

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10266 HOUSE JUDICIARY

cashing out. The association is "deeply concerned about the emergence of companies that purchase payments intended for disabled persons at a drastic discount," says its executive director, Thomas Countee.

While opinions are divided about the validity of factoring transactions, both sides agree that regulation of the secondary market is necessary. As in Illinois, Connecticut and Kentucky have passed laws requiring a judge's approval of advanced-funding deals, as well as fuller disclosure of costs. Faced with mounting criticism, Wentworth this week will announce its pledge to submit every request for purchase of a settlement to a court for approval. Other states are expected to address the issue this year, and in Congress, Rep. Clay Shaw, a Florida Republican, has reintroduced a measure that would tax factoring transactions.

The factoring companies respond to all these efforts by also calling for better disclosure from the primary market—the insurance companies, attorneys, and brokers that set up the structured settlements in the first place. Factoring companies argue that structured settlements are not always as generous as they are represented to be. "We challenge insurance companies and their brokers to take the same pledge," said Michael Goodman, Wentworth's executive vice president.

Whatever the outcome of the debate, consumers thinking about selling their future payments are well advised to take a hard look at what they are getting into.

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FEB 19 2001

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Agreed to by National Structured
Settlements Trade Association and National
Association of Settlement Purchasers – 9/11/2000

Proposed
**MODEL STATE STRUCTURED SETTLEMENT
PROTECTION ACT**

SECTION 1. TITLE. This Act shall be known and referred to as the "Structured Settlement Protection Act."

SECTION 2. DEFINITIONS. For purposes of this Act--

"annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement;

"dependents" include a payee's spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony;

"discounted present value" means the present value of future payments determined by discounting such payments to the present using the most recently published Applicable Federal Rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service;

"gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from such consideration;

"independent professional advice" means advice of an attorney, certified public accountant, actuary or other licensed professional adviser;

(f) "interested parties" means, with respect to any structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under such structured settlement;

(g) "net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under Section 3(e) of this Act;

(h) "payee" means an individual who is receiving tax free payments under a structured settlement and proposes to make a transfer of payment rights thereunder;

(i) "periodic payments" includes both recurring payments and scheduled future lump sum payments;

(j) "qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of section 130 of the United States

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Internal Revenue Code, United States Code Title 26, as amended from time to time;

(k) “responsible administrative authority” means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement;

(l) “settled claim” means the original tort claim or workers’ compensation claim resolved by a structured settlement;

(m) “structured settlement” means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers’ compensation claim;

(n) “structured settlement agreement” means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement;

(o) “structured settlement obligor” means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement;

(p) “structured settlement payment rights” means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, where –

(i) the payee is domiciled in, or the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in, this State; or

(ii) the structured settlement agreement was approved by a court or responsible administrative authority in this State; or

(iii) the structured settlement agreement is expressly governed by the laws of this State;

(q) “terms of the structured settlement” include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement and any order or other approval of any court or responsible administrative authority or other government authority that authorized or approved such structured settlement;

(r) “transfer” means any sale, assignment, pledge, hypothecation or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration; provided that the term “transfer” does not include the

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creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to redirect the structured settlement payments to such insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce such blanket security interest against the structured settlement payment rights;

(s) "transfer agreement" means the agreement providing for a transfer of structured settlement payment rights.

(t) "transfer expenses" means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including, without limitation, court filing fees, attorneys fees, escrow fees, lien recordation fees, judgment and lien search fees, finders' fees, commissions, and other payments to a broker or other intermediary; "transfer expenses" do not include preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer;

(u) "transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer;

SECTION 3. REQUIRED DISCLOSURES TO PAYEE. Not less than three (3) days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than 14 points, setting forth —

the amounts and due dates of the structured settlement payments to be transferred;
the aggregate amount of such payments;
the discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities", and the amount of the Applicable Federal Rate used in calculating such discounted present value;
the gross advance amount;
an itemized listing of all applicable transfer expenses, other than attorneys' fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any such fees and disbursements;
the net advance amount;
the amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee; and
a statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee.

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SECTION 4. APPROVAL OF TRANSFERS OF STRUCTURED SETTLEMENT PAYMENT RIGHTS.

No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order or order of a responsible administrative authority based on express findings by such court or responsible administrative authority that —

- (i) the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;
- (ii) the payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived such advice in writing; and
- (iii) the transfer does not contravene any applicable statute or the order of any court or other government authority;

SECTION 5. EFFECTS OF TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS. Following a transfer of structured settlement payment rights under this Act:

The structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments;

The transferee shall be liable to the structured settlement obligor and the annuity issuer:

- (i) if the transfer contravenes the terms of the structured settlement, for any taxes incurred by such parties as a consequence of the transfer; and
- (ii) for any other liabilities or costs, including reasonable costs and attorneys' fees, arising from compliance by such parties with the order of the court or responsible administrative authority or arising as a consequence of the transferee's failure to comply with this Act;

Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two (or more) transferees or assignees; and

Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this Act.

SECTION 6. PROCEDURE FOR APPROVAL OF TRANSFERS.

An application under this Act for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought in the [county] in which the payee resides, in the [county] in which the structured settlement obligor or the annuity issuer maintains its principal

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place of business, or in any court or before any responsible administrative authority which approved the structured settlement agreement.

Not less than twenty (20) days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under Section 4 of this Act, the transferee shall file with the court or responsible administrative authority and serve on all interested parties a notice of the proposed transfer and the application for its authorization, including with such notice:

- (i) a copy of the transferee's application;
- (ii) a copy of the transfer agreement;
- (iii) a copy of the disclosure statement required under Section 3 of this Act;
- (iv) a listing of each of the payee's dependents, together with each dependent's age;
- (v) notification that any interested party is entitled to support, oppose or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and
- (vi) notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed (which shall be not less than [fifteen (15)] days after service of the transferee's notice) in order to be considered by the court or responsible administrative authority.

SECTION 7. GENERAL PROVISIONS; CONSTRUCTION.

The provisions of this Act may not be waived by any payee.

Any transfer agreement entered into on or after the effective date of this Act by a payee who resides in this state shall provide that disputes under such transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this State. No such transfer agreement shall authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

No transfer of structured settlement payment rights shall extend to any payments that are lifecontingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for (i) periodically confirming the payee's survival, and (ii) giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

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No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of such transfer to satisfy the conditions of this Act

Nothing contained in this Act shall be construed to authorize any transfer of structured settlement payment rights in contravention of any law or to imply that any transfer under a transfer agreement entered into prior to the effective date of this Act is valid or invalid.

Compliance with the requirements set forth in Section 3 of this Act and fulfillment of the conditions set forth in Section 4 of this Act shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, non-compliance with such requirements or failure to fulfill such conditions.

EFFECTIVE DATE. This Act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after the [thirtieth (30th)] day after the date of enactment of this Act; provided, however, that nothing contained herein shall imply that any transfer under a transfer agreement reached prior to such date is either effective or ineffective.

NATIONAL STRUCTURED SETTLEMENT
TRADE ASSOCIATION

FEB 19 2001

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- URGENT
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Notes/Comments:

Thank you for the opportunity to speak today. Enclosed is the most recent version of the Model Act which has been approved by the NSSTA as well as the National Association of Settlement Purchasers on 9/28/00.

THE
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DOCUMENT(S)
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**TESTIMONY OF
RANDY DYER
ON BEHALF OF
THE NATIONAL STRUCTURED SETTLEMENTS TRADE ASSOCIATION**

REGARDING

HB 97

BEFORE

**THE HOUSE JUDICIARY COMMITTEE
ALASKA HOUSE OF REPRESENTATIVES**

FEBRUARY 19, 2001

My name is Randy Dyer. I am Executive Vice President of the National Structured Settlement Trade Association, headquartered in Washington, DC. Members of NSSTA work with the parties to a physical injury claim to help them put together a structured settlement that will resolve the case and provide long-term financial security for the injured victim and the victim's family.

The National Structured Settlements Trade Association (NSSTA) is an association composed of more than 500 members who negotiate and fund structured settlements of tort and worker's compensation claims involving persons with serious, long-term physical injuries.

Structured settlements have been widely used over the past two decades in Alaska and across the country to compensate seriously-injured, often profoundly-disabled, victims of torts and workplace accidents.

A lump sum recovery used to be the standard in personal injury cases. The injured victim then faced the daunting challenge of managing a large lump sum to cover the substantial ongoing medical and living expense for decades, even for a lifetime. All too often, the

lump sum swiftly eroded away. When the money was gone, the victim often was left still disabled and unable to work. In such cases, responsibility to care for this disabled person fell to the State Medicaid system and public assistance system.

Structured settlements provide a better approach. A voluntary agreement is reached between the parties generally through their counsel under which the injured victim receives damages in the form of a stream of payments tailored to the future medical expenses and basic living needs of the victim and his or her family from a well-capitalized, financially-secure institution. This process may be overseen by a court, particularly in minor's cases. Often this payment stream is for the rest of the victim's life to make sure that future medical expenses and the family's basic living needs will be met and that the victim will not outlive his or her compensation.

In essence, structured settlements constitute a private sector funding alternative to taxpayer-financed assistance programs to meet the ongoing, long-term medical and basic living needs of seriously-injured victims and their families. Thus, structured settlements enable

seriously-injured people to live with dignity and financial independence, free of reliance on government assistance.

Structured settlements have the strong support of the plaintiff's bar, the defense bar, judges, and mediators. They have worked very well over the past two decades in providing long-term financial security to injured people.

Over the past three years or so, there has emerged a new type of transaction, known as the "factoring" of structured settlement payments. In this transaction, settlement purchase companies cash out part or all of a structured settlement recipient's future payments in exchange for a lump sum now.

We in the structured settlement industry have been very concerned that the growth of this unregulated practice of structured settlement factoring threatens the very important public policies that underlie structured settlements, raises very important consumer protection concerns, and finally raises serious tax risks for the other parties to the original structured settlement.

These concerns over the unregulated practice of structured settlement factoring have been shared by State legislators across the

country, the U.S. Treasury Department, State Attorneys General, Members of Congress on a bipartisan basis, consumer groups, disabled victims groups, and bar groups.

State legislatures in some 18 States already have passed legislation to protect structured settlements and regulate structured settlement factoring. In addition, the National Conference of Insurance Legislators (NCOIL), which is a group of State legislators from around the country with responsibility for insurance regulation in their home States, recently adopted model State structured settlement protection legislation.

I believe that the structured settlement industry and the factoring or settlement purchase industry both have come to recognize the strong need for oversight and regulation of structured settlement factoring transactions. Mr. Chairman and Members of the Committee, I am pleased to tell you that after three years of battling in State legislatures and in Congress, the structured settlement industry and the settlement purchase industry have finally hammered out an agreed package of Federal and State model legislation to protect structured settlements and to regulate structured settlement factoring.

I have attached to my written statement copies of this agreed Federal and State model legislation along with a joint letter of support for the legislation by the structured settlement industry and the settlement purchase industry.

This agreed State model legislation is very similar to the structured settlement protection legislation already enacted in 16 States and the model State legislation adopted by the National Conference of Insurance Legislators.

At the center of the agreed approach is a State court review process. The agreed State model legislation provides for State court review of all proposed factoring transactions to determine whether the proposed transaction is appropriate under the circumstances. In order for the factoring transaction to proceed, the reviewing court must find that the transaction is in the best interest of the structured settlement payee, taking into account the welfare and support of the payee's dependents, and that the transaction does not contravene other applicable statutes and court orders.

It is expected that structured settlement payee in Alaska would go to a local court which would review the proposed factoring

transaction under the Alaska structured settlement protection statute. Based on experience with the court review process in other States with structured settlement protection statutes already on the books, it is not expected that this process would be burdensome for the payee.

The agreed State model legislation provides important additional consumer protections for the structured settlement payee. The settlement purchase company must disclose the key terms of the transaction to the payee in advance. This disclosure includes the present value of the payments to be transferred as calculated under the Applicable Federal Rate used by the Internal Revenue Service for valuing annuities. The payee must be told to seek independent professional advice (and has sought or waived such advice). The payee is given a right to cancel the transaction within three days. No confessed or consent judgments may be used under the factoring agreement. Finally, the legislation confirms that it does not authorize factoring transactions that contravene other laws.

The agreed State model legislation also provides protections for the other parties to the original structured settlement in the event of

a subsequent factoring transaction, including indemnification by the settlement purchase company for any Federal tax cost.

In conclusion, the agreed State model legislation has been hammered out by the two sides after months of work. We in the structured settlement industry believe that the agreed State legislation ensures that the structured settlement serves its intended purpose of providing long-term financial security for injured people and their families, while enabling the structured settlement payee to get access to future payments if the court determines that such access is in the best interest of the payee and the payee's family.

Therefore, Mr. Chairman and Members of the Committee, the National Structured Settlements Trade Association, on behalf of the structured settlement industry, strong urges that the Alaska legislature enact at the earliest possible time in next year's session the agreed State model structured settlement protection legislation.

Mr. Chairman, thank you for giving me and the National Structured Settlements Trade Association this opportunity to present our views on this critically important issue.

Agreed to by National Structured
Settlements Trade Association and National
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Proposed
**MODEL STATE STRUCTURED SETTLEMENT
PROTECTION ACT**

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SECTION 2. DEFINITIONS. For purposes of this Act--

(a) "annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement;

(b) "dependents" include a payee's spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony;

(c) "discounted present value" means the present value of future payments determined by discounting such payments to the present using the most recently published Applicable Federal Rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service;

(d) "gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from such consideration;

(e) "independent professional advice" means advice of an attorney, certified public accountant, actuary or other licensed professional adviser;

(f) "interested parties" means, with respect to any structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under such structured settlement;

(g) "net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under Section 3(e) of this Act;

(h) "payee" means an individual who is receiving tax free payments under a structured settlement and proposes to make a transfer of payment rights thereunder;

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(i) "periodic payments" includes both recurring payments and scheduled future lump sum payments;

(j) "qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of section 130 of the United States Internal Revenue Code, United States Code Title 26, as amended from time to time;

(k) "responsible administrative authority" means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement;

(l) "settled claim" means the original tort claim or workers' compensation claim resolved by a structured settlement;

(m) "structured settlement" means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers' compensation claim;

(n) "structured settlement agreement" means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement;

(o) "structured settlement obligor" means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement;

(p) "structured settlement payment rights" means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, where --

(i) the payee is domiciled in, or the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in, this State; or

(ii) the structured settlement agreement was approved by a court or responsible administrative authority in this State; or

(iii) the structured settlement agreement is expressly governed by the laws of this State;

(q) "terms of the structured settlement" include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement and any order or other approval of any court or responsible administrative authority or other government authority that authorized or approved such structured settlement;

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(r) "transfer" means any sale, assignment, pledge, hypothecation or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration; provided that the term "transfer" does not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to redirect the structured settlement payments to such insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce such blanket security interest against the structured settlement payment rights;

(s) "transfer agreement" means the agreement providing for a transfer of structured settlement payment rights.

(t) "transfer expenses" means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including, without limitation, court filing fees, attorneys fees, escrow fees, lien recordation fees, judgment and lien search fees, finders' fees, commissions, and other payments to a broker or other intermediary; "transfer expenses" do not include preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer;

(u) "transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer;

SECTION 3. REQUIRED DISCLOSURES TO PAYEE. Not less than three (3) days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than 14 points, setting forth —

(a) the amounts and due dates of the structured settlement payments to be transferred;

(b) the aggregate amount of such payments;

(c) the discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities", and the amount of the Applicable Federal Rate used in calculating such discounted present value;

(d) the gross advance amount;

(e) an itemized listing of all applicable transfer expenses, other than attorneys' fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any such fees and disbursements;

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- (f) the net advance amount;
- (g) the amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee; and
- (h) a statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee.

SECTION 4. APPROVAL OF TRANSFERS OF STRUCTURED SETTLEMENT PAYMENT RIGHTS.

(a) No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order or order of a responsible administrative authority based on express findings by such court or responsible administrative authority that —

- (i) the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;
- (ii) the payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived such advice in writing; and
- (iii) the transfer does not contravene any applicable statute or the order of any court or other government authority;

SECTION 5. EFFECTS OF TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS. Following a transfer of structured settlement payment rights under this Act:

- (a) The structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments;
- (b) The transferee shall be liable to the structured settlement obligor and the annuity issuer:
 - (i) if the transfer contravenes the terms of the structured settlement, for any taxes incurred by such parties as a consequence of the transfer; and
 - (ii) for any other liabilities or costs, including reasonable costs and attorneys' fees, arising from compliance by such parties with the order

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of the court or responsible administrative authority or arising as a consequence of the transferee's failure to comply with this Act;

(c) Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two (or more) transferees or assignees; and

(d) Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this Act.

SECTION 6. PROCEDURE FOR APPROVAL OF TRANSFERS.

(a) An application under this Act for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought in the [county] in which the payee resides, in the [county] in which the structured settlement obligor or the annuity issuer maintains its principal place of business, or in any court or before any responsible administrative authority which approved the structured settlement agreement.

(b) Not less than twenty (20) days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under Section 4 of this Act, the transferee shall file with the court or responsible administrative authority and serve on all interested parties a notice of the proposed transfer and the application for its authorization, including with such notice:

(i) a copy of the transferee's application;

(ii) a copy of the transfer agreement;

(iii) a copy of the disclosure statement required under Section 3 of this Act;

(iv) a listing of each of the payee's dependents, together with each dependent's age;

(v) notification that any interested party is entitled to support, oppose or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and

(vi) notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed (which shall be not less than [fifteen (15)] days after service of the transferee's notice) in order to be considered by the court or responsible administrative authority.

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SECTION 7. GENERAL PROVISIONS; CONSTRUCTION.

(a) The provisions of this Act may not be waived by any payee.

(b) Any transfer agreement entered into on or after the effective date of this Act by a payee who resides in this state shall provide that disputes under such transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this State. No such transfer agreement shall authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

(c) No transfer of structured settlement payment rights shall extend to any payments that are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for (i) periodically confirming the payee's survival, and (ii) giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

(d) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of such transfer to satisfy the conditions of this Act.

(e) Nothing contained in this Act shall be construed to authorize any transfer of structured settlement payment rights in contravention of any law or to imply that any transfer under a transfer agreement entered into prior to the effective date of this Act is valid or invalid.

(f) Compliance with the requirements set forth in Section 3 of this Act and fulfillment of the conditions set forth in Section 4 of this Act shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, non-compliance with such requirements or failure to fulfill such conditions.

EFFECTIVE DATE. This Act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after the [thirtieth (30th)] day after the date of enactment of this Act; provided, however, that nothing contained herein shall imply that any transfer under a transfer agreement reached prior to such date is either effective or ineffective.

Version Agreed to by National Structured Settlements Trade Association
and National Association of Settlement Purchasers - 9/18/2000

106th CONGRESS

1st Session

H.R. _____

IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES

_____) introduced the following bill; which was read twice
and referred to the Committee on _____

A BILL

To amend the Internal Revenue Code of 1986 to impose an excise tax on persons who
acquire structured settlement payments in factoring transactions, and for
other purposes

*Be it enacted by the Senate and House of Representatives of the United
States of America in Congress assembled,*

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) **SHORT TITLE.**—This Act may be cited as “The Structured
Settlement Protection Act”.

(b) **AMENDMENT OF 1986 CODE.**—Except as otherwise expressly
provided, whenever in this Act an amendment or repeal is expressed in terms of an
amendment to, or repeal of, a section or other provision, the reference shall be
considered to be made to a section or other provision of the Internal Revenue Code of
1986.

- 2 -

SECTION 2. IMPOSITION OF EXCISE TAX ON PERSONS WHO ACQUIRE STRUCTURED SETTLEMENT PAYMENTS IN FACTORING TRANSACTIONS.

Subtitle E is amended by adding at the end thereof the following new chapter:

"CHAPTER 55 – STRUCTURED SETTLEMENT FACTORING TRANSACTIONS

"Sec. 5891. Structured Settlement Factoring Transactions.

"Sec. 5891. STRUCTURED SETTLEMENT FACTORING TRANSACTIONS.

"(a) IMPOSITION OF TAX.—There is hereby imposed on any person who acquires directly or indirectly structured settlement payment rights in a structured settlement factoring transaction a tax equal to 40 percent of the factoring discount as determined under subsection (c)(4) with respect to such factoring transaction.

"(b) EXCEPTION FOR COURT-APPROVED TRANSACTIONS.—

"(1) IN GENERAL.—The tax under subsection (a) shall not apply in the case of a structured settlement factoring transaction in which the transfer of structured settlement payment rights is approved in advance in a final court (or where applicable, responsible administrative authority) order, judgment, or decree—

"(A) finding that such transfer—

"(i) does not contravene any statute or the order of any court or responsible administrative authority, and

"(ii) is in the best interest of the payee, taking into account the welfare and support of the payee's dependents, and

- 3 -

"(B) issued—

"(i) under--

"(I) a statute enacted by the State (or a possession of the United States or the District of Columbia) in which the structured settlement payee is domiciled, by a court of such State, or

"(II) in the absence of such a statute in the payee's State of domicile, a statute enacted by the State (or possession or District of Columbia) in which a party to the structured settlement (including an assignee under a qualified assignment under section 130) or the company issuing the funding asset for the structured settlement is domiciled or has its principal place of business, by a court of such State or by a court of the State in which the structured settlement payee resides, or

"(ii) where applicable by reason of exclusive jurisdiction over the underlying action or proceeding that was resolved by means of the structured settlement, by the responsible administrative authority.

"(2) COURT ORDER DISPOSITIVE.—A final court (or responsible administrative authority) order, judgment, or decree described in paragraph (1) shall be treated as dispositive for purposes of the exception to the excise tax provided in this subsection.

"(c) **DEFINITIONS.**—For purposes of this section—

"(1) **STRUCTURED SETTLEMENT.**—The term 'structured settlement' means an arrangement—

"(A) established by—

"(i) suit or agreement for the periodic payment of damages excludable from the gross income of the recipient under section 104(a)(2), or

"(ii) agreement for the periodic payment of compensation under any workers' compensation act that is excludable from the gross income of the recipient under section 104(a)(1), and

"(B) where the periodic payments are—

"(i) of the character described in subparagraphs (A) and (B) of section 130(c)(2), and

"(ii) payable by a person who is a party to the suit or agreement or to the workers' compensation claim or by a person who has assumed the liability for such periodic payments under a qualified assignment in accordance with section 130.

"(2) **STRUCTURED SETTLEMENT PAYMENT RIGHTS.**—The term 'structured settlement payment rights' means rights to receive payments under a structured settlement.

"(3) **STRUCTURED SETTLEMENT FACTORING TRANSACTION.**—The term 'structured settlement factoring transaction' means a transfer of structured settlement payment rights (including portions of structured settlement payments) made for consideration by means of sale, assignment, pledge, or other form of encumbrance or alienation for consideration; provided that such term shall not include (i) the creation or perfection of a security interest in

structured settlement payment rights under a blanket security agreement entered into with an insured depository institution in the absence of any action to redirect the structured settlement payments to such institution (or agent or successor thereof) or otherwise to enforce such blanket security interest as against the structured settlement payment rights, or (ii) a subsequent transfer of structured settlement payment rights acquired in a structured settlement factoring transaction.

"(4) **FACTORING DISCOUNT.**--The term 'factoring discount' means an amount equal to the excess of (i) the aggregate undiscounted amount of structured settlement payments being acquired in the structured settlement factoring transaction, over (ii) the total amount actually paid by the acquirer to the person from whom such structured settlement payments are acquired.

"(5) **RESPONSIBLE ADMINISTRATIVE AUTHORITY.**--The term 'responsible administrative authority' means the administrative authority which had exclusive jurisdiction over the underlying action or proceeding that was resolved by means of the structured settlement.

"(d) **COORDINATION WITH OTHER PROVISIONS.** --

"(1) **IN GENERAL.**--In any case where the applicable requirements of sections 72, 104(a)(1) and (2), 130, and 461(h) were satisfied at the time the structured settlement was entered into, the subsequent occurrence of a structured settlement factoring transaction shall not affect the application of the provisions of such sections to the parties to the structured settlement (including an assignee under a qualified assignment under section 130) in any taxable year.

"(2) **NO WITHHOLDING OF TAX.**--The provisions of section 3405 regarding withholding of tax shall not apply to the person making

the payments in the event of a structured settlement factoring transaction.

(c) **CLERICAL AMENDMENTS.**—The table of chapters for subtitle E of such Code is amended by adding at the end the following new item:

"Chapter 55. Structured settlement factoring transactions."

SEC. 3. EFFECTIVE DATE.

(a) **IN GENERAL.**—The amendments made by sections 1 and 2 of this Act (other than the provisions of section 5891(d) of the Internal Revenue Code of 1986 as adopted by this Act) shall be effective with respect to structured settlement factoring transactions (as defined in section 5891(c) of the 1986 Code as adopted by this Act) entered into on or after the thirtieth day following the date of enactment of this Act.

(b) **TRANSITION RULE.**—In the case of a structured settlement factoring transaction entered into during the period beginning on the thirtieth day following the date of enactment of this Act and ending on July 1, 2002, no tax shall be imposed under section 5891(a) of the 1986 Code where—

(1) the structured settlement payee is domiciled in a State (or possession of the United States or the District of Columbia) which has not enacted a statute providing that the structured settlement factoring transaction is ineffective unless the transaction has been approved by a court (or where applicable, responsible administrative authority) order, judgment, or decree finding that such transaction (a) does not contravene any statute or the order of any court (or responsible administrative authority) and (b) is in the best interest of the structured settlement payee or is appropriate in light of a hardship faced by the payee, and

(2) the person acquiring the structured settlement payment rights discloses to the structured settlement payee in advance of the structured settlement factoring transaction the amounts and due dates

- 7 -

of the payments to be transferred, the aggregate amount to be transferred, the consideration to be received by the structured settlement payee for the transferred payments, the discounted present value of the transferred payments including the present value as determined in the manner described in section 7520 of the 1986 Code, and the expenses required under the terms of the structured settlement factoring transaction to be paid by the structured settlement payee or deducted from the proceeds of such transaction.

STRUCTURED FINANCIAL ASSOCIATES



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AL TAMAGNI, SR.
Settlement Specialist

WHAT IS A STRUCTURED SETTLEMENT?



National Structured Settlements Trade Association

WHAT IS A STRUCTURED SETTLEMENT?

Historically, money paid because of a personal injury law suit has been paid in the form of a lump sum at the time of settlement. This kind of payment, especially in very large catastrophic injury cases, places the claimant (or the family) in the position of managing a large sum of money which is intended to provide for a lifetime of medical and income needs. Most people are not experienced in handling large sums of money. As a result, the money often is spent quickly, leaving little or nothing to cover future needs of a seriously injured person. In order to create a more stable financial basis for the claimant, structured settlements were developed.

By definition, a STRUCTURED SETTLEMENT is the payment of money for a personal injury claim where at least part of the SETTLEMENT calls for future payment. The payments may be scheduled for any length of time — even as long as the claimant's lifetime, and may consist of installment payments and/or future lump sums. Payments can be in fixed amounts or they can vary. The schedule is STRUCTURED to meet the financial needs of the claimant.

These arrangements may be voluntary, as in a pre-trial settlement, or they may be required by law or a court order, as in a settlement involving a minor. The defendant may agree to make future payments or it may purchase an annuity contract from a life insurance company to fund the payments. Annuity contracts have been the preferred way of funding because of their pricing and flexibility for settlement design. An alternative, however, is a trust fund which invests only in United States treasury obligations. These trusts add the safety of investment in obligations issued by the U.S. Government.

There are some important benefits to the claimant in structuring the settlement:

1. The claimant receives money when it is needed. Instead of receiving a lump sum which has to be invested at risk, and managed for a fee, the money is paid out over time, better correlated with the actual need for funds.
2. The claimant does not have to pay income tax on the payments received, which includes an "internal buildup" of funds over time. A lump sum received also would be tax-free, but most later income from investing that money would be taxable.

Here is an example of how a structure might look when compared to a lump sum settlement. (Assume that the claimant is a man, age 45)

	TOTAL GUARANTEED	TOTAL EXPECTED
Single payment at settlement	\$200,000	? (Depends on how the money is invested, and the taxes on its earnings)
<u>or, for about the same cost</u>		
\$1300 per month for life with 20 years guaranteed	\$312,000	\$536,000 (Assuming a normal life expectancy)

In this illustration, money is received for as long as the claimant lives, with the first 20 years of payments made whether or not the claimant is alive. The total expected payments are tax-free.

In almost every bodily injury situation, a structured settlement should be considered. A more detailed description of these arrangements follows.

WHEN TO CONSIDER STRUCTURES:

- * For cases involving the following situations:
 1. Temporarily or permanently disabled plaintiffs/claimants;
 2. Plaintiffs/claimants with limited investment or financial management skills;
 3. Guardianship cases, including minors or incompetents;
 4. Wrongful death cases where the surviving spouse and/or children need monthly or annual income;
 5. Severe injury, especially with shortened life expectancy, or mental incompetency.

- * For plaintiffs with specific needs such as:
 1. Significant ongoing medical expenses;
 2. Rehabilitation or permanent care facility expenses;
 3. Deferred payments for college funds, retirement, down payment on a home, or mortgage payment;
 4. Replacement of monthly/annual income or supplemental income.

- * Other types of cases to consider (these cannot be assigned, see qualified assignments):
 1. Workers Compensation claims;
 2. Personal injuries other than physical injury.

ADVANTAGES TO THE CLAIMANT/PLAINTIFF:

1. Income — tax-free guaranteed payments;*
2. Avoids risk of mismanagement — insurance industry statistics show that about 25 to 30% of all accident victims completely dissipate their judgments or settlements within two months of recovery, and 90% of them spend it all within five years;**
3. Avoids expense and worry with regard to financial loss — provides a secure, low-risk source of money;
4. Convenience of regular payments designed to meet the individual plaintiff's needs;
5. Claimant can receive more money over time than a lump sum settlement;
6. Competitive with other rates of return — see Internal Rate of Return illustration which shows before tax rate-of-return required to match the benefits offered by a structure;
7. Helps avert risk, expense and delay of going to trial;
8. Transfers the risk of outliving one's income to a life insurance company;
9. Benefits may be made higher if injury decreased life expectancy.

ADVANTAGES TO THE DEFENDANT/INSURER:

1. Earlier settlements — including assistance by structured settlement brokers with negotiations and settlement documents;
2. Reduced litigation costs;
3. May assign future liability;
4. Avoids risk and expense of a jury trial;
5. Can make low policy limits more attractive by making payments over time.

* Check with your own tax advisor for confirmation

** The Rutter Group, Ltd. from Flahavan, Rea, Kelly & Tencer, "California Practice Guide: Personal Injury" (TRG 1992) Ch. 4

“QUALIFIED ASSIGNMENTS”

The defendant (or his/her liability insurance company) may transfer the responsibility to make the future payments to a third party by means of a “qualified assignment.” The assignment is referred to as “qualified” because, if done properly, it qualifies for special tax treatment. The assignee then takes care of making the payments. This process relieves the defendant of further responsibility for the payments and also transfers the administration and record keeping responsibilities. The assignment company specializes in these activities, and may offer additional financial security.

OTHER USES OF PERIODIC PAYMENTS:

Although the concept of periodic payments has usually been applied to personal injury claims, there are other situations where payout obligations can be made on a periodic basis.

Property Loss Claims:

Periodic payments may be an excellent means of satisfying the claims of home owner groups, or others who are seeking reimbursement for construction defect claims. Instead of receiving a single large sum, payments are made over time in order to more closely match the time when repair costs are incurred.

ENVIRONMENTAL CLAIMS AND POLLUTION LIABILITY:

This area offers the greatest potential for the use of periodic payments outside of personal injury claims. From the superfund designated sites to the thousand of potential municipal and local sites, there is a need for clean-up funding.

When determination has been made that liability for pollution exists, and the terms for clean-up have been established and quantified, the future costs can be funded with an annuity or similar funding agreement offered by a life insurance company. By this means, the potentially responsible party can pay for its future obligations on a more economically efficient basis. It can also turn over to the life insurance company the administrative responsibilities of making the payments.

NOTE: The tax treatment of these alternative uses of structures is not necessarily the same as for the personal injury cases. A qualified tax expert should be consulted before any investment decisions or annuity purchases are made.

RELEVANT TAX RULES:

Structured settlements are governed by the Federal Internal Revenue Code (IRC) and offer tax advantages to the claimant and the assignee.

Section 104(a)(2) of the IRC states that compensation received on account of personal injury or sickness is exempt from gross income whether received in a lump sum or in periodic payments. The reason most often cited as justification for this exemption is that the claimants are merely being compensated monetarily for what they have lost physically or otherwise, and the payments are not a gain for the claimant. If the claimant invests these payments, the interest earned will be taxed. A structure, however, provides more money over time, and all payments received are tax-free.

Revenue Ruling 79-220 interprets Section 104(a)(2) and sets out the criteria that must be met in order to qualify for tax-exempt status under the law. The basic requirement is that the claimants can have no control over the investment that funds the periodic payments. They have only the right to receive future payments.

The Periodic Payment Settlement Act of 1982 gave statutory certainty to various tax rulings concerning personal injury damages paid by periodic payments. It also created Section 130 of the IRC.

Section 130 allows the party accepting the assignment of responsibility for future periodic payments to exclude the amount received for the assignment from gross income to the extent of the amount used to purchase specified funding vehicles. The process is called a "qualified assignment," and the funding vehicle is called a "qualified funding asset."

Section 130 is very specific regarding the requirements necessary to establish a qualified assignment:

1. The assignee assumes the liability from a party to the suit or agreement;
2. The payments are fixed and determinable;
3. The payments cannot be accelerated, deferred, increased or decreased, or otherwise changed after the agreement is reached;
4. The assignee's obligation is no greater than the obligation of the assignor;
5. The periodic payments are excludable from the recipient's gross income under Section 104(a)(2);
6. The injury must be a physical sickness or injury;
7. A qualified funding asset (an annuity or U.S. Government obligation) must be purchased.

SECURED CREDITOR:

Under a structured settlement, the IRC allows the claimant to have no more than a general creditor's interest in the assets of the defendant, to the extent of the future payments. If the liability to make the payments is assigned to a third party, however, the IRC permits the claimant to have a greater interest, i.e., a secured interest. This interest is secured by the annuity or U.S. government obligation purchased by the assignment company to fund its future obligations to the claimant. Should the assignment company fail to pay, the claimant, as a secured creditor, can become the owner of the assets which fund his/her payments. This ensures that the assignee's other creditors cannot use the assets to satisfy their claims against the company. Note that this secured interest applies to the assignment company, not to the life insurance company that issued the annuity contract.

Although the Internal Revenue Service has not ruled on the tax status of payments once an annuitant assumes ownership of the annuity, it is possible that a portion of subsequent amounts received would be subject to ordinary income taxation.

CONCLUSION:

A structured settlement is a proven, effective solution for the needs of personal injury claimants. Claims professionals, plaintiff attorneys, judges and defense attorneys advocate the use of structured settlements because they effectively meet a claimant's needs for security, as well as provide more benefits over time than a single, lump sum settlement. In addition, the periodic payment concept can be applied to a variety of other situations.

There are many other features of structured settlements that are worthy of consideration. If you would like additional information about structured settlements, please contact the Structured Settlement Consultant who provided you with this brochure, or the National Structured Settlement Trade Association at (202) 797-5108.

INTERNAL RATE OF RETURN COMPARISONS

The chart below demonstrates how much interest the self investor would have to earn to equal the payout of a non-taxable structured settlement. The tax brackets refer to the recipient's federal income tax level. The figures do not include state income taxes, which would make the differences even greater.

STRUCTURE RETURN RATE	15% TAX BRACKET	28% TAX BRACKET	31% TAX BRACKET	36% TAX BRACKET
5.00%	5.88%	6.94%	7.25%	7.81%
6.00%	7.06%	8.33%	8.69%	9.38%
7.00%	8.23%	9.72%	10.14%	10.94%
8.00%	9.41%	11.11%	11.59%	12.50%
9.00%	10.60%	12.52%	13.12%	14.06%

ALASKA STATE HOUSE OF REPRESENTATIVES

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State Capitol
Room 416

REPRESENTATIVE JOHN COGHILL

Date: February 22, 2001
To: Representative John Coghill
From: Rynnieva Moss, Legislative Aide
Re: Structured Settlements

A handwritten signature in cursive script, appearing to read "Rynnieva Moss".

I have reviewed HB 97 and have discussed your concerns with Jerry Luckhaupt. He has agreed to attend the sub-committee meeting.

There are several ways to address this but probably the most logical would be for the competent adult participants to be provided the information required in Sec. 09.68.200(a)(3) fifteen days prior to the scheduled signing of the buy out by the factoring company. This would be the informed consent provision. There would be a fifteen day cooling off period for the payee to reviewed all the particulars of the sell out and to get legal advice. If the payee determines that he wants to enter the agreement after that point, there would be no need to get a court approval. Mr. Luckhaupt said he pointed out in committee yesterday, the court would be hard pressed telling an able minded person he or she could not enter into such an agreement.

The second part of the issue is, would the agreement be in the best interest of a child recipient of the structured settlement or a recipient who is a vulnerable, incapacitated, or mentally handicapped adult? While a guardian has a fiduciary responsibility in this type of case, an appearance before a judge on the matter prior to selling the structured settlement would prevent the need for civil action when all the assets are gone and there is no way to recoup them.

It should be mentioned that this particular piece of legislation is not the model legislation provided by NSSTA. Jerry Luckhaupt composed this bill largely with language from a California statute and some language from Minnesota law.

Structured settlements are appealing to insurance companies in settling a case because while they can pay the settlement in annual payments, they can write off the entire settlement in the first year. A \$1,000,000 settlement may be structured for twenty years at \$50,000, the company can write off the \$1,000,000 the first year, invest \$950,000 and draw interest on the investment.

There are several income tax considerations on the part of the payee that come with a structured settlement. Congress passed legislation to make income from a structured settlement tax free, but when a factor company purchases structured settlements, the payee must pay taxes on the buyout total. In addition the factor company is levied a tax penalty for purchasing the structured settlement. This penalty is passed on to the payee.

HB

102

22-LS0347J
Luckhaupt
2/20/01

CS FOR HOUSE BILL NO. 102(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE KOTT

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the theft of propelled vehicles."**

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

3 *** Section 1.** AS 11.46.360(a) is amended to read:

4 (a) A person commits the crime of vehicle theft in the first degree if, having
5 no right to do so or any reasonable ground to believe the person has such a right, the
6 person drives, tows away, or takes

7 (1) the car, truck, motorcycle, motor home, bus, aircraft, or watercraft
8 of another;

9 (2) the propelled vehicle of another and

10 (A) the vehicle or any other property of another is damaged in
11 a total amount of \$¹⁰⁰⁰500 or more;

12 (B) [, OR] the owner incurs ^{reasonable} expenses as a result of
13 the loss of use of the vehicle, in a total amount of \$¹⁰⁰⁰500 or more; or

14 (C) the owner is deprived of the use of the vehicle for seven
15 days or more;

1 (3) the propelled vehicle of another and the vehicle is marked as a
2 police or emergency vehicle; or

3 (4) the propelled vehicle of another and, within the preceding seven
4 years, the person was convicted under

5 (A) this section or AS 11.46.365;

6 (B) former AS 11.46.482(a)(4) or (5);

7 (C) former AS 11.46.484(a)(2);

8 (D) AS 11.46.120 - 11.46.140 of an offense involving the theft
9 of a propelled vehicle; or

10 (E) a law or ordinance of this or another jurisdiction with
11 elements substantially similar to those of an offense described in (A) - (D) of
12 this paragraph.

13 * Sec. 2. AS 11.46.360(b)(2) is amended to read:

14 (2) "all-terrain vehicle" means a [THREE-WHEELED] propelled
15 vehicle that has three or more wheels or two or more tracks or treads, is less than
16 75 inches in width, has [AND HAVING] a dry weight of 800 pounds or less, is
17 equipped with low pressure tires or rubberized or metal tracks or treads, and is
18 designed primarily for travel over unimproved terrain;

19 * Sec. 3. AS 11.46.360(b)(4) is amended to read:

20 (4) "watercraft" means a propelled vehicle used or capable of being
21 used as a means of transportation, for recreational or commercial purposes, on water;
22 in this paragraph, "watercraft" does not include a shallow draft propelled
23 vehicle not more than 12 feet in length with an inboard motor powering a water
24 jet pump as its primary means of propulsion that is designed to carry not more
25 than two persons who sit, stand, or kneel on the vehicle.

Alaska State Legislature

House of Representatives

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SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801

Sponsor Statement

HB 102

This legislation focuses on the crime of vehicle theft and equal penalties associated with the taking of propelled vehicles without the owners' permission.

All terrain vehicles and snow machines are used in many parts of Alaska as the sole means of transportation for some Alaskans, and therefore, are more than merely recreational vehicles for those owners. Equal protection under the law demands that the theft of such vehicles be accorded the same treatment as provided for the principle transportation vehicles of other Alaskans.

HB 102 provides a new element in the commission of taking the propelled vehicle of another when the owner is deprived of the use of the vehicle for a specific period of time and incurs expenses as a result of the loss of use of the vehicle. It amends the definition for "all terrain vehicles", as well as, the definition for "watercraft".

I urge your support.

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
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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 5, 2001

SUBJECT: Sectional Summary of HB 102

TO: Representative Pete Kott
Attn: Roger

FROM: Gerald P. Luckhaupt 
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill amends AS 11.46.360(a) by adding a new element for the commission of this crime. Currently a person commits auto theft in the first degree if a person takes

- the car, truck, motorcycle, motor home, bus, aircraft, or watercraft of another;
- a police or emergency vehicle;
- the propelled vehicle of another when the offender has a previous conviction for theft of an auto or joyriding; or
- the propelled vehicle of another and the vehicle or other property is damaged in the amount of \$500 or more or the owner of the vehicle incurs expenses as a result of loss of use of the vehicle in the amount of \$500 or more.

This section adds that a person commits by taking the propelled vehicle of another and the owner is deprived of the use of the vehicle for seven days.

Sections 2 of the bill amends the definition of "all-terrain vehicle" for the purpose of this section. Even though "all-terrain vehicle" is not explicitly found in this section the term is a part of this section through the definition of "propelled vehicle" found in AS 11.81.900(b)(49).

Section 3 of the bill amends the definition of "watercraft" to exclude "personal water craft" such as jet skis, ski-doods, and the like from that definition. This will place these propelled vehicles on the same footing as snow machines and all-terrain vehicles with regard to the vehicle theft laws. In that the theft of a personal water craft, snow machine, or all-terrain vehicle is only a felony if there is \$500 damage to the vehicle or other property, the vehicle is a police or emergency vehicle, the owner incurs \$500 or more in expenses for loss of use, or the owner is deprived of the use of the vehicle for seven days or more.

GPL:glc
01-098.glc

distinguished. — "Vehicle theft" as defined in subsection (a) of this section is not the same thing as "theft" of a motor vehicle as defined in AS 11.46.100. The former is the crime of taking a vehicle without permission, but not necessarily with an intent to permanently deprive the owner or permanently appropriate the vehicle for oneself, while theft, on the other hand, requires proof of one or both of these culpable mental states - the intent to "appropriate" as defined in AS 11.46.990(2), or an intent to "deprive" as defined in AS 11.46.990(8). *Allridge v. State*, 969 P.2d 644 (Alaska Ct. App. 1998).

Knowledge of value of damage not necessary. — A person who intentionally damages the property of another is strictly liable for the value of the property damaged and is not required to know that the damage exceeds \$500 in value in order to be liable under this section. (Decided under former provisions of AS 11.46.482).

Cost of repair. — Because damage can be determined by cost of repair and, in turn, cost of repair can be established without determining the value of the damaged property, AS 11.46.980(a), requiring use of market value, does not apply when the prosecution relies on evidence of cost of repair to prove the amount of damage in a criminal mischief case. *Willett v. State*, 826 P.2d 1142 (Alaska Ct. App. 1992) (Decided under former provisions of AS 11.46.482).

For case construing former AS 11.20.525, making stealing, removing or damaging parts of an aircraft a crime, see *Catlett v. State*, 585 P.2d 553 (Alaska 1978) (Decided under former provisions of AS 11.46.482).

Lesser included offense of robbery. — Under the cognate approach, joyriding was a lesser included offense of robbery, since an element of robbery is the

Sec. 11.46.365. Vehicle theft in the second degree. (a) A person commits the crime of vehicle theft in the second degree if, having no right to do so or a reasonable ground to believe the person has such a right,

(1) the person drives, tows away, or takes the propelled vehicle of another, other than a vehicle described in AS 11.46.360(a)(1); or

(2) having custody of a propelled vehicle under a written agreement with the owner of the vehicle that includes an agreement to return the vehicle to the owner at a specified time, the person knowingly retains or withholds possession of the vehicle without the consent of the owner for so long a period beyond the time specified as to render the retention or possession of the vehicle an unreasonable deviation from the agreement:

(b) Vehicle theft in the second degree is a class A misdemeanor. (§ 1 ch 71 SLA 1996)

NOTES TO DECISIONS

Quoted in *Eppenger v. State*, 966 P.2d 995 (Alaska Ct. App. 1998).

Article 4. Arson, Criminal Mischief, and Related Offenses.

- Section 400. Arson in the first degree
- 410. Arson in the second degree
- 430. Criminally negligent burning
- 450. Failure to control or report a dangerous fire
- 460. Disregard of a highway obstruction
- 462. Unlawful possession of official traffic control device

unauthorized taking or attempted taking of property; and joyriding is the unauthorized taking of a vehicle. *Minano v. State*, 690 P.2d 28 (Alaska Ct. App. 1984), rev'd on other grounds, 710 P.2d 1013 (Alaska 1985) (Decided under former provisions of AS 11.46.484(a)(2)).

Felony after previous conviction of joyriding. — To convict a defendant of a felony under this section the state must prove as an element of the offense that the defendant has a previous conviction for joy riding. *Harlow v. State*, 820 P.2d 307 (Alaska Ct. App. 1991) (Decided under former provisions of AS 11.46.484(a)(2)).

Joyrider characterized as worst offender. — The district court judge was not clearly mistaken in characterizing a defendant as a worst offender, and in imposing the maximum sentence of one year for third-degree criminal mischief (joyriding). Despite the limited period of time in which defendant committed the offenses, the defendant's record, coupled with the especially serious nature of the particular joyriding offense, i.e., that it was committed in order to perpetrate a felony, justified the sentence imposed. *Plant v. State*, 724 P.2d 536 (Alaska Ct. App. 1986) (Decided under former provisions of AS 11.46.484(a)(2)).

Defense of necessity in prosecution for reckless destruction of personal property and joyriding. — See *Nelson v. State*, 597 P.2d 977 (Alaska 1979) (Decided under former provisions of AS 11.46.484(a)(2)).

Applied in *Blackmon v. State*, 653 P.2d 669 (Alaska Ct. App. 1982).

Quoted in *Frankson v. State*, 645 P.2d 225 (Alaska Ct. App. 1982).

Stated in *Shoemaker v. State*, 716 P.2d 391 (Alaska Ct. App. 1986).

- Section 480. Criminal mischief in the first degree
- 482. Criminal mischief in the second degree
- 484. Criminal mischief in the third degree
- 486. Criminal mischief in the fourth degree
- 487. Forfeiture of property upon conviction
- 490. Definitions

Collateral references. — Related Offenses, § 1 et seq. Criminal Mischief, § 1 et seq.

6A C.J.S., Arson, § 1 et seq. Criminal Mischief, § 1 et seq.

Sufficiency of evidence on action for spread of fire punished, 24 ALR2d 241.

Vacancy or nonoccupancy character as "dwelling" as 1456.

Sec. 11.46.400. Arson in the first degree if the defendant causes an explosion or physical injury. For purposes of fire and police services, regardless of rank.

(b) Arson in the first degree. (1983)

Legislative history report of intent relating to ch. 39, § 1, Journal, pp. 106 and 171; for

For cases construing former statute, see *Salinas v. United States*, 9th Cir. 1960; *Rank v. State*, 456 P.2d 466 (Alaska 1969); *W. 1384* (Alaska 1980); *Mossb* (Alaska Ct. App. 1987).

Double jeopardy. — The attempted murder, possession of a firearm, and multiple offenses do not violate double jeopardy. *State*, 797 P.2d 677 (Alaska Ct. App. 1990).

Where defendant committed offenses placed other persons in danger of injury, double jeopardy did not apply for both arson in the first

Sec. 11.46.410. Arson in the second degree if the defendant causes an explosion or physical injury.

(b) In a prosecution for arson in the second degree:

(1) that no person has a substantial interest in the building or property; or

(2) that the sole purpose of the defendant's conduct is to cause injury to a person or property for a lawful purpose.

(c) Arson in the second degree is a class A misdemeanor.

when the premises or
to the public and when

the public after being

violation of a provision
enacted under former AS

to commit a crime on the
land, which is neither
owners, is privileged to

person by the owner of

conspicuous manner

authority the property
to grant permission

property that is known

a cardinal point of the

against, such as "no
restrictions. (§ 4 ch 166
§ 4 ch 64 SLA 1996)

effective July 1, 1996, in
"or filed" and "or issued
and section references.

prohibited activities on the
of, make the person's contin-
ing remaining." *Turney v.*
State Ct. App. 1996).

closed to public. — Under
must be closed to the public
entry or remaining to occur.
890 (Alaska Ct. App. 1985).
does not include entry into a
ing which is otherwise open
ite, 699 P.2d 890 (Alaska Ct.

between public and private
al trespass statute does not
ic and private property; the
r the "person in charge" has
erson from entering or re-
hus making it "unlawful" for
ey v. State, 936 P.2d 533

te, 724 P.2d 536 (Alaska Ct.
tate, 780 P.2d 1044 (Alaska

Article 3. Vehicle Theft.

Section

360. Vehicle theft in the first degree

365. Vehicle theft in the second degree

Effective dates. — Section 13, ch. 71, SLA 1996,
makes this article effective June 20, 1996, in ac-
cording with AS 01.10.070(c).

Sec. 11.46.360. Vehicle theft in the first degree. (a) A person commits the crime of vehicle theft in the first degree if, having no right to do so or any reasonable ground to believe the person has such a right, the person drives, tows away, or takes

- (1) the car, truck, motorcycle, motor home, bus, aircraft, or watercraft of another;
- (2) the propelled vehicle of another and the vehicle or any other property of another is damaged, or the owner incurs reasonable expenses as a result of the loss of use of the vehicle, in a total amount of \$500 or more;
- (3) the propelled vehicle of another and the vehicle is marked as a police or emergency vehicle; or
- (4) the propelled vehicle of another and, within the preceding seven years, the person was convicted under

- (A) this section or AS 11.46.365;
- (B) former AS 11.46.482(a)(4) or (5);
- (C) former AS 11.46.484(a)(2);
- (D) AS 11.46.120 — 11.46.140 of an offense involving the theft of a propelled vehicle;

or
(E) a law or ordinance of this or another jurisdiction with elements substantially similar to those of an offense described in (A) — (D) of this paragraph.

(b) In this section,

- (1) "aircraft" has the meaning given in AS 02.15.260;
- (2) "all-terrain vehicle" means a three-wheeled propelled vehicle less than 75 inches in width and having a dry weight of 800 pounds or less, equipped with low pressure tires, and designed primarily for travel over unimproved terrain;
- (3) "motorcycle" means a vehicle having a seat or saddle for the use of the rider, designed to travel on not more than three wheels in contact with the ground, and having an engine with more than 50 cubic centimeters of displacement; "motorcycle" does not include a tractor or an "all-terrain vehicle";
- (4) "watercraft" means a propelled vehicle used or capable of being used as a means of transportation, for recreational or commercial purposes, on water.

(c) Vehicle theft in the first degree is a class C felony. (§ 1 ch 71 SLA 1996)

Editor's notes. — Section 12, ch. 71, SLA 1996
provides that (a)(1) of this section "applies to an act
committed on or after June 20, 1996."

NOTES TO DECISIONS

Annotator's notes. — The cases below were de-
cided under former provisions of AS 11.46.482, AS
11.46.484, and AS 11.46.486.

For case construing former AS 11.20.520, mak-
ing malicious destruction of property a crime, see
Hensel v. State, 604 P.2d 222 (Alaska 1979) (Decided
under former provisions of AS 11.46.482).

Oral permission of vehicle owner. — A defen-

dant cannot be convicted of vehicle theft in the first
degree if he obtains the vehicle with oral permission of
the owner; although the wording of the statute would
seem to support such a conviction, the legislative
history of the statute indicates that the legislature did
not intend this result. *Eppenger v. State*, 966 P.2d 995
(Alaska Ct. App. 1998).

"Vehicle theft" and "theft" of motor vehicle

(27) "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;

(28) "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;

(29) "identification document" means a paper, instrument, or other article used to establish the identity of a person; "identification document" includes a social security card, driver's license, non-driver's identification, birth certificate, passport, employee identification, or hunting or fishing license;

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

(31) "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;

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

(33) "law" includes statutes and regulations;

(34) "leased" includes "rented";

(35) "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;

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

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

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

(39) "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;

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

(41) "omission" means a failure to perform an act for which a duty of performance is imposed by law;

(42) "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;

(43) "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;

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

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

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

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

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

(49) "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;

(50) "property" means an article, substance, or thing of value, including money, tangible and intangible personal property including data or information stored in a

ALASKA STATE LEGISLATURE

HOUSE JUDICIARY COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Scott Ogan, Vice-Chairman
Representative John Coghill
Representative Jeannette James
Representative Kevin Meyer
Representative Ethan Berkowitz
Representative Albert Kookesh



State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4990
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Heather M. Nobrega
Counsel to Committee

MEMORANDUM

To: All Judiciary Committee Members

From: Heather Nobrega, Aide *JN*
House Judiciary Committee

Date: February 19, 2001

Re: Fiscal notes

The following fiscal notes have been requested, but have not yet been received:

HB 102: Theft of Propelled Vehicles
Department of Law
Department of Public Safety
Department of Administration-DMV & Public Defender's

HB 97: Purchase of Structured Settlements
Department of Law

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 102
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title: An Act relating to the theft of propelled vehicles. BRU: 271
 Component: All
 Sponsor: Representative Kott
 Requester: House Judiciary Committee Component Number: 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	***	***	***	**	***	***

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

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

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill adds a provision making it a C felony (vehicle theft in the 1st degree) if the owner is deprived of the use of the vehicle for seven days or more. It also adds snow machines and four wheelers to the Vehicle Theft 1 statute. It is unclear how many new felony offenders will result from this legislation. The Department of Corrections does think that this will have an impact, but we are submitting an indeterminate fiscal note because we don't know the figures.

Prepared by: Candace Browe Phone 456-4652
 Division: Commissioner's Office Date/Time 02/16/01 5:30 p.m.
 Approved by: Margaret Pugh, Commissioner Date 02/16/01 5:30 p.m.
 Agency: Dept. of Corrections

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

BILL NO. HB 102

Revision Date/Time (Note if correction) _____ Dept. Affected _____
 Title Theft of Propelled Vehicles BRU Alaska Court System
 Component Trial Courts
 Sponsor Rep. Pete Kott
 Requester Rep. Pete Kott Component No. 768

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of HB 102.

Prepared by: Douglas Wooliver *Douglas Wooliver* Phone 463-4750
 Division Alaska Court System Date/Time 2/06/01 2:30 p.m.
 Approved by: Stephanie Cole *Stephanie Cole* Date 2/6/01
 Agency Alaska Court System

For distribution information, call the Governor's Legislative Office

HEB

110

22-LS0453F
Ford
3/15/01

CS FOR HOUSE BILL NO. 110(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES COGHILL, Dyson

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to driver's licenses and instructional permits; and providing for an
2 effective date."

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

4 * **Section 1.** AS 28.15.061(b) is amended to read:

5 (b) An application under (a) of this section must

6 (1) contain the applicant's full name, [SOCIAL SECURITY
7 NUMBER,] date and place of birth, sex, and mailing and residence addresses;

8 (2) state whether the applicant has been previously licensed as a driver
9 and, if so, when and by what jurisdiction;

10 (3) state whether any previous driver's license issued to the applicant
11 has ever been suspended or revoked or whether an application for a driver's license has
12 ever been refused and, if so, the date of and reason for the suspension, revocation, or
13 refusal; [AND]

14 (4) contain the applicant's social security number; the requirement

1 of this paragraph only applies to an applicant who has been issued a social
2 security number; and

3 (5) contain other information that the department may reasonably
4 require to determine the applicant's identity, competency, and eligibility.

5 * Sec. 2. AS 28.15.111(a) is amended to read:

6 (a) Upon successful completion of the application and all required
7 examinations, and upon payment of the required fee, the department shall issue to
8 every qualified applicant a driver's license indicating the type or general class of
9 vehicles that the licensee may drive. The license must display (1) a distinguishing
10 number assigned to the license; (2) the licensee's full name, address, date of birth,
11 brief physical description, and color photograph; (3) either a facsimile of the signature
12 of the licensee or a space upon which the licensee must write the licensee's usual
13 signature with pen and ink; (4) a holographic symbol intended to prevent illegal
14 alteration or duplication; and (5) for a qualified applicant who is under age 21, the
15 words "UNDER 21". A license may not display the licensee's social security
16 number and is not valid until signed by the licensee. If facilities are not available for
17 the taking of the photograph required under this section, the department shall endorse
18 on the license, the words "valid without photograph."

19 * Sec. 3. AS 28.33.100(b) is amended to read:

20 (b) In addition to the information required under AS 28.15.111, a commercial
21 driver's license shall include information determined by the United States Secretary of
22 Transportation to be appropriate to identify the licensee [, INCLUDING THE
23 LICENSEE'S SOCIAL SECURITY NUMBER].

24 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 APPLICABILITY. Section 2 of this Act applies to a driver's license that is issued or
27 renewed on or after the effective date of this Act.

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

ALASKA STATE LEGISLATURE

House of Representatives

Committee Assignments:

Judiciary Committee, Chairman
Labor & Commerce Committee, Member
Legislative Council, Member
Special Committees:
Economic Development, Member



Interim:

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State Capitol
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FAX: (907) 465-2040

REPRESENTATIVE NORMAN ROKEBERG

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

FAX COVER SHEET

DATE: 3/14/01

TO: Mike Ford

FAX: 2029 VOICE: 2450

RE: Requested CS for HB 110 - 22-LS0453/C

MESSAGE: We would like a CS for HB 110 (JUB) with

the following amendments:

#1. see attached

#2. change line #1, pg 2 to read "only applies to a person who has been issued a social security number; and"

TOTAL NUMBER OF PAGES SENT, INCLUDING COVER SHEET: ~~3~~ 2

#3. line 15, pg 2. delete "Except as provided under AS 28.33.10(b) for a commercial driver's license"

Thank you.

Heather Nobrega
x4990

Moved

AMENDMENT #1

OFFERED IN THE SENATE

TO: SB 102

1 Page 2, following line 20:

2 Insert a new bill section to read:

3 "* Sec. 3. AS 28.33.100(b) is amended to read:

4 (b) In addition to the information required under AS 28.15.111, a commercial
5 driver's license shall include information determined by the United States Secretary of
6 Transportation to be appropriate to identify the licensee [, INCLUDING THE
7 LICENSEE'S SOCIAL SECURITY NUMBER]."

8

9 Renumber the following bill sections accordingly.

only applies
1 ~~does not apply to a person who affirms by sworn affidavit that the person has not~~
2 been issued a social security number; and

3 (5) contain other information that the department may reasonably
4 require to determine the applicant's identity, competency, and eligibility.

5 * Sec. 2. AS 28.15.111(a) is amended to read:

6 (a) Upon successful completion of the application and all required
7 examinations, and upon payment of the required fee, the department shall issue to
8 every qualified applicant a driver's license indicating the type or general class of
9 vehicles that the licensee may drive. The license must display (1) a distinguishing
10 number assigned to the license; (2) the licensee's full name, address, date of birth,
11 brief physical description, and color photograph; (3) either a facsimile of the signature
12 of the licensee or a space upon which the licensee must write the licensee's usual
13 signature with pen and ink; (4) a holographic symbol intended to prevent illegal
14 alteration or duplication; and (5) for a qualified applicant who is under age 21, the
words "UNDER 21" ~~Except as provided under AS 28.33.100(b) for a commercial~~

Amendment #28

16 ~~driver's license, a~~ [A] license may not display the licensee's social security
17 number and is not valid until signed by the licensee. If facilities are not available for
18 the taking of the photograph required under this section, the department shall endorse
19 on the license, the words "valid without photograph."

delete

20 * Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 APPLICABILITY. Section 2 of this Act applies to a driver's license that is issued or
23 renewed on or after the effective date of this Act.

24 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

ALASKA STATE HOUSE OF REPRESENTATIVES

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Session Contact:
(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 416

REPRESENTATIVE JOHN COGHILL

Date: February 26, 2001

To: Representative Norman Rokeberg, Chairman
House Judiciary Committee

From: Representative John Coghill

Re: Hearing for HB 110

FEB 26 2001

I am requesting that HB 110, "An Act relating to Social Security Numbers and Alaska Driver's Licenses", be heard at your earliest convenience.

- HB 110 would place in statute the current policy of allowing for an affidavit for persons who have never had a social security number.
- Secondly, it will eliminate the practice of placing social security numbers on a driver's license.
- The new policy set in this legislation would become effectively immediately rather than waiting until the sunset of HB 344.
- The provisions of this legislation would also apply to Alaska State Identification Cards.

Backup information for the bill is attached.

ALASKA STATE HOUSE OF REPRESENTATIVES

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Room 416

REPRESENTATIVE JOHN COGHILL

HB 110 Social Security Numbers and Driver's Licenses Sponsor Statement

In recent years the federal government has increased their practice of using social security numbers for identification purposes. This has resulted in Alaska requiring a social security number to be placed on the driver's license and has also resulted in the Division of Motor Vehicles requiring a social security number to obtain or renew a driver's license. Recently DMV instituted a new policy that better met federal guidelines on the obtaining or renewing of a driver's license. Now a person can sign an affidavit that they have never obtained, been issued, or used a social security number and obtain or renew a driver's license. The purpose of this legislation is fourfold.

- First, HB 110 would place in statute the current policy of allowing for an affidavit for persons who have never had a social security number.
- Secondly, it will eliminate the practice of placing social security numbers on a driver's license.
- The new policy set in this legislation would become effectively immediately rather than waiting until the sunset of HB 344.
- The provisions of this legislation would also apply to Alaska State Identification Cards.

I attempted to amend the statute to allow for persons who have completed a rescission action with the social security administration in returning invalidating their social security number to sign an affidavit to that effect and obtain or renew an Alaska Driver's License. The Social Security Administration has indicated, however, that they have not approved any request to rescind a social security number.

Because a driver's license is a means of identification for clerks in stores accepting checks, airlines allowing passage on planes, and bank cashier cashing checks or processing withdrawals, there is a lot of access to a social security number placed on a driver's license. I believe this is an acceptable change to law to preserve the privacy of each Alaskan's social security number.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 110(STA)
 (H) Publish Date: 2/21/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title: An act relating to driver's licenses and BRU: Motor Vehicles
instructional permits; and providing an effective date. Component: _____
 Sponsor: Representative Coghill
 Requester: H (SA) Component Number: 2348

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill will have no fiscal impact on DMV. Procedures contained in this bill have already been implemented by DMV administrative policy.

Prepared by: Charles R. Hosack Phone 269-5559
 Division: Motor Vehicles Date/Time 2/8/2001 2:00:00 PM
 Approved by: Jim Duncan, Commissioner Date 2/12/01
 Agency: Department of Administration

For distribution information, call the Governor's Legislative Office

Subject: HB 110
Date: Thu, 08 Feb 2001 10:35:32 -0900
From: Chuck Hosack <Chuck_Hosack@admin.state.ak.us>
Organization: St of AK, Dept of Admin
To: Rynniva Moss@legis.state.ak.us

Rynniva

Thanks for sending a copy of HB 110. The wording is fine and this will not present a problem for DMV. The new wording in Section 1 reflects the new policy DMV started a few weeks ago for those who have never been issued a SSN. Since DMV is already doing this, the new language will not have an operational or fiscal impact on DMV. This section allows DMV to continue to collect the SSN on the application and this will satisfy the federal requirement. Those who have never been issued a SSN will fill out the affidavit and will be able to get the license.

Section 2 is a change in that DMV will no longer be able to print the SSN on non commercial licenses. DMV already has this capability as an option so again there will be no fiscal or operational impact.

You also mentioned that you would include language for those who had "legally rescinded the number back to social security". This language would cause a problem because according to social security a person cannot rescind a number once it is issued. The following paragraphs are taken from an email from Pat Driggers from the Social Security Administration on this subject.

*****Message from Pat Driggers, SSA *****

We have numerous people who have tried to "rescind" their number. Most of them are on the far fringes of the taxpayer protest movement who cite certain paragraphs from various laws out of context. Others are prisoners. All seek to prove that they are exempt from statutes of the federal government because they do not "reside" in the USA but in some other "sovereignty." (Many even refuse to add Zip Codes to their addresses since that implies that the federal government is a legal entity.) None of them have been successful. There is a filing cabinet somewhere containing their requests and copies of the refusal letters. We inform them that we will not withdraw an SSN that was issued based on a properly completed application. However, it is up to the individual to determine whether to "use" the number by supplying it when requested by a third party (employer, government agency, credit company, etc.) The third party is legally able to deny a job or services/credit if the person elects not to supply the SSN.

We do sometimes "void" an SSN. We do not delete the SSN from our records, only the identifying data. The most common reason in the past decade has been for parents who receive an SSN through the Enumeration at Birth process in the hospitals who claim that they did not request this SSN for their child and that they do not want their child to be

enumerated. In this situation, we do not truly have a "proper application" for an SSN. Since a child must have an SSN to be claimed as a tax dependent, this is a very rare occurrence. In the past, SSA voided a number to correct the human errors made when card issuance was a manual process.

However, it is most likely that a person who uses the word "rescinded" is not referring to voiding but to the denied requests in the first paragraph.

Subject: [Fwd: Social Security Numbers and Driver's License Applications]

Date: Tue, 20 Feb 2001 21:11:39 -0800

From: Wes Keller <Wes_Keller@legis.state.ak.us>

To: Rynnieva_Moss@legis.state.ak.us

Subject: Social Security Numbers and Driver's License Applications

Date: Tue, 20 Feb 2001 18:05:13 -0500

From: "Sheri Steisel" <sheri.steisel@ncsl.org>

Reply-To: humserv-l@ncsl.org

To: <childsupport-l@ncsl.org>, "Humserv-l" <humserv-l@ncsl.org>

Friends,

I have received a number of inquiries recently regarding the requirement in child support law to obtain social security numbers at application for driver's licenses. Last week, I attended the American Association of Motor Vehicles meeting on privacy issues where there also seemed to be confusion from State Departments of Motor Vehicles about whether states had alternatives if a driver did not have a social security number. The Office of Child Support Enforcement at HHS did clarify that there are procedures to assist individuals who apply for driver's licenses and do not have social security numbers.

While we posted this information to the listserv in December, I think it could be helpful to some of the newer members of the listserv. The Office of Child Support Enforcement PIQ Guidance on Social Security Numbers can be accessed at

<http://www.acf.dhhs.gov/programs/cse/pol/piq-9905.htm>

This PIQ advises states to accept a sworn affidavit from individuals who don't have a social security number which can be recorded on certain license applications.

---- Sheri Steisel
Federal Affairs Counsel
Director, Human Services Committee
NCSL
Sheri.Steisel@NCSL.org

U.S. Department of Health and Human Services
Administration for Children & Families
Office of Child Support Enforcement

PIQ-99-05

DATE: July 14, 1999

TO: State IV D Directors and Regional Program Managers

FROM: David Gray Ross
Commissioner
Office of Child Support Enforcement

RE: Inclusion of Social Security Numbers on License Applications and Other Documents

It has come to our attention that there is some confusion regarding the issue of inclusion of social security numbers on license applications and other documents.

Section 466(a)(13) of the Social Security Act (Act) requires States to implement procedures requiring that the social security number(s) of any applicant for a professional, driver's, occupational, recreational or marriage license be recorded on the application. In addition, section 466(a)(13) of the Act requires procedures requiring that the social security number(s) of any individual subject to a divorce decree, support order or paternity determination or acknowledgment be placed in the records relating to the matter and that the social security number(s) of any individual who has died be placed in the death records and recorded on the death certificate. Some States have asked how this requirement applies to those applicants or individuals that do not have social security numbers.

We interpret the statutory language in section 466(a)(13) of the Act to require that States have procedures which require an individual to furnish any social security number that he or she may have. Section 466(a)(13) of the Act does not require that an individual have a social security number as a condition of receiving a license, etc. We would advise States to require persons who wish to apply for a license who do not have social security numbers to submit a sworn affidavit, under penalty of perjury, along with their application stating that they do not have a social security number. Such an affidavit should also be required for divorce, support or paternity matters where an individual indicates that he or she does not have a social security number or in death cases where a family member, next of kin indicates that the deceased did not have a social security number.

This is consistent with the position we took in PIQ-97-04 regarding the requirement for inclusion of social security numbers on voluntary paternity acknowledgement affidavits. In PIQ-97-04 we stated that, although section 452(a)(7) of the Act specified that the social security number of each parent is one of the minimum requirements of an affidavit to be used for the voluntary acknowledgment of paternity, the omission of one or both of the social security numbers would not invalidate the acknowledgment.

If you have questions regarding this subject, please contact Jan Rothstein of my staff at (202) 401-5073.

9.]

license and special s provided in (b) of this the department for an successfully passed all iving test, issue to the e having the permit in ss of motor vehicle on 0 years. The permittee i been licensed at least capable of exercising r, or who accompanies ives a motorcycle. An

ie a restricted instruc- d to an applicant who program that includes ed instruction permit ermittee's immediate owever, an approved ermittee is driving a nmediate supervision

o an applicant for a class of motor vehicle mination of all facts he temporary license nt is driving a motor t's license has been

on who is at least 14 ouse who is 18 years ermit may be issued nd fees, and is valid lid in a municipality erson under the age asis only, unless the .300 — 29.35.330 or

ment may issue a ears because of the f hardship shall be SLA 1978; am § 50

or vehicular way or area vo years. The permittee erson at least 19 years of t least one year to drive ng used, who is capable ehicle and who occupies ho accompanies and riever when the permit- struction permit may be

Effect of amendments. — The 1998 amendment, "must" and "21 years of age" for "19 years of age" in the effective January 1, 1999, substituted "shall" for next-to-last sentence in subsection (a).

NOTES TO DECISIONS

Cited in Francis v. Municipality of Anchorage, 641 P.2d 226 (Alaska Ct. App. 1982).

Collateral references. — 60 C.J.S., Motor Vehi- quirements for licensing of motor vehicle operators, 86 cles, § 135. ALR3d 475.

Validity, construction, and application of age re-

Sec. 28.15.055. Provisional driver's license. [Effective January 1, 1999]. Upon application, the department may issue a provisional driver's license to a person who is at least 16 years of age but not yet 18 years of age if the person has been licensed under an instruction permit issued under AS 28.15.051 or under the law of another state with substantially similar requirements for at least six months. (§ 3 ch 93 SLA 1998)

Effective dates. — Section 15, ch. 93, SLA 1998 makes this section effective January 1, 1999.

Sec. 28.15.057. Restrictions on driver's license issued to a person under 18. [Effective January 1, 1999]. Except as provided under AS 28.15.051, a person who is at least 16 years of age but not yet 18 years of age may not be issued a driver's license unless the person has been licensed under an instruction permit issued under AS 28.15.051 for at least six months and has held a valid provisional driver's license issued under AS 28.15.055 for at least one year. (§ 3 ch 93 SLA 1998)

Effective dates. — Section 15, ch. 93, SLA 1998 makes this section effective January 1, 1999.

Sec. 28.15.060. Applications of minors. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.061. Application for driver's license or instruction permit; notice of anatomical gift and living will procedure. (a) Application for an instruction permit or for a driver's license must be made on a form furnished by the department and must be accompanied by the fee required under AS 28.15.271.

(b) An application under (a) of this section must

(1) contain the applicant's full name, social security number, date and place of birth, sex, and mailing and residence addresses;

(2) state whether the applicant has been previously licensed as a driver and, if so, when and by what jurisdiction;

(3) state whether any previous driver's license issued to the applicant has ever been suspended or revoked or whether an application for a driver's license has ever been refused and, if so, the date of and reason for the suspension, revocation, or refusal; and

(4) contain other information that the department may reasonably require to determine the applicant's identity, competency, and eligibility.

(c) When an application is received from a person previously licensed in another jurisdiction, the department may request a copy of the applicant's driving record from the other jurisdiction. Upon receipt of that record by the department, it becomes a part of the driver's record in this state with the same effect as if the record originated in this state.

(d) An employee of the department who processes a driver's license application, other than an application received by mail, shall ask the applicant orally whether the applicant wishes to execute an anatomical gift or a living will. The department shall make known to all applicants the procedure for executing a gift under AS 13.50 (Uniform Anatomical

D.M.V. attn: Charles R. Hasack

02-16-01

Fax to (907) 269-6084

Ref. John Coghill North Pole!
of course long distance!

Fax # 1-(907) 465-3258

The issue today is H/B 110 that was introduced only in part

(1) removal of SSAT#s from Drivers licenses is a $\frac{1}{2}$ bill (see item #2)

(2) We need to also remove SSAT#s from our state ID Cards also. Because these can be requested instead of Drivers licenses which has become the major if one source for identity. Our State ID that is required by law need not have our SSAT# on it either. At the time you remove it from our Drivers licenses then the required state ID, will be the main source simply because it will have the SSAT# that people can use to access every source of confidential information about a person. It was always a direct invasion of our rights to privacy that Alaska is leading in they love to be able to infringe upon others! So why just do it $\frac{1}{2}$ way? Jewel Walker Sr.

Fax to 1-(907) 677-9266

1-907-258-9422

Subject: SSN on ID Cards
Date: Fri, 16 Feb 2001 14:45:19 -0900
From: Chuck Hosack <Chuck_Hosack@admin.state.ak.us>
Organization: St of AK, Dept of Admin
To: Rynniewa_Moss@legis.state.ak.us

Rynniewa

I received a fax note this afternoon from a Jewel Walker Sr. and Rep Coghill was also listed as an addressee. She wanted HB 110 amended to prevent DMV from printing SSNs on ID cards. ID cards are addressed in AS 18.65.310 and in part says "the department shall issue a card identical to the motor vehicle operator's license provided for in AS 28.15.111.....". DMV takes the word "identical" literally and uses the same print program for both driver licenses and ID cards. If HB 110 passes in it's current form then DMV would apply the same standard to ID cards and would not print the SSN on the card.

I haven't replied to her yet. This is just for your info so you know DMV's position and intentions on this.

I will be in the office on Tuesday morning. Did you want me teleconferenced in again for the hearing when this comes up again?

Chuck Hosack

Subject: AkCLU statement in SUPPORT of HB 110

Date: Tue, 13 Mar 2001 19:09:26 -0900

From: "Jennifer Rudinger" <akclu@alaska.net>

To: <Representative_John_Coghill@legis.state.ak.us>

CC: "Heather Nobrega" <Heather_Nobrega@legis.state.ak.us>,
<Representative_Albert_Kookesh@legis.state.ak.us>,
<Representative_Ethan_Berkowitz@legis.state.ak.us>,
<Representative_Kevin_Meyer@legis.state.ak.us>,
<Representative_Jeannette_James@legis.state.ak.us>,
<Representative_Scott_Ogan@legis.state.ak.us>,
<Representative_Norman_Rokeberg@legis.state.ak.us>

MAR 14 2001

Dear Rep. Coghill,


Attached below, FYI, is my testimony in support of HB 110 (drivers' licenses and SSNs). I will go to the LIO in Anchorage tomorrow to testify in the House Judiciary Committee at 1:00, and I look forward to working with you in the future to protect Alaskans' privacy rights. Thank you very much for sponsoring this bill.

BTW, you will note in my statement that we support an amendment adopted in Senate Finance this morning, protecting commercial drivers' licenses the same as noncommercial licenses. Sen. Wilken introduced this amendment, and Sen Phillips accepted it as friendly. Would you accept such an amendment as friendly also? It really strengthens the bill.

Sincerely,

Jennifer Rudinger
Executive Director, AkCLU

CC: House Judiciary Committee

 (CS)HB 110 (SSN's on drivers' licenses).doc	Name: (CS)HB 110 (SSN's on drivers' licenses).doc Type: Winword File (application/msword) Encoding: base64 Download Status: Not downloaded with message
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MAR 14 2001

Alaska Civil Liberties Union

An Affiliate of the American Civil Liberties Union

P. O. Box 201844, Anchorage, AK 99520-1844

Phone: (907) 258-0044 Fax: (907) 258-0288 Email: akclu@alaska.net

To: House Judiciary Committee (Representatives Rokeberg, Ogan, Coghill, James, Meyer, Berkowitz, and Kookesh)
From: Jennifer Rudinger, Executive Director
Date: Weds., March 14, 2001

Re: STATEMENT IN SUPPORT OF (CS) HOUSE BILL 110

Good afternoon, Mr. Chairman and members of the Committee. For the record, my name is Jennifer Rudinger, and I am the Executive Director of the Alaska Civil Liberties Union (AkCLU). The AkCLU is a non-partisan nonprofit organization supported by over 1,100 members statewide, and our mission is to defend Alaskans' civil liberties, including Alaskans' right to privacy and the right to control our own personal information. I thank you for the opportunity to testify today.

The Alaska Civil Liberties Union is pleased to support CSHB 110, and we commend Representative Coghill for sponsoring this legislation, as well as Senators Therriault and Phillips in the Senate (CSSB 102). **Furthermore, we urge this Committee to adopt an amendment similar to the friendly amendment offered by Sen. Wilken yesterday in Senate Finance and accepted by Sen. Phillips, bringing commercial drivers' licenses into the scope of CSHB 110's prohibition against the display of Social Security numbers (SSNs).** Sen. Phillips testified that when the bill was originally drafted, the sponsors were under the impression that federal law required display of SSNs on commercial drivers' licenses. Upon further research, that proved not to be the case, so the Senate Finance Committee moved CSSB 102 out yesterday with an amendment to protect commercial drivers' licenses the same as noncommercial drivers' licenses. The AkCLU enthusiastically supports this amendment. The AkCLU receives hundreds of complaints every year from Alaskans who feel that their civil liberties have been violated, and one of the most common complaints stems from Alaskans' legitimate concerns about the privacy of their Social Security numbers.

Despite the government's promise when the Social Security program was created that the SSN would be used *only* as a tool to administer a national retirement program, it has in fact become a national ID number. But because the SSN is so commonly used as an individual account number, this nine-digit code ends up being a virtual pass key to a vast amount of private, and often sensitive, information about individuals -- our address, medical history, shopping preferences, household income, and use of prescription drugs, to name just a few examples.

The Internet has made the problem even more serious. Numerous companies have distributed SSNs through online personal locaters or look-up services -- California's

Senator Dianne Feinstein has testified that it took her less than three minutes to retrieve her own SSN from the Internet. The proliferation of SSNs has already led to some very serious problems. Here are a few examples:

FRAUD -- It was recently discovered that ten current and former SSA employees had accepted bribes from a credit fraud ring in the business of selling mothers' maiden names to activate fraudulently obtained credit cards.

IMPROPER PRYING -- Congress passed a law in 1997 making improper prying, or so-called "browsing," a crime after an IRS employee targeted a state prosecutor against whom he had a grudge. The employee scrutinized the prosecutor's tax form, which included detailed information about the day care center the prosecutor's children attended.

IDENTITY THEFT -- Because of the widespread availability of SSNs, criminals are able to assume the identities of others in order to gain access to their victims' bank and charge accounts and to steal their victims' government benefits.

Ideally, Alaskans would not even be required to *provide* their SSN in order to obtain a driver's license -- but we understand that this is a requirement under federal law, and the ACLU has long been lobbying against this in Congress. Since the State must comply with this federal requirement, we applaud the sponsors of CSSB 102 and CSHB 110 for at least preventing Alaskans' SSNs from being *displayed* on their driver's licenses. These bills are a step in the right direction toward alleviating some of your constituents' valid concerns that their personal information could be accessed and used in an illegitimate manner.

We therefore support the immediate passage of CSHB 110, and we thank this body for taking this crucial first step toward protecting Alaskans' right to privacy.



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Regulations

§383.153 Information on the document and application.

(a) All CDLs shall contain the following information:

(a)(1) The prominent statement that the license is a "Commercial Driver's License" or "CDL," except as specified in [383.153\(b\)](#).

(a)(2) The full name, signature, and mailing address of the person to whom such license is issued;

(a)(3) Physical and other information to identify and describe such person including date of birth (month, day, and year), sex, and height;

(a)(4) Color photograph of the driver;

(a)(5) The driver's State license number;

(a)(6) The name of the State which issued the license;

(a)(7) The date of issuance and the date of expiration of the license;

(a)(8) The group or groups of commercial motor vehicle(s) that the driver is authorized to operate, indicated as follows:

(a)(8)(i) A for Combination Vehicle;

(a)(8)(ii) B for Heavy Straight Vehicle; and

(a)(8)(iii) C for Small Vehicle.

(a)(9) The endorsement(s) for which the driver has qualified, if any, indicated as follows:

(a)(9)(i) for double/triple trailers;

(a)(9)(ii) P for passenger;

(a)(9)(iii) N for tank vehicle;

(a)(9)(iv) H for hazardous materials;

*provided by
Senator Gene Therriault*

(a)(9)(v) X for a combination of the tank vehicle and hazardous materials endorsements; and

(a)(9)(vi) At the discretion of the State, additional codes for additional groupings of endorsements, as long as each such discretionary code is fully explained on the front or back of the CDL document.

(b) If the CDL is a Nonresident CDL, it shall contain the prominent statement that the license is a "Nonresident Commercial Driver's License" or "Nonresident CDL." The word "Nonresident" must be conspicuously and unmistakably displayed, but may be noncontiguous with the words "Commercial Driver's License" or "CDL."

(c) If the State has issued the applicant an air brake restriction as specified in 383.95, that restriction must be indicated on the license.

(d) Except in the case of a Nonresident CDL:

→ (d)(1) A driver applicant must provide his/her Social Security Number on the application of a CDL; and

→ (d)(2) The State must provide the Social Security Number to the CDLIS.



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Holly 465-3884
From: Mary M - DMV

siders "air over hydraulic" brakes to be air brakes under FMVSS 121.

Question 3: May a State issue a restriction to a driver who passes the air brake knowledge test and the skills test in a vehicle equipped with an air-over-hydraulic brake system that limits the driver to operate only vehicles equipped with an air-over-hydraulic air brake system?

Guidance: Yes. A State may issue the additional restriction, provided it is fully explained on the CDL. This would give a State the option to allow a driver who tests in a vehicle equipped with an air-over-hydraulic brake system (rather than a full air brake system) to operate a vehicle equipped with either a hydraulic or air-over-hydraulic brake system, while restricting them from operating vehicles equipped with a full air brake system.

Question 4: May a driver with an air brake restriction on his or her CDL operate a CMV equipped with a hydraulic braking system that has an air-assisted parking brake release?

Guidance: Yes. The air brake restriction applies only to the principal braking system used to stop the vehicle. §383.95(b) is not applicable to an air-assisted mechanism to release the parking brake.

§383.131 Test Procedures

Question 1: Are there any Federal regulations which require the States to retain for a specified period of time the CDL knowledge tests (or the test results) used to test CMV drivers?

Guidance: No, there are no Federal regulations regarding such record retention.

§383.133 Testing Methods

Question 1: May States administer the CDL knowledge and endorsement test in foreign languages or in other than a written format?

Guidance: Yes.

Question 2: Do the Federal standards limit the number of times a driver may take a test if he or she fails?

Guidance: The rule does not limit the number of times a driver may take a test.

Question 3: Is a State allowed to provide for an alternate test (e.g., oral) or administer an alternate exam format providing the test meets FHWA requirements?

Guidance: Yes. The knowledge portion of the test may be administered in written form, verbally, in automated formats, or otherwise at the discretion of the State.

§383.153 Information on the Document and Application

Question 1: May a State use the residence address as opposed to the mailing address on the CDL?

Guidance: Yes.

Question 2: May a State issue temporary nonphoto CDLs?

Guidance: Yes, as long as:

a. the State does not liberalize any existing procedures for issuing nonphoto licenses; and

b. the State does not allow drivers to operate CMVs indefinitely without a CDL which meets all the standards of §383.153.

Question 3: May a State choose to implement a driver license system involving multiple part license documents?

Guidance: Yes. A two or more part document, as currently used in some States, is acceptable, provided:

a. All of the documents must be present to constitute a "license;"

b. Each document is explicitly "tied" to the other document(s), and to a single driver's record. Each document must indicate that the driver is licensed as a CMV driver, if that is the case; and

c. The multipart license document includes all of the data elements specified in part 383, subpart J.

Question 4: If the State restricts the CDL driving privilege, must that restriction be shown on the license?

Guidance: Yes.

Question 5: Is a State required to show the driver's SSN on the CDL?

Guidance: No. §383.153 does not specify the SSN as a required element of the CDL document although the regulation does require a driver applicant who is domiciled in the U.S. to provide his or her SSN on the CDL application.

Question 6: Is a State prohibited from issuing a CDL to an applicant who, for religious reasons, does not possess an SSN?

Guidance: No. The determination of whether a person needs an SSN is left up to the Social Security Administration.

Question 7: Is a color-digitized image of a driver acceptable for purposes of a CDL?

Guidance: Yes. The FHWA will accept a color-digitized image of a driver on a CDL in lieu of a color photograph.

Special Topics — Motor Coaches and CDL

Question 1: May a State develop a knowledge test exclusively for motorcoach operators which excludes cargo handling and hazardous materials?

Guidance: Yes. A State could develop a basic knowledge test for bus drivers only, by deleting the cargo handling and FM questions from its normal basic knowledge test. In that case, the driver applicant would still need to pass the specialized knowledge and skills tests for the passenger endorsement, and the State would need to restrict the CDL to passenger operations only.

Question 2: What skills test is required for a CDL holder seeking to add a passenger endorsement?

Guidance: If a person already holds a CDL without a passenger endorsement, and subsequently applies for such endorsement, three situations may arise:

a. The passenger test vehicle is in the same vehicle group as that shown on the CDL. This situation poses no problem since there is no discrepancy.

b. The passenger test vehicle is in a greater vehicle group than that shown on the preexisting CDL. This is an upgrade situation. The driver and the State must meet the requirements of §383.71(d) and

y reports. — For Governor
IB 4-45 (from which ch. 55, SLA
(a) of this section, derived), see
262-2263.

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; blood, or less than 0.04
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HCS CSSB 261 (JUD) am E
d 954.

Sec. 28.33.100. License to drive commercial motor vehicle. (a) A person may not drive a commercial motor vehicle until the person applies for and is issued a license for that purpose under AS 28.15.041. The department may not issue a license to drive a commercial motor vehicle unless the applicant

- (1) is at least 19 years of age;
- (2) has held a valid driver's license at least one year before the date of application or meets the experience qualifications established by the department;
- (3) has successfully completed all required driving tests and written and physical examinations;
- (4) either does not have a driver's license issued by another jurisdiction or surrenders all driver's licenses issued by other jurisdictions.

(b) In addition to the information required under AS 28.15.111, a commercial driver's license shall include information determined by the United States Secretary of Transportation to be appropriate to identify the licensee, including the licensee's social security number.

(c) A person who has been a state resident for 30 days or longer may not drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction.

(d) The licensing requirements of this section are in addition to the requirements imposed on a school bus driver under AS 28.15.046.

(e) The department shall disqualify a person for a period of 60 consecutive days, and shall reevaluate the person's application or license to drive a commercial motor vehicle, if the department determines that the person knowingly provided false information required under

(1) this section or AS 28.15 in an application to the department for a commercial driver's license; or

(2) AS 28.33.110(c) in an application for employment. (§ 3 ch 53 SLA 1990; am §§ 16, 17 ch 3 SLA 1992)

Effect of amendments. — The 1992 amendment, effective April 1, 1992, in subsection (a), substituted "drive" for "operate" in two places in the introductory paragraph and inserted "or meets the experience qualifications established by the department" in paragraph (2); and added subsection (e).

Sec. 28.33.110. Notification requirements for drivers of commercial motor vehicles. (a) A driver of a commercial motor vehicle holding a commercial driver's license issued by the state who is convicted of violating a federal or state law or local ordinance relating to motor vehicle traffic control in this or another state, or a federal, provincial, territorial, or municipal law relating to motor vehicle traffic control in Canada, other than parking violations, shall notify the driver's employer, in writing, of the conviction within 30 days after the date of conviction.

(b) A driver whose operating privilege is suspended, revoked, or canceled by a state, who loses the privilege to operate a commercial motor vehicle in a state for any period, or who is disqualified from operating a commercial motor vehicle for any period, shall notify the driver's employer of that fact before the end of the business day following the day the driver received notice of the suspension, revocation, cancellation, loss, or disqualification.

(c) A person who applies for employment as a commercial motor vehicle driver shall

(1) provide the person's prospective employer, at the time of application for employment, with the following information for the 10 years preceding the date of application:

- (A) a list of the names and addresses of employers for which the applicant was a driver of a commercial motor vehicle;
- (B) the dates between which the applicant drove for each employer;
- (C) the reason for leaving each employer;

(2) certify that the information provided under this subsection is true and complete;

(3) provide additional information required by the employer. (§ 3 ch 53 SLA 1990)