

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11201 SENATE JUDICIARY

	RBS Provision		Mandatory States							Voluntary States			
			Categories of Employees Required to Attend RBS Training			Establishment Type Required to Participate		Applies to New or Existing Licenses		Incentives			
	Man-datory	Volun-tary	Licensee	Manager	Server	On	Off	New	Existing	Liability Defense	Miti-gation of Fines	Dis-count Ins.	Pro-tection of License
Maine		√								√			
Maryland	√		√	√	√	√	√	√	√				
Massachusetts													
Michigan		√										√	
Minnesota													
Mississippi													
Missouri													
Montana													
Nebraska													
Nevada													
New Hampshire		√								√	√		
New Jersey	√		√	√			√	√					
New Mexico	√			√	√		√	√	√				
New York													
North Carolina													
North Dakota													
Ohio													
Oklahoma													
Oregon	√			√	√		√		√	√			
Pennsylvania	√			√	√		√	√	√				
Rhode Island		√								√	√		
South Carolina													
South Dakota													
Tennessee	√		√	√	√		√		√	√			
Texas		√											√
Utah	√		√	√	√		√		√	√			
Vermont	√		√	√	√		√	√	√				
Virginia													
Washington	√		√	√	√		√		√	√			
West Virginia													
Wisconsin	√		√	√	√		√	√	√				
Wyoming													
State Totals	13	11	8	13	12	12	9	13	11	3	7	3	3

KEG REGISTRATION

Keg registration allows tracking of beer kegs from the time of purchase to the time the empty keg is returned to the vendor. The purpose of these laws is to deter adults from providing keg beer to minors and to identify and punish those who do. The laws are also designed to protect distributors from being accused of selling kegs to underage consumers.

Keg registration laws require wholesalers or retailers to attach a tag, sticker, or engraving with an identification number to kegs exceeding a specified capacity. When the keg is purchased, the retailer records identifying information about the purchaser. A refundable deposit may also be collected, but very few states specify whether a deposit is required and, if required, the amount of the deposit. For those states that do specify, the information appears in the footnotes to the chart below.

The recent introduction of disposable kegs presents a complicating factor for keg registration laws. These containers cannot be tagged or traced easily because they are meant to be disposed of when empty. This new technology suggests that deposit provisions are particularly important as a disincentive against destroying the keg, which defeats the purpose of the law. The analysis below indicates whether a state has a keg registration law, how "keg" is defined for the purposes of the keg provision, the type of purchaser information a retailer is required to obtain (and keep on file for a specified time period), and the type of information to be placed on kegs.

Currently 22 states have keg registration provisions of the type analyzed in this document. The variables analyzed in the chart below are as follows:

- **Keg definition**—this variable describes the minimum number of gallons a keg must hold to require registration. It varies from 2 to 16 gallons. One state (Rhode Island) does not specify the number of gallons needed to constitute a keg.
- **Purchaser information**—all states that require keg registration require that the purchaser provide his or her name or signature on the registration form. Sixteen states require that the purchaser show some type of identification; eight states allow the use of a driver's license, and two allow the use of car registration information. In addition, four states require that the purchaser specify where the keg will be consumed.
- **Type of identification label**—in most states with keg registration, the ABC will either issue forms to be used to track purchasers or sales (10 states) or specify the forms to be used (13 states). In three states, the ABC department or agency must approve the form used by those who sell kegs.

Keg Registration

	Keg Registration Provision	Keg Definition: Minimum Number of Gallons	Purchaser Information				Type of Identification Label		
			Identification	Driver's License	Car Registration	Keg Consumption Location	Form Specified	ABC Issued	Approved by ABC
Alabama									
Alaska									
Arizona									
Arkansas									
California ¹	√	6	√	√			√	√	
Colorado									
Connecticut ¹	√	6			√		√		
Delaware									
District of Columbia	√	4	√			√		√	
Florida									
Georgia ¹	√	2	√	√		√	√		√
Hawaii									
Idaho	√	7.75					√	√	
Illinois									
Indiana	√	7.75					√		
Iowa									
Kansas	√	4	√	√				√	
Kentucky									
Louisiana									
Maine ²	√	7.75	√				√		√
Maryland	√	4	√				√	√	
Massachusetts ³	√	2	√				√	√	
Michigan									
Minnesota	√	7	√						
Mississippi									
Missouri									
Montana									
Nebraska	√	5	√	√			√		
Nevada									
New Hampshire	√	7	√	√			√		
New Jersey									
New Mexico	√	More than 6	√	√			√		
New York									
North Carolina									
North Dakota ⁴	√	6	√	√					

¹ In California, Connecticut, and Georgia, a deposit is required to obtain a keg, but the deposit amount is not specified.

² In Maine, a deposit of up to \$50 is required.

³ In Massachusetts, there are two types of fees required: (1) a container fee of not less than \$10.00 for each keg of six or more gallons and not less than \$1.00 for each container of less than six gallons; (2) a registration fee of \$10.00 for each keg of six or more gallons and \$4.00 for each keg of less than six gallons.

⁴ North Dakota is the only state that specifies the type of ink to be used on the keg label.

	Keg Registration Provision	Keg Definition: Minimum Number of Gallons	Purchaser Information				Type of Identification Label		
			Identifi- cation	Driver's License	Car Registration	Keg Consumption Location	Form Specified	ABC Issued	Approved by ABC
Ohio ⁵	√	5					√	√	
Oklahoma									
Oregon	√	7	√	√	√		√	√	
Pennsylvania									
Rhode Island	√								
South Carolina									
South Dakota ⁶	√	8 or 16							
Tennessee									
Texas									
Utah ⁷									
Vermont ⁸	√	5	√						√
Virginia	√	4	√			√		√	
Washington	√	4	√			√		√	
West Virginia									
Wisconsin									
Wyoming									
State Totals	22		16	8	2	4	13	10	3

⁵ In Ohio, keg registration is mandatory only if five or more kegs are being purchased.

⁶ South Dakota statute 35-1-11 defines a keg as "an eight or sixteen gallon reusable plastic or metal container."

⁷ In Utah, "a person may not sell, offer to sell, or otherwise furnish or supply beer to the general public in containers larger than two liters. This does not preclude licensed beer wholesalers from selling, offering to sell, or otherwise furnishing or supplying beer in containers larger than two liters to beer retailers authorized by this title to dispense beer on draft for consumption on the beer retailer's licensed premises." In addition, "a person may not purchase or possess beer in containers larger than two liters unless that person is a beer retailer authorized by this title to dispense beer on draft for consumption on the beer retailer's licensed premises."

⁸ In Vermont, a \$25 deposit is required.

FALSE AND MISLEADING ADVERTISING

Commercial speech is protected under the First Amendment of the U.S. Constitution, but there is no constitutional protection for false or misleading advertising. For example, any advertisement that targets underage persons for alcohol sales or consumption (the typology immediately following this one) can be interpreted as misleading because it invites an illegal transaction. Although legal interpretations of the terms "false", "misleading", and "targeting minors" are not well developed as they apply to alcohol advertising, a state with such a provision provides a basis for conducting investigations, establishing specific rules regarding ad content that is attractive to minors, and developing remedies to ensure that the ads will not be misleading.

In the typology below, we note the states with laws that expressly prohibit false and misleading advertising. All but two of these states (Maryland and Tennessee) cover all types of alcoholic beverages (distilled spirits, wine, and beer). We also list specific references to the type of advertising in which false and misleading claims are prohibited (newspapers and magazines, outdoor advertising, and electronic media). At present, 30 states have policies prohibiting false and misleading advertising.

False and Misleading Advertising

	False and Misleading Provision	Advertising Type			
		Newspapers and Magazines	Outdoor Advertising	Electronic Media	Not Specified
Alabama	√				√
Alaska					
Arizona					
Arkansas					
California					
Colorado					
Connecticut ¹	√				√
Delaware	√	√	√	√	
District of Columbia	√				√
Florida					
Georgia	√				√
Hawaii					
Idaho	√	√	√	√	
Illinois	√				√
Indiana					
Iowa					
Kansas	√				√
Kentucky	√				√
Louisiana					
Maine					
Maryland ²	√				√
Massachusetts	√				√
Michigan ¹	√				√
Minnesota	√				√
Mississippi ¹	√				√

¹ The relevant provisions for Connecticut, Michigan, and Mississippi are found outside the ABC code.

² In Maryland and Tennessee, the provisions apply only to distilled spirits and wine.

	False and Misleading Provision	Advertising Type			
		Newspapers and Magazines	Outdoor Advertising	Electronic Media	Not Specified
Missouri	√				√
Montana					
Nebraska	√				√
Nevada					
New Hampshire	√				√
New Jersey	√				√
New Mexico					
New York ³	√				√
North Carolina	√				√
North Dakota					
Ohio					
Oklahoma					
Oregon	√				√
Pennsylvania	√				√
Rhode Island					
South Carolina					
South Dakota					
Tennessee ²	√	√			
Texas	√	√	√	√	
Utah	√				√
Vermont	√	√	√	√	
Virginia	√				√
Washington ⁴	√		√		√
West Virginia ⁵	√			√	
Wisconsin					
Wyoming	√				√
State Totals	30	5	5	5	24

³ In New York, the provision applies only to package stores.

⁴ Washington has two provisions that relate to false and misleading advertising: one deals with outdoor advertising, and one does not specify the type of advertising.

⁵ Virginia does not allow radio or TV ads for alcoholic beverages. A Constitutional issue concerning content-based restrictions and First Amendment protections may be relevant here.

ADVERTISING THAT TARGETS MINORS

Legal provisions in many states prohibit ads of any type in which advertisers intend to target children, minors, or those under the legal drinking age, or encourage them, induce them, or make a special appeal to them to buy or consume alcoholic beverages. Targeting minors provisions can also prohibit advertising that uses images of children or models who are under the legal drinking age. We have focused on the specific wording of each statute because, although a state agency can pursue legal action against such ads through false or misleading provisions, enforcement is much easier when there is a specific provision against targeting minors. On the other hand, a provision that is poorly drafted will probably undermine a general false or misleading statute; a court is likely to conclude that the state legislature intended the targeting minors provisions to override (or serve as an interpretation of) a general false and misleading provision. For this reason, if a state has a targeting minors provision, it is important that the scope of the provision not be unduly restricted.

At present, 25 states have provisions of the type analyzed for this report. The variables in the chart below are defined as follows:

- **Reference**—this variable describes how the legal provision defines the audience that is not to be targeted. Nine states use the term “children” while six states refer to those “under the legal drinking age.” Fourteen states refer to “minors”, and in Kentucky and New Mexico the audience is not specified.
- **Placement**—nine states prohibit the placement of alcohol advertisements in school-related locations (this may include schools, universities, school buses, and yearbooks). Three states prohibit advertising near churches, and three states prohibit advertisements near playgrounds.
- **Symbols**—states may also restrict the use of symbols that can be depicted in advertisements. Six states prohibit the use of symbols of children; four states restrict symbols related to holidays such as Christmas or Easter; and five states prohibit the use of toys or other items that might appeal to children.
- **Wording**—seven states prohibit advertising that “induces” minors to drink; five states prohibit advertising that “encourages” minors to drink; and eight states prohibit advertising that “makes a special appeal” to minors. In some states, more than one of these phrases may be used to prohibit advertising that targets minors.

Advertising That Targets Minors

	Targets Minors	Reference			Placement			Symbols			Wording		
		Children	Under Legal Drinking Age	Minors	School Related	Churches	Play-grounds	Symbols of Children	Holidays	Toys	Induces	Encourages	Makes Special Appeal
Alabama	√			√									√
Alaska													
Arizona													
Arkansas													
California ¹	√			√						√		√	
Colorado													
Connecticut	√	√						√	√	√			
Delaware	√			√							√		
District of Columbia ²	√	√							√	√			√
Florida													
Georgia	√		√										
Hawaii													
Idaho													
Illinois	√	√											√
Indiana													
Iowa													
Kansas													
Kentucky ³	√												
Louisiana													
Maine	√			√							√		
Maryland													
Massachusetts													
Michigan ⁴	√			√									
Minnesota	√	√			√			√		√			√
Mississippi ⁵	√	√											
Missouri													
Montana													
Nebraska	√	√		√				√					
Nevada													
New Hampshire	√		√	√	√						√		
New Jersey	√	√		√				√			√		
New Mexico	√				√								
New York													
North	√		√		√						√		

¹ California includes language that prohibits "the use in any advertisement of alcoholic beverages of any subject matter, language, or slogan addressed to and intended to encourage minors to drink the alcoholic beverages."

² The District of Columbia prohibits "the use of any picture or illustration depicting a child or immature person...."

³ Kentucky has a general alcohol advertising provision that prohibits scenes of family or the home.

⁴ Michigan has a general alcohol advertising provision that prohibits any references to minors on alcohol cartoons or containers.

⁵ Mississippi has a provision that prohibits TV ads five minutes before or after a program that consists primarily of animated material intended for children.

	Targets Minors	Reference			Placement			Symbols			Wording		
		Children	Under Legal Drinking Age	Minors	School Related	Churches	Play- grounds	Symbols of Children	Holidays	Toys	Induces	Encou- rages	Makes Special Appeal
Carolina													
North Dakota													
Ohio	√	√			√	√	√	√	√				
Oklahoma													
Oregon	√			√								√	√
Pennsylvania	√		√	√	√	√	√						
Rhode Island													
South Carolina													
South Dakota													
Tennessee													
Texas													
Utah	√			√	√			√	√			√	√
Vermont	√		√									√	√
Virginia	√			√	√					√			
Washington	√	√	√	√	√	√	√			√			√
West Virginia	√			√						√	√		
Wisconsin													
Wyoming													
State Totals	25	9	6	14	9	3	3	6	4	5	7	5	8

HAPPY HOURS AND DRINK SPECIALS

Excessive drinking practices include happy hours, all-you-can-drink specials, unlimited quantities of alcohol for one low price (usually during specified hours), ladies' nights, two-for-one promotions, nickel pitchers, and other practices that encourage customers of bars and restaurants to drink large quantities of alcohol quickly thereby reducing the incentive to monitor consumption levels and drink responsibly. The consequences of this high-risk drinking include automobile crashes and fatalities, injuries, unplanned sexual activity, assault, rape, and property damage.

In this analysis, we focused on state statutes and regulations that specifically targeted happy hour types of promotions. At present, 27 states have such a provision. Although some states may have provisions that prohibit awarding alcohol as a prize or providing free beverages, in other parts of statutory or regulatory codes as a stand-alone statute or regulation, the information below focuses on states with provisions expressly prohibiting excessive drinking practices. Additionally, several states, such as New Hampshire, have separate provisions prohibiting advertising happy hours or happy hour-related activities, such as ladies' nights. We did not include these provisions in this analysis.

The variables found in the chart below are defined as follows:

- **Free beverages**—ten states have happy hour provisions that contain specific prohibitions against the distribution of free alcoholic beverages.
- **Additional servings**—16 states prohibit an establishment from providing additional servings of alcoholic beverages until previous servings have been consumed.
- **Reduced price – specified day or time**—18 states prohibit the sale of alcoholic beverages at reduced prices during a specified days or time.
- **Unlimited beverages – fixed price, fixed time**—23 states prohibit the sale of alcoholic beverages during a fixed period of time for a fixed price.
- **Increased volume**—12 states prohibit increasing the volume of alcoholic beverages in a drink without increasing the price.
- **Prizes**—15 states have happy hour provisions that contain specific prohibitions against giving alcoholic beverages as prizes.

Happy Hours and Drink Specials

	Happy Hours and/or Drink Specials	Free Beverages	Additional Servings	Reduced Price - Specified Day or Time	Unlimited Beverages - Fixed Price, Fixed Time	Increased Volume	Prizes
Alabama	√			√	√		
Alaska	√	√	√	√	√		√
Arizona	√		√		√		
Arkansas							
California							
Colorado							
Connecticut	√		√		√		√
Delaware	√			√	√		√
District of Columbia							
Florida							
Georgia							
Hawaii							
Idaho							
Illinois	√		√	√	√	√	√
Indiana	√		√	√			
Iowa							
Kansas	√	√		√	√	√	√
Kentucky							
Louisiana ¹	√				√		
Maine	√	√	√		√		√
Maryland							
Massachusetts	√	√	√	√	√	√	√
Michigan	√				√		√
Minnesota							
Mississippi							
Missouri							
Montana							
Nebraska	√				√		
Nevada							
New Hampshire							
New Jersey	√				√	√	√
New Mexico	√	√	√	√	√		√
New York	√	√			√		
North Carolina	√			√	√		
North Dakota							
Ohio	√		√	√	√	√	√
Oklahoma	√		√	√	√	√	√
Oregon ²							
Pennsylvania	√		√	√	√	√	
Rhode Island	√	√	√	√	√	√	√

¹ In Louisiana, selling or serving alcoholic beverages at a fixed price after 10 p.m. is prohibited.

² Although Oregon has no happy hour statute per se, it does have a provision that prohibits providing alcohol as prizes.

	Happy Hours and/or Drink Specials	Free Beverages	Additional Servings	Reduced Price - Specified Day or Time	Unlimited Beverages - Fixed Price, Fixed Time	Increased Volume	Prizes
South Carolina	√	√		√			
South Dakota							
Tennessee	√	√	√	√	√	√	√
Texas	√		√	√	√	√	
Utah							
Vermont	√		√			√	
Virginia	√	√	√	√	√	√	√
Washington	√			√			
West Virginia							
Wisconsin							
Wyoming							
State Totals	27	10	16	18	23	12	15

Conclusion

The analyses of these policies relating to key provisions of alcohol beverage control laws reveal that there are considerable discrepancies in the ways in which states regulate the sale and consumption of alcohol in the United States. Key findings produced by the study include:

- Four states prohibit the purchase of alcohol by a minor only if the minor makes a false statement or representation of age in order to purchase the alcohol.
- Ten states allow minors to possess alcohol in any private location, including any private residence or venue.
- Three states do not prohibit the furnishing of alcohol to intoxicated individuals.
- Thirteen states require some type of mandatory Responsible Beverage Service (RBS), and 11 states provide incentives for retailers to participate. Three of the states with voluntary programs provide protection against license revocation for sales to minors or intoxicated persons if the licensee has participated in RBS training.
- Twenty-two states have passed keg registration laws, but the requirements vary widely from the definition of what constitutes a keg to the type of purchaser information required.
- Twenty-five states prohibit alcohol advertising that target minors.

Our analysis highlights the importance of understanding state laws that address underage consumption and drinking to intoxication. The presence or absence of a law may have a significant effect on the rate of alcohol-related problems in a state, particularly alcohol-related motor vehicle crashes. A law's wording, or the inclusion of an exception, may undercut the ability of law enforcement officials, regulatory agencies, and the courts to enforce it, thereby negating the law's intended effect. Research is needed to assess the impact of these laws and the variations across jurisdictions. When researchers engage in this work, it is important that they note the variations and loopholes in provisions to ensure accurate interpretation of results.

Our report provides a first, important step in assessing these state laws. There are several limitations that have already been noted. Most important, we do not include any analysis of local legislation, and we have not researched case law interpretations. These critical aspects of a comprehensive legal analysis are more appropriately accomplished on a state-by-state basis. Our goal is to provide an overview and introduction to the subject that can serve as an important starting point for researchers, policymakers, public health and law enforcement officials, and community organizations across the country.

HB

438

STATE OF ALASKA

Interim:

119 North Cushman, Rm. 205
Fairbanks, Alaska 99701
(907) 456-7423
Fax: (907) 451-9293


Session:

State Capitol Building
Juneau, Alaska 99801
(907) 465-3466
Fax: (907) 465-2937

REPRESENTATIVE JIM HOLM DISTRICT 9

DATE: April 27th, 2004

TO: Senator Ralph Seekins, Chair
Senate State Judiciary Committee

FROM: Representative Jim Holm 

RE: HB 438

Please schedule HB 438, MOVE OVER LAW FOR DRIVERS, for hearing in the Senate Judiciary Committee at your earliest convenience pending referral. Back-up material is attached.

Thank you very much for your help with this bill.

STATE OF ALASKA

Interim:

119 North Cushman, Rm. 205
Fairbanks, Alaska 99701
(907) 456-7423
Fax: (907) 451-9293

Session:

State Capitol Building
Juneau, Alaska 99801
(907) 465-3466
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REPRESENTATIVE JIM HOLM DISTRICT 9

HB 438

"Move Over Laws For Drivers" Sponsor Statement

27 April 04

"An Act relating to motorists moving over or slowing down for emergency vehicles."

HB 438 can save lives and prevent injury.

All over the country law enforcement, emergency, and fire personnel are putting their lives in danger on the roadways. This bill is an opportunity to improve their safety and their working conditions by requiring motorists to slow down and move over.

If emergency personnel, as defined by statute, are pulled over on the side of the road with their emergency lights on, drivers will be required to slow to a reasonable and prudent speed below the speed limit. On a highway with more than two lanes, the motorist will also be required to occupy the lane furthest away from the emergency personnel unless otherwise directed.

This bill is long overdue. Many other states across the nation are adopting such statutes to ensure the safety of their citizens.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 438
 (H) Publish Date: 2/26/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to motorists moving over or RDU CRIMINAL
slowing down for emergency vehicles." Component Criminal Justice Litigation
 Sponsor Representative Holm
 Requester House Transportation Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill amends AS 28.35 by adding a new section to require that drivers of vehicles overtaking parked emergency vehicle shall vacate the lane nearest the parked emergency vehicle if two or more lanes travelling in the same direction exist. Otherwise the driver of the overtaking vehicle shall slow to 20 miles an hour below the speed limit except where the speed limit is 25 mile per hour or below, in which case the driver shall slow to five miles per hour. The amendment provides that a violation of the new section is a class A misdemeanor results in personal injury, and an infraction if not.

 Passage of this legislation will have no foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673
 Division: Administrative Services Date/Time 2/13/04 3:03 PM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 2/13/2004
 Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 438
 (H) Publish Date: 2/26/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title Motorists Slowing Down for Emergency Vehs RDU Alaska State Troopers
 Component AST Detachments

Sponsor Rep. Holm
 Requester (H) Transportation Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This bill will amend AS 28.35.185 to require that drivers slow or move over (depending on conditions) when they approach a stationary emergency vehicle that is displaying flashing lights on a highway or roadway.

 A violation of section AS 28.35.185 resulting in personal injury would be a class A misdemeanor; violations under other circumstances would constitute an infraction.

 This bill will have no fiscal impact on the Alaska State Troopers.

Prepared by: Lt. Al Storey Phone 269-4532
 Division Alaska State Troopers Date/Time 2/11/04 10:23 AM
 Approved by: Commissioner William Tandeske Date 2/11/2004
 Agency Department of Public Safety

Attachment A

Official Code of Georgia Annotated
40-6-16

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

40-6-16.

(a) The operator of a motor vehicle approaching a stationary authorized emergency vehicle that is displaying flashing yellow, amber, white, red, or blue lights shall approach the authorized emergency vehicle with due caution and shall, absent any other direction by a peace officer, proceed as follows:

(1) Make a lane change into a lane not adjacent to the authorized emergency vehicle if possible in the existing safety and traffic conditions; or

(2) If a lane change under paragraph (1) of this subsection would be impossible, prohibited by law, or unsafe, reduce the speed of the motor vehicle to a reasonable and proper speed for the existing road and traffic conditions, which speed shall be less than the posted speed limit, and be prepared to stop.

(b) The operator of a motor vehicle approaching a stationary towing or recovery vehicle or a stationary highway maintenance vehicle that is displaying flashing yellow, amber, or red lights shall approach the vehicle with due caution and shall, absent any other direction by a peace officer, proceed as follows:

(1) Make a lane change into a lane not adjacent to the towing, recovery, or highway maintenance vehicle if possible in the existing safety and traffic conditions; or

(2) If a lane change under paragraph (1) of this subsection would be impossible, prohibited by law, or unsafe, reduce the speed of the motor vehicle to a reasonable and proper speed for the existing road and traffic conditions, which speed shall be less than the posted speed limit, and be prepared to stop.

(c) Violation of subsection (a) or (b) of this Code section shall be punished by a fine of \$500.00.

Attachment B

Maine Revised Statutes Annotated
29-A MRSA §2054, sub-§9 and 10

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 29-A MRSA §2054, sub-§9, as enacted by PL 2001, c. 360, §8, is repealed.

Sec. 2. 29-A MRSA §2054, sub-§10 is enacted to read:

10. Stationary authorized emergency vehicles. The following provisions govern the operator of a vehicle approaching or passing a stationary authorized emergency vehicle that is using an emergency light.

A. With due regard to the safety and traffic conditions, an operator of a vehicle approaching or passing a stationary authorized emergency vehicle that is using an emergency light shall:

(1) Reduce speed and maintain a speed throughout the incident area no greater than is reasonable and prudent under the conditions, including actual and potential hazards then existing;

(2) Vacate any lane wholly or partially blocked;

(3) Obey the directions of an authorized official directing traffic and all applicable traffic control devices; and

(4) Pass in a lane not adjacent to that of the emergency vehicle, if possible, or, if passing in a nonadjacent lane is impossible or unsafe, pass the emergency vehicle at a reasonable and prudent speed.

B. The following penalties apply to violations of this subsection.

(1) A person who violates this subsection commits a Class E crime.

(2) A person who violates this subsection and at the time of the offense has a prior conviction for violating this subsection commits a Class E crime and is subject to a mandatory 30-day driver's license suspension. Title 17-A, section 9-A governs the use of prior convictions in determining a sentence, except that for purposes of this subparagraph, the date of each prior conviction may precede the commission of the offense being enhanced by no more than 3 years.

LD 0837 (LR: 0455 item 01) Unofficial Document created 02-20-2003 -
14:41:16

LR 455 (01)

C. Paragraphs A and B do not apply to authorized emergency vehicles in an incident area. Operators of emergency vehicles in an incident area shall proceed at a reasonable and prudent speed, with due regard to the safety of all persons in the incident area.

In addition to any other penalty imposed by law, if a violation of this subsection results in serious bodily injury or death to another person, the violator's driver's license must be suspended for at least 180 days and not more than 2 years.

SUMMARY

This bill adds to the safety requirements governing drivers approaching or passing a stationary authorized emergency vehicle that is using an emergency light and increases the penalties for violation. The bill also clarifies that an authorized emergency vehicle must exercise due regard to the safety of others but is exempted from the other operator requirements of the new provision.

Attachment C

Nevada Assembly Bill 299 (2003)

Assembly Bill No. 299—Assemblymen Beers, Gustavson,
Christensen, Conklin, Giunchigliani, Grady, Horne,
Koivisto, McClain, Pierce, Sherer and Weber

Joint Sponsors: Senators Cegavske, Amodei,
Care and Schneider

CHAPTER.....

AN ACT relating to motor vehicles; establishing the duties of a driver when that driver approaches an authorized emergency vehicle which is stopped and is making use of flashing lights; providing a penalty; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 484 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Upon approaching an authorized emergency vehicle which is stopped and is making use of flashing lights meeting the requirements of subsection 3 of NRS 484.787, the driver of the approaching vehicle shall, in the absence of other direction given by a peace officer:

(a) Decrease the speed of his vehicle to a speed that is:

(1) Reasonable and proper, pursuant to the criteria set forth in subsection 1 of NRS 484.361; and

(2) Less than the posted speed limit, if a speed limit has been posted;

(b) Proceed with caution;

(c) Be prepared to stop; and

(d) If possible, drive in a lane that is not adjacent to the lane in which the emergency vehicle is stopped, unless roadway, traffic, weather or other conditions make doing so unsafe or impossible.

2. A person who violates subsection 1 is guilty of a misdemeanor.

Attachment D

Oregon House Bill 2176 (2003)

CHAPTER 42

AN ACT

HB 2176

Relating to motor vehicles.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2003 Act is added to and made a part of the Oregon Vehicle Code.

SECTION 2. (1) A person operating a motor vehicle commits the offense of failure to maintain a safe distance from an emergency vehicle or ambulance if the person approaches an emergency vehicle or ambulance that is stopped

and is displaying required warning lights and the person:

(a) On a highway having two or more lanes for traffic in a single direction, fails to:

(A) Make a lane change to a lane not adjacent to that of the emergency vehicle or ambulance; or

(B) Reduce the speed of the motor vehicle, if making a lane change is unsafe.

(b) On a two directional, two-lane highway, fails to reduce the speed of the motor vehicle.

(2) The offense described in this section, failure to maintain a safe distance from an emergency vehicle or ambulance, is a Class B traffic violation.

Approved by the Governor April 1, 2003

Filed in the office of Secretary of State April 2, 2003

Effective date January 1, 2004

Attachment E

Kentucky Revised Statutes
189.930

189.930 Right-of-way to emergency vehicles -- Blocking or following emergency vehicles -- Driving over unprotected hoses of fire department.

- (1) Upon the approach of an emergency vehicle equipped with, and operating, one (1) or more flashing, rotating, or oscillating red or blue lights, visible under normal conditions from a distance of five hundred (500) feet to the front of such vehicle; or the driver is given audible signal by siren, exhaust whistle, or bell, the driver of every other vehicle shall yield the right-of-way, immediately drive to a position parallel to, and as close as possible to, the edge or curb of the highway clear of any intersection, and stop and remain in such position until the emergency vehicle has passed, except when otherwise directed by a police officer or firefighter.
- (2) Upon the approach of any emergency vehicle, operated in conformity with the provisions of subsection (1) of this section, the operator of every vehicle shall immediately stop clear of any intersection and shall keep such position until the emergency vehicle has passed, unless directed otherwise by a police officer or firefighter.
- (3) No operator of any vehicle, unless he is on official business, shall follow any emergency vehicle being operated in conformity with the provisions of subsection (1) of this section closer than five hundred (500) feet, nor shall he drive into, or park the vehicle into, or park the vehicle within, the block where the vehicle has stopped in answer to an emergency call or alarm unless he is directed otherwise by a police officer or firefighter.
- (4) No vehicle, train, or other equipment shall be driven over any unprotected hose of a fire department when the hose is laid down on any street, private driveway, or track for use at any fire or fire alarm unless the fire department official in command consents that the hose be driven over.
- (5) Upon approaching a stationary emergency vehicle or public safety vehicle, when the emergency vehicle or public safety vehicle is giving a signal by displaying alternately flashing yellow, red, red and white, red and blue, or blue lights, a person who drives an approaching vehicle shall, while proceeding with due caution:
 - (a) Yield the right-of-way by moving to a lane not adjacent to that of the authorized emergency vehicle, if:
 1. The person is driving on a highway having at least four (4) lanes with not fewer than two (2) lanes proceeding in the same direction as the approaching vehicle; and
 2. If it is possible to make the lane change with due regard to safety and traffic conditions; or
 - (b) Reduce the speed of the vehicle, maintaining a safe speed to road conditions, if changing lanes would be impossible or unsafe.
- (6) This section does not operate to relieve the person who drives an emergency vehicle from the duty to operate the vehicle with due regard for the safety of all persons using the highway.

Effective: June 24, 2003

History: Amended 2003 Ky. Acts ch. 63, sec. 1, effective June 24, 2003. -- Amended 2000 Ky. Acts ch. 215, sec. 1, effective July 14, 2000. -- Amended 1980 Ky. Acts ch. 371, sec. 2, effective July 15, 1980. -- Created 1970 Ky. Acts ch. 93, sec. 3.

Attachment F

Ohio Code
§ 4511.21.3

[§ 4511.21.3] § 4511.213. Duties upon approaching stationary public safety vehicle displaying emergency light.

(A) The driver of a motor vehicle, upon approaching a stationary public safety vehicle that is displaying a flashing red light, flashing combination red and white light, oscillating or rotating red light, oscillating or rotating combination red and white light, flashing blue light, flashing combination blue and white light, oscillating or rotating blue light, or oscillating or rotating combination blue and white light, shall do either of the following:

(1) If the driver of the motor vehicle is traveling on a highway that consists of at least two lanes that carry traffic in the same direction of travel as that of the driver's motor vehicle, the driver shall proceed with due caution and, if possible and with due regard to the road, weather, and traffic conditions, shall change lanes into a lane that is not adjacent to that of the stationary public safety vehicle.

(2) If the driver is not traveling on a highway of a type described in division (A)(1) of this section, or if the driver is traveling on a highway of that type but it is not possible to change lanes or if to do so would be unsafe, the driver shall proceed with due caution, reduce the speed of the motor vehicle, and maintain a safe speed for the road, weather, and traffic conditions.

(B) This section does not relieve the driver of a public safety vehicle from the duty to drive with due regard for the safety of all persons and property upon the highway.

(C) No person shall fail to drive a motor vehicle in compliance with division (A)(1) or (2) of this section when so required by division (A) of this section.

(D) (1) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

(2) Notwithstanding section 2929.28 of the Revised Code, upon a finding that a person operated a motor vehicle in violation of division (C) of this section, the court, in addition to all other penalties provided by law, shall impose a fine of two times the usual amount imposed for the violation.

(E) As used in this section, "public safety vehicle" has the same meaning as in section 4511.01 of the Revised Code.

HISTORY: 148 v H 86, Eff 9-28-99; 149 v. s 123, §1, eff. 1-1-04; 149 v H 490, §/4, eff. 1-1-04.

Attachment G

South Dakota Codified Laws
32-31-6.1

32-31-6.1. Stop required upon approaching stopped emergency vehicle using red signals -- Requirements for approaching vehicles using amber or yellow signals -- Violation as misdemeanor. Upon approaching from any direction any stopped authorized emergency vehicle making use of red visual signals meeting the requirements of this title, the driver of every other vehicle shall come to a complete stop before reaching the stopped emergency vehicle and may, unless otherwise directed, proceed with caution only after ascertaining that it is safe to do so, and upon approaching from any direction any stopped vehicle making use of amber or yellow warning lights, the driver of every other vehicle shall:

(1) If driving on an interstate highway or other highway with two or more lanes traveling in the same direction as the vehicle, merge into the lane farthest from the vehicle and proceed with caution, unless otherwise directed; or

(2) If driving on a two lane highway, slow to a speed that is at least twenty miles per hour less than the posted speed limit or five miles per hour when the speed limit is posted at twenty miles per hour or less and proceed with caution, unless otherwise directed.

A violation of this section is a Class 2 misdemeanor.

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Attachment H

Iowa Code
321-323A

321.323A Approaching certain stationary vehicles.

1. The operator of a motor vehicle approaching a stationary authorized emergency vehicle that is displaying flashing yellow, amber, white, red, or red and blue lights shall approach the authorized emergency vehicle with due caution and shall proceed in one of the following manners, absent any other direction by a peace officer:

a. Make a lane change into a lane not adjacent to the authorized emergency vehicle if possible in the existing safety and traffic conditions.

b. If a lane change under paragraph "a" would be impossible, prohibited by law, or unsafe, reduce the speed of the motor vehicle to a reasonable and proper speed for the existing road and traffic conditions, which speed shall be less than the posted speed limit, and be prepared to stop.

2. The operator of a motor vehicle approaching a stationary towing or recovery vehicle, or a stationary highway maintenance vehicle, that is displaying flashing yellow, amber, or red lights shall approach the vehicle with due caution and shall proceed in one of the following manners, absent any other direction by a peace officer:

a. Make a lane change into a lane not adjacent to the towing, recovery, or highway maintenance vehicle if possible in the existing safety and traffic conditions.

b. If a lane change under paragraph "a" would be impossible, prohibited by law, or unsafe, reduce the speed of the motor vehicle to a reasonable and proper speed for the existing road and traffic conditions, which speed shall be less than the posted speed limit, and be prepared to stop.

Section History: Recent form

2002 Acts, ch 1013, §1

Footnotes

For applicable scheduled fines, see §805.8A, subsection 11, paragraph b

Previous Section [321.323](#)

Next Section [321.324](#)



Attachment I

Alaska Administrative Code

13 AAC 04.090 "Authorized Emergency Vehicles"

&

13 AAC 04.095 "Flashing Yellow Vehicular Warning Lights"

&

13 AAC 04.100 "Flashing Blue Lights on Vehicles"


13 AAC 04.090. Authorized emergency vehicles

(a) Every authorized emergency vehicle must, in addition to other equipment required by this chapter, be equipped with a signal light mounted as high as practicable, and which is capable of displaying to the front and rear flashing red color of sufficient intensity to be visible at 500 feet in normal sunlight. The flashing light must be sufficiently spaced from the headlights so that it will not be blacked out when the headlights are illuminated. An authorized emergency vehicle may display rotating beams of red light or of red and white light meeting the requirements of this subsection.

(b) Repealed 6/28/79.

(c) A police vehicle, when used as an authorized emergency vehicle, may but need not be equipped with alternately flashing red lights as specified in (a) of this section.

(d) Repealed 6/28/79.

(e) Repealed 6/28/79.

(f) Repealed 6/28/79.

(g) If, in addition to the light required in (a) of this section, a second or subsequent light is mounted on the authorized emergency vehicle, the light must be mounted as high as practicable and at the same level as the first light. The lights must be as widely spaced laterally as practicable, and must meet the spacing and visibility requirements of (a) of this section. The second light may display flashing blue color in accordance with sec. 100 of this chapter.

History: In effect before 7/28/59; am 12/15/61, Register 3; am 8/10/66, Register 22; am 12/31/69, Register 31; am 6/28/79, Register 70

Authority: AS 28.05.011

13 AAC 04.095. Flashing yellow vehicular hazard warning lights

(a) Repealed 6/28/79.

(b) Repealed 6/28/79.

(c) The following vehicles must be equipped with a flashing yellow warning light visible at 500 feet in normal sunlight to either the front, rear or sides or from all positions:

(1) a vehicle of the Department of Transportation and Public Facilities, a municipality, or a contractor used in highway maintenance, inspection, survey or construction when working upon or within eight feet of a roadway;

(2) a vehicle of a public utility company, when actually engaged in the construction, removal, repair, maintenance or inspection of a public utility facility and when parked or moving slower than the normal traffic flow upon or within eight feet of a roadway;

(3) a motor vehicle engaged in towing a house or a building upon a highway;

(4) a pilot car as provided in 17 AAC 25.090; and

(5) a motor vehicle engaged in snow removal from private property when it moves onto, across or within eight feet of a roadway while removing the snow, or a motor vehicle engaged in snow removal from subdivision streets.

(d) The lights required in this section must be used to warn drivers of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking or passing the hazard.

(e) After January 1, 1978, every bus, truck, truck-tractor and trailer 80 inches or more in overall width or 30 feet or more in overall length, and every motor vehicle manufactured after January 1, 1978, must be equipped with lights meeting the requirements of (f) of this section.

(f) Vehicular hazard warning lights must be mounted at the same level and as widely spaced laterally as practicable, except that on vehicles less than 80 inches overall width, only one warning light need be mounted on the rear of the vehicle. The lights must display simultaneously flashing yellow color to the front of the vehicle, except that on vehicles manufactured before January 1, 1969, the light showing to the front may display simultaneously flashing yellow or white color, or any shade of color between yellow and white. The lights displaying warning to the rear of the vehicle must show simultaneously flashing red or yellow color, or any shade of color between red and yellow. The lights authorized by this section must be visible from a distance of not less than 500 feet in normal sunlight.

(g) A tow car must be equipped with a flashing yellow warning light visible at 500 feet in normal sunlight to the front, rear and both sides. The tow car must illuminate the yellow warning light during preparation at the location from which a disabled vehicle is to be towed, and the yellow warning light must be illuminated when the tow car is towing a vehicle at a speed slower than the normal flow of traffic, during the hours of darkness when the towed vehicle does not have taillights illuminated to the rear, or when the taillights, stop lights or turn signals on the tow car are obscured by the towed vehicle. The flashing warning light may not be illuminated except as provided in this section.

(h) A vehicle used for the purpose of mail or other delivery along a highway must illuminate the lights required by this section at least 100 feet, but not more than 500 feet, before making a stop as required in the official performance of the duties of the driver of the vehicle. Display of the lights must continue for as long as the conditions specified in (d) of this section exist. The lights must be visible to the front and rear of the vehicle at a distance of 500 feet in normal sunlight. Further, a mail delivery vehicle must clearly display to the front and to the rear of the vehicle, the words "U.S. MAIL" in letters at least eight inches high on a distinctively contrasting background; other vehicles used in making deliveries along a highway must display the words "DELIVERY VEHICLE" in a like manner.

(i) The lights specified in this section may not be turned on when a vehicle is

(1) parked lawfully in an urban district;

(2) stopped lawfully to avoid conflict with other traffic or to comply with the directions of a police officer, a fireman or an authorized flagman or an official traffic-control device; or

(3) otherwise stopped or driven when there do not exist the conditions specified in (c) of this section.

History: Eff. 12/31/69, Register 31; am 6/28/79, Register 70

Authority: AS 28.05.011

13 AAC 04.097. Special school bus lighting equipment

(a) A school bus must, in addition to other equipment and distinctive markings required by this chapter, be equipped with signal lights mounted as high and as widely spaced laterally as practicable, which must display to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level. The lights must be visible at 500 feet in normal sunlight. The alternately flashing red lights must be illuminated by the driver of the school bus when, but only when, the bus is stopped for the purpose of receiving or discharging school children, except that the lights may not be illuminated in

(1) a designated school bus loading or unloading area where the bus is entirely off the roadway and a child being received into or discharged from the bus is not required to cross the roadway; or

(2) an intersection or other place where traffic is controlled by a traffic-control signal or by a police officer.

(b) A school bus must be equipped with yellow signal lights mounted near each of the four red lights required in (a) of this section and at the same level but closer to the vertical centerline of the bus. These lights must display two alternately flashing yellow lights visible to the front and rear of the bus for a distance of at least 500 feet in normal sunlight. The yellow flashing lights must be illuminated by the school bus driver at least 100 feet, but not more than 500 feet, before every stop at which the alternately flashing red lights are illuminated, at which time the alternately flashing yellow lights authorized by this section must be turned off.

(c) Every school bus must have indicator lights readily visible to the driver of the bus, which automatically indicate to the driver of the bus when any of the alternately flashing lights authorized by this section are illuminated.

History: Eff. 6/28/79, Register 70

Authority: AS 28.05.011

Editor's note: This section is based partially on former 13 AAC 04.090(b) and 13 AAC 04.150(c) - (e).

13 AAC 04.100. Flashing blue lights on vehicles

(a) A firefighter, an emergency medical service responder, or a police officer, with the concurrence of the chief of that person's department, when authorized under 13 AAC 02.517 or (i) of this section, may equip the person's motor vehicle with a flashing blue light that must be visible from the front and sides for a distance of 300 feet in normal sunlight. The flashing blue light authorized by this subsection may be illuminated only when the driver of the vehicle is a member of a fire or a police department responding to an emergency, and the vehicle must display a sign or plate that indicates the department membership and the name of the municipality or organization in which the driver is a member.

(b) Repealed 6/28/79.

(c) Repealed 6/28/79.

(d) Repealed 6/28/79.

(e) Police and public fire vehicles may not use a flashing blue light except simultaneously with a flashing red light as required in sec. 90 of this chapter.

(f) Vehicles, except those vehicles described in (e) of this section, that are owned or operated by the state or a municipality may not use a flashing blue light except simultaneously with a flashing yellow light and in accordance with 13 AAC 04.095.

(g) A person certified by a state agency to render emergency lifesaving or medical services, when authorized by the commissioner, may equip his private vehicle with a flashing blue light meeting the visibility requirements of (a) of this section, for use only when responding to an emergency. The flashing blue light may not be illuminated except when the driver of the vehicle is properly certified to render emergency lifesaving or medical services and his vehicle displays the "star of life" symbol.

(h) Lights displaying blue color may not be used upon vehicles, except as provided in this section.

(i) A fire chief, an emergency medical service provider, or a police chief of a municipality or borough that has been granted authority in writing by the commissioner may authorize a person to equip the person's motor vehicle with a flashing blue light if

(1) the person completes and returns to the commissioner or the commissioner's designee on a signed and notarized form prepared by the department a certification that

(A) the person's motor vehicle complies with the equipment standards set out in 13 AAC 04;

(B) the person holds a valid Alaska driver's license that has not been suspended, revoked, cancelled, or limited within the three years before the form is returned; and

(C) the person has read and understands the regulations for emergency vehicle operation set out in 13 AAC 02.140, 13 AAC 02.517 and 13 AAC 04.100; and

(2) if requested by the commissioner or the commissioner's designee, the person provides a certified copy of the person's driving record.

History: Eff. 12/31/69, Register 31; am 6/28/79, Register 70; am 6/12/97, Register 142; am 12/6/2001, Register 160

Authority: AS 28.05.011

Editor's note: Copies of the design standards for the "star of life" may be obtained from the emergency medical services section of the division of public health, Department of Health and Social Services.

13 AAC 04.105. Stoplamp and electric turn signals

Repealed 6/28/79.

13 AAC 04.110. Additional lighting equipment

Attachment J

Peace Officer Letters of Support

Fairbanks Police Department

Attn: Officer David A. Stevenson
911 Cushman Street
Fairbanks, AK 99701

February 16th, 2004

STATE OF ALASKA HOUSE OF REPRESENTATIVES
Representative Jim Holme
ATTN: Matthew Rudig, Staff to Representative Jim Holm
State Capitol Building
Juneau, AK 99801

To Whom It May Concern:

I am submitting this letter as a Statement in Support of House Bill 438.

I have been a police officer for over 17 years. I have been a police officer in Alaska since 1993. On October 8th, 2000 I was involved in an accident on the Richardson Highway just south of Fairbanks. In my accident, a driver traveling southbound on the Richardson Highway realized at the last minute that I was not merely doing a traffic stop. A wrecker was facing backwards on the highway ready to tow a vehicle. I did things to try and get the driver to slow down. My emergency overhead lights were on. She moved over, but did not slow down. She swerved suddenly and the icy road conditions threw her vehicle into a spin at 50 MPH causing her to crash into my patrol car. On this day, I did something different than I have ever done in my career. I did not get out of my patrol car and direct traffic as I usually do. It was dark. It was snowing heavily and had been raining earlier in the night, causing extremely slick road conditions. I could hardly stand on the road. If I had been out of my vehicle at the time of the accident, I would have been crushed between the patrol car and the car that struck me.

My patrol car was involved in a similar accident in 1998. Fairbanks Police Department Officer Williams using my patrol car. He was working an accident on the Richardson Highway when a driver failed to slow, drove through a large flare pattern and rear-ended my patrol car.

Sergeant Jewkes with the Fairbanks Police Department also was working an accident on the Johansen Expressway near the Peger Road overpass. A vehicle did not slow down and slid on the icy roads. He and a bystander had to jump over an embankment to avoid being crushed as the car struck the guardrail they were standing next to. We are thankful at the Fairbanks Police Department that it was only the embankment, and not the bridge itself.

In the 1980's Fairbanks Police Officer Don Lasage was struck on the Richardson Highway after he stopped to clear debris from the roadway. His emergency overhead lights were on. Officer Lasage was gravely injured and subsequently had to retire on medical retirement.

There are similar stories across the state where officers have jumped out of the way or felt the high speed brush of a mirror passing their head at 55 MPH plus. I have discovered an interesting effect through the years. Some drivers are so busy looking at the emergency overhead lights they actually drive towards them. (You drive to where you are looking.)

The point I see in this law is it will give a person an automatic response to the sight of emergency vehicles along the side of the road. We all take our foot off the accelerator when we see a police car coming the other way. I do it too. Even though we may not be speeding, it is an automatic response. We do not want a speeding ticket. With the proper advertising campaign and support in the media, this law could engrain in most driver's head that

when they see the emergency overhead lights, they need to slow down and move over. We will automatically think, "Oh, emergency overhead lights... I better slow down and move over." Nobody wants a ticket.

Thank you for your time and consideration in this matter. Please vote for House Bill 438. It is a simple law that could save an officer's life and save our government money in damages and medical bills.

Sincerely,

David A. Stevenson #307
Police Officer
Fairbanks Police Department

Subject: [Fwd: New Alaska Statute]

Date: Tue, 10 Feb 2004 07:04:40 -0900

From: Representative Jim Holm <Representative_Jim_Holm@Legis.state.ak.us>

Organization: Alaska State Legislature

To: Matthew Rudig <Matthew_Rudig@legis.state.ak.us>

Subject: New Alaska Statute

Date: Sat, 07 Feb 2004 01:12:33 -0900

From: Eric Jewkes <ejewkes@ci.fairbanks.ak.us>

To: Representative_Jim_Holm@legis.state.ak.us

I have read over the proposed statute AS 28.35.185 and give it my support. One, often overlooked, danger emergency service personnel frequently face is that of careless drivers. With so much of our time being spent on or near the road way, this danger is one that is difficult to defend against. Nothing we have can stop a 6000 pound car traveling at 55 plus mph.

To add a personal story relating to this: After working for the Fairbanks Police department around 2 years I responded to a traffic accident on the Johansen expressway. The vehicles involved in the accident were not able to be driven, which meant staying on the roadside, near the Peger overpass. I was aware of the dangers of passing cars and had one of the driver's, whom I was speaking with, stand with me in front of my car. While I was talking to the driver I heard a vehicle sliding on the ice. I turned around to see a Jeep, out of control, and heading right at my patrol car, and us. I had just enough time to tell the other driver to run. We both ran toward the guardrail, jumping over it and down the embankment(luckily just passed the overpass and not on the actual bridge). The Jeep struck my patrol car, at approximately 50 mph, in the middle of the driver's door, pushing my car into the area where we had just been standing.

Would this proposed law change what happened or what could have happened? Maybe not. Regardless, I believe the intent of the law represents what a driver with good sense would do anyway. Unfortunately common sense does not always parallel good sense and a legislative reminder is necessary.

Thank you for your concerns and efforts.

Eric Jewkes, Sergeant
Fairbanks Police Department

Subject: New Alaska Statute

Date: Sat, 07 Feb 2004 01:12:33 -0900

From: Eric Jewkes <ejewkes@ci.fairbanks.ak.us>

To: Representative_Jim_Holm@legis.state.ak.us

I have read over the proposed statute AS 28.35.185 and give it my support. One, often overlooked, danger emergency service personnel frequently face is that of careless drivers. With so much of our time being spent on or near the road way, this danger is one that is difficult to defend against. Nothing we have can stop a 6000 pound car traveling at 55 plus mph.

To add a personal story relating to this: After working for the Fairbanks Police department around 2 years I responded to a traffic accident on the Johansen expressway. The vehicles involved in the accident were not able to be driven, which meant staying on the roadside, near the Peger overpass. I was aware of the dangers of passing cars and had one of the driver's, whom I was speaking with, stand with me in front of my car. While I was talking to the driver I heard a vehicle sliding on the ice. I turned around to see a Jeep, out of control, and heading right at my patrol car, and us. I had just enough time to tell the other driver to run. We both ran toward the guardrail, jumping over it and down the embankment(luckily just passed the overpass and not on the actual bridge). The Jeep struck my patrol car, at approximately 50 mph, in the middle of the driver's door, pushing my car into the area where we had just been standing.

Would this proposed law change what happened or what could have happened? Maybe not. Regardless, I believe the intent of the law represents what a driver with good sense would do anyway. Unfortunately common sense does not always parallel good sense and a legislative reminder is necessary.

Thank you for your concerns and efforts.

Eric Jewkes, Sergeant
Fairbanks Police Department

HB

447

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

FRANK H. MURKOWSKI,
GOVERNOR

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-2075

April 8, 2004

Honorable Ralph Seekins, Chair
Senate Judiciary Committee
State Capital, Room 125
Juneau, AK 99811

Re: CSHB 447(JUD) -- (2004 Revisor's Bill)

Dear Senator Seekins:

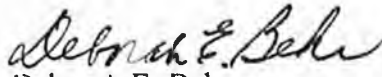
The Department of Law has reviewed CSHB 447(JUD) (2004 revisor of statutes bill).
The bill makes technical changes to improve Alaska statutes

We appreciate the revisor's excellent efforts in preparing this necessary legislation.

We find no legal issues with CSHB 447(JUD).

Sincerely,

GREGG D. RENKES
ATTORNEY GENERAL

By: 
Deborah E. Behr
Assistant Attorney General

DEB:pvp

cc: Pam Finley
Revisor of Statutes

David Márquez, Chief Assistant Attorney General
Dept. of Law

Mike Tibbles, Legislative Director
Office of the Governor

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM

April 7, 2004

SUBJECT: CSHB 447(JUD) (2004 Revisor's Bill)

TO: Senator Ralph Seekins
Chair of the Senate Judiciary Committee

FROM: Pam Finley *PF*
Revisor of Statutes

Enclosed is a sectional analysis for CSHB 447(JUD) (the 2004 revisor's bill), which has been referred to your committee. I would appreciate it if you would schedule a hearing on the bill at your earliest convenience. If you have any questions, please do not hesitate to call me. Thank you for your attention.

PF:med
04-378.med

Enclosure

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 7, 2004

SUBJECT: CSHB 447(JUD) (2004 Revisor's Bill)

TO: Senator Ralph Seekins
Chair of the Senate Judiciary Committee

FROM: Pam Finley 
Revisor of Statutes

The following is a sectional analysis of CSHB 447(JUD), the 2004 revisor's bill. The bill is prepared under AS 01.05.036, which provides, in part, that the revisor of statutes

...shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of any portion of the statute law of this state.

To assist the reader in understanding the bill, I have summarized the contents by listing sections that have similar purposes or effects.

Sections that delete, repeal, or update obsolete provisions: Sections 6, 7, 11, 47, and 48 amend or repeal provisions that have become obsolete through other legislative action.

Sections that correct errors or oversights: Sections 1 - 5, 8 - 10, 12 - 17, 20, 23, 24, 26 - 46, and 49 correct errors or oversights.

Sections that improve the form or substance of the law: Sections 18, 19, 21, 22, and 25 propose amendments to improve the form or substance of the statutory law of Alaska.

SECTIONAL ANALYSIS

Bill section 1. Chapter 46, SLA 2003 amended the definition of "emission" in AS 46.14.990 to change "air contaminants" to "air pollutants." This amendment arguably triggered the provisions of AS 09.45.230(d). According to the Department of Law and the Department of Environmental Conservation (chapter 46 was a Governor's bill), it was not the Governor's intent to trigger AS 09.45.230(d), and the failure to amend it to conform to the amendment in ch. 46 was an oversight. That oversight is corrected here.

Bill section 2 corrects an error in AS 09.65.235, added by ch. 117, SLA 1998, by substituting a reference to the article governing negotiated regulation making committees for a reference to the chapter governing immunities in general. As currently written, the

language makes no sense because there are no official duties of the committee under AS 09.65; the duties are set by AS 44.62.710 - 44.62.800.

Bill sections 3 and 4 correct an error in Executive Order 108. Executive Order 108 repealed AS 14.37, but failed to delete cross-references to AS 14.37. These bill sections delete those cross-references in AS 11.61.195(a) and 11.61.220(a). The remaining language is adequate because Executive Order 108 moved the child care licensing provisions from AS 14.37 to AS 47.35, and AS 47.35 is already mentioned in AS 11.61.195(a)(2)(B) and AS 11.61.220(a)(4)(A).

Bill section 5 corrects an error in AS 12.55.125(l) by substituting "subsection" for "section." AS 12.55.125(f) and (g) already apply the limitations found in AS 12.55.125(l)(1) - (3) to other applicable subsections. This corrects an error in sec. 7, ch. 7, SLA 1996.

Bill section 6 amends AS 13.26.015(1) by deleting a reference to a minor having attained 18 years of age. Since, under AS 25.20.010, people 18 years of age are not minors, this provision no longer makes sense. At the time AS 13.26.015 was enacted, the age of majority was 19, but it was lowered to 18 in 1977. The legislature may, in another bill where substantive changes are more appropriate, want to consider amending AS 13.26.015(1) and AS 13.26.280(a) (which is amended by the next bill section) to include minors that are emancipated under AS 09.55.590, or to harmonize the references to married minors with AS 25.20.020, or both.

Bill section 7 amends AS 13.26.280(a) to remove another reference to a "minor under the age of 18 years." See explanation for bill section 6.

Bill section 8 corrects an error in Executive Order 108. Executive Order 108 repealed AS 14.37, but failed to delete cross-references to AS 14.37. This bill section deletes a cross-reference in AS 14.43.148(h)(1)(B)(iii). The remaining language is adequate because Executive Order 108 moved the child care licensing provisions from AS 14.37 to AS 47.35, and AS 47.35 is already mentioned in AS 14.43.148(h)(1)(B)(iii).

Bill section 9 amends AS 15.13.040(j) to correct a drafting error in ch. 108, SLA 2003 (SB 119). The Senate State Affairs Committee substitute was supposed to delete, throughout the bill, the requirement of disclosing a contributor's principal occupation and employer unless the aggregate contributions exceeded \$250 per year. This change was made in AS 15.13.040(a) and (b), but not in AS 15.13.040(j). This bill section amends AS 15.13.040(j) to conform to the committee's instructions for what became ch. 108, SLA 2003.

Bill section 10 amends AS 15.13.110(f)(2) by changing "primary election" to "general election." Chapter 103, SLA 2001 amended AS 15.25.140 - 15.25.200 so that nominating petitions are to apply to general elections, not primary elections. This bill section conforms AS 15.13.110(f)(2) to the change made by ch. 103, SLA 2001.

Bill section 11 amends the list of programs that may be considered in setting limited entry permit fees for non-residents as set out in AS 16.43.160(e)(2)(A). AS 16.43.160(e)(2)(A)(iii) and (vi) are amended to reflect the transfer of habitat programs from the Department of Fish and Game to the Department of Natural Resources in Executive Order 107. AS 16.43.160(e)(2)(A)(viii) is amended to reflect the addition of the salmon fishery assessment program and the permit buy-back assessment program in the Department of Revenue; this change should have been made when these programs were added. This bill section also conforms AS 16.43.160(e) to the Alaska Supreme Court's decision in Carlson v. C.F.E.C., 65 P.3d 851 (Alaska 2003)(Carlson III), as suggested by Assistant Attorney General Stephen White. Since AS 16.43.160(e) was enacted to support the State's position in Carlson, it seems appropriate to conform the statute to the Court's decision as requested by the Attorney General's office.

Bill sections 12 - 14 amend AS 21.36.360(i), (j), and (k) by substituting "AS 21.89.090" for "AS 21.89.070". Chapter 62, SLA 1995 amended AS 21.36.360 (i), (j), and (k) to refer to a risk retention group or purchasing group "registered under AS 21.89.070". However, it is AS 21.89.090, added by ch. 62, SLA 1995, that requires registration of risk retention groups and purchasing groups. AS 21.89.070 relates to tax credits for gifts to colleges and does not mention registration. To correct this error in ch. 62, SLA 1995, these bill sections, substitute "AS 21.89.090" for "AS 21.89.070".

Bill section 15 deletes the requirement that sets of the Alaska Statutes be recorded as items of property on the records of agencies and the central property records of the state. According to the legislative supply officer, the current minimum value for recording state property is \$1,000. Now that the sets of Alaska Statutes are published in softbound editions, their value is considerably below that.

Bill section 16 corrects an error in Executive Order 108. Executive Order 108 repealed AS 14.37, but failed to delete cross-references to AS 14.37. This bill section deletes a cross-reference in AS 25.27.244(s)(2)(B)(ii). The remaining language is adequate because Executive Order 108 moved the child care licensing provisions from AS 14.37 to AS 47.35, and AS 47.35 is already mentioned in AS 25.27.244(s)(2)(B)(ii).

Bill section 17 corrects an error in Executive Order 108. Executive Order 108 abolished the division of alcoholism and drug abuse, but did not delete a reference to the division in AS 28.35.032(l). This bill section corrects that error.

Bill sections 18 and 19 substitute "tenancy by the entirety" for "tenancy by the entireties" in AS 32.05.020(2) and AS 32.06.202(c). The former is the correct term.

Bill section 20 corrects an error in Executive Order 108 by substituting "AS 47.25.001 - 47.25.009" for "AS 47.25.007 - 47.25.009" in AS 36.30.850(b)(11), which lists subjects not covered by the Procurement Code. Because executive orders must reorganize executive functions without otherwise changing the law, when Executive Order 108

deleted "AS 14.38.100" it should have inserted a reference to the statute enacted by E.O. 108 that was equivalent to AS 14.38.100. AS 14.38.100 referred to agreements with providers of services under AS 14.38.100 - 14.38.199, which corresponds to AS 47.25.001 - 47.25.009 in E.O. 108. Therefore the appropriate spanned reference to substitute for "AS 14.38.100" was "AS 47.25.001 - 47.25.009," not "AS 47.25.007 - 47.25.009." This bill section corrects the reference. The Department of Law agrees that this amendment is appropriate.

Bill section 21 amends AS 37.05.180 by inserting "former" before "AS 39.37." AS 39.37 was rejected by referendum in 1976.

Bill section 22 corrects the style of AS 37.05.318. Because this section is within AS 37.05, it should refer to "other provisions of this chapter" instead of "AS 37.05." Also, the current style of the Alaska Statutes requires the statutory reference ("AS 44.62" in this case) to precede the description ("Administrative Procedure Act" in this case.)

Bill section 23 amends AS 37.14.270(2) because the term that is actually defined in AS 47.17.290 is "child abuse or neglect."

Bill section 24 amends AS 39.50.030(g) to substitute "domestic partner" for "spousal equivalent". This change in terminology was made in other subsections of AS 39.50.030 by ch. 108, SLA 2003, but we overlooked AS 39.50.030(g).

Bill section 26 adds a short title to AS 41.17, which has come to be known as the Forest Resources and Practices Act. This bill section will make that name official.

Bill section 26. This section corrects an error in Executive Order 108. E.O. 108 repealed AS 44.21.120 and enacted the same language as AS 44.29.520. However, E.O. 108 failed to address contingent amendments to AS 44.21.120 that were made by secs. 1 and 2, ch. 4, SSSLA 2002. The contingency on which sec. 2, ch. 4, SSSLA 2002 depended (the establishment of the Alaska Veterans Advisory Council) has already occurred, but nevertheless, under sec. 13(a), ch. 4, SSSLA 2002, the effective date of sec. 2, ch. 4, SSSLA 2002 has not arrived because the agreement to allow a pilot project, which is described in sec. 10, ch. 4, SSSLA 2002, has not been executed. Under secs. 12(b) and 13(b), that agreement also controls the effective date of sec. 1, ch. 4, SSSLA 2002. In order to integrate secs. 1 and 2, ch. 4, SSSLA into E.O. 108, this bill section amends AS 44.29.520 (enacted by E.O. 108) to include the changes made by secs. 1 and 2, ch. 4, SSSLA 2002. However, this bill section is made contingent on execution of the agreement described in sec. 10, ch. 4, SSSLA 2002, and the effective date of this bill section is the date the agreement described in sec. 10, ch. 4, SSSLA 2002 is signed by all parties.

Bill section 27 corrects an error in Executive Order 108. E.O. 108 repealed AS 44.21.200 and enacted in its stead AS 47.44.200, but failed to amend cross-references to AS 44.21.200. This bill section corrects the cross-reference in AS 44.66.010(a)(10).

Bill sections 28 - 30 correct errors in ch. 46, SLA 2003. Section 15 of that Act (CSHB 160(FIN)) renumbered the paragraphs of AS 46.14.140(a), but failed to conform cross-references. These bill sections correct cross-references in AS 46.14.120(b) and (c) and 46.14.170(a). These amendments are proposed after consultation with the Department of Environmental Conservation because ch. 46, SLA 2003 was a Governor's bill.

Bill section 31 corrects an error in ch. 99, SLA 1998, which renumbered paragraphs in AS 47.10.093(b), but failed to conform a cross-reference in AS 47.10.093(g). This bill section corrects that error.

Bill sections 32 and 33 correct errors in Executive Order 108. E.O. 108 repealed AS 44.21.200 and enacted in its stead AS 47.44.200, but failed to amend cross-references to AS 44.21.200. These bill sections correct the cross-reference in AS 47.24.070 and AS 47.30.016(b)(2)(D).

Bill section 34 corrects an error in Executive Order 108. E.O. 108 repealed AS 44.21.230 and enacted in its stead AS 47.44.230, but failed to amend cross-references to AS 44.21.230. This bill section corrects the cross-reference in AS 47.30.036(3).

Bill section 35 corrects errors in Executive Order 108. Executive orders may not change substantive legal requirements. However, when E.O. 108 repealed AS 14.37.020 and amended AS 47.35.010 to include provisions from former AS 14.37.020, it failed to include references to "certification" that had been in AS 14.37.020. It also, by applying AS 47.35.010(a)(5) to child care facilities, added provisions that did not exist in AS 14.37.020. Accordingly, "certification" is added to AS 47.35.010(a)(2) and (3), and child care facilities are excepted from AS 47.35.010(a)(5). The Department of Law agreed that these changes are appropriate.

Bill section 36 involves an error in ch. 58, SLA 1999, which was carried forward in Executive Order 108. Chapter 58, SLA 1999 transferred the child care facility licensing to the Department of Education and Early Development, but was not intended to change the substantive requirements for licensing those facilities. Before 1999, the facilities were licensed under AS 47.35 and applicants were required to submit fingerprints for background checks. When the requirement was moved to AS 14.37, the fingerprint requirement was inadvertently omitted (although the background check requirement was moved to AS 14.37). Because the Department of Education and Early Development had broad regulation-making authority, it required fingerprints by regulation. However, when E.O. 108 moved the licensing of child care facilities back to AS 47.35, it excepted child care facilities from the fingerprint provision unless regulations were adopted that required them. While this may have been the proper procedure for an executive order, the effect was to continue the error in ch. 58, SLA 1999. This bill section takes the language back to what it was before ch. 58, SLA 1999, so that fingerprints will be required, even absent regulations.

Bill section 37 corrects an error in Executive Order 108. AS 47.35.021 allows discretionary denial of initial licenses. AS 14.37, repealed by E.O. 108, did not contain similar provisions. Because AS 47.35.021 was enacted in 2002, after child care licensing had been moved to AS 14.37, it appears that the omission of a similar provision for child care licensing was deliberate. So, when E.O. 108 moved regulation of child care facilities from AS 14.37 to AS 47.35, it should have excepted those facilities from AS 47.35.021, but did not do so. This bill section corrects that error.

Bill section 38 corrects an error in Executive Order 108. AS 47.35.140 allows certain persons licensed under AS 47.35 to continue operating under certain circumstances even if an employee has committed certain offenses. AS 14.37, repealed by E.O. 108, did not contain a similar provision. Because AS 47.35.140 was enacted in 2002, after child care licensing had been moved to AS 14.37, it appears that the omission of a similar provision for child care licensing was deliberate. So, when E.O. 108 moved regulation of child care facilities from AS 14.37 to AS 47.35, it should have excepted those facilities from AS 47.35.140, but did not do so. This bill section corrects that error.

Bill sections 39 - 46 and 49 amend ch. 4, SSSLA 2002 to conform to the changes made by Executive Order 108. Sections 39, 40, 42, 43 and 45 amend secs. 5, 8, 10, 12(b), and 13(b), respectively, of ch. 4, SSSLA 2002 to substitute "health and social services" for "administration" because E.O. 108 moved the responsibility for these provisions from the Department of Administration to the Department of Health and Social Services. Bill section 41 amends sec. 9, ch. 4, SSSLA 2002 to reflect the fact that AS 47.55.010(e) is being amended by bill section 39. Bill sections 43 and 45 also remove sec. 1, ch. 4, SSSLA 2002 from the condition and delayed effective date of secs. 12(b) and 13(b), ch. 4, SSSLA 2002; the amendments of sec. 1, ch. 4, SSSLA 2002 are incorporated in bill section 26 and provisions similar to secs. 12(b) and 13(b), ch. 4, SSSLA 2002 are found in bill sections 51 and 52. Because the provisions of secs. 1 and 2, ch. 4, SSSLA 2002 are also incorporated into bill section 26, both secs. 1 and 2, ch. 4, SSSLA 2002 and the conditional and effective dates for sec. 2 that are found in secs. 12(a) and 13(a), ch. 4, SSSLA 2002 are also repealed by bill section 49.

Bill sections 44 and 46 correct an error in ch. 4, SSSLA 2002. Under sec. 15, ch. 4, SSSLA 2002, secs. 8 and 9 of that Act take effect July 1, 2005. However, there is no need for secs. 8 and 9, ch. 4, SSSLA 2002 unless sec. 5 (which adds the subsection sec. 9 repeals) and sec. 11 (which changes the name of the Home and thereby requires the amendment made by sec. 8) of that Act take effect. Therefore, bill section 44 adds that condition and bill section 46 amends the effective date in sec. 15, ch. 4, SSSLA 2002 to take the condition into account.

Bill section 47 repeals AS 39.25.110(21) which places in the exempt service employees of the Citizens' Advisory Commission on Federal Areas in Alaska. However, there are no longer employees of that Commission because AS 41.37, which created the Citizens' Advisory Commission on Federal Areas in Alaska, was repealed June 30, 2003, under

Senator Ralph Seekins
April 7, 2004
Page 7

sec. 3, ch. 81, SLA 1981, as amended by sec. 1, ch. 25, SLA 1988 and sec. 1, ch. 71, SLA 1998.

Bill section 48 repeals sec. 71(1), ch. 106, SLA 1980, an uncodified law section that reads as follows:

After July 1, 1981,

(1) no further loans may be made under AS 16.10.310 and AS 16.10.320(a) except for loans authorized under AS 16.10.333 [for purchase of limited entry permits] pursuant to AS 16.10.310 and 16.10.320(a)....

However, since 1981, the legislature has authorized loans under AS 16.10.310 for things other than entry permits, *e.g.*, for the upgrade of existing vessels and gear and to pay past due federal tax obligations (sec. 1, ch. 62, SLA 1994 and sec. 1, ch. 127, SLA 2000) and for quota shares (sec. 2, ch. 73, SLA 1994). Clearly sec. 71(1), ch. 106, SLA 1980 has been repealed by implication. This bill section makes the repeal explicit.

Bill section 49. See explanation for bill sections 39 - 46.

Bill section 50 provides transitional provisions for the appointments to the Alaska Pioneers' Homes Advisory Board authorized by AS 44.29.520, as amended by bill section 26. Bill section 26 is derived from secs. 1 and 2, ch. 4, SSSLA 2002. Although ch. 4, SSSLA 2002 had no transitional provisions, sec. 2 of that Act (which added the member who is chair of the Alaska Veterans Advisory Council) was to take effect after sec. 1 of that Act (which added the member described in AS 44.29.520(a)(2), as amended by bill section 26). See sec. 13(a), ch. 4, SSSLA 2002. Accordingly, in the transitional provision, the person described in AS 44.29.520(a)(2) is to be appointed before the person described in AS 44.29.520(a)(4) becomes a member.

Bill section 51 makes bill section 26 conditional on the agreement described in sec. 10, ch. 4, SSSLA 2002, as amended by bill section 42. This bill section replaces the references to secs. 1 and 2, ch. 4, SSSLA 2002 in secs. 12 and 13, ch. 4, SSSLA 2002.

Bill section 52 gives bill section 26 the effective date that the equivalent provisions had under sec. 13(b), ch. 4, SSSLA 2002.

Bill section 53 gives the remainder of this bill an immediate effective date.

Please give me a call if you have any questions about the above.

PF:med
04-379.med

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 447(STA)
(H) Publish Date: 2/23/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Legislature
Title: "An Act making corrective amendments to BRU: Legislative Council
the Alaska Statutes as recommended by the revisor..." Component: Council and Subcommittees
Sponsor: House Rules by Request of Leg Council
Requestor: House State Affairs Component No. 783

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type- Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation has zero fiscal impact on the Legislative Affairs Agency.

Prepared by: Karla Schofield, Deputy Director Phone 465-6626
Division: Administrative Services Date/Time 2/23/04 10:08 AM
Approved by: Pamela Varni, Executive Director Date 2/23/2004
Agency: Legislative Affairs Agency

HB

451



ALASKA COURT SYSTEM
State of Alaska
Office of the Administrative Director

Doug Wooliver
Administrative Attorney

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

March 22, 2004

The Honorable Ralph Seekins
Chair, Senate Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Seekins:

The Alaska Court System respectfully requests that you schedule HB 451 for a hearing before the Senate Judiciary Committee at your earliest convenience.

House Bill 451 was introduced at the request of the court system to delay the termination dates of two pilot therapeutic court programs in Anchorage and Bethel. Those felony-level courts were established in 2001 through the passage of HB 172. They are each scheduled to run for three years, after which the Judicial Council is to evaluate the programs and publish a study for the court and the legislature to review. Unfortunately, because of the timing of the report, both programs will end more than a year before the legislature has an opportunity to decide whether they should continue. In order to fix this problem, HB 451 extends the termination date of the HB 172-courts until after the legislature has had the opportunity to evaluate their effectiveness.

Additionally, HB 451 deletes a sunset clause that was placed on the Anchorage superior court judge position that was added by HB 172. The new judge was necessary not only to do the work of the therapeutic court but also to help absorb the growing felony caseload in Anchorage. The sunset clause will take effect this summer at the same time the therapeutic court program is scheduled to end. Not only will that mean the end of the felony therapeutic court, it will also mean that Anchorage will have one less judge for other superior court work. The therapeutic court judge in Anchorage spends most of her time on general superior court work unrelated to therapeutic court cases. If we lose the judicial position it will impact all superior court cases in Anchorage.

Thank you for your consideration of this bill.

Sincerely,


Doug Wooliver

Sponsor Statement
HB 451
Alaska Court System
2/19/04

HB 451 extends the termination dates for two pilot therapeutic court programs until after a planned study of those courts has been completed and reviewed by the legislature. The bill also removes a sunset clause on the Anchorage superior court judge position that was added, in part, to administer one of those therapeutic courts.

In 2001 the legislature passed HB 172, which established felony-level therapeutic courts in Anchorage and Bethel. Each court was set up as a pilot program scheduled to run for three years. The Anchorage court admits those with a felony conviction for driving under the influence of an alcoholic beverage, inhalant, or controlled substance (DUI). The Bethel court admits those convicted of either felony DUI or certain felony drug offenses. The findings section of HB 172 explained the purposes of these courts:

The purposes of therapeutic courts are lasting sobriety of offenders, protection of society from alcohol-related and drug-related crime, prompt payment of restitution to victims of crimes, effective interaction and use of resources among criminal justice and community agencies, and long-term reduction of costs relating to arrest, trial, and incarceration.

In order to determine the effectiveness of these courts the Judicial Council was charged with evaluating them and publishing a study for legislative review. Unfortunately, both the Anchorage and Bethel programs sunset long before the evaluation is scheduled to be completed and, because the report is to be published in July, many months more before the legislature has an opportunity to review that evaluation. If the legislature looks at the evaluation study and decides that the programs should continue, it will be too late; both programs would have ended more than a year earlier.

In order to fix this problem, HB 451 extends the termination date of the pilot programs until after the legislature has had an opportunity to review their effectiveness.

House Bill 451 also removes a sunset clause in HB 172 that will terminate the Anchorage superior court judge position that was added by that bill. The new judge was necessary not only to do the work of the therapeutic court but also to help absorb the growing felony caseload in Anchorage. The sunset clause will take effect this summer at the same time the therapeutic court program is scheduled to end. Not only will that mean the end of the felony therapeutic court, it will also mean that Anchorage will have one less judge for other superior court work. The therapeutic court judge in Anchorage spends most of her time on general superior court work unrelated to therapeutic court cases. If we lose the judicial position it will impact all superior court cases in Anchorage.

The loss of a superior court judge in Anchorage will return us to the number of judges initially established in 1984. Since that time the felony caseload in Anchorage has increased approximately 100%. We simply cannot afford to lose a superior court position in Anchorage and to return to a level of judicial coverage that was appropriate 20 years ago.

Thank you for your consideration of this bill.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 451
 (H) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to therapeutic courts BRU Legal and Advocacy Services
 Component Public Defender Agency
 Sponsor House Rules
 Requester (H) Judiciary Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This bill would continue the two pilot therapeutic courts in Bethel and Anchorage, and continue the Anchorage judge position. This bill should not have any further fiscal impact on the operations of the Public Defender Agency.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416
 Division: Public Defender Agency Date/Time 3/1/04 12:00 AM
 Approved by: Mike Miller, Commissioner Date _____
 Agency: Administration

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 451
 (H) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title "An Act relating to therapeutic courts..." RDU Probation & Parole
 Component: _____
 Sponsor Rules by Request
 Requester House Judiciary Finance Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0				
Travel	0.0	0.0				
Contractual	0.0	0.0				
Supplies	0.0	0.0				
Equipment	0.0	0.0				
Land & Structures	0.0	0.0				
Grants & Claims	0.0	0.0				
Miscellaneous	0.0	0.0				
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0				
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CHANGE IN REVENUES ()	0.0	0.0				
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0				
1003 GF Match	0.0	0.0				
1004 GF	0.0	0.0				
1005 GF/Program Receipts	0.0	0.0				
1037 GF/Mental Health	0.0	0.0				
Other (Specify Type--Do not abbreviate)	0.0	0.0				
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

Passage of this legislation would extend the pilot project for therapeutic courts that was originally established through HB172 in FY2002. Passage of this legislation would have no fiscal impact to the Department of Corrections. Positions and funding were received in FY2002 which would be maintained within the Department's FY2006 Operating Base.

The pilot project established therapeutic courts in Anchorage and Bethel to handle alcohol and drug addicted offenders. The stated purpose of therapeutic courts are lasting sobriety of offenders, protection of society from alcohol related and drug related crimes, prompt payment of restitution to victims of crimes,

(continued)

Prepared by: Jerry D. Burnett, Director Phone (907) 465-3339
 Division Administrative Services Date/Time 2/27/04 4:03 PM
 Approved by: Portia C.K. Parker, Deputy Commissioner Date 2/27/2004
 Agency Department of Corrections

FISCAL NOTE #2

**STATE OF ALASKA
2004 LEGISLATIVE SESSION**

BILL NO. HB 451

ANALYSIS CONTINUATION

(continued)

effective interactions and use of resources among criminal justice and community agencies, and hopefully, a long-term reduction in costs relating to arrest, trial and incarceration.

House Bill 451 will extend the program through FY2006. This bill proposes to allow for the pilot program to continue in FY2006 at the current funding level while the legislature reviews the evaluation of services and determines an appropriate course of action.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: HB 451
 (H) Publish Date: 3/3/04
 Dept. Affected: Health & Social Services
 RDU Behavioral Health
 Component Behavioral Health Grants

Revision Date/Time (Note if correction):
 Title RELATING TO THERAPEUTIC COURTS

Sponsor (RL) BY REQUEST

Requester HOUSE (JUD)

Component No. 2669

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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 (0)						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill extends the pilot project for therapeutic courts that was originally established in through HB 172 for FY2002. The pilot project established therapeutic courts in Anchorage and Bethel to handle alcohol and drug-addicted offenders. The purposes of the courts are lasting sobriety of offenders, protection of society from alcohol-related and drug related crime, prompt payment of restitution to victims of crimes, effective interaction and use of resources among criminal justice and community agencies, and long-term reduction of costs relating to arrest, trial, and incarceration.

Continued on next page --

Prepared by: Shawnda Brooks
 Division Behavioral Health
 Approved by: Joel S. Gilbertson, Commissioner
 Agency Department of Health and Social Services

Phone 907-465-3167
 Date/Time _____
 Date 02/26/2004

FISCAL NOTE
FN 3

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. HB 451

ANALYSIS CONTINUATION

House Bill 451 will extend the program through FY2006. A break in the service being provided as a result of the programs' scheduled conclusion in FY04 and FY05 would result in a delay in services and inefficiencies. This bill proposes to allow for the pilot program to continue in FY06 at the current funding level while the legislature reviews the evaluation of services and determines an appropriate course of action.

Funding for this program is in the Governor's FY2005 budget.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: HB 451
 (H) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to therapeutic courts; and providing RDU CRIMINAL
for an effective date." Component Third Judicial District
 Sponsor House Rules Committee
 Requester House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill extends the pilot programs for therapeutic courts established in Anchorage and Bethel for alcohol- and drug-addicted offenders out to June 30, 2006. The criminal division was appropriated \$198.9 beginning in FY 2002 for the therapeutic court pilot. Additional funds will not be needed as a result of the date extension.

Prepared by: Kathryn A. Daughhete, Director
 Division: Administrative Services
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General
 Agency: Department of Law

Phone 465-3673
 Date/Time 2/29/04 2:25 PM
 Date 2/29/2004

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 5
 Bill Version: HB 451
 (H) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Therapeutic Courts BRU Alaska Court System
 Component Trial Courts
 Sponsor House Rules
 Requester Alaska Court System Component No. 768

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	308.6	308.6	308.6	300.6	308.6	308.6
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	308.6	308.6	308.6	308.6	308.6	308.6

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	308.6	308.6	308.6	308.6	308.6	308.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	308.6	308.6	308.6	308.6	308.6	308.6

Estimate of any current year (FY2004) cost: 308.6
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	5	5	5	5	5	5
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 The amount requested in this fiscal note is the same amount proposed to be reduced from the court's base budget. This is not new money, it represents funds that has been in the court's base budget since FY02.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
 Division: Alaska Court System Date/Time 2/20/04 9:04 AM
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 2/20/2004
 Agency: Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 6
Bill Version: HB 451
(H) Publish Date: 3/12/04

Revision Date/Time: Revised 3/9/04
Title: Therapeutic Courts BRU: Alaska Court System
Component: Trial Courts
Sponsor: House Rules
Requester: Alaska Court System Component No.: 768

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	257.2	308.6	308.6	308.6	308.6	308.6
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	257.2	308.6	308.6	308.6	308.6	308.6

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	257.2	308.6	308.6	308.6	308.6	308.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	257.2	308.6	308.6	308.6	308.6	308.6

Estimate of any current year (FY2004) cost: 308.6
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	5	5	5	5	5	5
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
The amount requested in this fiscal note is the same amount proposed to be reduced from the court's base budget. This is not new money, it represents funds that has been in the court's base budget since FY02. The FY 05 savings is less than later years because the first judge currently scheduled to retire will end his service effective 8/31/04, which leaves be only 10 months savings for FY 05.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
Division: Alaska Court System Date/Time 3/9/04 7:29 AM
Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 3/9/2004
Agency: Alaska Court System

HB

503

Alaska State Legislature
House Finance Committee

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MEMORANDUM

TO: Senator Ralph Seekins, Chair
Senate Judiciary Committee

FROM: Representative John Harris, Co-Chair
House Finance Committee

DATE: April 5, 2004

RE: Request for Scheduling

Please consider this request to schedule House Bill 503: An Act relating to the tobacco product Master Settlement Agreement; and providing for an effective date, at your earliest possible convenience.

The bill requires non-participating manufacturers to make a deposit into escrow that is roughly the same as what they would pay under the Master Settlement Agreement. So if the MSA would require tobacco manufacturers to pay 2 cents per cigarette, under this statute they have to deposit into escrow 2 cents per cigarette—and leave it there. In sum, it ensures that all tobacco manufacturers selling cigarettes in Alaska will pay approximately 2 cents per cigarette, either into an escrow account or into the MSA revenue fund.

I appreciate your consideration of my request. Please do not hesitate to contact either Tom Wright of my staff or me if we can provide further information or answer any questions you may have in regards to this legislation.

Alaska State Legislature
House Finance Committee

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Co-Chair

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Juneau, AK 99801-1182

SPONSOR STATEMENT

HOUSE BILL 503: *An Act relating to the tobacco product Master Settlement Agreement; and providing for an effective date.*

HB 503 is a bill related to the tobacco Master Settlement Agreement. Under the Master Settlement Agreement, we enacted AS 45.53 in 1999 so as to level the economic playing field between those tobacco manufacturers that participated in the MSA and those that didn't. AS 45.53 requires all non-participating manufacturers to deposit a certain amount of money into an escrow account—this year about two cents per cigarette—in order to level the playing field.

AS 45.53 lets non-participating manufacturers withdraw money from the escrow account if the amount they put in is more than what the state would have received had the non-participating manufacturer ("NPM") been a participant in the MSA. While this sounds fair, in actual practice it is not. It allows NPMs to concentrate their markets in certain states and receive a substantial windfall by withdrawing from the escrow account far more than was originally intended.

This bill was drafted by the National Association of Attorneys General and was unanimously supported by its membership. Simply put, it requires NPMs to make a deposit into escrow that is roughly the same as what they would pay under the MSA. So if the MSA would require tobacco manufacturers to pay 2 cents per cigarette, under this statute they have to deposit into escrow 2 cents per cigarette—and leave it there. In sum, it ensures that all tobacco manufacturers selling cigarettes in Alaska will pay approximately 2 cents per cigarette, either into an escrow account or into the MSA revenue fund.

This bill has two contingent sections, if for some reason a court objects to this provision. If section 1 is found unconstitutional, then section 2 comes into effect which would prohibit any withdrawal by an NPM from an escrow account until the money has been in escrow for 25 years. If section 2 is found unconstitutional, then the current language now in effect is revived in section 3.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 503
 (H) Publish Date: 2/26/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title Tobacco Master Settlement Agreement RDU Revenue Programs & Services
 Component Tax Division
 Sponsor House Finance
 Requester House Finance Component No. 2476

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Tobacco Master Settlement Agreement - Bill Analysis

This bill, based on a model developed by the National Association of Attorneys General in cooperation with a working group of participating states, is designed to preserve, to the fullest extent possible, the revenue stream under the tobacco product Master Settlement Agreement (MSA) and AS 45.53. One of the provisions of the MSA required states to enact legislation that would "level the playing field" for non-participating tobacco manufacturers by requiring them to deposit money into escrow for every cigarette they sell in the state. Nonparticipating manufacturers have discovered a "loophole" that allows them to remove escrow payments from individual state escrow accounts which has given them a competitive advantage over those manufacturers that signed the MSA. This bill is intended to close the "loophole" and ensure a "level playing field" as originally intended by AS 45.53

Prepared by: Johanna Bales Phone 269-6628
 Division Tax Division Date/Time 2/24/04 4:39 PM
 Approved by: Steve Porter, Deputy Commissioner Date 2/24/2004
 Agency Department of Revenue

Alaska State Legislature
House Finance Committee



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State Capitol, Juneau, Alaska 99801-1182

SECTIONAL ANALYSIS

HOUSE BILL 503: *An Act relating to the tobacco product Master Settlement Agreement; and providing for an effective date.*

Section 1: Amends AS 45.53.020(b)(2), Requirements. Language clarifies that a non-participating tobacco manufacturer in the Master Settlement Agreement must deposit money into escrow for every cigarette they sell in the state. Removes a loophole that allowed NPMs to remove escrow payments from individual state accounts. Currently, an NPM is supposed to deposit only a percentage of its cigarette sales into escrow.

Section 2: Repeals and reenacts AS 45.53.020(b), Requirements. Provisional language if a court finds section 1 of this legislation unconstitutional. States that funds placed into escrow may only be released to pay a judgment or settlement on a released claim or after 25 years after the date on which funds were placed into escrow.

Section 3: Repeals and reenacts AS 45.53.020(b), Requirements. Provisional language if a court finds section 1 and/or section 2 of this legislation unconstitutional. Reverts to original language found in current statute, AS 45.53.020(b).

Section 4: Conditional effective date. Section 2 takes effect only if section 1 of this bill is found to be unconstitutional. If section 2 is found to be unconstitutional, then section 3 takes effect.

Section 5: Section 1 effective date of July 1, 2004.

Section 6: Section 2 takes effect on the day after the date of a final order or decision by a court if section 1 is found to be unconstitutional.

Section 7: Section 3 takes effect on the day after the date of a final order or decision by a court if section 2 is found to be unconstitutional.

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FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

Chapter 45.53. CIGARETTE SALES

Sec. 45.53.010. Tobacco product Master Settlement Agreement recognized.

The Master Settlement Agreement entered into by certain United States tobacco product manufacturers and the state, and related documents, for settlement of claims raised in State of Alaska v. Philip Morris, Incorporated, and approved by the Alaska Superior Court on February 9, 1999, are recognized.

Sec. 45.53.020. Requirements.

(a) Any tobacco product manufacturer selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, after June 4, 1999, shall do one of the following:

(1) become a participating manufacturer, as that term is defined in sec. II(jj) of the Master Settlement Agreement, and generally perform its financial obligations under the Master Settlement Agreement; or

(2) place into a qualified escrow fund by April 15 of the year following each listed calendar year the following amounts, as such amounts are adjusted for inflation:

(A) for 1999, \$.0094241 per unit sold on or after June 4, 1999, but before January 1, 2000;

(B) for 2000, \$.0104712 per unit sold during that year;

(C) for each of 2001 and 2002, \$.0136125 per unit sold during the year in question;

(D) for each of 2003 through 2006, \$.0167539 per unit sold during the year in question;

(E) for each of 2007 and each year thereafter, \$.0188482 per unit sold during the year in question.

(b) A tobacco product manufacturer that places money into escrow under (a)(2) of this section is entitled to receive the interest or other appreciation on such money as earned. Such money itself shall be released from escrow only under the following circumstances:

(1) to pay a judgment or settlement on a released claim brought against such tobacco product manufacturer by this state or a releasing party located or residing in this state; the funds shall be released from escrow under this paragraph in the order in which they were placed into escrow and

only to the extent and at the time necessary to make payments required under the judgment or settlement;

(2) to the extent that the tobacco product manufacturer establishes that the amount that it was required to place into escrow in a particular year was greater than the state's allocable share of the total payments that the manufacturer would have been required to make in that year under the Master Settlement Agreement had it been a participating manufacturer, as such payments are determined under sec. IX(i)(2) of the Master Settlement Agreement and before any of the adjustments or offsets described in sec. IX(i)(3) of that agreement other than the inflation adjustment, the excess shall be released from escrow and revert back to that tobacco product manufacturer; or

(3) to the extent not released from escrow under (1) or (2) of this subsections, funds placed into escrow shall be released from escrow and revert back to the tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(c) To be a qualified escrow fund under this section, the

(1) fund must be an escrow fund governed by an escrow arrangement with a federally or state chartered financial institution having no affiliation with a tobacco product manufacturer and having assets of at least \$1,000,000,000; and

(2) escrow arrangements described in (1) of this subsection must

(A) require that the financial institution hold the principal of the escrow fund for the benefit of releasing parties; and

(B) prohibit the tobacco product manufacturer that places money into the escrow fund from using, accessing, or directing the use of the principal of the fund except as consistent with this section.

Sec. 45.53.030. Regulations.

The commissioner of revenue shall adopt regulations under AS 44.62 (Administrative Procedure Act) necessary to ascertain the amount of excise tax paid on the cigarettes of a tobacco product manufacturer for each year for which the manufacturer is required to place money into a qualified escrow fund under AS 45.53.020 .

Sec. 45.53.040. Certification of compliance; civil actions.

(a) A tobacco product manufacturer that elects to comply with AS 45.53.020 by placing money into escrow under that section shall annually, at

the time of compliance, certify to the commissioner of revenue that it is in compliance with AS 45.53.020 .

(b) If the commissioner of revenue does not timely receive a certification of compliance from a tobacco product manufacturer as required by (a) of this section, the commissioner shall notify the attorney general. The attorney general shall require the manufacturer, within 15 days, to place into a qualified escrow fund the money necessary to bring the manufacturer into compliance with AS 45.53.020 . The attorney general may bring a civil action on behalf of the state against a tobacco product manufacturer that fails to place into a qualified escrow fund the money necessary to bring the manufacturer into compliance with AS 45.53.020 . The court, upon a finding of a tobacco product manufacturer's

(1) violation of AS 45.53.020 , shall require the manufacturer, within 15 days, to place into a qualified escrow fund the money necessary to bring the manufacturer into compliance with AS 45.53.020 and may impose a civil penalty, in an amount not to exceed five percent of the amount improperly withheld from escrow, for each day of the violation; the total amount of the penalty under this paragraph may not exceed 100 percent of the original amount improperly withheld from escrow;

(2) knowing violation of AS 45.53.020 , shall require the manufacturer, within 15 days, to place into a qualified escrow fund the money necessary to bring the manufacturer into compliance with AS 45.53.020 and may impose a civil penalty, in an amount not to exceed 15 percent of the amount improperly withheld from escrow, for each day of the violation; the total amount of the penalty under this paragraph may not exceed 300 percent of the original amount improperly withheld from escrow; and

(3) second knowing violation of AS 45.53.020 , shall require the manufacturer, within 15 days, to place into a qualified escrow fund the money necessary to bring the manufacturer into compliance with AS 45.53.020, and may impose a monetary penalty as described in (2) of this subsection, and shall prohibit the manufacturer from selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary, for a period not to exceed two years.

(c) In addition to the civil penalties described in (b) of this section, the court may award the state full reasonable attorney fees and costs if the state prevails in a civil action brought under (b) of this section.

(d) Each failure to make an annual placement of money into a qualified escrow fund as required by AS 45.53.020 is a separate violation for the purposes of this section.

Sec. 45.53.100. Definitions.

In this chapter,

(1) "adjusted for inflation" means increased in accordance with the formula for inflation adjustment set out in Exhibit C to the Master Settlement Agreement;

(2) "affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person; in this paragraph,

(A) "owns," "is owned," and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 10 percent or more;

(B) "person" means an individual, a partnership, a committee, an association, a corporation, or any other organization or group of persons;

(3) "allocable share" means allocable share as that term is defined in the Master Settlement Agreement;

(4) "cigarette"

(A) means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains

(i) any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(ii) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling is likely to be offered to, or purchased by, consumers as a cigarette; or

(iii) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in (i) of this subparagraph;

(B) includes "roll-your-own"; for purposes of this subparagraph,

(i) 0.09 ounces of "roll-your-own" tobacco constitutes one individual "cigarette;"

(ii) "roll-your-own" includes any tobacco that, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes;