a warrant.  
4 In order to collect sufficient evidence to obtain a warrant, the officer may have to go  
5 undercover, thereby creating risk of harm to that officer. Currently, peace officers are often  
6 required to perform undercover investigations of drug offenses and other crimes without  
7 adequate backup protection from fellow officers, and in situations where the persons being  
8 investigated are commonly armed with firearms.

9 (d) The legislature finds that by prohibiting the recording of monitored conversations  
10 and prohibiting the testimony of the monitoring officer regarding the fact that the monitoring  
11 occurred or the content of the monitored conversation, the intrusion on an individual's privacy  
12 is minor. This minimal intrusion to protect the safety and lives of peace officers is one that  
13 society acknowledges is reasonable.

14 (e) It is the intent of this legislation to allow peace officers investigating a crime or  
15 making an arrest to wear monitoring devices, so that back-up law enforcement may monitor  
16 the investigation and, if a dangerous situation arises, provide help and protection to the  
17 undercover officer.

18 \* Sec. 2. AS 09.65 is amended by adding a new section to read:

19 **Sec. 09.65.215. Immunity of peace officer for use of body wire**  
20 **eavesdropping device.** (a) A peace officer who intercepts an oral communication by  
21 use of an electronic, mechanical, or other eavesdropping device that is concealed on  
22 or carried on the person of the peace officer and that transmits that oral communication  
23 by means of radio to a receiving unit that is monitored by other peace officers, or who  
24 monitors the receiving unit, is not liable for damages to a person whose oral  
25 communication is intercepted if

26 (1) the interception and monitoring occurs

27 (A) during the investigation of a crime or the arrest of a person  
28 for a crime;

29 (B) for the purpose of ensuring the safety of the peace officer  
30 conducting the investigation or making the arrest;

31 (2) the peace officer who intercepts the oral communication is a party

1 to the communication; and

2 (3) the communication intercepted is not recorded.

3 (b) In this section,

4 (1) "intercept" has the meaning given in AS 42.20.390;

5 (2) "oral communication" has the meaning given in AS 42.20.390;

6 (3) "peace officer" has the meaning given in AS 11.81.900(b).

7 \* Sec. 3. AS 12.37 is amended by adding a new section to read:

8 **Article 3A. Police Use of Body Wires.**

9 **Sec. 12.37.400. Police use of body wire.** A peace officer may intercept an  
10 oral communication by use of an electronic, mechanical, or other eavesdropping device  
11 that is concealed on or carried on the person of the peace officer and that transmits  
12 that oral communication by means of radio to a receiving unit that is monitored by  
13 other peace officers, if

14 (1) the interception and monitoring occurs

15 (A) during the investigation of a crime or the arrest of a person  
16 for a crime; and

17 (B) for the purpose of ensuring the safety of the peace officer  
18 conducting the investigation or making the arrest;

19 (2) the peace officer intercepting the conversation is a party to the oral  
20 communication and has consented to the interception; and

21 (3) the communication intercepted is not recorded.

22 (b) A peace officer monitoring a receiving unit under (a) of this section is not  
23 competent to testify in a criminal proceeding involving a party to the oral  
24 communication about the contents of the oral communication that was intercepted or  
25 the fact that the communication occurred.

26 \* Sec. 4. AS 42.20.320(a) is amended to read:

27 (a) The following activities are exempt from the provisions of AS 42.20.300  
28 and 42.20.310:

29 (1) listening to a radio or wireless communications of any sort where  
30 the same are publicly made;

31 (2) hearing conversation when heard by employees of a common carrier

1 by wire incidental to the normal course of their employment in the operation,  
2 maintenance, or repair of the equipment of the common carrier by wire, provided the  
3 information obtained is not used or divulged in any manner by the hearer;

4 (3) a broadcast by radio or other means whether it is a live broadcast  
5 or recorded for the purpose of later broadcasts of any function where the public is in  
6 attendance and the conversations that are overheard are incidental to the main purpose  
7 for which the broadcast is then being made;

8 (4) recording or listening with the aid of any device to an emergency  
9 communication made in the normal course of operations by a federal, state, or local  
10 law enforcement agency or institutions dealing in emergency services, including  
11 hospitals, clinics, ambulance services, fire fighting agencies, a public utility emergency  
12 repair facility, civilian defense establishment, or military installations;

13 (5) inadvertent interception of telephone conversations over party lines;

14 (6) a peace officer, or a person acting at the direction or request of a  
15 peace officer, engaging in conduct authorized by or under AS 12.37;

16 (7) interception, listening, or recording of communications by a peace  
17 officer, or a person acting under the direction or request of a peace officer, in an  
18 emergency where the communications are received from a device that intercepts the  
19 communications of a person

20 (A) barricaded and not exiting or surrendering at the direction  
21 or request of a peace officer, in circumstances where there is an imminent risk  
22 of harm to life or property;

23 (B) holding another person hostage; or

24 (C) threatening the imminent illegal use of an explosive;

25 (8) the interception by a peace officer of an oral communication by  
26 use of an electronic, mechanical, or other eavesdropping device that is concealed  
27 on or carried on the person of the peace officer and that transmits that oral  
28 communication by means of radio to a receiving unit that is monitored by other  
29 peace officers, if

30 (A) the interception and monitoring occurs

31 (i) during the investigation of a crime or the arrest

1  
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of a person for a crime; and  
(ii) for the purpose of ensuring the safety of the  
peace officer conducting the investigation or making the arrest; and  
(B) the peace officer who intercepts the oral communication  
is a party to the communication and has consented to the interception; and  
(C) the communication intercepted is not recorded.

1-LS0427G  
Luckhaupt ✓  
4/27/99

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1 "An Act relating to use of eavesdropping and recording devices by peace  
2 officers."

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

4 \* Section 1. AS 09.65 is amended by adding a new section to read:

5 Sec. 09.65.215. Immunity of peace officer for use of body wire  
6 eavesdropping device. (a) A peace officer who intercepts an oral communication by  
7 use of an electronic, mechanical, or other eavesdropping device that is concealed on  
8 or carried on the person of the peace officer and that transmits that oral communication  
9 by means of radio to a receiving unit that is monitored by other peace officers, or who  
10 monitors the receiving unit, is not liable for damages to a person whose oral  
11 communication is intercepted if

12 (1) the interception and monitoring occurs

13 (A) during the investigation of a crime or the arrest of a person  
14 for a crime;

1 (B) for the purpose of ensuring the safety of the peace officer  
2 conducting the investigation or making the arrest;

3 (2) the peace officer who intercepts the oral communication is a party  
4 to the communication; and

5 (3) the communication intercepted is not recorded.

6 (b) In this section,

7 (1) "intercept" has the meaning given in AS 42.20.390;

8 (2) "oral communication" has the meaning given in AS 42.20.390;

9 (3) "peace officer" has the meaning given in AS 11.81.900(b).

10 \* Sec. 2. AS 12.37 is amended by adding a new section to read:

11 **Article 3A. Police Use of Body Wires.**

12 **Sec. 12.37.400. Police use of body wire.** A peace officer may intercept an  
13 oral communication by use of an electronic, mechanical, or other eavesdropping device  
14 that is concealed on or carried on the person of the peace officer and that transmits  
15 that oral communication by means of radio to a receiving unit that is monitored by  
16 other peace officers, if

17 (1) the interception and monitoring occurs

18 (A) during the investigation of a crime or the arrest of a person  
19 for a crime; and

20 (B) for the purpose of ensuring the safety of the peace officer  
21 conducting the investigation or making the arrest;

22 (2) the peace officer intercepting the conversation is a party to the oral  
23 communication and has consented to the interception; and

24 (3) the communication intercepted is not recorded.

25 (b) A peace officer monitoring a receiving unit under (a) of this section is not  
26 competent to testify in a criminal proceeding involving a party to the oral  
27 communication about the contents of the oral communication that was intercepted or  
28 the fact that the communication occurred.

29 \* Sec. 3. AS 42.20.320(a) is amended to read:

30 (a) The following activities are exempt from the provisions of AS 42.20.300  
31 and 42.20.310:

1 (1) listening to a radio or wireless communications of any sort where  
2 the same are publicly made;

3 (2) hearing conversation when heard by employees of a common carrier  
4 by wire incidental to the normal course of their employment in the operation,  
5 maintenance, or repair of the equipment of the common carrier by wire, provided the  
6 information obtained is not used or divulged in any manner by the hearer;

7 (3) a broadcast by radio or other means whether it is a live broadcast  
8 or recorded for the purpose of later broadcasts of any function where the public is in  
9 attendance and the conversations that are overheard are incidental to the main purpose  
10 for which the broadcast is then being made;

11 (4) recording or listening with the aid of any device to an emergency  
12 communication made in the normal course of operations by a federal, state, or local  
13 law enforcement agency or institutions dealing in emergency services, including  
14 hospitals, clinics, ambulance services, fire fighting agencies, a public utility emergency  
15 repair facility, civilian defense establishment, or military installations;

16 (5) inadvertent interception of telephone conversations over party lines;

17 (6) a peace officer, or a person acting at the direction or request of a  
18 peace officer, engaging in conduct authorized by or under AS 12.37;

19 (7) interception, listening, or recording of communications by a peace  
20 officer, or a person acting under the direction or request of a peace officer, in an  
21 emergency where the communications are received from a device that intercepts the  
22 communications of a person

23 (A) barricaded and not exiting or surrendering at the direction  
24 or request of a peace officer, in circumstances where there is an imminent risk  
25 of harm to life or property;

26 (B) holding another person hostage; or

27 (C) threatening the imminent illegal use of an explosive;

28 **(8) the interception by a peace officer of an oral communication by**  
29 **use of an electronic, mechanical, or other eavesdropping device that is concealed**  
30 **on or carried on the person of the peace officer and that transmits that oral**  
31 **communication by means of radio to a receiving unit that is monitored by other**

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peace officers. if

(A) the interception and monitoring occurs

(i) during the investigation of a crime or the arrest  
of a person for a crime; and

(ii) for the purpose of ensuring the safety of the  
peace officer conducting the investigation or making the arrest; and

(B) the peace officer who intercepts the oral communication  
is a party to the communication and has consented to the interception; and

(C) the communication intercepted is not recorded.

# Alaska State Legislature

## House of Representatives

COMMITTEES  
JUDICIARY COMMITTEE, CHAIR  
RULES  
MILITARY & VETERANS AFFAIRS  
UTILITY RESTRUCTURING  
ETHICS



INTERIM:  
10928 EAGLE RIVER RD., SUITE 141  
EAGLE RIVER, AK 99577

SESSION:  
ALASKA STATE CAPITOL  
JUNEAU, AK 99801

### MEMORANDUM

Date: April 27, 1999

To: Jerry Luckhaupt  
Legislative Legal and Research Services

From: Patrick Harman *Pat*  
Representative Pete Kott's Office

Subject: HB 135 Findings

Please add a new section to HB 135 regarding Findings. Below is my cut at Findings:

- Social changes have occurred since the Glass decision was made.
- Illegal drugs are now a major social issue.
- When making arrests of drug dealers, the drug dealers are usually armed.
- Police officer safety is of concern to the citizen's of Alaska
- Monitoring undercover conversations will greatly enhance officer safety.

Attached are Annie Carpeneti's Findings, between our input and your thoughts we should have something that can assist any appeal of this bill.

If you have any questions call me at 6841.



### Representative Pete Kott

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EAGLE RIVER OFFICE (907) 694-8944 FAX (907) 694-8945 E-MAIL: representative\_pete\_kott@legis.state.ak.us



*Draft for review*

In State v. Glass, 583 P. 2d 872 (Alaska 1978), the Alaska Supreme Court held that peace officers must obtain a warrant from a judicial officer before monitoring or recording a conversation between an informant and a person being investigated for having committed a crime. In its decision, however, the court acknowledged the possibility of an exception to the warrant requirement under certain circumstances. Glass at footnote 34. We find that the safety of peace officers conducting undercover investigations is such a circumstance.

In 1978, undercover peace officers rarely encountered suspects armed with a firearm. However, in the ensuing years, the investigation of certain crimes, particularly drug offenses, has become much more hazardous to peace officers.

It is not always possible to obtain a warrant to monitor a conversation during the beginning phases of an investigation. An officer may have suspicions that do not rise to the level of probable cause, the standard for obtaining a warrant. In order to collect sufficient evidence to obtain a warrant, the officer may have to go undercover, thereby creating a risk of harm to himself or herself. Currently, peace officers are often required to perform undercover investigations of drug offenses and other crimes without adequate backup protection from fellow officers, and in situations where the persons being investigated are commonly armed with firearms.

This legislation is intended to allow peace officers investigating a crime or making an arrest to wear monitoring devices, so that back-up law enforcement may monitor the investigation and, if a dangerous situation arises, provide help and protection to the undercover officer.

By prohibiting the recording of the monitored conversations, and prohibiting the testimony of the monitoring officer regarding the fact that the monitoring occurred or the content of the monitored conversation, the intrusion on an individual's privacy is minor. This minimal intrusion to protect the safety and lives of peace officers is one that society acknowledges is reasonable.

workers over until they can resume employment; these benefits are paid contingent on the employee's participation in the development and execution of a reemployment plan. See AS 23.30.041(g)-(n). The statute makes it clear that the legislature intended these plans to include employee contact with the rehabilitation specialist, and an opportunity for the employer to monitor the employee's compliance with the plan. See AS 23.30.041(n). Although we do not hold that payment of reemployment benefits to claimants residing out of state is inappropriate, we believe that these provisions indicate a preference for residence in Alaska while the employee is participating in the plan.

If we were to hold that claimants residing out of state could collect reemployment benefits despite an employer's offer of employment in Alaska, some claimants may seek to avoid the application of that provision by leaving the state. Such opportunism would increase the cost to employers of the workers' compensation scheme, an outcome contrary to the legislature's stated desire to control costs and workers' compensation premiums. See *Williams v. State, Dept. of Revenue*, 895 P.2d 99, 104 (Alaska 1995) ("[T]he Act's purpose is 'to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of AS 23.30.'" (quoting Ch. 79, § 1, SLA 1988) (emphasis added)); *Chiropractors for Justice v. State*, 895 P.2d 962, 966, 970 (Alaska 1995) (noting the State's legitimate interest in "saving jobs by reducing workers' compensation premiums" and "the overall legislative policy of providing medical benefits to injured workers at a reasonable cost to employers."). See also AS 23.30.175 (allowing downward adjustment in workers' compensation benefits paid to claimants living in states which have a lower cost of living as compared to Alaska).

The issue in this case is whether a claimant must return to Alaska from out of state to take a job offered pursuant to AS 23.30.041(f)(1), or forego reemployment benefits. The policy considerations which underlie a limitation on reemployment benefits payments to out-of-state residents include fa-

cilitating employer monitoring of compliance with the reemployment plan and avoiding opportunistic departures by claimants. These considerations apply with equal force whether the claimant resides in another state or is a resident of a foreign country.

#### IV. CONCLUSION

Alaska Statute 23.30.041(f) governs the eligibility for reemployment benefits of workers' compensation claimants who move outside of the State of Alaska. The superior court and the Board are **AFFIRMED**.



STATE of Alaska, Petitioner,

v.

Edward PAGE, Jr., Respondent.

No. A-5205.

Court of Appeals of Alaska.

Feb. 9, 1996.

Hearing Granted April 22, 1996.

Defendant was charged with offenses relating to sale of cocaine. The Superior Court, Fourth Judicial District, Fairbanks, Richard D. Savell, J., suppressed videotape of defendant's activities within apartment, and State appealed. The Court of Appeals, Mannheimer, J., held that police were required to secure warrant before surreptitiously videotaping defendant's conversation in apartment with police informant even though videotape recorder's sound was turned off.

Affirmed.

#### 1. Criminal Law §1139

Whether police had to secure warrant before they surreptitiously videotaped suspect's conversation with police informant was question of law, subject to de novo review.

**2. Telecommunications** ⇨511

If person engages in conversation that is protected from electronic monitoring without warrant, and if this conversation occurs in place where person has reasonable expectation of visual privacy, then police must secure warrant before surreptitiously videotaping conversation, even if they turn sound off. Const. Art. 1, §§ 14, 22.

**3. Searches and Seizures** ⇨26

Under Alaska Constitution, person is protected from unreasonable government intrusion whenever person manifests subjective expectation of privacy in property or activity being subjected to government scrutiny, and this expectation of privacy is one that society recognizes as reasonable. Const. Art. 1, §§ 14, 22.

**4. Searches and Seizures** ⇨201

Whether person manifests subjective expectation of privacy in property or activity being subjected to government scrutiny, as element of protection under Alaska Constitution, presents question of fact. Const. Art. 1, §§ 14, 22.

**5. Searches and Seizures** ⇨201

Whether expectation of privacy manifested by person is one that society recognizes as reasonable, as element of protection under Alaska Constitution, presents legal question, answer to which rests on constitutional intent and, ultimately, on judgment concerning proper balance to be struck between rights of individual and authority society exercises over individuals through agency of government. Const. Art. 1, §§ 14, 22.

**6. Searches and Seizures** ⇨26

Alaska Constitution protected defendant from surreptitious photography or videotaping, without warrant, of meeting in apartment; although there was no audio recording, videotaping of defendant's private meeting with informant was not merely de minimis invasion of his privacy. Const. Art. 1, §§ 14, 22.

**7. Constitutional Law** ⇨82(7)

Meaning of privacy, subject to constitutional protection, must necessarily vary de-

pending on factual context. Const. Art. 1, §§ 14, 22.

**8. Constitutional Law** ⇨82(7)

People who knowingly reveal private matters to other occupants of room are nonetheless entitled, as matter of constitutional right to privacy, to expect that these private matters are not being simultaneously broadcast to other locations or electronically recorded for later scrutiny. Const. Art. 1, §§ 14, 22.

**9. Drugs and Narcotics** ⇨185(1)

That defendant was using apartment to transact illegal business, the sale of cocaine, did not deprive him of any reasonable expectation of privacy, such that surreptitious videotaping of defendant's activities in apartment would not violate Alaska Constitution. Const. Art. 1, §§ 14, 22.

**10. Searches and Seizures** ⇨26

Fact that business might be discussed or transacted in private residence does not deprive occupants of their normal expectation of privacy under Alaska Constitution. Const. Art. 1, §§ 14, 22.

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Petition for Review from the Superior Court, Fourth Judicial District, Fairbanks, Trial Court No. 4FA-90-1830 Cr; Richard D. Savell, Judge.

Eric A. Johnson, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Bruce M. Botelho, Attorney General, Juneau, for Petitioner.

Marcia E. Holland, Assistant Public Defender, Fairbanks, and John B. Salemi, Public Defender, Anchorage, for Respondent.

Before BRYNER, C.J., and COATS and MANNHEIMER, JJ.

*OPINION*

MANNHEIMER, Judge.

In *State v. Glass*, 583 P.2d 872 (Alaska 1978), the Alaska Supreme Court held that the police must obtain a warrant before surreptitiously recording people's conversations. We are now asked to decide whether the police may surreptitiously record people's ac-

tivities on videotape without first obtaining a Glass warrant if the police confine themselves to the video-recording capabilities of the electronic equipment and do not employ its audio capabilities.

Edward Page, Jr. was suspected of selling cocaine. The police hid videotaping equipment in a Fairbanks apartment and, through an informant, they arranged for Page to come there to make a delivery of cocaine.<sup>1</sup> The police had placed three video cameras in the apartment: one was focused on the parking area and front door to the building, another was focused on an amusement arcade across the street, and a third was housed inside a non-functioning television set in the living room of the apartment.

After he was charged, Page learned that the police had videotaped him. He asked the superior court to suppress the videotape, arguing that the police had violated Glass because they had not obtained a warrant before they recorded his activities.

A hearing on Page's motion was conducted on January 21, 1994, before Superior Court Judge Richard D. Savell. The State conceded that, under Glass, the police would have needed a warrant to record the conversation between Page and the undercover officer. However, the State argued that no warrant was needed if the police simply recorded video images of Page's conduct.

Judge Savell granted Page's suppression motion in part. The judge ruled that Page had no expectation of privacy with respect to observation of his conduct in public places (the parking lot or the arcade). However, Judge Savell ruled that Page did have an expectation of privacy when he moved inside the apartment. Judge Savell therefore suppressed the videotape recorded by the camera hidden inside the television. The State asks us to reverse that ruling.

The facts of this case are not in dispute. The State concedes that Page and the police

1. The video camera was placed in the apartment with the knowledge and consent of the manager. The manager of the apartment complex had earlier notified the police that her tenants had complained to her about drug deals being conducted in the nearby vicinity. The manager agreed to let the police use an unoccupied (but furnished)

informant were engaged in a conversation that was protected from electronic monitoring under the supreme court's decision in Glass. The State further concedes that there were no exigent circumstances that might excuse the police's failure to procure a Glass warrant. Finally, the State concedes that the conversation between Page and the police informant took place in a private residence.

[1, 2] Given these facts, the issue of whether the police had to secure a warrant before they surreptitiously videotaped Page's conversation with the police informant is a question of law. We therefore review this issue de novo. See State v. Resek, 706 P.2d 706, 707 (Alaska App.1985). We now hold that if a person engages in a conversation that is protected from electronic monitoring under Glass, and if this conversation occurs in a place where the person has a reasonable expectation of visual privacy, then the police must secure a warrant before surreptitiously videotaping the conversation, even if they turn the sound off.

[3] In Glass, the Alaska Supreme Court adopted a two-pronged test to be employed when construing the scope of privacy granted by Article I, Sections 14 and 22 of the Alaska Constitution. Under these sections of the state constitution, a person is protected from unreasonable government intrusion whenever (1) the person manifests a subjective expectation of privacy in the property or activity being subjected to government scrutiny, and (2) this expectation of privacy is one that society recognizes as reasonable. Glass, 583 P.2d at 875, 880.

[4, 5] The first prong of this test (a person's subjective expectation of privacy) presents a question of fact. However, the second prong (the reasonableness of any expectation of privacy) presents a legal question. The answer to this second prong of the test rests on constitutional intent and, ultimately, on a

apartment in order that an undercover police informant might solicit potential drug sellers and then have them return to the apartment to conduct the actual sales. The police brought in food, trash, and articles of clothing to make the apartment look "lived in".

judgement concerning the proper balance to be struck between the rights of the individual and the authority society exercises over individuals through the agency of government.

[6] The State does not contest that Page subjectively expected his activities in the apartment to be private. The remaining question "is whether that expectation of privacy is one that society is prepared to recognize as being reasonable". *Glass*, 583 P.2d at 880.

The State argues that the warrant requirement established in *Glass* to regulate police monitoring of conversations should not apply to police videotaping of non-verbal physical conduct. The State points out that much of the discussion in *Glass* focuses on the importance of free speech in a democratic society and on the chilling effect that unrestricted police monitoring would have on political and social discourse. *Glass*, 583 P.2d at 876-78.

[7] *Glass* involved the electronic monitoring of a conversation; it was thus natural that the supreme court would focus its decision on the importance of speech. But the privacy interests protected by Article I, Sections 14 and 22 of the state constitution apply to activities other than speech. As the supreme court noted in *Glass*, "The meaning of privacy of necessity must vary depending on the factual context[.]" *Id.* at 879-880.

American tort law recognizes the principle that "[o]ne who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another . . . is subject to liability . . . for invasion of [the other person's] privacy, if the intrusion would be highly offensive to a reasonable person." *Restatement of Torts (Second)* (1976), § 652B, Vol. 3, pp. 378-79. The Restatement declares that an actionable intrusion is not limited to "physical intrusion into a place in which the plaintiff has secluded himself[;] . . . [it] may also be [accomplished] by the use of the defendant's senses, with or without mechanical aids, to oversee or overhear the plaintiff's private affairs". *Id.* Thus, under many circumstances, if a

person is in a place where he or she can reasonably expect privacy, tort law protects the person from unconsented-to observation or photography. See, for example, *Huskey v. National Broadcasting Company, Inc.*, 632 F.Supp. 1282, 1289 (N.D.Ill.1986) (citing the Restatement, § 652); *Cohen v. Herbal Concepts, Inc.*, 100 A.D.2d 175, 473 N.Y.S.2d 426, 427-28 (1984) (surreptitious photography), order *aff'd* 63 N.Y.2d 379, 482 N.Y.S.2d 457, 472 N.E.2d 307 (1984). But see *Muratore v. M/S Scotia Prince*, 656 F.Supp. 471, 482-83 (D.Me.1987), *rev'd in part on other grounds*, 845 F.2d 347 (1st Cir.1988); *Slessman v. American Black Hawk Broadcasting Co.*, 416 N.W.2d 685, 686-88 (Iowa 1987) (surreptitious photographing of a person in a public place is not actionable).

[8] In the present case, Page voluntarily accompanied the undercover officer to the apartment. He knew that his conduct inside that apartment would be observed by the undercover officer (whom Page believed to be a drug customer). Page can hardly claim that he expected complete visual privacy inside the apartment. However, the decision in *Glass* is premised on the legal rule that people who knowingly reveal private matters to other occupants of a room are nonetheless entitled to expect that these private matters are not being simultaneously broadcast to other locations or electronically recorded for later scrutiny.<sup>2</sup>

We therefore reject the State's argument that its videotaping of Page's private meeting with the undercover officer was a *de minimis* invasion of his privacy. Just as the Alaska Constitution (as construed in *Glass*) protected Page against surreptitious electronic monitoring or recording of his words to the undercover officer, we conclude that our state's constitution also protected Page from surreptitious photography or videotaping of that meeting. Surreptitious video monitoring and recording of people's private activities has the same "corrosive impact . . . on our sense

2. See *Barron v. State*, 823 P.2d 17 (Alaska App. 1992), where this court recognized that a person in a restroom can not expect complete privacy from the observations of other persons in the restroom but can still expect privacy from "clan-

destine peeping". *Id.* at 20 (quoting Wayne R. LaFare, *Search and Seizure: A Treatise on the Fourth Amendment* (2nd ed. 1987), § 2.4(c), Vol. 1, pp. 440-41).

of security", *Glass*, 583 P.2d at 877, as surreptitious audio monitoring and recording.

[9] The State next argues that, even if people have a right to expect that their private activities will not be surreptitiously videotaped, this expectation is substantially diminished when the person's private activities are of a commercial nature. Because Page was engaged in the sale of drugs, the State contends, he had little expectation of privacy.

[10] The fact that business might be discussed or transacted in a private residence does not deprive the occupants of their normal expectation of privacy. Stripped of its trimmings, the State's argument appears to be that Page had no reasonable expectation of privacy because he was using the apartment to transact illegal business—the sale of cocaine. The supreme court answered this contention in *Glass*:

It is of course, easy to say that one engaged in an illegal activity has no right to complain if his conversations are broadcast or recorded. If, however, law enforcement officials may lawfully [use informants] to record and transcribe private conversations, nothing prevents monitoring of . . . persons not engaged in illegal activity, who have incurred [official] displeasure, have not conformed[,] or have espoused unpopular causes.

*Glass*, 583 P.2d at 878. In other words, because of the value our society places on individual privacy, we can not give the police unfettered discretion to decide when electronic monitoring of private conversations might be justified to detect or prevent illegal conduct. The same holds true for clandestine videotaping of non-public activities.

Given the narrow facts of Page's case, we need not completely define the relationship between the government's need to employ clandestine video surveillance as an investigative technique and the individual citizen's right to visual privacy. Instead, we confine ourselves to the circumscribed issue before us.

Page was engaged in a conversation which, the State concedes, was protected from warrantless monitoring under *Glass*. This con-

versation took place in a private apartment, a location where Page could reasonably expect that his activities would not be observed by anyone except those onlookers whose presence he was aware of. We hold that, in these circumstances, the Alaska Constitution as interpreted by the supreme court in *Glass* requires the police to secure a warrant before engaging in surreptitious videotaping of a conversation. It makes no difference that the police turn down the audio recording level on their equipment.

The decision of the superior court suppressing the videotape made inside the apartment is **AFFIRMED**.



Roger H. HAMPEL, Appellant,

v.

STATE of Alaska, Appellee.

No. A-5501.

Court of Appeals of Alaska.

Feb. 9, 1996.

Petitioner sought postconviction relief from sentence for first-degree murder. The Superior Court, Third Judicial District, Anchorage, Milton M. Souter, J., denied application for postconviction relief, and petitioner appealed. The Court of Appeals, Bryner, C.J., held that: (1) defendant was not entitled to deduction for good time credit in calculating mandatory minimum term of imprisonment for purposes of determining discretionary parole eligibility; (2) petitioner's subjective belief regarding eligibility for discretionary parole did not render plea involuntary; but (3) petitioner stated claim for prosecutorial misconduct for state's renegeing on alleged agreement not to oppose reduction in sentence.

Affirmed in part, reversed in part and remanded.

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**HB**

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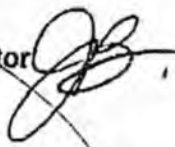
# Alaska Action Trust

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(907) 258-4040 • FAX (907) 276-7185

## FAX MEMORANDUM

Date: April 16, 1999

To: Rep. Kott, Rep. Green, Rep. James, Rep. Murkowski, Rep. Rokeberg,  
Rep. Croft and Rep. Kerrtula

From: Jan Bouch, Executive Director 

Re: HB 146

# of pages: 4

*Did you have  
a good weekend?*

To follow is an AATL position paper on HB 146, scheduled for hearing on Monday, April 19, 1999. The position paper is to provide information to you regarding HB 146's impact.

APR 19 1999



## Alaska Action Trust

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### Position Paper on House Bill 146

Prepared by Russell L. Winner  
April 12, 1999

This bill would limit the liability of an operator of a commercial recreational activity if one of its customers is injured or dies. The customer would be deemed contributorily negligent, and his damages would be reduced, to the extent that the inherent risks of that activity were or should have apparent to him.

The bill is unwarranted special interest legislation. It is poorly drafted and will raise more questions than it answers. The bill is unnecessary and should not be enacted into law. What follows is a section-by-section analysis of the bill.

**Purpose.** The stated purpose of the bill is to establish responsibilities of operators and consumers of commercial recreational activities, to decrease the uncertainty regarding legal responsibilities for injuries, and to encourage the continued availability of businesses in this area. The existing tort law of Alaska, however, already governs liability in this area. Under existing law, an operator of a commercial recreational activity is liable only for its percentage of fault in causing the injury or death. To the extent that injury or death was caused by the inherent risks of the activity, and not by the fault of the operator, the operator is not liable under existing law.

Further, the tort law of Alaska was recently amended by enactment of a comprehensive bill. It places caps on non-economic damages and punitive damages. It allows fault to be allocated to non-parties. It shortens the statute of limitation for suits for breach of express or implied contract. And it requires minors, or their representatives, to bring suit sooner than was required under prior law. There is no need for further restrictions on the liability of commercial recreational operators. In fact, such legislation would be subject to challenge as unconstitutional special interest litigation. Turner Construction Company, Inc. v. Scales, 752 P.2d 467 (Alaska 1988)

The proposed legislation is not necessary to encourage the continued availability of businesses that offer commercial recreational activities to the public. We are not aware that operators are being driven out of business as a result of litigation over injuries or death. In fact, there is very little litigation in this area. In the event of injury or death, however, the most prudent protection for an operator is insurance. Such insurance has not become unavailable or significantly more expensive. Further, enactment of this bill would have no effect on premium rates. Most insurance companies set their rates on a regional basis, not on a state-by-state basis. Finally, if the legislature wishes to encourage commercial recreational businesses in Alaska, it seems counterproductive to

tell members of the public that they are contributorily negligent just by choosing to be a customer of such a business.

**Acceptance of inherent risks.** The bill states that participation in a commercial recreational activity constitutes acceptance of the inherent risks of the activity that are or should be apparent to an ordinarily prudent person. This, however, is unnecessary, as it would be the case under the existing tort law.

**Contributory negligence.** The bill states that customer's participation in a commercial recreational activity will be deemed contributory negligent to the extent that his injuries or death were caused by the inherent risks of that activity. It is, however, inappropriate to say this constitutes contributory negligence on the part of the customer. Instead, as is true under the existing tort law, the inherent risks of the activity should be taken into account when allocating fault to all persons, including the customer. Again, does Alaska really want to be known as the State where tourists are statutorily defined as being contributorily negligent merely by participating in commercial recreational activity in the State.

**Responsibilities of participants.** The bill sets out five responsibilities of consumers of commercial recreational activities. Items 2 through 5 are unnecessary, as they would be considered anyway under the existing tort law in allocating fault. Item 1 is confusing: It requires the consumer to "learn about and expressly accept the risks of the activities." From whom is she to learn about this? From the operator? What if the operator doesn't tell her? What other source is she supposed to consult? What if she doesn't learn about these risks from another source? How is she to expressly accept these risks? In writing? What if she does not? And what risks are we talking about, anyway? The inherent risk which should be apparent to an ordinarily prudent person, or other non-obvious risks?

**Responsibilities of operators of commercial recreational activities.** The bill also sets out certain responsibilities of operators. One is to explain to participants the "fundamental inherent risks of the commercial recreational activity." Again, this is confusing. Does the operator also have to explain the non-obvious risks? Are these the same risks the customer is required to learn about? What if the operator does not explain the risks that give rise to an injury or death? Must these be explained in writing? If not, how does the operator prove it explained these risks? What if the customer disputes that the operator explained the risks? What if the customer has died? Does the fact or adequacy of the operator's explanation affect the contributory negligence of the customer in participating in the activity?

This section also requires that the operator ensure the proper training of its employees, that its equipment and facilities are in good repair, and that it acts in a reasonably safe and competent manner. This is unnecessary as these factors would be taken into account in allocating fault under the existing tort law. Again, what is the effect under the proposed legislation if the operator does not do these things? Does it affect the contributory fault of the customer?

It is instructive to compare this bill with the Alaska statutes dealing with the liability of ski operators, AS 05.45. There, a ski operator is entitled to the statutory shield of liability only if it complies with the specific, detailed, mandatory duties set out in that statute. In contrast, an operator's duties under this proposed legislation are only generally worded and the bill is silent on the consequences of the operator's failure to comply with those duties.

**Definitions.** The bill defines recreational activity as "an outdoor activity undertaken for the purpose of exercise, education, relaxation, pleasure, or sport or as a hobby." This definition is so broad and ambiguous as to invite litigation over its meaning.

What is not defined is "inherent risk of a commercial recreational activity." When will it be defined? When the customer engages the operator? During litigation? Who defines it? What if the operator tries to define it too broadly, say in a consent form signed by the customer? For example, the inherent risks of white-water rafting should not include drowning in cold water if the proximate cause of the death is the negligent maintenance or operation of the raft by the operator. Yet, if the operator defines the inherent risk of white-water rafting to include simply "drowning in cold water, the victim of a negligent operator may have no remedy.

For the above reasons, HB 146 should not become the law of Alaska.

AMENDMENT #1

OFFERED IN THE HOUSE  
TO: CSHB 146 (L&C)

BY Representative Croft

*4/19 adopted*

1. Page 3, line 9  
Insert

**Sec. 05.50.060**

“A person who operates a business that offers a commercial recreational activity and violates a requirement of this chapter is negligent and civilly liable to the extent the violation causes injury to a person or damage to property.”

## Sponsor Statement

### HB 146 - An Act relating to civil liability for commercial recreational activities

One of Alaska's major draws is outdoor adventure and recreation which carries some level of inherent risk for participants. Many businesses, the majority of which are small, offer commercial recreational activities to the public such as river rafting, guided hiking, kayaking, snowboarding and sport fishing, to name a few. HB 146 has been introduced to establish the responsibilities of commercial recreation businesses and the responsibilities of persons who elect to participate in recreational activities. It addresses specific guidelines operators and participants must follow to minimize the possibility of accidents. Commercial businesses are still responsible for meeting safety standards and providing trained and competent personnel, as outlined in Section 05.50.040.

The legislation will decrease uncertainties regarding the legal responsibilities for injuries and encourage the continued viability of responsible businesses that offer commercial recreational activities to the public. Existing legal uncertainties have resulted in high liability insurance costs which are prohibitive, especially for smaller businesses. This bill will help avoid unfair and unreasonable claims that make it increasingly difficult to provide recreational and outdoor activities that are synonymous with Alaska lifestyles and visitor expectations.

# Alaska State Legislature



## House of Representatives

HB 146

### SECTIONAL ANALYSIS

- Section 1:** This establishes the purpose of the bill, which is to decrease legal uncertainty regarding liability for injuries that result from participation in commercial recreational activities.
- It is also the purpose of this act to encourage the continued availability of businesses that offer commercial recreational activities to the public.
- Section 2:** This section amends a chapter to AS 05 which sets forth guidelines which include acceptance of inherent risks, contributory negligence, responsibilities of participants, responsibilities of operators of commercial recreational activities, interactions with other laws and lastly, the definitions for certain terms in all of the above.
- Section 3:** This section defines the act as applicable to acts or omissions that occur after the effective date of this act.
- Section 4:** This is the enabling portion of the bill.

HOUSE BILL NO. 146

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE KOTT

Introduced: 3/19/99

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil liability for commercial recreational activities; and  
2 providing for an effective date."

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

4 \* Section 1. PURPOSE. It is the purpose of this Act to establish the responsibilities of  
5 persons who operate commercial recreational activities and persons who participate in those  
6 recreational activities and to decrease uncertainty regarding the legal responsibility for injuries  
7 that result from participation in commercial recreational activities. It is also the purpose of  
8 this Act to encourage the continued availability of businesses that offer commercial  
9 recreational activities to the public.

10 \* Sec. 2. AS 05 is amended by adding a new chapter to read:

11 Chapter 50. Civil Liability for Commercial  
12 Recreational Activities.

13 Sec. 05.50.010. Acceptance of inherent risks. Participation in a commercial  
14 recreational activity constitutes acceptance of the inherent risks of the commercial

1 recreational activity that are or should be apparent to an ordinarily prudent person.

2 **Sec. 05.50.020. Contributory negligence.** (a) A person who accepts an  
3 inherent risk of a commercial recreational activity as described in AS 05.50.010 is  
4 contributorily negligent to the extent that the inherent risk causes injury, death, or  
5 property damage.

6 (b) In an action seeking to recover damages for injury or death to a person or  
7 harm to property resulting from an inherent risk of a commercial recreational activity,  
8 compensatory damages shall be reduced for contributory negligence as provided under  
9 AS 09.17.060.

10 **Sec. 05.50.030. Responsibilities of participants.** A participant in a  
11 commercial recreational activity has the responsibility to

12 (1) learn about and expressly accept the risks of the activities;

13 (2) act within the limits of the person's abilities;

14 (3) heed all warnings regarding participation in the commercial  
15 recreational activity;

16 (4) maintain control of the participant's person, the participant's  
17 children, and any equipment, devices, or animals the participant is using;

18 (5) refrain from acting in a manner that may cause or contribute to  
19 injury of the participant or another person.

20 **Sec. 05.50.040. Responsibilities of operators of commercial recreational**  
21 **activities.** A person who operates a business that offers a commercial recreational  
22 activity shall

23 (1) explain to a participant

24 (A) the fundamental inherent risks of the commercial  
25 recreational activity; and

26 (B) the skills or equipment required to participate in the  
27 commercial recreational activity that are not apparent to an inexperienced  
28 participant;

29 (2) require that employees who are responsible for assisting participants  
30 in the actual performance of a commercial recreational activity have training in basic  
31 first aid and cardiopulmonary resuscitation and explain to those employees how to use

1 emergency medical services available in the area;

2 (3) maintain recreational equipment and facilities in good repair;

3 (4) provide trained and competent personnel; and

4 (5) act in a reasonably safe and competent manner.

5 **Sec. 05.50.050. Interaction with other laws.** This chapter does not affect the  
6 immunity of an owner of unimproved land under AS 09.65.200 or of a ski area  
7 operator under AS 05.45.

8 **Sec. 05.50.100. Definitions.** In this chapter,

9 (1) "children" means persons under 18 years of age;

10 (2) "commercial recreational activity" means a recreational activity for  
11 which the participants pay compensation;

12 (3) "recreational activity" means an outdoor activity undertaken for the  
13 purpose of exercise, education, relaxation, pleasure, sport, or as a hobby.

14 \* **Sec. 3.** This Act applies to acts or omissions that occur on or after the effective date of  
15 this Act.

16 \* **Sec. 4.** This Act takes effect July 1, 1999.



# ALASKA VISITORS ASSOCIATION 1999 STATE LEGISLATIVE PRIORITIES

The Alaska Visitors Association (AVA) is a statewide, private, non-profit trade association representing the common interests of Alaska's tourism industry. Nearly 92 percent of AVA's 650-plus members are small Alaskan businesses. Collectively, they encompass all sectors of travel and tourism and employ more than 25,000 Alaskans.

The visitor industry is one of the most significant industries in Alaska, providing one in eight private-sector jobs. AVA urges the Alaska State Legislature and Administration to demonstrate their commitment to helping tourism realize its full potential as an employer and contributor to the state's economy. The following are priorities in accomplishing this goal.

## **Enact legislation that will help Alaska regain its competitive position as a visitor destination and consolidate statewide tourism organizations**

Last year the Legislature approved an industry-led plan to increase private-sector contributions and consolidate the Alaska Tourism Marketing Council (ATMC), the Alaska Visitors Association (AVA), and the marketing functions of the State Division of Tourism into a single non-profit entity. However, the bill failed to receive final concurrence before the session ended. This year, AVA again supports passage of legislation provided that *all* marketing functions are offered in a fee-for-service contract with the state, as called for in the plan. To do otherwise will leave the industry unable to raise the required funds.

State funding for tourism promotions in Alaska has declined by 60 percent over the last decade, dropping the state from 7th place in state spending in 1989 to 27th in 1998; this decrease in funding corresponds with a drop in Alaska's annual rate of visitor growth from 13 percent to less than 6 percent. By increasing private-sector contributions to \$6 million through pay-to-play programs and increased contributions from businesses, communities, and cruise companies, the plan will help return Alaska's tourism marketing to a more competitive position. A transition team with representatives from ATMC, AVA, AWRTA, and the Department of Commerce has already begun work to set up the new non-profit organization should legislation be enacted.

## **Continue to provide core funding for destination marketing**

Under the New Millennium Plan, the industry proposes increasing private-sector funds while gradually decreasing state general fund participation. While the industry recognizes that overall state funding may decrease in the face of budget shortfalls, AVA believes the state has a vested interest in maintaining core funding for tourism marketing:

- The industry's direct contributions to government (more than \$124 million in taxes and fees to state and local governments) demonstrate that funds spent on tourism promotion are a long-term investment that will come back to the state in increasing amounts.
- The state will ultimately save money through lower unemployment and decreased state social services expenditures.
- The state needs to help level the playing field as Alaska competes with other states and countries who are spending millions of general fund dollars.
- Nearly everyone benefits from tourism, although not everyone pays. From gas stations and florists to construction companies and caterers, businesses that may not contribute to tourism funding still profit from the money visitors inject into Alaska's economy.

The entire state gains by being able to compete with other destinations, creating a healthier economy with greater numbers of people employed. As businesses – even those not generally viewed as tourism-related – benefit from the dollars visitors put into Alaska's economy, the industry maintains that the state has a responsibility to assist the tourism industry with the financial burden of marketing a product which benefits all Alaskans. The New Millennium Plan calls for phasing in a decrease in state funding by 25 percent over three years, reducing the state's current general fund contribution from \$5.3 million in FY00 to \$5.0 – FY01, \$4.5 – FY02, and \$4.0 thereafter. Conversely, the private sector's contribution would increase by 300 percent, with a target of \$6 million by FY03. The base-level funding would be in the form of a fee-for-service contract with the state.

### **Enact legislation to reform recreation liability laws**

AVA continues to support passage of legislation to decrease legal uncertainties for commercial recreation businesses and to acknowledge some level of inherent risk on the part of those participating in recreational activities. One of Alaska's major visitor draws is outdoor adventure, yet high liability insurance costs are prohibitive, especially for smaller businesses offering commercial recreation opportunities. Recreational liability reform legislation should also include indemnification for private landowners who allow a public trail across their property. Alaska is the only state in America that does not provide this indemnification.

### **Implement a two-year Alaska Marine Highway schedule**

AVA supports changes that will allow the Alaska Marine Highway System to implement a two-year ferry schedule. According to the AMHS, the current legislative funding cycle prevents this. Visitor use of the ferry system is the primary revenue generator for the Alaska Marine Highway System, yet the lack of a two-year schedule significantly inhibits advance sales and bookings and prevents appreciable increases in revenues. When attracting visitors, Alaska must compete with adventure tours to places around the world in both cost and quality. Surveys show 60 percent of visitors coming to Alaska start their planning six to 12 months prior to departure. Tourism operators have to prepare business plans, make itinerary decisions, and develop and distribute brochures marketing their products in advance of client bookings. Under the current planning cycle, businesses and communities are unable to make these advance preparations.

### **Increase access to public lands**

Alaska is largely composed of public lands, making access critical to tourism activities within the state. The public has a desire to engage in a variety of outdoor activities on these lands. Although there is tremendous pressure to restrict further access to public lands for commercial use of any kind. The tourism industry provides an opportunity for people to participate in guided outdoor experiences they might not be able to enjoy on their own and in a manner that has a relatively low impact on the land. While AVA appreciates the initial efforts of the Alaska Land Managers Forum in focusing on tourism/public land issues such as permitting, the association encourages the Legislature to promote use of public lands for tourism and require public agencies to include tourism components in all government and public planning documents.

### **Address important capital budget projects**

Adequate infrastructure is crucial to all of Alaska's basic industries. The association supports the concept of a fuel tax with revenues dedicated to a highway maintenance fund and the creation of a proposed state highway system funding category. AVA has also identified these transportation projects as top priorities:

- Petersburg Road rehabilitation and extension to Tokositna and construction of a visitor facility
- Denali Highway hard surfacing
- McCarthy Road hard surfacing and wayside construction
- Alaska Marine Highway's continued Lynn Canal day boat service and fleet-wide vessel maintenance and safety improvements
- Parks Highway and Denali National Park Gateway road and pedestrian improvements
- Taylor Highway reconstruction and Top of the World Highway improvements from Tetlin Junction to Jack Wade Junction
- Implementation of the Southeast Alaska Transportation Plan
- Statewide system of rest and information stops
- Statewide system of snow machine trails utilizing snow machine registration fees for trail development
- Hatcher Pass road improvements and driving loop through Willow

### **Maintain State Park funding**

AVA supports the governor's budget for State Parks. Although parks are utilized by 30 percent of residents, they are also important attractions to Alaska's visitors.

ALASKA VISITORS ASSOCIATION  
phone: 907-561-5733 ☐ fax: 907-561-5727

# FISCAL NOTE

No: 1

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

Bill Version: CSHB 146 (L&C)  
(H) Publish Date: 4/14/99

Revision Date	Dept. Affected <u>Alaska Court System</u>
Title	BRU <u>Alaska Court System</u>
	Component <u>Trial Courts</u>
Sponsor	<u>Rep. Pete Kott</u>
Requester	House Labor and Commerce
	Component Serial No. <u>769</u>

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY99) cost: None

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

No fiscal impact anticipated.

Prepared by: <u>Doug Wooliver, Administrative Attorney</u>	Phone: <u>264-8265</u>
Agency: <u>Alaska Court System</u>	Date/Time: <u>4/8/99 3:08 PM</u>
Approved by: <u>Stephanie J. Cole, Administrative Director</u>	Date: <u>4/8/99</u>
Agency: <u>Alaska Court System</u>	

**COMMITTEE COPY**

**HB**

**147**

# Alaska State Legislature



District 32  
Representative John Coghill

## Committees:

Health, Education & Social Services

Co-Chair

State Affairs

Vice Chair

Military & Veterans Affairs

Vice Chair

During Interim: (June-Dec.)

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State Capitol, Room 416

Juneau, Alaska 99801-1182

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## SPONSOR STATEMENT

### HB-147

The Joint Senate/House Long-Term Care Task Force presented this legislation to the House HESS Committee. The Committee then assigned it to a sub-committee for review and revisions. House Bill 147, "An Act relating to vulnerable adults," is before us today.

Current law states that the Department of Administration must terminate an investigation if the suspected abused vulnerable adult requests them to do so. Additionally, an alleged perpetrator who is the guardian or surrogate may also terminate the investigation.

We have a responsibility to protect those seniors who are no longer able to protect themselves. House Bill 147 does that by allowing the Department to continue with their investigation if they have reason to believe the vulnerable adult is in need of protection.

Please join me and the members of the sub-committee by offering your support for this much needed and very important legislation. Thank you.

# FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. HB 147

Revision Date: \_\_\_\_\_  
Title: "An Act relating to vulnerable adults...."

Department Affected: Administration  
BRU: Senior Services  
Component: Protection, Community Services, Administration

Sponsor: Health, Education & Social Services  
Requestor: (H) HES

COMPONENT SERIAL NO. 2083

Expenditures/Revenues: (Thousands of Dollars)  
Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2000	FY 2001	FY2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY 99) cost: \$ \_\_\_\_\_

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

This bill will have no fiscal impact on the Department of Administration.

HB 147 increases the department's legal authority to protect vulnerable adults from harm perpetrated by guardians, attorneys-in-fact, or surrogate decision makers by making changes and additions to AS 47.24.015 (c), .019 (a), .019 (c), and .050 (b). The amended language in these sections includes the additions of the terms "guardians, attorneys-in-fact, or surrogate decision makers" as possible perpetrators of harm. Additional amended language gives the department clear authority to petition for a "change of guardian." The amended language also gives the department authority to not disclose a report of harm to "guardians, attorneys-in-fact, or surrogate decision makers" who are alleged perpetrators who are being investigated as such.

Prepared by: Dwight Becker  
Division: Senior Services

Phone: (907) 269-3674  
Date: \_\_\_\_\_

Approved by Commissioner: Robert Poe Jr.  
Agency: Department of Administration

Date: 3/26/99

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**HB**

**151**

4/23  
adopted

**CS FOR HOUSE BILL NO. 151(JUD)**

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

**TWENTY-FIRST LEGISLATURE - FIRST SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVES KOTT, Austerman**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to revocation and reinstatement of the driver's license of a  
2 person at least 14 but not yet 21 years of age."

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

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

5 (a) If a peace officer has probable cause to believe that a person who is at  
6 least 14 years of age but not yet 21 years of age has possessed or used a controlled  
7 substance in violation of AS 11.71 [,] or a municipal ordinance with substantially  
8 similar elements, [OR] possessed or consumed alcohol in violation of AS 04.16.050  
9 or a municipal ordinance with substantially similar elements and the possession or  
10 consumption occurred while occupying a motor vehicle, operated a vehicle after  
11 consuming alcohol in violation of AS 28.35.280, or refused to submit to a chemical  
12 test under AS 28.35.285, and the peace officer has cited the person or arrested the  
13 person for a violation of AS 11.71, AS 04.16.050, AS 28.35.280, or 28.35.285, or the  
14 municipal ordinance with substantially similar elements, the peace officer shall read

1 a notice and deliver a copy to the person. The notice must advise that

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

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

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

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

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

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

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

21 (1) that the officer had probable cause to believe that the person is at  
22 least 14 years of age but not yet 21 years of age and has possessed or used a  
23 controlled substance in violation of AS 11.71 [,] or a municipal ordinance with  
24 substantially similar elements, [OR] possessed or consumed alcohol in violation of  
25 AS 04.16.050 or a municipal ordinance with substantially similar elements and the  
26 possession or consumption occurred while occupying a motor vehicle, operated a  
27 vehicle after consuming alcohol in violation of AS 28.35.280, or refused to submit to  
28 a chemical test of breath under AS 28.35.285;

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

30 (A) a violation of AS 11.71, AS 04.16.050, AS 28.35.280, or  
31 28.35.285; or

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

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

4 (4) describing the circumstances surrounding the violation of the  
5 controlled substances provisions of AS 11.71, the alcoholic beverages provisions of  
6 AS 04.16.050, or the municipal ordinance with substantially similar elements when the  
7 possession or consumption of the alcohol occurred while occupying a motor  
8 vehicle, the minor operating a vehicle after consuming alcohol [UNDER] provisions  
9 of AS 28.35.280, or the minor refusing to submit to a chemical test of breath  
10 [UNDER] provisions of AS 28.35.285.

11 \* Sec. 3. AS 28.15.183(f) is amended to read:

12 (f) A revocation imposed under this section shall be consecutive to a  
13 revocation imposed under another provision of law, except that (1) a revocation  
14 imposed under this section shall be concurrent with a prior revocation imposed  
15 under this section; and (2) a revocation for an offense for which a revocation is  
16 required under AS 28.15.185 shall be concurrent with a revocation imposed under  
17 AS 28.15.185 that is based on the same incident. A [DEPARTMENT HEARING  
18 OFFICER MAY GRANT LIMITED LICENSE PRIVILEGES IN ACCORDANCE  
19 WITH THE STANDARDS SET OUT IN AS 28.15.201 TO A] person whose driver's  
20 license, permit, or privilege was revoked under this section may apply for limited  
21 license privileges under AS 28.15.201(d) or reinstatement as provided under (j)  
22 of this section.

23 \* Sec. 4. AS 28.15.183(g) is amended to read:

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

28 (1) an alcoholism education or rehabilitation treatment program  
29 approved under AS 47.37, if the revocation resulted from possession or consumption  
30 of alcohol in violation of AS 04.16.050 or a municipal ordinance with substantially  
31 similar elements and the possession or consumption occurred while occupying a

1 motor vehicle, from operating a vehicle after consuming alcohol in violation of  
2 AS 28.35.280, or from refusal to submit to a chemical test of breath in violation of  
3 AS 28.35.285; or

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

7 \* Sec. 5. AS 28.15.183 is amended by adding a new section to read:

8 (j) A person whose driver's license, permit, or privilege was revoked under  
9 this section may apply for reinstatement of the person's driver's license as provided in  
10 this subsection. A person may apply to the department for reinstatement by filing a  
11 written request for review of the revocation imposed under this section with the  
12 department. The department shall issue a new license or reissue the person's driver's  
13 license as provided under AS 28.15.211(d) if

14 (1) the application for reinstatement is filed at least two years after the  
15 person's license, permit, or privilege was revoked;

16 (2) the person complies with (g) of this section;

17 (3) the person has not violated a provision of this title or a regulation  
18 of the department since the revocation; and

19 (4) the license will allow the person to attend school, care for a  
20 dependent child, or earn a livelihood without creating a danger to the public.

21 \* Sec. 6. AS 28.15.184(g) is amended to read:

22 (g) The hearing for review of a revocation by the department under  
23 AS 28.15.183 shall be limited to the issues of whether the person was at least 14 years  
24 of age but not yet 21 years of age and whether the person possessed or used a  
25 controlled substance in violation of AS 11.71 or a municipal ordinance with  
26 substantially similar elements, or possessed or consumed alcohol in violation of  
27 AS 04.16.050 or a municipal ordinance with substantially similar elements and the  
28 possession or consumption occurred while occupying a motor vehicle, operated a  
29 vehicle after consuming alcohol in violation of AS 28.35.280, or refused to submit to  
30 a chemical test of breath in violation of AS 28.35.285.

31 \* Sec. 7. AS 28.15.219 is amended by adding a new paragraph to read:

1 (4) "possessed alcohol" means having physical possession of an  
2 alcoholic beverage.

3 \* Sec. 8. APPLICABILITY. Sections 2 - 6 of this Act apply to violations that occur on  
4 or after the effective date of this Act.

1-LS0492IV

Fordv

4/15/99

KOTT

4/15

CS FOR HOUSE BILL NO. 151(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES KOTT, Austerman

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to revocation and reinstatement of the driver's license of a  
2 person at least 14 but not yet 21 years of age; and relating to possession,  
3 control, or consumption of an alcoholic beverage by a person under 21 years of  
4 age."

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

6 \* Section 1. AS 04.15.050(b) is amended to read:

7 (b) A person who violates (a) of this section is guilty of a violation. Upon  
8 conviction in the district court, the court may impose a fine of not less than \$100,  
9 community work, or both. The court may offer the person the option of  
10 performing community work in place of a fine or a portion of the fine. The value  
11 of community work in place of a fine is as specified under AS 12.55.055(c).

12 \* Sec. 2. AS 04.16.050 is amended by adding a new subsection to read:

13 (c) In a prosecution for a violation of (a) of this section, the court may refer  
14 the matter to a youth court for recommendation of an appropriate sentence.

1 \* Sec. 3. AS 21.36.210(a) is amended to read:

2 (a) An insurer may not exercise its right to cancel a policy of personal  
3 automobile insurance except for the following reasons:

4 (1) nonpayment of premium; or

5 (2) the driver's license or motor vehicle registration of either the named  
6 insured or of an operator who resides in the same household as the named insured or  
7 who customarily operates a motor vehicle insured under the policy has been under  
8 suspension or revocation during the policy period or, if the policy is a renewal, during  
9 its policy period or the 180 days immediately preceding its effective date; [THIS  
10 PARAGRAPH DOES NOT APPLY TO REVOCATION AS DESCRIBED UNDER  
11 AS 21.89.027].

12 \* Sec. 4. AS 28.15.183(a) is amended to read:

13 (a) If a peace officer has probable cause to believe that a person who is at  
14 least 14 years of age but not yet 21 years of age has possessed or used a controlled  
15 substance in violation of AS 11.71 [,] or a municipal ordinance with substantially  
16 similar elements, or [POSSESSED OR CONSUMED ALCOHOL IN VIOLATION OF  
17 AS 04.16.050 OR A MUNICIPAL ORDINANCE WITH SUBSTANTIALLY  
18 SIMILAR ELEMENTS,] operated a vehicle after consuming alcohol in violation of  
19 AS 28.35.280, or refused to submit to a chemical test under AS 28.35.285 and the  
20 peace officer has cited the person or arrested the person for a violation of AS 11.71,  
21 [AS 04.16.050,] AS 28.35.280, or 28.35.285 or the municipal ordinance with  
22 substantially similar elements, the peace officer shall read a notice and deliver a copy  
23 to the person. The notice must advise that

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

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

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

30 (4) revocation of the person's driver's license or permit, privilege to  
31 drive, or privilege to obtain a license or permit, takes effect seven days after delivery

1 of the notice to the person unless the person, within seven days, requests an  
2 administrative review;

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

6 \* Sec. 5. AS 28.15.183(c) is amended to read:

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

12 (1) that the officer had probable cause to believe that the person is at  
13 least 14 years of age but not yet 21 years of age and has possessed or used a  
14 controlled substance in violation of AS 11.71 [,] or a municipal ordinance with  
15 substantially similar elements, or [POSSESSED OR CONSUMED ALCOHOL IN  
16 VIOLATION OF AS 04.16.050 OR A MUNICIPAL ORDINANCE WITH  
17 SUBSTANTIALLY SIMILAR ELEMENTS,] operated a vehicle after consuming  
18 alcohol in violation of AS 28.35.280, or refused to submit to a chemical test of breath  
19 under AS 28.35.285;

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

21 (A) a violation of AS 11.71, [AS 04.16.050,] AS 28.35.280, or  
22 28.35.285; or

23 (B) possession or use of a controlled substance [OR  
24 ALCOHOL] in violation of a municipal ordinance with substantially similar  
25 elements;

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

27 (4) describing the circumstances surrounding the violation of the  
28 controlled substances provisions of AS 11.71, [THE ALCOHOLIC BEVERAGES  
29 PROVISIONS OF AS 04.16.050, OR THE MUNICIPAL ORDINANCE WITH  
30 SUBSTANTIALLY SIMILAR ELEMENTS,] the minor operating a vehicle after  
31 consuming alcohol [UNDER] provisions of AS 28.35.280, or the minor refusing to

1 submit to a chemical test of breath [UNDER] provisions of AS 28.35.285.

2 \* Sec. 6. AS 28.15.183(f) is amended to read:

3 (f) A revocation imposed under this section shall be consecutive to a  
4 revocation imposed under another provision of law, except that (1) a revocation  
5 imposed under this section shall be concurrent with a prior revocation imposed  
6 under this section; and (2) a revocation for an offense for which a revocation is  
7 required under AS 28.15.185 shall be concurrent with a revocation imposed under  
8 AS 28.15.185 that is based on the same incident. A [DEPARTMENT HEARING  
9 OFFICER MAY GRANT LIMITED LICENSE PRIVILEGES IN ACCORDANCE  
10 WITH THE STANDARDS SET OUT IN AS 28.15.201 TO A] person whose driver's  
11 license, permit, or privilege was revoked under this section may apply for limited  
12 license privileges under AS 28.15.201(d) or reinstatement as provided under (i)  
13 of this section.

14 \* Sec. 7. AS 28.15.183(g) is amended to read:

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

19 (1) an alcoholism education or rehabilitation treatment program  
20 approved under AS 47.37, if the revocation resulted from [POSSESSION OR  
21 CONSUMPTION OF ALCOHOL IN VIOLATION OF AS 04.16.050 OR A  
22 MUNICIPAL ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS,  
23 FROM] operating a vehicle after consuming alcohol in violation of AS 28.35.280 [,]  
24 or from refusal to submit to a chemical test of breath in violation of AS 28.35.285; or

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

28 \* Sec. 8. AS 28.15.183 is amended by adding a new section to read:

29 (j) A person whose driver's license, permit, or privilege was revoked under  
30 this section may apply for reinstatement of the person's driver's license as provided in  
31 this subsection. A person may apply to the department for reinstatement by filing a

1 written request for review of the revocation imposed under this section with the  
2 department. The department shall issue a new license or reissue the person's driver's  
3 license as provided under AS 28.15.211(d) if

4 (1) the application for reinstatement is filed at least two years after the  
5 person's license, permit, or privilege was revoked;

6 (2) the person complies with (g) of this section;

7 (3) the person has not violated a provision of this title or a regulation  
8 of the department since the revocation; and

9 (4) the license will allow the person to attend school, care for a  
10 dependent child, or earn a livelihood without creating a danger to the public.

11 \* Sec. 9. AS 28.15.184(g) is amended to read:

12 (g) The hearing for review of a revocation by the department under  
13 AS 28.15.183 shall be limited to the issues of whether the person was at least 14 years  
14 of age but not yet 21 years of age and whether the person possessed or used a  
15 controlled substance in violation of AS 11.71 or a municipal ordinance with  
16 substantially similar elements, or [POSSESSED OR CONSUMED ALCOHOL IN  
17 VIOLATION OF AS 04.16.050 OR A MUNICIPAL ORDINANCE WITH  
18 SUBSTANTIALLY SIMILAR ELEMENTS,] operated a vehicle after consuming  
19 alcohol in violation of AS 28.35.280, or refused to submit to a chemical test of breath  
20 in violation of AS 28.35.285.

21 \* Sec. 10. AS 21.87.027 is repealed.

22 \* Sec. 11. APPLICABILITY. Sections 1, 2, and 4 - 9 of this Act apply to violations that  
23 occur on or after the effective date of this Act.

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4/12

**CS FOR HOUSE BILL NO. 151(JUD)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FIRST LEGISLATURE - FIRST SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:**  
**Referred:**

**Sponsor(s): REPRESENTATIVES KOTT, Austerman**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to revocation and reinstatement of the driver's license of a  
2 person at least 14 but not yet 21 years of age; and relating to possession of an  
3 alcoholic beverage by a person under 21 years of age."

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

5 \* **Section 1.** AS 21.89.027(a) is amended to read:

6 (a) Notwithstanding AS 21.36.210, an insurer offering insurance in this state  
7 may not (1) refuse to issue or renew motor vehicle liability insurance coverage; (2)  
8 cancel an existing policy of motor vehicle liability insurance; (3) deny a covered claim;  
9 or (4) increase the premium on a motor vehicle liability insurance policy if the refusal,  
10 cancellation, denial, or increase results only from the fact that the person's driver's  
11 license was revoked under AS 28.15.183 [OR 28.15.185] for [POSSESSION OR]  
12 consumption of alcohol in a situation where the person was not driving and was in  
13 violation of AS 04.16.050 or a municipal ordinance with substantially similar elements.

14 \* **Sec. 2.** AS 28.15.183(a) is amended to read:

1 (a) If a peace officer has probable cause to believe that a person who is at  
2 least 14 years of age but not yet 21 years of age has possessed or used a controlled  
3 substance in violation of AS 11.71 [,] or a municipal ordinance with substantially  
4 similar elements, or [POSSESSED OR] consumed alcohol in violation of AS 04.16.050  
5 or a municipal ordinance with substantially similar elements, operated a vehicle after  
6 consuming alcohol in violation of AS 28.35.280, or refused to submit to a chemical  
7 test under AS 28.35.285 and the peace officer has cited the person or arrested the  
8 person for a violation of AS 11.71, AS 04.16.050, AS 28.35.280, or 28.35.285 or the  
9 municipal ordinance with substantially similar elements, the peace officer shall read  
10 a notice and deliver a copy to the person. The notice must advise that

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

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

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

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

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

24 \* Sec. 3. AS 28.15.183(c) is amended to read:

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

30 (1) that the officer had probable cause to believe that the person is at  
31 least 14 years of age but not yet 21 years of age and has possessed or used a

1 controlled substance in violation of AS 11.71 [,] or a municipal ordinance with  
2 substantially similar elements, or [POSSESSED OR] consumed alcohol in violation of  
3 AS 04.16.050 or a municipal ordinance with substantially similar elements, operated  
4 a vehicle after consuming alcohol in violation of AS 28.35.280, or refused to submit  
5 to a chemical test of breath under AS 28.35.285;

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

7 (A) a violation of AS 11.71, AS 04.16.050, AS 28.35.280, or  
8 28.35.285; or

9 (B) possession or use of a controlled substance or consumption  
10 of alcohol in violation of a municipal ordinance with substantially similar  
11 elements;

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

13 (4) describing the circumstances surrounding the violation of the  
14 controlled substances provisions of AS 11.71, the alcoholic beverages provisions of  
15 AS 04.16.050, or the municipal ordinance with substantially similar elements, the  
16 minor operating a vehicle after consuming alcohol [UNDER] provisions of  
17 AS 28.35.280, or the minor refusing to submit to a chemical test of breath [UNDER]  
18 provisions of AS 28.35.285.

19 \* Sec. 4. AS 28.15.183(f) is amended to read:

20 (f) A revocation imposed under this section shall be consecutive to a  
21 revocation imposed under another provision of law, except that (1) a revocation  
22 imposed under this section shall be concurrent with a prior revocation imposed  
23 under this section; and (2) a revocation for an offense for which a revocation is  
24 required under AS 28.15.185 shall be concurrent with a revocation imposed under  
25 AS 28.15.185 that is based on the same incident. A [DEPARTMENT HEARING  
26 OFFICER MAY GRANT LIMITED LICENSE PRIVILEGES IN ACCORDANCE  
27 WITH THE STANDARDS SET OUT IN AS 28.15.201 TO A] person whose driver's  
28 license, permit, or privilege was revoked under this section may apply for limited  
29 license privileges under AS 28.15.201(d) or reinstatement as provided under (j)  
30 of this section.

31 \* Sec. 5. AS 28.15.183(g) is amended to read:

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

5 (1) an alcoholism education or rehabilitation treatment program  
6 approved under AS 47.37, if the revocation resulted from [POSSESSION OR]  
7 consumption of alcohol in violation of AS 04.16.050 or a municipal ordinance with  
8 substantially similar elements, from operating a vehicle after consuming alcohol in  
9 violation of AS 28.35.280, or from refusal to submit to a chemical test of breath in  
10 violation of AS 28.35.285; or

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

14 \* Sec. 6. AS 28.15.183 is amended by adding a new section to read:

15 (j) A person whose driver's license, permit, or privilege was revoked under  
16 this section may apply for reinstatement of the person's driver's license as provided in  
17 this subsection. A person may apply to the department for reinstatement by filing a  
18 written request for review of the revocation imposed under this section with the  
19 department. The department shall issue a new license or reissue the person's driver's  
20 license as provided under AS 28.15.211(d) if

21 (1) the application for reinstatement is filed at least two years after the  
22 person's license, permit, or privilege was revoked;

23 (2) the person complies with (g) of this section;

24 (3) the person has not violated a provision of this title or a regulation  
25 of the department since the revocation; and

26 (4) the license will allow the person to attend school, care for a  
27 dependent child, or earn a livelihood without creating a danger to the public.

28 \* Sec. 7. AS 28.15.184(g) is amended to read:

29 (g) The hearing for review of a revocation by the department under  
30 AS 28.15.183 shall be limited to the issues of whether the person was at least 14 years  
31 of age but not yet 21 years of age and whether the person possessed or used a

1 controlled substance in violation of AS 11.71 or a municipal ordinance with  
2 substantially similar elements, or [POSSESSED OR] consumed alcohol in violation of  
3 AS 04.16.050 or a municipal ordinance with substantially similar elements, operated  
4 a vehicle after consuming alcohol in violation of AS 28.35.280, or refused to submit  
5 to a chemical test of breath in violation of AS 28.35.285.

6 \* Sec. 8. AS 47.12.400(a) is amended to read:

7 (a) The department may use youth courts to hear, determine, and dispose of  
8 cases involving

9 (1) a minor whose alleged act that brings the minor within the  
10 jurisdiction of AS 47.12.010 - 47.12.260 constitutes a violation of

11 (A) a state law that is a misdemeanor or a violation; or

12 (B) [THAT CONSTITUTES A VIOLATION OF] a municipal  
13 ordinance that prescribes a penalty not exceeding the penalties for a class A  
14 misdemeanor under state law; or

15 (2) possession of alcoholic beverages in violation of AS 04.16.050.

16 \* Sec. 9. APPLICABILITY. (a) The amendment to AS 21.89.027(a), made by sec. 1 of  
17 this Act, applies to driver's license revocations occurring on or after the effective date of this  
18 Act. AS 21.89.027(a) as it read on the day before the effective date of this Act applies to  
19 driver's license revocations occurring before the effective date of this Act.

20 (b) Sections 2 - 7 of this Act apply to a driver's license revocation that occurs on or  
21 after the effective date of this Act.

4/9

**CS FOR HOUSE BILL NO. 151(JUD)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FIRST LEGISLATURE - FIRST SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:**  
**Referred:**

**Sponsor(s): REPRESENTATIVES KOTT, Austerman**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to revocation and reinstatement of the driver's license of a  
2 person at least 14 but not yet 21 years of age."

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

4 \* **Section 1.** AS 21.89.027(a) is amended to read:

5 (a) Notwithstanding AS 21.36.210, an insurer offering insurance in this state  
6 may not (1) refuse to issue or renew motor vehicle liability insurance coverage; (2)  
7 cancel an existing policy of motor vehicle liability insurance; (3) deny a covered claim;  
8 or (4) increase the premium on a motor vehicle liability insurance policy if the refusal,  
9 cancellation, denial, or increase results only from the fact that the person's driver's  
10 license was revoked under AS 28.15.183 [OR 28.15.185] for [POSSESSION OR]  
11 consumption of alcohol in a situation where the person was not driving and was in  
12 violation of AS 04.16.050 or a municipal ordinance with substantially similar elements.

13 \* **Sec. 2.** AS 28.15.183(a) is amended to read:

14 (a) If a peace officer has probable cause to believe that a person who is at

1 least 14 years of age but not yet 21 years of age has possessed or used a controlled  
2 substance in violation of AS 11.71 [,] or a municipal ordinance with substantially  
3 similar elements, or [POSSESSED OR] consumed alcohol in violation of AS 04.16.050  
4 or a municipal ordinance with substantially similar elements, operated a vehicle after  
5 consuming alcohol in violation of AS 28.35.280, or refused to submit to a chemical  
6 test under AS 28.35.285 and the peace officer has cited the person or arrested the  
7 person for a violation of AS 11.71, AS 04.16.050, AS 28.35.280, or 28.35.285 or the  
8 municipal ordinance with substantially similar elements, the peace officer shall read  
9 a notice and deliver a copy to the person. The notice must advise that

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

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

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

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

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

23 \* Sec. 3. AS 28.15.183(c) is amended to read:

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

29 (1) that the officer had probable cause to believe that the person is a  
30 least 14 years of age but not yet 21 years of age and has possessed or used a  
31 controlled substance in violation of AS 11.71 [,] or a municipal ordinance with

1 substantially similar elements, or [POSSESSED OR] consumed alcohol in violation of  
2 AS 04.16.050 or a municipal ordinance with substantially similar elements, operated  
3 a vehicle after consuming alcohol in violation of AS 28.35.280, or refused to submit  
4 to a chemical test of breath under AS 28.35.285;

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

6 (A) a violation of AS 11.71, AS 04.16.050, AS 28.35.280, or  
7 28.35.285; or

8 (B) possession or use of a controlled substance or consumption  
9 of alcohol in violation of a municipal ordinance with substantially similar  
10 elements;

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

12 (4) describing the circumstances surrounding the violation of the  
13 controlled substances provisions of AS 11.71, the alcoholic beverages provisions of  
14 AS 04.16.050, or the municipal ordinance with substantially similar elements, the  
15 minor operating a vehicle after consuming alcohol [UNDER] provisions of  
16 AS 28.35.280, or the minor refusing to submit to a chemical test of breath [UNDER]  
17 provisions of AS 28.35.285.

18 \* Sec. 4. AS 28.15.183(f) is amended to read:

19 (f) A revocation imposed under this section shall be consecutive to a  
20 revocation imposed under another provision of law, except that (1) a revocation  
21 imposed under this section shall be concurrent with a prior revocation imposed  
22 under this section; and (2) a revocation for an offense for which a revocation is  
23 required under AS 28.15.185 shall be concurrent with a revocation imposed under  
24 AS 28.15.185 that is based on the same incident. A [DEPARTMENT HEARING  
25 OFFICER MAY GRANT LIMITED LICENSE PRIVILEGES IN ACCORDANCE  
26 WITH THE STANDARDS SET OUT IN AS 28.15.201 TO A] person whose driver's  
27 license, permit, or privilege was revoked under this section may apply for limited  
28 license privileges under AS 28.15.201(d) or reinstatement as provided under (i)  
29 of this section.

30 \* Sec. 5. AS 28.15.183(g) is amended to read:

31 (g) Except as provided under (h) of this section, the department may not issue

1 a new license or reissue a license to a person whose driver's license, permit, or  
2 privilege to drive has been revoked under this section unless the person is enrolled in  
3 and is in compliance with, or has successfully completed,

4 (1) an alcoholism education or rehabilitation treatment program  
5 approved under AS 47.37, if the revocation resulted from [POSSESSION OR]  
6 consumption of alcohol in violation of AS 04.16.050 or a municipal ordinance with  
7 substantially similar elements, from operating a vehicle after consuming alcohol in  
8 violation of AS 28.35.280, or from refusal to submit to a chemical test of breath in  
9 violation of AS 28.35.285; or

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

13 \* Sec. 6. AS 28.15.183 is amended by adding a new section to read:

14 (j) A person whose driver's license, permit, or privilege was revoked under  
15 this section may apply for reinstatement of the person's driver's license as provided in  
16 this subsection. A person may apply to the department for reinstatement by filing a  
17 written request for review of the revocation imposed under this section with the  
18 department. The department shall issue a new license or reissue the person's driver's  
19 license as provided under AS 28.15.211(d) if

20 (1) the application for reinstatement is filed at least two years after the  
21 person's license, permit, or privilege was revoked;

22 (2) the person complies with (g) of this section;

23 (3) the person has not violated a provision of this title or a regulation  
24 of the department since the revocation; and

25 (4) the license will allow the person to attend school, care for a  
26 dependent child, or earn a livelihood without creating a danger to the public.

27 \* Sec. 7. AS 28.15.184(g) is amended to read:

28 (g) The hearing for review of a revocation by the department under  
29 AS 28.15.183 shall be limited to the issues of whether the person was at least 14 years  
30 of age but not yet 21 years of age and whether the person possessed or used a  
31 controlled substance in violation of AS 11.71 or a municipal ordinance with

1 substantially similar elements, or [POSSESSED OR] consumed alcohol in violation of  
2 AS 04.16.050 or a municipal ordinance with substantially similar elements, operated  
3 a vehicle after consuming alcohol in violation of AS 28.35.280, or refused to submit  
4 to a chemical test of breath in violation of AS 28.35.285.

5 \* Sec. 8. APPLICABILITY. (a) The amendment to AS 21.89.027(a), made by sec. 1 of  
6 this Act, applies to driver's license revocations occurring on or after the effective date of this  
7 Act. AS 21.89.027(a) as it read on the day before the effective date of this Act applies to  
8 driver's license revocations occurring before the effective date of this Act.

9 (b) Sections 2 - 7 of this Act apply to a driver's license revocation that occurs on or  
10 after the effective date of this Act.



Anchorage Youth Court

PO Box 102735

Anchorage, AK 99510

Phone: (907) 274-5986 • Fax: (907) 272-0491

HB 151

Rep. Pete Kott  
Rep. Joe Green

March 10, 1999

Anchorage Youth Court would like to thank you for your interest in diverting juvenile alcohol possession and consumption cases to youth courts. We believe that many of these cases would be best handled in a youth court, since youth courts, using a peer court system, have tailored sentencing options and can give individual attention and role modeling to each defendant.

Anchorage Youth Court received from Rep. Kott's office a working copy draft of the proposed changes. One section in the draft proposes to give youth courts the responsibility of recommending to the department of motor vehicles that a person has met certain criteria and should get his/her driver's license back. While Anchorage Youth Court thanks you for your confidence in youth courts, we believe that this responsibility is too great for youth courts to take on.

Anchorage Youth Court does not believe that its students would serve best in the DMV arena. DMV requires too many administrative standards and has too many security and liability ramifications for our members. Anchorage Youth Court believes that youth courts' abilities could best be used to take some of the load from the court system which now must prosecute a juvenile for possessing or consuming alcohol, which, under AS 04.16.50, is a violation. These cases could be diverted out of the regular system and sent to a youth court, if the youth court believed that the cases would be proper. There are currently numerous youth courts working or forming around the state.

The current dilemma that Anchorage Youth Court finds itself in, is that the District Attorney does not believe that the current youth court statute authorizes it to divert alcohol cases to youth courts. This belief is based on the language in AS 47.12.400 which gives DHSS the ability to divert cases to youth courts which are within its jurisdiction. Alcohol (plus curfew and tobacco) are specifically NOT included in DHSS's jurisdiction (see AS 47.12.030), and we are informed that DHSS does NOT want to take jurisdiction of those cases back. The oddity comes from the language in AS 47.12.400 which grants youth courts jurisdiction to hear violations, but provides no mechanism in which to receive those types of cases, since DHSS does not deal with violations. While the statute does not prohibit youth courts from accepting cases which are referred from sources other than DHSS, it also does not specifically say that youth courts can. Therefore, it would be easier to just enable youth courts to take violation/infracton cases from referral sources other than DHSS.

*"A New Generation for Justice"*

To achieve this goal the alcohol working group has proposed amending the youth court statute itself, adding a new subsection (h) to AS 47.12.400. The following language is the suggestion. It does not specifically limit the types of cases to alcohol so that tobacco and curfew might be included as well.

This section does not preclude youth courts from accepting cases which constitute a violation, under state law or city ordinance, when referred from a law enforcement agency, a prosecutor, or a court.

The referral source needs to be broad enough to include referrals from VPC's, base MP's, and magistrates. The way I have phrased it may not be the best, but that is why we have used that particular language.

If you have any questions about what I have written, or this subject, please call me. I work every week day from 2 p.m. - 6 p.m. Thank you very much for your interest.

Sincerely,  
ANCHORAGE YOUTH COURT



Linda Johnson  
Legal Advisor

**Subject: HB 151**

**Date: Thu, 8 Apr 1999 00:15:36 -0500**

**From: "Kevin Hyde" <dallram@ptialaska.net>**

**To: <Representative\_Pete\_Kott@legis.state.ak.us>**

Dear Representative

Thank you for bringing the issue of Use and Lose it up in the form of HB 151. I appreciate your effort however HB 151 does not address 2 crucial points . #1 AS 28.15.183 was found to be Unconstitutional in the appeals court, because it requires the revocation of a drivers license for a non driving offence, HB 151 does not address this critical issue. #2 The administrative revocation of a drivers license by DMV when the accused has been found not guilty in a court or if the court has dismissed the case is also Unconstitutional as this requires a person to be tried twice for the same offence. Even though there are arguments for both of these issues It is wrong and our young people are the real losers here, please work Immediately to correct this terrible injustice.

I am Currently the president of a group called G.L.A.D. ( Good Legislation Assures Democracy) we are concerned parents who formed a group to fight this unjust law. We are currently working on an Initiative petition to have this law repealed and have retained an attorney to work on the wording of the Initiative as well as work as Legal advisor. We have a already membership that will easily assure us of enough signatures to get the Initiative certified however we are still working on the wording and should be sending our Initiative to Lt Governor Ulmers office for certification by the end of this month or the first half of next.

Please Contact Me as soon as possible to discuss this matter, I can be reached AT:

Kevin B Hyde, President , G.L.A.D. ( Good Legislation Assures Democracy)  
P.O> Box 105 Soldotna Alaska, 99669  
907 262 4889 Home  
907 398 6012 Cell

To: Rep. Pete Kott  
Fax: 907-465-2819

From: Ronald Jordan  
Fax: 907-235-2924

Ref: HB 151

Rep. Kott

I agree with HB 151 on the changes in the current law. But I would like to suggest these other changes be added on to your bill.

The consumption of alcohol or drugs be proven by breath, blood or urine alcohol test. That the required testing be done within 2 to 4 hours for alcohol and within 32 hours for drugs.

An breath alcohol test to show a .02 alcohol content and drug screens to show at or above the U.S. DOT drug testing levels.

An Adminstrative hearing be held only after a court or youth court hearing.


Many cases court hearings are upholding the results of a drug or alcohol test and the adminstrative hearings ar ingnoring the court findings.

Require that schools only act after the facts of any court hearing.

In many cases I am seeing the abuse of adminstrative hearings against the youth in Alaska. Many cases the youth are not involved with the consumption alcohol or drugs. Many of these kids and young adults are wrongfully accused and violated with A admistrative hearing that should not even be at. And the current state law will not let them defend themselves in a adminstrative hearing.

Many of these kids should not be punished nor fined because they were in the area of the violation nor held as "brothers keeper" "or guilt by association".

Thank you

  
Ronald Jordan  
8170 Woodgreen  
Anchorage, AK. 99518  
344-6302 Home number 235-7576

OR COPY MY CELL PHONE NUMBER  
THANKS IS 907-360-3716  
HM 344-6302

CS FOR HOUSE BILL NO. 151(JUD)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES KOTT, Austerman

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to revocation and reinstatement of the driver's license of a  
2 person at least 14 but not yet 21 years of age."

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

4 \* Section 1. AS 21.89.027(a) is amended to read:

5 (a) Notwithstanding AS 21.36.210, an insurer offering insurance in this state  
6 may not (1) refuse to issue or renew motor vehicle liability insurance coverage; (2)  
7 cancel an existing policy of motor vehicle liability insurance; (3) deny a covered claim;  
8 or (4) increase the premium on a motor vehicle liability insurance policy if the refusal,  
9 cancellation, denial, or increase results only from the fact that the person's driver's  
10 license was revoked under AS 28.15.183 [OR 28.15.185] for [POSSESSION OR]  
11 consumption of alcohol in a situation where the person was not driving and was in  
12 violation of AS 04.16.050 or a municipal ordinance with substantially similar elements.

13 \* Sec. 2. AS 28.15.183(a) is amended to read:

14 (a) If a peace officer has probable cause to believe that a person who is at

1 least 14 years of age but not yet 21 years of age has possessed or used a controlled  
2 substance in violation of AS 11.71 [.] or a municipal ordinance with substantially  
3 similar elements, or [POSSESSED OR] consumed alcohol in violation of AS 04.16.050  
4 or a municipal ordinance with substantially similar elements, operated a vehicle after  
5 consuming alcohol in violation of AS 28.35.280, or refused to submit to a chemical  
6 test under AS 28.35.285 and the peace officer has cited the person or arrested the  
7 person for a violation of AS 11.71, AS 04.16.050, AS 28.35.280, or 28.35.285 or the  
8 municipal ordinance with substantially similar elements, the peace officer shall read  
9 a notice and deliver a copy to the person. The notice must advise that

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

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

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

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

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

23 \* Sec. 3. AS 28.15.183(c) is amended to read:

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

29 (1) that the officer had probable cause to believe that the person is at  
30 least 14 years of age but not yet 21 years of age and has possessed or used a  
31 controlled substance in violation of AS 11.71 [.] or a municipal ordinance with

1 substantially similar elements, or [POSSESSED OR] consumed alcohol in violation of  
2 AS 04.16.050 or a municipal ordinance with substantially similar elements, operated  
3 a vehicle after consuming alcohol in violation of AS 28.35.280, or refused to submit  
4 to a chemical test of breath under AS 28.35.285;

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

6 (A) a violation of AS 11.71, AS 04.16.050, AS 28.35.280, or  
7 28.35.285; or

8 (B) possession or use of a controlled substance or consumption  
9 of alcohol in violation of a municipal ordinance with substantially similar  
10 elements;

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

12 (4) describing the circumstances surrounding the violation of the  
13 controlled substances provisions of AS 11.71, the alcoholic beverages provisions of  
14 AS 04.16.050, or the municipal ordinance with substantially similar elements, the  
15 minor operating a vehicle after consuming alcohol [UNDER] provisions of  
16 AS 28.35.280, or the minor refusing to submit to a chemical test of breath [UNDER]  
17 provisions of AS 28.35.285.

18 \* Sec. 4. AS 28.15.183(f) is amended to read:

19 (f) A revocation imposed under this section shall be consecutive to a  
20 revocation imposed under another provision of law, except that a revocation imposed  
21 under this section (1) shall be concurrent with a prior revocation imposed under  
22 this section; and (2) for an offense for which a revocation is required under  
23 AS 28.15.185, shall be concurrent with a revocation imposed under AS 28.15.185 that  
24 is based on the same incident. A [DEPARTMENT HEARING OFFICER MAY  
25 GRANT LIMITED LICENSE PRIVILEGES IN ACCORDANCE WITH THE  
26 STANDARDS SET OUT IN AS 28.15.201 TO A] person whose driver's license,  
27 permit, or privilege was revoked under this section may apply for reinstatement as  
28 provided under (i) of this section.

29 \* Sec. 5. AS 28.15.183(g) is amended to read:

30 (g) Except as provided under (h) of this section, the department may not issue  
31 a new license or reissue a license to a person whose driver's license, permit, or

1 privilege to drive has been revoked under this section unless the person is enrolled in  
2 and is in compliance with, or has successfully completed,

3 (1) an alcoholism education or rehabilitation treatment program  
4 approved under AS 47.37, if the revocation resulted from [POSSESSION OR]  
5 consumption of alcohol in violation of AS 04.16.050 or a municipal ordinance with  
6 substantially similar elements, from operating a vehicle after consuming alcohol in  
7 violation of AS 28.35.280, or from refusal to submit to a chemical test of breath in  
8 violation of AS 28.35.285; or

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

12 \* Sec. 6. AS 28.15.183 is amended by adding a new section to read:

13 (j) A person whose driver's license, permit, or privilege was revoked under  
14 this section and whose remaining period of driver's license revocation is more than one  
15 year may apply for reinstatement of the person's driver's license as provided in this  
16 subsection. A person may apply to the department for reinstatement by filing a written  
17 request for review of the revocation imposed under this section with the department.  
18 The department shall issue a new license or reissue the person's driver's license as  
19 provided under AS 28.15.211(d) if

20 (1) the person's license, permit, or privilege has been revoked for at  
21 least two years;

22 (2) the person complies with (g) of this section;

23 (3) the person has not violated a provision of this title or a regulation  
24 of the department since the revocation; and

25 (4) the license will allow the person to attend school, care for a  
26 dependent child, or earn a livelihood without creating a danger to the public.

27 \* Sec. 7. AS 28.15.184(g) is amended to read:

28 (g) The hearing for review of a revocation by the department under  
29 AS 28.15.183 shall be limited to the issues of whether the person was at least 14 years  
30 of age but not yet 21 years of age and whether the person possessed or used a  
31 controlled substance in violation of AS 11.71 or a municipal ordinance with

1 substantially similar elements, or [POSSESSED OR] consumed alcohol in violation of  
2 AS 04.16.050 or a municipal ordinance with substantially similar elements, operated  
3 a vehicle after consuming alcohol in violation of AS 28.35.280, or refused to submit  
4 to a chemical test of breath in violation of AS 28.35.285.

5 \* Sec. 8. APPLICABILITY. (a) The amendment to AS 21.89.027(a), made by sec. 1 of  
6 this Act, applies to driver's license revocations occurring on or after the effective date of this  
7 Act. AS 21.89.027(a) as it read on the day before the effective date of this Act applies to  
8 driver's license revocations occurring before the effective date of this Act.

9 (b) Sections 2 - 7 of this Act apply to a driver's license revocation that occurs on or  
10 after the effective date of this Act.

# FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. HB 151

Revision Date: \_\_\_\_\_  
 Title: An Act relating to revocation and reinstatement of the driver's license of a person at least 14 but not yet 21.....  
 Sponsor: Representative Kott  
 Requestor: H (JUD)

Department Affected: Administration  
 BRU: Motor Vehicles  
 Component: \_\_\_\_\_  
 COMPONENT SERIAL NO. 2348

Expenditures/Revenues: (Thousands of Dollars)  
 Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2000	FY 2001	FY2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	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						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 99) cost: \$ \_\_\_\_\_

**POSITIONS:**

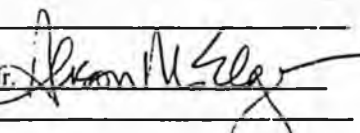
FULL-TIME						
PART-TIME						
TEMPORARY						

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

This bill repeals the provisions for a revocation for possession of alcohol by a person under 21 and provides a method for terminating revocations early for certain offenses. The repeal of the revocation for possession of alcohol will reduce the workload, but the need to review requests for early terminations will increase the workload. These two actions will offset each other and there will be no change to funding.

Prepared by: Charles R. Hosack  
 Division: Motor Vehicles

Phone: (907) 269-5559  
 Date: \_\_\_\_\_

Approved by Commissioner: Robert Poe Jr.   
 Agency: Department of Administration

Date: 4/6/99

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# FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. HB 151

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TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY 99) cost: \$ \_\_\_\_\_

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

This bill repeals the provisions for a revocation for possession of alcohol by a person under 21 and provides a method for terminating revocations early for certain offenses. The repeal of the revocation for possession of alcohol will reduce the workload, but the need to review requests for early terminations will increase the workload. These two actions will offset each other and there will be no change to funding.

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## HOUSE BILL NO. 99

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/19/99

Referred: Judiciary

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to sexual assault and the definitions of 'sexual contact,'  
 2 'sexual penetration,' and 'legal guardian' in AS 11."

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

4 \* Section 1. AS 11.41.425(a) is amended to read:

5 (a) An offender commits the crime of sexual assault in the third degree if

6 (1) the offender engages in sexual contact with a person who the  
 7 offender knows is

8 (A) [(1)] mentally incapable;

9 (B) [(2)] incapacitated; or

10 (C) [(3)] unaware that a sexual act is being committed;

11 (2) the offender, while employed in a state correctional facility or  
 12 other placement designated by the commissioner of the Department of Corrections  
 13 for the custody and care of prisoners, engages in sexual penetration with a person  
 14 who the offender knows is committed to the custody of the Department of

1 Corrections to serve a term of imprisonment or period of temporary commitment;  
 2 or

3 (3) the offender engages in sexual penetration with a person 18 or  
 4 19 years of age who the offender knows is committed to the custody of the  
 5 Department of Health and Social Services under AS 47.10 or AS 47.12 and the  
 6 offender is the legal guardian of the person.

7 \* Sec. 2. AS 11.41 is amended by adding a new section to read:

8 **Sec. 11.41.427. Sexual assault in the fourth degree.** (a) An offender  
 9 commits the crime of sexual assault in the fourth degree if

10 (1) while employed in a state correctional facility or other placement  
 11 designated by the commissioner of the Department of Corrections for the custody and  
 12 care of prisoners, the offender engages in sexual contact with a person who the  
 13 offender knows is committed to the custody of the Department of Corrections to serve  
 14 a term of imprisonment or period of temporary commitment; or

15 (2) the offender engages in sexual contact with a person 18 or 19 years  
 16 of age who the offender knows is committed to the custody of the Department of  
 17 Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal  
 18 guardian of the person.

19 (b) Sexual assault in the fourth degree is a class A misdemeanor.

20 \* Sec. 3. AS 11.41.470(3) is amended to read:

21 (3) "legal guardian" means a person who is under a duty to exercise  
 22 general supervision over a minor or other person committed to the custody of the  
 23 Department of Health and Social Services under AS 47.10 or AS 47.12 as a result  
 24 of a court order, statute, or regulation, and includes Department of Health and Social  
 25 Services employees, foster parents, and staff members and other employees of group  
 26 homes or youth [CORRECTIONAL] facilities where the minor or other person [A  
 27 CHILD] is placed as a result of a court order or the action of the Department of  
 28 Health and Social Services [DIVISION OF FAMILY AND YOUTH SERVICES],  
 29 and police officers, [AND] probation officers, and social workers when those persons  
 30 [OFFICERS] are exercising custodial control over a minor or other person.

31 \* Sec. 4. AS 11.81.900(b)(55) is amended to read: