

ALAN EARL DAVIDSON, 2000 / 2000

11488 HOUSE JUDICIARY

HB

2666

LEGAL SERVICES

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

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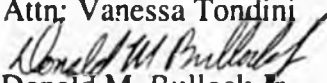
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 29, 2005

SUBJECT: Rule 43.6, Alaska Rules of Administration and amending fines by statute - CSHB 266(TRA)

TO: Representative Lesil McGuire
Attn: Vanessa Tondini

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

You asked whether secs. 4 and 6 are necessary in CSHB 266(TRA). Section 4 of the bill states that sec. 2 "has the effect of changing Rule 43.6, Alaska Rules of Administration (Rule 43.6), by increasing the maximum fine for overweight vehicle violations." Section 6 states that sec. 2 will take effect only if sec. 4 receives the two-thirds vote required by art. IV, sec. 15, Constitution of the State of Alaska.¹

Section 2 of CSHB 266(TRA) establishes fines for overweight vehicles. There is a flat fine of \$150 for a vehicle that is 1,001 to 2,000 pounds overweight, and a graduated fine schedule for vehicles more than 2,000 pounds overweight. The graduated schedule ranges from \$.08 per pound for a vehicle that is overweight by 2,001 to 4,000 pounds to \$.24 per pound for a vehicle that is overweight by 10,001 pounds or more.

Rule 43.6 lists a bail forfeiture amount of \$.05 per pound for the offenses of overweight axle, overweight gross, overweight inner gross, and overweight axle combination. Rule 43.6 also lists a bail forfeiture amount of \$300 for overweight distribution. Rule 43.6 also states, "if a person charged with one of these offenses appears in court and is found guilty, the penalty imposed for the offense may not exceed the bail amount for that offense listed [in the rule]." With the possible exception of the penalty for an overweight distribution violation, the fines in sec. 2 of CSHB 266(TRA) are higher than those that may be assessed under Rule 43.6. Therefore sec. 2 does have the effect of amending Rule 43.6, as stated in the title of the bill. If Rule 43.6 is a rule of practice or procedure, a two-thirds vote will be required under art. IV, sec. 15, Constitution of the State of Alaska.

¹ **SECTION 15. Rule-Making Power.** The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules may be changed by the legislature by two-thirds vote of the members elected to each house.

However, the fact that the bill would increase the amount of the fines that may be assessed under Rule 43.6 does not necessarily lead to the result that a two-thirds vote will be required. There are two other possibilities for categorizing establishment of the fines under Rule 43.6: either the bail or fine amounts set out in the rule are substantive law that the legislature may enact by a simple majority, or the rule relates to the administration of the courts that may not be modified by the legislature.

Rule 43.6 was adopted by the Supreme Court under AS 45.75.133.² The rule does not relate to the administration of the courts but merely lists the bail forfeiture amounts found by the Supreme Court to be appropriate for the various offenses. Accordingly, the bail forfeiture amounts (that also set the maximum fines) are a matter of substantive law and may be changed by the legislature with a simple majority vote.

I recommend that you discuss this memorandum with the chairs of the house finance committee so that a committee substitute can be prepared. We recommend leaving sec. 4 and the court rule notation in the title, but deleting sec. 6 and adding a section noting that a two-thirds vote is not required. See sec. 18, ch. 108, SLA 2004 for an example of this.

² **Sec. 45.75.133. Bail forfeiture.** (a) The supreme court shall specify by rule or order those violations that are appropriate for disposition without court appearance, and shall establish a schedule of bail amounts. The maximum bail forfeiture amount for an offense may not exceed the maximum fine specified by law for that offense. If the person who has been cited can dispose of the violation without court appearance, the issuing peace officer or employee shall write on the citation the amount of bail forfeiture applicable to the violation.

(b) A person cited for a violation for which a bail forfeiture amount has been established under (a) of this section may, within 15 days after the date of the citation, mail or personally deliver to the clerk of the court in which the citation is filed by the employee

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

(2) a copy of the citation indicating that the right to an appearance is waived, a plea of no contest is entered and the bail is forfeited.

(c) When the cited person has forfeited bail under (b) of this section, the court shall enter a judgment of conviction. Forfeiture of bail is a complete satisfaction for the violation. The clerk of the court accepting the bail forfeiture shall provide the offender with a receipt stating that fact if requested.

(d) A cited person who fails to pay the bail forfeiture amount established under (a) of this section or to appear in court as required, is guilty of a class B misdemeanor.

(e) Notwithstanding other provisions of law, if a person cited for a violation for which a bail forfeiture amount has been established under (a) of this section appears in court and is found guilty, the court may not impose a penalty that exceeds the bail forfeiture amount for that offense established under (a) of this section.

Representative Lesil McGuire
April 29, 2005
Page 3

Also, we recommend amending AS 45.75.133(a) to add the phrase "except as provided in AS 45.75.380."

If I may be of further assistance, please advise.

DMB:med
05-319.med

AMENDMENT 1

FAILED

HB 266

BY: REP. ANDERSON

Page 2

Delete Lines 6 - 10
Renumbe subsections

(Keep current fine structure, if any
for up to + including 6,000 pounds
overweight.)

*Michael T. Kenny, Principal Executive Officer***GENERAL TEAMSTERS**620 E. 34th Avenue
Anchorage, Alaska 99503**LOCAL 959**
State of Alaska761 Old Richardson Hwy., Suite 127
Fairbanks, Alaska 99701

April 25, 2005

Representative Lesil McGuire
Chairperson, House Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Re: HB 266, Vehicle Weights

Dear Chairperson McGuire:

On behalf of all citizens of Alaska, and specifically those members whom Teamsters Local 959 represents in the trucking industry, I am proud to support HB 266 regarding offenses and penalties for violation of vehicle weight limitations.

As you may be aware, overweight penalties in Alaska have not increased for some 20 or more years. While some would say the penalty charged for running overweight in this day and age is "just another cost of doing business", I believe it is truly a matter to be taken seriously.

For the most part, our Teamster drivers work for employers who follow the rules and abide by state-imposed weight requirements. For those employers that do not, a slight penalty fee is paid and drivers are ticketed. But the consequences the public faces when an overweight truck flips over while going down the highway, causing a major traffic accident, are very critical. Many wonder how many more lives need to be lost in this manner?

We further have the issue of our roadways being damaged by vehicles with overweight loads. These overweight loads cause the tearing up the pavement, as well as the subsurface, because they are only designed to specific standards. If that design standard is exceeded, damage occurs. Each year we ask for funding to correct damages to our highways and roadways because of overweight abuse. This abuse needs to stop.

The passage of HB 266 will certainly help curtail much of the indifference shown in this area today. Its passage will increase penalties for overweight violations, no longer allowing penalties paid to be "just another cost of doing business". This bill also creates a pattern or practice of violation, so those who show no sign of abiding by the law will realize stiffer

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Representative Lesil McGuire
Chairperson, House Judiciary Committee
Re: HB288
April 25, 2005
Page 2.

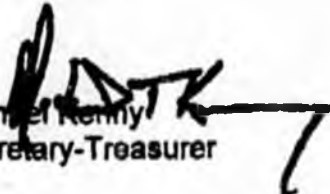
penalties. It further prohibits the use of overweight citations as a basis for "adverse action" by an insurance carrier.

We believe this bill will clearly go a long way in protecting the motoring public by reducing wear and tear on the highways. The bill will also establish increased penalties to encourage companies to operate their trucks within proper weight limits.

We ask you and the members of the House Judiciary Committee to support moving this bill out of committee.

Fraternally,

GENERAL TEAMSTERS LOCAL 959


Michael Renny
Secretary-Treasurer

c: Vice Chair, Representative Tom Anderson
Representative John Coghil
Representative Nancy Dahlstrom
Representative Pete Kott
Representative Les Gara
Representative Max Gruenberg

Via facsimile - (907)465-8592

ALASKA STATE LEGISLATURE

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REPRESENTATIVE JIM ELKINS

House Bill 266 " An Act relating to offenses and penalties for violation of vehicle weight limitations; prohibiting the use of a violation of a vehicle weight limitation for certain personal automobile insurance actions" modifies existing law related to the penalty structure for overweight vehicle violations as well as prohibiting the use of overweight vehicle violations by insurers.

This legislation proposes is the first increase in penalties since the existing provisions were established in the 1970s. Existing provisions do not adequately inhibit commercial shipping companies and others from violating overweight vehicle limitations. The proposed modification establishes a graduated penalty for the amount of weight in excess of the limitations set by statute, regulation and/or permit.

There is also a new offense established to sanction shippers or carriers who commit or allow those working for them to commit a combined total of 12 or more violations during any twelve-month period. The maximum fine for this violation is \$10,000. This modification is expected to result in commercial shippers and carriers being more rigorous toward compliance with overweight vehicle limitations.

Another provision of the bill prohibits the use of overweight vehicle violations for use by insurers to adversely impact decisions related to providing private automobile insurance coverage for drivers. In the majority of cases, the driver has little knowledge or ability to limit the weight of the load placed on the vehicle they are assigned to drive. As a result, the company causes the violation and, if cited, pays the fine imposed.

Currently, overweight vehicle violations are used by insurers as justification to take adverse action in relation to the personal automobile insurance coverage of truck drivers. Section 1 of the bill would prohibit this action.

This legislation will protect drivers who do not know they are in violation and our roads from overweight vehicles in Alaska. The Department of Transportation, Teamsters, and Horizon Shipping Lines all support HB 266, and we urge your support.

ALASKA STATE LEGISLATURE

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REPRESENTATIVE JIM ELKINS

House Bill 266 Sectional Analysis

Section 1 Adds AS 21.36.307; prohibiting an insurer from taking adverse action relating to the personal automobile insurance of a driver who commits one or more violations relating to overweight vehicles under AS 45.75.380(a)(10) or (11). Defines "adverse action."

Section 2 Repeals and reenacts AS 45.75.380 (b). Establishes the maximum fines for overweight vehicles according to the weight-range in which the overweight amount falls. Amends Rule 43.6, Alaska Rules of Administration by enacting fines in place of those set under that court rule.

Section 3 Amends AS 45.75.380 by adding a new subsection providing for a fine under AS 12 55.0359(c)(1)(D) to be imposed on a motor carrier who exhibits a pattern or practice of violating the overweight limitations. Defines "pattern or practice of violation."

Section 4 Adds a new section to uncodified law to recognize that sec.2 of the Act amends Rule 43.6, Alaska Rules of Administration, by increasing the maximum fines for overweight vehicles.

Section 5 Adds a new section to uncodified law to state the applicability of secs. 1, 2, and 3 of the Act. Section 1 applies to an adverse action by an insurer on or after the effective date of the Act based on an overweight vehicle violation occurring before, on, or after the effective date of the Act. Sections 2 and 3 apply to offenses committed on or after the effective date.

Section 6 Adds a new section to uncodified law stating that sec 2 of the Act will take effect only if sec. 4 receives the two-thirds majority vote in each house required to make a court rule change under art. IV, sec. 15, Constitution of the State of Alaska.

Section 7 Provides for an immediate effective date and will require a two-thirds vote in each house.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 266(TRA)
 (H) Publish Date: 4/15/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title Vehicle Weights and Insurance RDU Insurance (116)
 Component Insurance
 Sponsor House Transportation
 Requester House Transportation Component No. 354

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation prohibits the use of a violation of a vehicle weight limitation for certain personal automobile insurance actions. It has no fiscal impact on the operations of the Division of Insurance.

Prepared by: Linda S. Hall, Director
 Division Insurance
 Approved by: Edgar Blatchford, Commissioner
 Agency Commerce, Community, and Economic Development

Phone 907-269-7900
 Date/Time 4/12/05 10:14 AM
 Date 4/12/2005

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 266(TRA)
 (H) Publish Date: 4/15/05

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
 Title Vehicle Weights and Insurance RDU Administration & Support
 Component Commissioner's Office
 Sponsor House Transportation
 Requester House Transportation Component No. 530

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 The increased revenue does not come to DOT&PF but rather the court system and there will be little, if any, incremental cost increase as a result of the increase in fines, thus a zero fiscal note. The revenue increase to the court system is estimated to be 88.8 based on a comparison with CY 2004. During CY2004, 57.8 went to the court system in fines and with the new schedule, the amount would have been 147.6 for an increase of 88.8

Prepared by: Nona Wilson Phone 465-3904
 Division Legislative Liaison, DOT&PF Date/Time 4/11/05 3:02 PM
 Approved by: Mike Barton Date 4/11/2005
 Agency Commissioner, DOT&PF

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSHB 266(TRA)
 (H) Publish Date: 4/15/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to offenses and penalties for RDU CIVIL
violation of vehicle weight limitations;..." Component Collections and Support
 Sponsor House Transportation
 Requester House Transportation Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (GF)	*****	*****	*****	*****	*****	*****
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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 (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 21.36 preventing an automobile insurer from taking adverse action against an insured driver because of a violation relating to an overweight vehicle. The bill repeals and reenacts AS 45.75.380 (b) (Weights and Measures Act - General Provisions) by specifying new violations and fines for certain increments by which a vehicle is found to be overweight. The bill further specifies that a motor carrier who is found to exhibit a pattern or practice of violations under the new sections of AS 45.75.380 (a) or (b) (as amended) is subject to a \$500 dollar fine. The current law simply imposes the \$500 fine for any violation of the vehicle weight limit plus \$.05 for each pound over the weight limit.

The Department of Law's Collections section already bears responsibility for collecting any fines imposed under the current structure to the extent they are forwarded for collection by the Court System. There may be an indeterminate change to the amount collected through passage of this

Prepared by: Kathryn Daughhete, Director Phone 465-3673
 Division Administrative Services Division Date/Time 4/10/05 4:34 PM
 Approved by: Kathryn Daughhete for David Marquez, Attorney General Date 4/10/2005
 Agency Department of Law

FISCAL NOTE #3

**STATE OF ALASKA
2005 LEGISLATIVE SESSION**

BILL NO. CSHB 266(TRA)

ANALYSIS CONTINUATION

legislation. There should not be an impact to workload.

Overweight Uniform Traffic Citations (UTC) CY2004

Citation	Over Weight Offence	Date	lbs Owt	Bail	Surcharge	Total	New Rate	Bail	Surcharge	Total
G66469	17AAC 25.013(a)(2)	11/1/04	11360	\$568.00	\$10.00	\$578.00	\$0.24	\$2,726.40	\$10.00	\$2,736.40
G67923	17AAC 25.013.(c)	11/2/04	3140	\$157.00	\$10.00	\$167.00	\$0.08	\$251.20	\$10.00	\$261.20
G67862	17AAC 25.013.(c)	11/2/04	3280	\$164.00	\$10.00	\$174.00	\$0.08	\$262.40	\$10.00	\$272.40
G66435	17AAC 25.013.(a) (2)	9/21/04	2680	\$134.00	\$10.00	\$144.00	\$0.08	\$214.40	\$10.00	\$224.40
G66565	17AAC 25.013.(a)(1)	10/20/04	4800	\$240.00	\$10.00	\$250.00	\$0.12	\$576.00	\$10.00	\$586.00
G67905	17AAC 25.013.(c)	11/2/04	3420	\$171.00	\$10.00	\$181.00	\$0.08	\$273.60	\$10.00	\$283.60
G64641	17AAC 25.013.(a) (2)	5/4/04	5740	\$287.00	\$10.00	\$297.00	\$0.12	\$688.80	\$10.00	\$698.80
G66432	17AAC 25.013.(a) (3)	9/13/04	2700	\$135.00	\$10.00	\$145.00	\$0.08	\$216.00	\$10.00	\$226.00
G65260	17AAC 25.013.(a) (2)	8/2/04	1460	\$73.00	\$10.00	\$83.00	\$150.00	\$150.00	\$10.00	\$160.00
G69148	17AAC 25.013.(a) (2)	8/2/04	2340	\$117.00	\$10.00	\$127.00	\$0.08	\$187.20	\$10.00	\$197.20
G67816	17AAC 25.013(a)(2)	12/14/04	4380	\$219.00	\$10.00	\$229.00	\$0.12	\$525.60	\$10.00	\$535.60
G65761	17AAC 25.013.(a) (2)	7/22/04	6280	\$314.00	\$10.00	\$324.00	\$0.16	\$1,004.80	\$10.00	\$1,014.80
G69112	17AAC 25.013. (a)(3)	4/27/04	5460	\$273.00	\$10.00	\$283.00	\$0.12	\$655.20	\$10.00	\$665.20
G69122	17AAC 25.013.(a) (2)	5/12/04	8300	\$415.00	\$10.00	\$425.00	\$0.20	\$1,660.00	\$10.00	\$1,670.00
G69145	17AAC 25.013.(a) (2)	7/27/04	7140	\$357.00	\$10.00	\$367.00	\$0.16	\$1,142.40	\$10.00	\$1,152.40
G67802	17AAC 25.013.(a) (2)	8/27/04	3180	\$159.00	\$10.00	\$169.00	\$0.08	\$254.40	\$10.00	\$264.40
G67881	17AAC 25.013.(c)	9/13/04	23460	\$1,198.00	\$10.00	\$1,208.00	\$0.24	\$5,630.40	\$10.00	\$5,640.40
G67912	17AAC 25.013(a)(3)	11/9/04	5600	\$280.00	\$10.00	\$290.00	\$0.12	\$672.00	\$10.00	\$682.00
G67906	17AAC 25.013.(c)	11/3/04	4520	\$266.00	\$10.00	\$276.00	\$0.12	\$542.40	\$10.00	\$552.40
G67812	17AAC 25.013(a)(2)	11/15/04	7820	\$393.00	\$10.00	\$403.00	\$0.16	\$1,251.20	\$10.00	\$1,261.20
G67915	17AAC 25.013.(c)	11/10/04	2540	\$127.00	\$10.00	\$137.00	\$0.08	\$203.20	\$10.00	\$213.20
G68452	17AAC 25.013(a)(2)	11/27/04	2360	\$118.00	\$10.00	\$128.00	\$0.08	\$188.80	\$10.00	\$198.80
G67869	17AAC 25.013.(c)	11/24/04	2220	\$111.00	\$10.00	\$121.00	\$0.08	\$177.60	\$10.00	\$187.60
G65784	17AAC 25.013(a)(2)	12/8/04	2520	\$126.00	\$10.00	\$136.00	\$0.08	\$201.60	\$10.00	\$211.60
G67872	17AAC 25.013.(c)	12/2/04	2080	\$104.00	\$10.00	\$114.00	\$0.08	\$166.40	\$10.00	\$176.40
G67508	17AAC 25.013.(a) (2)	5/3/04	7040	\$352.00	\$10.00	\$362.00	\$0.16	\$1,126.40	\$10.00	\$1,136.40
G67854	17AAC 25.013.(c)	10/20/04	2240	\$112.00	\$10.00	\$122.00	\$0.08	\$179.20	\$10.00	\$189.20
G66590	17AAC 25.013(a)(2)	11/24/04	2180	\$109.00	\$10.00	\$119.00	\$0.08	\$174.40	\$10.00	\$184.40
G69110	17AAC 25.013.(a) (2)	4/26/04	2240	\$112.00	\$10.00	\$122.00	\$0.08	\$179.20	\$10.00	\$189.20
G68540	17AAC 25.013.(c)	9/23/04	6840	\$342.00	\$10.00	\$352.00	\$0.16	\$1,094.40	\$10.00	\$1,104.40
G67880	17AAC 25.013.(c)	9/10/04	3880	\$194.00	\$10.00	\$204.00	\$0.08	\$310.40	\$10.00	\$320.40
G66104	17AAC 25.013.(a) (1)	8/5/04	4100	\$205.00	\$10.00	\$215.00	\$0.12	\$492.00	\$10.00	\$502.00
G66437	17AAC 25.013.(a) (2)	9/22/04	2760	\$138.00	\$10.00	\$148.00	\$0.08	\$220.80	\$10.00	\$230.80
G69183	17AAC 25.013.(a) (3)	9/14/04	6200	\$310.00	\$10.00	\$320.00	\$0.16	\$992.00	\$10.00	\$1,002.00
G66364	17AAC 25.013(a)(2)	1/22/04	4180	\$209.00	\$10.00	\$219.00	\$0.12	\$501.60	\$10.00	\$511.60
G70183	17AAC 25.013(a)(2)	12/21/04	2000	\$100.00	\$10.00	\$110.00	\$150.00	\$150.00	\$10.00	\$160.00

Overweight Uniform Traffic Citations (UTC) CY2004

Citation : Over Weight Offence	Date	lbs Owt	Bail	Surcharge	Total	New Rate	Bail	Surcharge	Total
G70178 17AAC 25.013(a)(3)	12/2/04	1660	\$83.00	\$10.00	\$93.00	\$150.00	\$150.00	\$10.00	\$160.00
G67884 17AAC 25.013.(c)	9/20/04	3240	\$162.00	\$10.00	\$172.00	\$0.08	\$259.20	\$10.00	\$269.20
G68405 17AAC 25.013.(a) (2)	5/24/04	8220	\$411.00	\$10.00	\$421.00	\$0.20	\$1,644.00	\$10.00	\$1,654.00
G68548 17AAC 25.013.(c)	10/14/04	1860	\$93.00	\$10.00	\$103.00	\$150.00	\$150.00	\$10.00	\$160.00
G67560 17AAC.25.013(a)(2)	1/18/04	2140	\$107.00	\$10.00	\$117.00	\$0.08	\$171.20	\$10.00	\$181.20
G678 17AAC 25.013.(a) (3)		9880	\$494.00	\$10.00	\$504.00	\$0.20	\$1,976.00	\$10.00	\$1,986.00
G66436 17AAC 25.013.(a) (2)	9/21/04	2560	\$128.00	\$10.00	\$138.00	\$0.08	\$204.80	\$10.00	\$214.80
G66430 17AAC 25.013.(a) (2)	9/2/04	2280	\$114.00	\$10.00	\$124.00	\$0.08	\$182.40	\$10.00	\$192.40
G66429 17AAC 25.013.(a) (2)	9/2/04	9580	\$479.00	\$10.00	\$489.00	\$0.20	\$1,916.00	\$10.00	\$1,926.00
G65785 17AAC 25.013(a)(2)	12/8/04	7180	\$359.00	\$10.00	\$369.00	\$0.16	\$1,148.80	\$10.00	\$1,158.80
G67857 17AAC 25.013.(c)	10/22/04	3420	\$171.00	\$10.00	\$181.00	\$0.08	\$273.60	\$10.00	\$283.60
G67858 17AAC 25.013.(c)	10/22/04	3400	\$170.00	\$10.00	\$180.00	\$0.08	\$272.00	\$10.00	\$282.00
G66530 17AAC 25.013(a)(2)	11/10/04	3000	\$150.00	\$10.00	\$160.00	\$0.08	\$240.00	\$10.00	\$250.00
G66796 17AAC 25.013(a)(1)	12/11/04	2340	\$117.00	\$10.00	\$127.00	\$0.08	\$187.20	\$10.00	\$197.20
G66574 17AAC 25.013(a)(3)	11/27/04	4080	\$204.00	\$10.00	\$214.00	\$0.12	\$489.60	\$10.00	\$499.60
G66258 17AAC 25.013. (a)(2)	4/19/04	3100	\$155.00	\$10.00	\$165.00	\$0.08	\$248.00	\$10.00	\$258.00
G66190 17AAC 25.013.(a) (3)	5/21/04	2350	\$117.00	\$10.00	\$127.00	\$0.08	\$188.00	\$10.00	\$198.00
G66786 17AAC 25.013.(a) (2)	9/15/04	4860	\$243.00	\$10.00	\$253.00	\$0.12	\$583.20	\$10.00	\$593.20
G66494 17AAC 25.013.(a) (2)	7/22/04	2600	\$130.00	\$10.00	\$140.00	\$0.08	\$208.00	\$10.00	\$218.00
G66563 17AAC 25.013.(a) (1)	9/24/04	2100	\$105.00	\$10.00	\$115.00	\$0.08	\$168.00	\$10.00	\$178.00
G67568 17AAC 25.013.(c)	11/2/04	6560	\$328.00	\$10.00	\$338.00	\$0.16	\$1,049.60	\$10.00	\$1,059.60
G69117 17AAC 25.013.(a) (2)	4/30/04	6520	\$326.00	\$10.00	\$336.00	\$0.16	\$1,043.20	\$10.00	\$1,053.20
G65544 17AAC.25.013(a)(2)	1/20/04	4100	\$205.00	\$10.00	\$215.00	\$0.12	\$492.00	\$10.00	\$502.00
G65643 17AAC.25.013(a)(2)	1/13/04	2960	\$148.00	\$10.00	\$158.00	\$0.08	\$236.80	\$10.00	\$246.80
G67563 17AAC.25.013(a)(2)	2/24/04	5400	\$270.00	\$10.00	\$280.00	\$0.12	\$648.00	\$10.00	\$658.00
G66251 17AAC.25.013(a)(2)	2/25/04	1480	\$74.00	\$10.00	\$84.00	\$150.00	\$150.00	\$10.00	\$160.00
G65865 17AAC 25.013. (a)(2)	3/17/04	4200	\$210.00	\$10.00	\$220.00	\$0.12	\$504.00	\$10.00	\$514.00
G65868 17AAC 25.013. (a)(2)	3/23/04	6850	\$342.50	\$10.00	\$352.50	\$0.16	\$1,096.00	\$10.00	\$1,106.00
G65869 17AAC 25.013. (a)(2)	3/23/04	7060	\$353.00	\$10.00	\$363.00	\$0.16	\$1,129.60	\$10.00	\$1,139.60
G65870 17AAC 25.013. (a)(2)	3/25/04	3140	\$157.00	\$10.00	\$167.00	\$0.08	\$251.20	\$10.00	\$261.20
G65598 17AAC 25.013. (a)(2)	4/22/04	3340	\$167.00	\$10.00	\$177.00	\$0.08	\$267.20	\$10.00	\$277.20
G66790 17AAC 25.013.(a) (2)	9/28/04	2680	\$134.00	\$10.00	\$144.00	\$0.08	\$214.40	\$10.00	\$224.40
G66433 17AAC 25.013.(a) (2)	9/15/04	4400	\$220.00	\$10.00	\$230.00	\$0.12	\$528.00	\$10.00	\$538.00
G66785 17AAC 25.013.(a) (2)	9/15/04	2540	\$127.00	\$10.00	\$137.00	\$0.08	\$203.20	\$10.00	\$213.20
G66789 17AAC 25.013.(a) (2)	9/21/04	2280	\$114.00	\$10.00	\$124.00	\$0.08	\$182.40	\$10.00	\$192.40
G67801 17AAC 25.013.(a) (2)	8/27/04	3600	\$180.00	\$10.00	\$190.00	\$0.08	\$288.00	\$10.00	\$298.00

Overweight Uniform Traffic Citations (UTC) CY2004

Citation	Over Weight Offence	Date	lbs Owt	Bail	Surcharge	Total	New Rate	Bail	Surcharge	Total
G66467	17AAC 25.013(a)(2)	10/4/04	36400	\$1,820.00	\$10.00	\$1,830.00	\$0.24	\$8,736.00	\$10.00	\$8,746.00
G67805	17AAC 25.013(a)(2)	10/12/04	2660	\$133.00	\$10.00	\$143.00	\$0.08	\$212.80	\$10.00	\$222.80
G66443	17AAC 25.013(a)(2)	10/22/04	3100	\$155.00	\$10.00	\$165.00	\$0.08	\$248.00	\$10.00	\$258.00
G66584	17AAC 25.013(a)(2)	11/2/04	2040	\$102.00	\$10.00	\$112.00	\$0.08	\$163.20	\$10.00	\$173.20
G67813	17AAC 25.013(a)(2)	11/19/04	4320	\$216.00	\$10.00	\$226.00	\$0.12	\$518.40	\$10.00	\$528.40
G70114	17AAC 25.013(a)(3)	12/16/04	3120	\$156.00	\$10.00	\$166.00	\$0.08	\$249.60	\$10.00	\$259.60
G70185	17AAC 25.013(a)(2)	12/22/04	2560	\$128.00	\$10.00	\$138.00	\$0.08	\$204.80	\$10.00	\$214.80
G66575	17AAC 25.013(a)(1)	12/14/04	3380	\$169.00	\$10.00	\$179.00	\$0.08	\$270.40	\$10.00	\$280.40
G65757	17AAC 25.013.(a) (3)	6/14/04	3900	\$195.00	\$10.00	\$205.00	\$0.08	\$312.00	\$10.00	\$322.00
G65768	17AAC 25.013.(a) (3)	8/24/04	3400	\$170.00	\$10.00	\$180.00	\$0.08	\$272.00	\$10.00	\$282.00
G65767	17AAC 25.013.(a) (3)	8/19/04	1240	\$62.00	\$10.00	\$72.00	\$150.00	\$150.00	\$10.00	\$160.00
G65236	17AAC 25.013.(a) (2)	9/25/04	7380	\$369.00	\$10.00	\$379.00	\$0.16	\$1,180.80	\$10.00	\$1,190.80
G65284	17AAC 25.013(a)(2)	10/26/04	3540	\$177.00	\$10.00	\$187.00	\$0.08	\$283.20	\$10.00	\$293.20
G67586	17AAC 25.013.(a)(2)	4/22/04	2660	\$133.00	\$10.00	\$143.00	\$0.08	\$212.80	\$10.00	\$222.80
G64633	17AAC 25.013.(a) (2)	4/27/04	4960	\$248.00	\$10.00	\$258.00	\$0.12	\$595.20	\$10.00	\$605.20
G64680	17AAC 25.013(a)(2)	2/12/04	9680	\$484.00	\$10.00	\$494.00	\$0.20	\$1,936.00	\$10.00	\$1,946.00
G64680	17AAC 25.013.(a) (2)	2/12/04	8680	\$484.00	\$10.00	\$494.00	\$0.20	\$1,736.00	\$10.00	\$1,746.00
G64642	17AAC 25.013.(a) (2)	5/4/04	3900	\$195.00	\$10.00	\$205.00	\$0.08	\$312.00	\$10.00	\$322.00
G64643	17AAC 25.013.(a) (3)	5/4/04	3660	\$183.00	\$10.00	\$193.00	\$0.08	\$292.80	\$10.00	\$302.80
G64399	17AAC 25.013.(a)(2)	3/30/04	2600	\$130.00	\$10.00	\$140.00	\$0.08	\$208.00	\$10.00	\$218.00
G64651	17AAC 25.013(a)(2)	11/30/04	2880	\$144.00	\$10.00	\$154.00	\$0.08	\$230.40	\$10.00	\$240.40
G65300	17AAC 25.013(a)(2)	11/29/04	8440	\$422.00	\$10.00	\$432.00	\$0.20	\$1,688.00	\$10.00	\$1,698.00
G66189	17AAC 25.013.(a) (2)	5/20/04	1900	\$95.00	\$10.00	\$105.00	\$150.00	\$150.00	\$10.00	\$160.00
G66439	17AAC 25.013(a)(2)	10/8/04	2560	\$128.00	\$10.00	\$138.00	\$0.08	\$204.80	\$10.00	\$214.80
G66567	17AAC 25.013.(a)(1)	10/27/04	3260	\$163.00	\$10.00	\$173.00	\$0.08	\$260.80	\$10.00	\$270.80
G66569	17AAC 25.013(a)(2)	11/2/04	3220	\$161.00	\$10.00	\$171.00	\$0.08	\$257.60	\$10.00	\$267.60
G65235	17AAC 25.013.(a) (2)	9/23/04	4760	\$238.00	\$10.00	\$248.00	\$0.12	\$571.20	\$10.00	\$581.20
G66373	AS 45.75.380 (a) (11)	4/19/04	2240	\$112.00	\$10.00	\$122.00	\$0.08	\$179.20	\$10.00	\$189.20
G66776	17AAC 25.013.(a) (2)	6/22/04	1520	\$76.00	\$10.00	\$86.00	\$150.00	\$150.00	\$10.00	\$160.00
G66839	17AAC 25.013.(a) (2)	8/3/04	6960	\$348.00	\$10.00	\$358.00	\$0.16	\$1,113.60	\$10.00	\$1,123.60
G66527	17AAC 25.013.(a)(1)	10/4/04	2620	\$131.00	\$10.00	\$141.00	\$0.08	\$209.60	\$10.00	\$219.60
G66791	17AAC 25.013.(c)	10/11/04	5000	\$250.00	\$10.00	\$260.00	\$0.12	\$600.00	\$10.00	\$610.00
G65242	17AAC 25.013(a)(3)	11/21/04	9600	\$480.00	\$10.00	\$490.00	\$0.20	\$1,920.00	\$10.00	\$1,930.00
G68541	17AAC 25.013.(a) (3)	9/23/04	4260	\$213.00	\$10.00	\$223.00	\$0.12	\$511.20	\$10.00	\$521.20
G64398	17AAC 25.013.(a)(2)	3/18/04	3580	\$179.00	\$10.00	\$189.00	\$0.08	\$286.40	\$10.00	\$296.40
G64397	17AAC 25.013.(a)(2)	3/18/04	4900	\$245.00	\$10.00	\$255.00	\$0.12	\$588.00	\$10.00	\$598.00

Overweight Uniform Traffic Citations (UTC) CY2004

Citation	Over Weight Offence	Date	lbs Owt	Bail	Surcharge	Total	New Rate	Bail	Surcharge	Total
G35230	17AAC 25.013.(a) (3)	7/21/04	6360	\$318.00	\$10.00	\$328.00	\$0.16	\$1,017.60	\$10.00	\$1,027.60
G66737	17AAC 25.013.(a) (2)	8/2/04	3000	\$150.00	\$10.00	\$160.00	\$0.08	\$240.00	\$10.00	\$250.00
G66213	17AAC 25.013.(a) (2)	7/17/04	5820	\$291.00	\$10.00	\$301.00	\$0.12	\$698.40	\$10.00	\$708.40
G66221	17AAC 25.013.(a) (3)	7/23/04	2850	\$142.00	\$10.00	\$152.00	\$0.08	\$228.00	\$10.00	\$238.00
G66576	17AAC 25.013(a)(3)	11/15/04	1240	\$62.00	\$10.00	\$72.00	\$150.00	\$150.00	\$10.00	\$160.00
G66778	17AAC 25.013.(a) (3)	7/22/04	2220	\$111.00	\$10.00	\$121.00	\$0.08	\$177.60	\$10.00	\$187.60
G66374	17AAC 25.013. (a)(2)	4/27/04	2220	\$111.00	\$10.00	\$121.00	\$0.08	\$177.60	\$10.00	\$187.60
G66783	17AAC 25.013.(a) (2)	9/5/04	1480	\$74.00	\$10.00	\$84.00	\$150.00	\$150.00	\$10.00	\$160.00
G67809	17AAC 25.013(b)	11/8/04	6460	\$323.00	\$10.00	\$333.00	\$0.16	\$1,033.60	\$10.00	\$1,043.60
G65848	17AAC 25.013. (a)(2)	4/1/04	2020	\$101.00	\$10.00	\$111.00	\$0.08	\$161.60	\$10.00	\$171.60
G66207	17AAC 25.013. (a)(2)	4/28/04	6500	\$325.00	\$10.00	\$335.00	\$0.16	\$1,040.00	\$10.00	\$1,050.00
G66206	17AAC 25.013. (a)(2)	4/28/04	5800	\$294.00	\$10.00	\$304.00	\$0.12	\$696.00	\$10.00	\$706.00
G66208	17AAC 25.013. (a)(2)	4/28/04	2320	\$116.00	\$10.00	\$126.00	\$0.08	\$185.60	\$10.00	\$195.60
G66204	17AAC 25.013. (a)(2)	4/19/04	6300	\$315.00	\$10.00	\$325.00	\$0.16	\$1,008.00	\$10.00	\$1,018.00
G66205	17AAC 25.013. (a)(2)	4/27/04	2540	\$127.00	\$10.00	\$137.00	\$0.08	\$203.20	\$10.00	\$213.20
G66203	17AAC 25.013. (a)(2)	4/14/04	5880	\$294.00	\$10.00	\$304.00	\$0.12	\$705.60	\$10.00	\$715.60
G66202	17AAC 25.013. (a)(2)	4/13/04	3460	\$173.00	\$10.00	\$183.00	\$0.08	\$276.80	\$10.00	\$286.80
G69173	17AAC 25.013.(a) (2)	8/30/04	4300	\$215.00	\$10.00	\$225.00	\$0.12	\$516.00	\$10.00	\$526.00
G66581	17AAC 25.013(a)(2)	10/5/04	2660	\$133.00	\$10.00	\$143.00	\$0.08	\$212.80	\$10.00	\$222.80
G66582	17AAC 25.013(a)(2)	10/8/04	2440	\$122.00	\$10.00	\$132.00	\$0.08	\$195.20	\$10.00	\$205.20
G66583	17AAC 25.013(a)(2)	10/25/04	5080	\$254.00	\$10.00	\$264.00	\$0.12	\$609.60	\$10.00	\$619.60
G66587	17AAC 25.013(a)(3)	11/3/04	8420	\$421.00	\$10.00	\$431.00	\$0.20	\$1,684.00	\$10.00	\$1,694.00
G66586	17AAC 25.013(a)(2)	11/3/04	4040	\$202.00	\$10.00	\$212.00	\$0.12	\$484.80	\$10.00	\$494.80
G66448	17AAC 25.013(a)(2)	11/10/04	2280	\$114.00	\$10.00	\$124.00	\$0.08	\$182.40	\$10.00	\$192.40
G67811	17AAC 25.013(a)(2)	11/12/04	4460	\$223.00	\$10.00	\$233.00	\$0.12	\$535.20	\$10.00	\$545.20
G67815	17AAC 25.013(a)(2)	11/26/04	2680	\$134.00	\$10.00	\$144.00	\$0.08	\$214.40	\$10.00	\$224.40
G70107	17AAC 25.013.(c)	11/29/04	5180	\$259.00	\$10.00	\$269.00	\$0.12	\$621.60	\$10.00	\$631.60
G66592	17AAC 25.013(a)(2)	11/30/04	2400	\$120.00	\$10.00	\$130.00	\$0.08	\$192.00	\$10.00	\$202.00
G66593	17AAC 25.013(a)(3)	11/30/04	1040	\$52.00	\$10.00	\$62.00	\$150.00	\$150.00	\$10.00	\$160.00
G70108	17AAC 25.013.(c)	12/7/04	6760	\$338.00	\$10.00	\$348.00	\$0.16	\$1,081.60	\$10.00	\$1,091.60
G66595	17AAC 25.013(a)(2)	12/8/04	2120	\$106.00	\$10.00	\$116.00	\$0.08	\$169.60	\$10.00	\$179.60
G70180	17AAC 25.013(a)(2)	12/8/04	2020	\$101.00	\$10.00	\$111.00	\$0.08	\$161.60	\$10.00	\$171.60
G66597	17AAC 25.013(a)(2)	12/10/04	3020	\$151.00	\$10.00	\$161.00	\$0.08	\$241.60	\$10.00	\$251.60
G64832	17AAC 25.013(a)(2)	2/18/04	1540	\$77.00	\$10.00	\$87.00	\$150.00	\$150.00	\$10.00	\$160.00
G66211	17AAC 25.013.(a) (2)	5/24/04	6340	\$317.00	\$10.00	\$327.00	\$0.16	\$1,014.40	\$10.00	\$1,024.40
G66210	17AAC 25.013.(a) (2)	5/24/04	3720	\$186.00	\$10.00	\$196.00	\$0.08	\$297.60	\$10.00	\$307.60

Overweight Uniform Traffic Citations (UTC) CY2004

Citation	Over Weight Offence	Date	lbs Owt	Bail	Surcharge	Total	New Rate	Bail	Surcharge	Total
G64981	17AAC 25.013. (a)(?)	4/10/04	3400	\$170.00	\$10.00	\$180.00	\$0.08	\$272.00	\$10.00	\$282.00
G64980	17AAC 25.013. (a)(2)	4/10/04	2620	\$131.00	\$10.00	\$141.00	\$0.08	\$209.60	\$10.00	\$219.60
G67587	17AAC 25.013. (a)(1)	4/29/04	2540	\$127.00	\$10.00	\$137.00	\$0.08	\$203.20	\$10.00	\$213.20
G66543	17AAC.25.013(a)(2)	1/15/04	2980	\$149.00	\$10.00	\$159.00	\$0.08	\$238.40	\$10.00	\$248.40
G65650	17AAC 25.013.(a) (2)	7/15/04	3280	\$164.00	\$10.00	\$174.00	\$0.08	\$262.40	\$10.00	\$272.40
G67125	17AAC 25.013.(a) (2)	5/2/04	3780	\$189.00	\$10.00	\$199.00	\$0.08	\$302.40	\$10.00	\$312.40
G67918	17AAC 25.013.(c)	11/15/04	4220	\$211.00	\$10.00	\$221.00	\$0.12	\$506.40	\$10.00	\$516.40
G65268	17AAC 25.013.(a) (2)	8/17/04	2520	\$126.00	\$10.00	\$136.00	\$0.08	\$201.60	\$10.00	\$211.60
G65269	17AAC 25.013.(a) (2)	8/17/04	2020	\$101.00	\$10.00	\$111.00	\$0.08	\$161.60	\$10.00	\$171.60
G69154	17AAC 25.013.(a) (2)	7/13/04	4680	\$234.00	\$10.00	\$244.00	\$0.12	\$561.60	\$10.00	\$571.60
G66553	17AAC 25.013.(a) (3)	7/22/04	4480	\$224.00	\$10.00	\$234.00	\$0.12	\$537.60	\$10.00	\$547.60
G67889	17AAC 25.013.(c)	9/24/04	4800	\$240.00	\$10.00	\$250.00	\$0.12	\$576.00	\$10.00	\$586.00
G67855	17AAC 25.013.(c)	10/20/04	4600	\$230.00	\$10.00	\$240.00	\$0.12	\$552.00	\$10.00	\$562.00
G65856	17AAC 25.013. (a)(2)	3/19/04	3320	\$166.00	\$10.00	\$176.00	\$0.08	\$265.60	\$10.00	\$275.60
G65872	17AAC 25.013. (a)(2)	3/30/04	1520	\$76.00	\$10.00	\$86.00	\$150.00	\$150.00	\$10.00	\$160.00
G67459	17AAC 25.013.(a) (3)	8/2/04	3040	\$152.00	\$10.00	\$162.00	\$0.08	\$243.20	\$10.00	\$253.20
G65296	17AAC 25.013(a)(2)	11/9/04	4140	\$207.00	\$10.00	\$217.00	\$0.12	\$496.80	\$10.00	\$506.80
G65295	17AAC 25.013(a)(2)	11/9/04	3960	\$198.00	\$10.00	\$208.00	\$0.08	\$316.80	\$10.00	\$326.80
G66492	17AAC 25.013.(a) (2)	7/21/04	9600	\$480.00	\$10.00	\$490.00	\$0.20	\$1,920.00	\$10.00	\$1,930.00
G65285	17AAC 25.013(a)(2)	10/26/04	10400	\$520.00	\$10.00	\$530.00	\$0.24	\$2,496.00	\$10.00	\$2,506.00
G67864	17AAC 25.013(a)(3)	11/3/04	3620	\$181.00	\$10.00	\$191.00	\$0.08	\$289.60	\$10.00	\$299.60
G69124	17AAC 25.013.(a) (2)	5/13/04	14940	\$747.00	\$10.00	\$757.00	\$0.24	\$3,585.60	\$10.00	\$3,595.60
G67877	17AAC 25.013.(c)	9/7/04	3540	\$182.00	\$10.00	\$192.00	\$0.08	\$291.20	\$10.00	\$301.20
G65234	17AAC 25.013.(a) (3)	9/16/04	5220	\$286.00	\$10.00	\$296.00	\$0.12	\$626.40	\$10.00	\$636.40
G67573	17AAC 25.013.(c)	12/15/04	3280	\$189.00	\$10.00	\$199.00	\$0.08	\$262.40	\$10.00	\$272.40
G67510	17AAC 25.013.(a) (3)	8/12/04	2100	\$105.00	\$10.00	\$115.00	\$0.08	\$168.00	\$10.00	\$178.00
G67895	17AAC 25.013.(c)	10/5/04	3680	\$184.00	\$10.00	\$194.00	\$0.08	\$294.40	\$10.00	\$304.40
G67588	17AAC 25.013.(a) (2)	6/8/04	3500	\$175.00	\$10.00	\$185.00	\$0.08	\$280.00	\$10.00	\$290.00
G66191	17AAC 25.013.(a) (2)	5/21/04	3300	\$165.00	\$10.00	\$175.00	\$0.08	\$264.00	\$10.00	\$274.00
G66201	17AAC 25.013. (a)(2)	4/12/04	2200	\$110.00	\$10.00	\$120.00	\$0.08	\$176.00	\$10.00	\$186.00
G65287	17AAC 25.013.(a) (3)	10/28/04	2680	\$134.00	\$10.00	\$144.00	\$0.08	\$214.40	\$10.00	\$224.40
G69115	17AAC 25.013. (c)	4/8/04	4400	\$220.00	\$10.00	\$230.00	\$0.12	\$528.00	\$10.00	\$538.00
G69128	17AAC 25.013.(a) (2)	5/10/04	4120	\$206.00	\$10.00	\$216.00	\$0.12	\$494.40	\$10.00	\$504.40
G69149	17AAC 25.013.(a) (2)	8/2/04	4880	\$244.00	\$10.00	\$254.00	\$0.12	\$585.60	\$10.00	\$595.60
G67806	17AAC 25.013(a)(2)	10/21/04	3420	\$171.00	\$10.00	\$181.00	\$0.08	\$273.60	\$10.00	\$283.60
G67719	17AAC 25.013. (a)(2)	3/18/04	2300	\$115.00	\$10.00	\$125.00	\$0.08	\$184.00	\$10.00	\$194.00

Overweight Uniform Traffic Citations (UTC) CY2004

Citation	Over Weight Offence	Date	lbs Owt	Bail	Surcharge	Total	New Rate	Bail	Surcharge	Total
G67569	17AAC 25.013.(c)	12/4/04	2580	\$128.00	\$10.00	\$138.00	\$0.08	\$204.80	\$10.00	\$214.80
G67452	17AAC 25.013.(a) (2)	5/10/04	3880	\$194.00	\$10.00	\$204.00	\$0.08	\$310.40	\$10.00	\$320.40
G64638	17AAC 25.013.(a) (2)	4/29/04	1580	\$79.00	\$10.00	\$89.00	\$150.00	\$150.00	\$10.00	\$160.00
G64639	17AAC 25.013.(a) (2)	4/29/04	2180	\$109.00	\$10.00	\$119.00	\$0.08	\$174.40	\$10.00	\$184.40
G64640	17AAC 25.013.(a) (2)	4/29/04	2160	\$108.00	\$10.00	\$118.00	\$0.08	\$172.80	\$10.00	\$182.80
G66559	17AAC 25.013.(a) (2)	8/28/04	4160	\$208.00	\$10.00	\$218.00	\$0.12	\$499.20	\$10.00	\$509.20
G65766	17AAC 25.013 (b)	8/17/04	3080	\$154.00	\$10.00	\$164.00	\$0.08	\$246.40	\$10.00	\$256.40
G65783	17AAC 25.013(a)(2)	12/6/04	2180	\$109.00	\$10.00	\$119.00	\$0.08	\$174.40	\$10.00	\$184.40
G67826	17AAC 25.013(a)(2)	10/4/04	8400	\$424.00	\$10.00	\$434.00	\$0.20	\$1,680.00	\$10.00	\$1,690.00
G67561	17AAC.25.013(a)(2)	1/18/04	2260	\$113.00	\$10.00	\$123.00	\$0.08	\$180.80	\$10.00	\$190.80
G65649	17AAC 25.013 (a) (2)	7/9/04	3240	\$162.00	\$10.00	\$172.00	\$0.08	\$259.20	\$10.00	\$269.20
G66834	17AAC 25.013.(a) (2)	7/6/04	3500	\$175.00	\$10.00	\$185.00	\$0.08	\$280.00	\$10.00	\$290.00
G66367	17AAC.25.013(a)(2)	2/23/04	4200	\$210.00	\$10.00	\$220.00	\$0.12	\$504.00	\$10.00	\$514.00
G66252	17AAC.25.013(a)(2)	2/27/04	3280	\$164.00	\$10.00	\$174.00	\$0.08	\$262.40	\$10.00	\$272.40
G66366	17AAC.25.013(a)(2)	2/5/04	2060	\$103.00	\$10.00	\$113.00	\$0.08	\$164.80	\$10.00	\$174.80
G65871	17AAC 25.013. (a)(2)	3/25/04	2300	\$115.00	\$10.00	\$125.00	\$0.08	\$184.00	\$10.00	\$194.00
G67868	17AAC 25.013(a)(3)	11/12/04	3900	\$195.00	\$10.00	\$205.00	\$0.08	\$312.00	\$10.00	\$322.00
G65781	17AAC 25.013(a)(3)	11/22/04	1680	\$84.00	\$10.00	\$94.00	\$150.00	\$150.00	\$10.00	\$160.00
G65290	17AAC 25.013(a)(3)	11/1/04	7430	\$373.00	\$10.00	\$383.00	\$0.16	\$1,193.60	\$10.00	\$1,203.60
G65292	17AAC 25.013(a)(3)	11/1/04	5780	\$289.00	\$10.00	\$299.00	\$0.12	\$693.60	\$10.00	\$703.60
G67562	17AAC.25.013(a)(2)	1/14/04	2560	\$128.00	\$10.00	\$138.00	\$0.08	\$204.80	\$10.00	\$214.80
G67124	17AAC 25.013. (a)(2)	4/23/04	4600	\$230.00	\$10.00	\$240.00	\$0.12	\$552.00	\$10.00	\$562.00
G67564	17AAC 25.013. (a)(2)	4/24/04	1700	\$85.00	\$10.00	\$95.00	\$150.00	\$150.00	\$10.00	\$160.00
G67509	17AAC 25.013.(a) (2)	5/7/04	4480	\$224.00	\$10.00	\$234.00	\$0.12	\$537.60	\$10.00	\$547.60
G67589	17AAC 25.013.(a) (2)	7/15/04	12480	\$624.00	\$10.00	\$634.00	\$0.24	\$2,995.20	\$10.00	\$3,005.20
G67507	17AAC 25.013. (a)(2)	4/5/04	2400	\$120.00	\$10.00	\$130.00	\$0.08	\$192.00	\$10.00	\$202.00
G68514	17AAC 25.013. (a)(2)	4/13/04	1460	\$73.00	\$10.00	\$83.00	\$150.00	\$150.00	\$10.00	\$160.00
G65847	17AAC 25.013. (a)(3)	3/18/04	4200	\$210.00	\$10.00	\$220.00	\$0.12	\$504.00	\$10.00	\$514.00
G69134	17AAC 25.013.(a) (2)	5/25/04	1780	\$89.00	\$10.00	\$99.00	\$150.00	\$150.00	\$10.00	\$160.00
G69114	17AAC 25.013.(a) (2)	4/28/04	4160	\$208.00	\$10.00	\$218.00	\$0.12	\$499.20	\$10.00	\$509.20
G68545	17AAC 25.013.(c)	9/30/04	3040	\$152.00	\$10.00	\$162.00	\$0.08	\$243.20	\$10.00	\$253.20
G67552	17AAC 25.013.(a) (3)	10/19/04	3940	\$197.00	\$10.00	\$207.00	\$0.08	\$315.20	\$10.00	\$325.20
G69156	17AAC 25.013.(a) (2)	7/14/04	6960	\$348.00	\$10.00	\$358.00	\$0.16	\$1,113.60	\$10.00	\$1,123.60
G66560	17AAC 25.013.(a) (2)	9/21/04	2220	\$111.00	\$10.00	\$121.00	\$0.08	\$177.60	\$10.00	\$187.60
G66568	17AAC 25.013(a)(2)	10/29/04	2940	\$147.00	\$10.00	\$157.00	\$0.08	\$235.20	\$10.00	\$245.20
G67853	17AAC 25.013.(c)	10/19/04	3840	\$192.00	\$10.00	\$202.00	\$0.08	\$307.20	\$10.00	\$317.20

Overweight Uniform Traffic Citations (UTC) CY2004

Citation	Over Weight Offence	Date	lbs Owt	Bail	Surcharge	Total	New Rate	Bail	Surcharge	Total
G65786	17AAC 25.013(a)(2)	12/9/04	2160	\$108.00	\$10.00	\$118.00	\$0.08	\$172.80	\$10.00	\$182.80
G65769	17AAC 25.013.(c)	8/27/04	4520	\$226.00	\$10.00	\$236.00	\$0.12	\$542.40	\$10.00	\$552.40
G63401	17AAC 25.013. (a)(2)	3/22/04	6020	\$301.00	\$10.00	\$311.00	\$0.16	\$963.20	\$10.00	\$973.20
G65760	17AAC 25.013.(a) (2)	7/20/04	3300	\$165.00	\$10.00	\$175.00	\$0.08	\$264.00	\$10.00	\$274.00
G68544	17AAC 25.013.(c)	9/30/04	3060	\$153.00	\$10.00	\$163.00	\$0.08	\$244.80	\$10.00	\$254.80
G67882	17AAC 25.013.(c)	9/14/04	4340	\$217.00	\$10.00	\$227.00	\$0.12	\$520.80	\$10.00	\$530.80
G66787	17AAC 25.013.(a) (2)	9/18/04	4860	\$243.00	\$10.00	\$253.00	\$0.12	\$583.20	\$10.00	\$593.20
G66788	17AAC 25.013.(a) (2)	9/18/04	3980	\$199.00	\$10.00	\$209.00	\$0.08	\$318.40	\$10.00	\$328.40
G65241	17AAC 25.013(a)(2)	11/14/04	5240	\$262.00	\$10.00	\$272.00	\$0.12	\$628.80	\$10.00	\$638.80
G65775	17AAC 25.013(a)(2)	10/7/04	2320	\$112.00	\$10.00	\$122.00	\$0.08	\$185.60	\$10.00	\$195.60
G66585	17AAC 25.013(a)(2)	11/3/04	2260	\$113.00	\$10.00	\$123.00	\$0.08	\$180.80	\$10.00	\$190.80
G66572	17AAC 25.013(a)(1)	11/9/04	3240	\$162.00	\$10.00	\$172.00	\$0.08	\$259.20	\$10.00	\$269.20
G66591	17AAC 25.013(a)(2)	11/29/04	3720	\$186.00	\$10.00	\$196.00	\$0.08	\$297.60	\$10.00	\$307.60
G66705	17AAC 25.013(a)(3)	11/22/04	3360	\$168.00	\$10.00	\$178.00	\$0.08	\$268.80	\$10.00	\$278.80
G70100	17AAC 25.013(a)(1)	12/22/04	3680	\$184.00	\$10.00	\$194.00	\$0.08	\$294.40	\$10.00	\$304.40
G66700	17AAC 25.013(a)(3)	12/14/04	4180	\$209.00	\$10.00	\$219.00	\$0.12	\$501.60	\$10.00	\$511.60
G67916	17AAC 25.013.(c)	11/12/04	4380	\$219.00	\$10.00	\$229.00	\$0.12	\$525.60	\$10.00	\$535.60
G65782	17AAC 25.013(a)(2)	12/6/04	2200	\$110.00	\$10.00	\$120.00	\$0.08	\$176.00	\$10.00	\$186.00
G67078	17AAC 25.013.(a) (3)	10/12/04	3340	\$167.00	\$10.00	\$177.00	\$0.08	\$267.20	\$10.00	\$277.20
G69171	17AAC 25.013.(a) (2)	8/24/04	3320	\$166.00	\$10.00	\$176.00	\$0.08	\$265.60	\$10.00	\$275.60
G65776	17AAC 25.013(a)(2)	10/7/04	5120	\$256.00	\$10.00	\$266.00	\$0.12	\$614.40	\$10.00	\$624.40
G67804	17AAC 25.013.(a) (2)	9/16/04	2960	\$148.00	\$10.00	\$158.00	\$0.08	\$236.80	\$10.00	\$246.80
G67873	17AAC 25.013.(c)	12/3/04	3040	\$152.00	\$10.00	\$162.00	\$0.08	\$243.20	\$10.00	\$253.20
G65759	17AAC 25.013.(a) (3)	7/20/04	5920	\$296.00	\$10.00	\$306.00	\$0.12	\$710.40	\$10.00	\$720.40
G65764	17AAC 25.013.(a) (2)	7/30/04	3740	\$187.00	\$10.00	\$197.00	\$0.08	\$299.20	\$10.00	\$309.20
G65771	17AAC 25.013.(a) (3)	9/27/04	5020	\$251.00	\$10.00	\$261.00	\$0.12	\$602.40	\$10.00	\$612.40
G67572	17AAC 25.013.(c)	12/11/04	2640	\$132.00	\$10.00	\$142.00	\$0.08	\$211.20	\$10.00	\$221.20
G67899	17AAC 25.013.(c)	10/13/04	9080	\$454.00	\$10.00	\$464.00	\$0.20	\$1,816.00	\$10.00	\$1,826.00
G65299	17AAC 25.013(a)(2)	11/29/04	2240	\$112.00	\$10.00	\$122.00	\$0.08	\$179.20	\$10.00	\$189.20
G66794	17AAC 25.013(a)(2)	11/9/04	2320	\$116.00	\$10.00	\$126.00	\$0.08	\$185.60	\$10.00	\$195.60
G67911	17AAC 25.013.(c)	11/8/04	7160	\$358.00	\$10.00	\$368.00	\$0.16	\$1,145.60	\$10.00	\$1,155.60
G70176	17AAC 25.013(a)(2)	11/29/04	4440	\$222.00	\$10.00	\$232.00	\$0.12	\$532.80	\$10.00	\$542.80
G67451	17AAC 25.013.(a) (2)	5/7/04	3120	\$156.00	\$10.00	\$166.00	\$0.08	\$249.60	\$10.00	\$259.60
G69163	17AAC 25.013.(a) (2)	7/26/04	5240	\$262.00	\$10.00	\$272.00	\$0.12	\$676.80	\$10.00	\$686.80
G68546	17AAC 25.013.(c)	10/8/04	8480	\$427.00	\$10.00	\$437.00	\$0.20	\$1,696.00	\$10.00	\$1,706.00
G68549	17AAC 25.013.(a) (3)	10/14/04	3840	\$192.00	\$10.00	\$202.00	\$0.08	\$307.20	\$10.00	\$317.20

Overweight Uniform Traffic Citations (UTC) CY2004

Citation	Over Weight Offence	Date	lbs Owt	Bail	Surcharge	Total	New Rate	Bail	Surcharge	Total
G85763	17AAC 25.013.(a) (2)	7/27/04	2100	\$105.00	\$10.00	\$115.00	\$0.08	\$168.00	\$10.00	\$178.00
G65849	17AAC 25.013. (a)(2)	4/7/04	5580	\$279.00	\$10.00	\$289.00	\$0.12	\$669.60	\$10.00	\$679.60
G67851	17AAC 25.013.(c)	10/15/04	1900	\$95.00	\$10.00	\$105.00	\$150.00	\$150.00	\$10.00	\$160.00
G64634	17AAC 25.013.(a) (2)	4/27/04	3060	\$153.00	\$10.00	\$163.00	\$0.08	\$244.80	\$10.00	\$254.80
G64635	17AAC 25.013.(a) (2)	4/27/04	3880	\$194.00	\$10.00	\$204.00	\$0.08	\$310.40	\$10.00	\$320.40
G67592	17AAC 25.013(a)(2)	11/10/04	2880	\$144.00	\$10.00	\$154.00	\$0.08	\$230.40	\$10.00	\$240.40
G70106	17AAC 25.013(a)(3)	11/29/04	4920	\$246.00	\$10.00	\$256.00	\$0.12	\$590.40	\$10.00	\$600.40
G70115	17AAC 25.013(a)(3)	12/21/04	1380	\$69.00	\$10.00	\$79.00	\$150.00	\$150.00	\$10.00	\$160.00
G70182	17AAC 25.013(a)(3)	12/17/04	7180	\$358.00	\$10.00	\$368.00	\$0.16	\$1,145.60	\$10.00	\$1,155.60
				\$55,179.50	\$2,610.00	\$57,789.50		\$144,005.60	\$2,610.00	\$146,615.60

New Fine Schedule CY 2004	\$146,615.60
CY 2004 Actual	\$57,789.50
Estimate of new revenue from new fine schedule.	\$88,826.10

ALASKA TRUCKING ASSOCIATION, INC.

3443 Minnesota Drive • Anchorage, Alaska 99503 • PHONE (907) 276-1149 • FAX (907) 274-1946

Representative Carl Gatto
State Capitol Room 411
Juneau, Alaska 99801-1182

Re: HB 266

Dear Representative Carl Gatto:

The Alaska Trucking Association opposes the implementation of HB 266 in to law. The ATA Board of Directors voted 15-2 opposing the bills intention to increase vehicle weight limitations. We feel that this bill:

- Continues the practice of placing the burden of operating an overweight vehicle on the driver as a criminal offence, forcing them to seek re-imbursments from the shippers who load the container in the lower 48 or internationally.
- Has unintended consequences that may hinder small carriers who are unable to wage legal battles to receive reimbursement from shippers who violate rules through incorrectly noting weight on bill of lading.
- Handicap heavy vehicle operators who are dispatched to move a piece of heavy equipment which have zero opportunity to assure that their load is loaded legally across their 18 axels.
- Magnify the current severe deficiency of validated scales in the state, loads that do not originate in Anchorage have little opportunity to accurately scale their vehicles prior to crossing weight stations.

These are several of the reasons that the Alaska Trucking Association feels that this bill should be tabled to reexamine these issue and provide measurable fixes to promote commerce and sustain infrastructure in the state.

Sincerely,
Alaska Trucking Association



Michael Bell,
Director



Michael J. Kenny, Regional Executive Officer

GENERAL TEAMSTERS520 E. Sixth Avenue
Anchorage, Alaska 99502**LOCAL 959**
State of Alaska784 Old Richardson Hwy., Suite 101
Fairbanks, Alaska 99707

April 11, 2005

Representative Jim Elkins
 Representative Carl Gatto
 Co-Chairpersons, Transportation Committee
 Alaska State Legislature
 Juneau, Alaska

Re: HB 266, Vehicle Weights

Dear Co-Chairpersons Elkins & Gatto:

On behalf of all citizens of Alaska, and specifically those members whom Teamsters Local 959 represents in the trucking industry, I am proud to support HB 266 regarding offenses and penalties for violation of vehicle weight limitations.

As you may be aware, overweight penalties in Alaska have not increased for some 20 or more years. While some would say the penalty charged for running overweight in this day and age is "just another cost of doing business", I believe it is truly a matter to be taken seriously.

For the most part, our Teamster drivers work for employers who follow the rules and abide by state-imposed weight requirements. For those employers that do not, a slight penalty fee is paid and drivers are ticketed. But the consequences the public faces when an overweight truck flips over while going down the highway, causing a major traffic accident, are very critical. Many wonder how many more lives need to be lost in this manner?

We further have the issue of our roadways being damaged by vehicles with overweight loads. These overweight loads cause the tearing up the pavement, as well as the subsurface, because they are only designed to specific standards. If that design standard is exceeded, damage occurs. Each year we ask for funding to correct damages to our highways and roadways because of overweight abuse. This abuse needs to stop.

The passage of HB 266 will certainly help curtail much of the indifference shown in this area today. Its passage will increase penalties for overweight violations, no longer allowing penalties paid to be "just another cost of doing business". This bill also creates a pattern or practice of violation, so those who show no sign of abiding by the law will realize stiffer

www.akteamsters.com

Anchorage (907) 665-8122 • Fairbanks (907) 452-2858 • Juneau (907) 588-3225 • Kenai (907) 283-4498 • Kodiak (907) 486-8818
 • Fax (907) 665-8266 • Fax (907) 452-5051 • Fax (907) 588-1227 • Fax (907) 283-8030 • Fax (907) 486-8818

Representatives Elkins and Gatto
Co-Chairpersons, Transportation Committee
Re: HB266
April 11, 2005
Page 2.

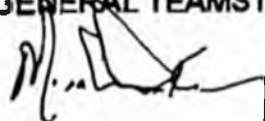
penalties. It further prohibits the use of overweight citations as a basis for "adverse action" by an insurance carrier.

We believe this bill will clearly go a long way in protecting the motoring public by reducing wear and tear on the highways. The bill will also establish increased penalties to encourage companies to operate their trucks within proper weight limits.

We ask you and the Transportation Committee members to support moving this bill out of committee.

Fraternally,

GENERAL TEAMSTERS LOCAL 959



Michael Kenny
Secretary-Treasurer



Kenneth Privratsky • Horizon Lines, LLC • 1717 Tidewater Road • Anchorage, AK 99501

April 11, 2005

Representative Jim Elkins, Chair
House Transportation Committee
State Capitol
Juneau, AK 99801-1182

Dear Representative Elkins :

I am writing you to express Horizon Lines' support for increasing scrutiny of overweight loads on our highways. The safety of Alaska's highways is something that everyone who uses them must be able to expect. As a commercial highway user, Horizon Lines understands its obligation to the public, our drivers and our customers to put only safe loads on our highways. This mirrors our company philosophy, and we are committed to doing this. The provisions outlined in the Intermodal Safe Container Act paragraph 5903(a) help ensure that accurate documentation is always provided when shippers tender loads to carriers. Using violations of this law as a criterion to identify possible willful offenders for further examination makes good sense.

Our drivers and our agents' drivers have told us that overweight violations have been used as a criterion when insurers underwrite their personal automobile policies. This practice is unfair as drivers normally have virtually no control over the loaded weight of the container or trailer they are being asked to pull.

Regards,

A handwritten signature in cursive script, appearing to read 'Ken Privratsky'.

Ken Privratsky
Vice President & General Manager, Alaska

WASHTO States									
Overweight Penalty Survey - Amount of Fine at the following weights.									
WASHTO State	Criminal (CR) Civil (CI)	2,000#	4,000#	6,000#	8,000#	10,000#	20,000#	30,000#	
AK Proposed	CR	\$150	\$320	\$720	\$1,280	\$2,000	\$4,800	\$7,200	
AK	CR traffic	\$100	\$200	\$300	\$400	\$500	\$1,000	\$1,500	
AZ	CI	\$300	\$980	\$1,500	\$1,700	\$1,900	\$2,900	\$3,900	
CA	CR	\$40	\$125	\$240	\$640	\$2,000	\$4,000	\$6,000	
CO	CR Traffic	\$22.50	\$37.50	\$141.50	\$451.60	\$911.70	\$2,639.70	\$4,411.70	
HI									
ID	CR Misdemeanor	\$ 15 + court cost	\$ 25 + court cost	\$293.2 + court cost	\$561.4 + court cost	\$829.6 + court cost	\$2500 + court cost	\$5500 + court cost	
MT	CR	\$210	\$260	\$310	\$385	\$410	\$1,135	\$2,135	
NE*	See below								
NV	CR Misdem/ by court	\$15	\$50	\$110	\$200	\$320	\$1,120	\$1,920	
NM	CR	\$25	\$80	\$125	\$275	\$425	\$1,000	\$1,000	
ND	CI	\$40	\$140	\$305	\$495	\$655	\$3,000	\$6,000	
OK	CR	\$258.90	\$358.90	\$458.90	\$558.90	\$628.90	\$628.90	\$628.90	
OR	CR/misdem/traffic	\$79	\$257	\$876	\$1,296	\$1,596	\$4,896	\$7,296	
SD	CR + CI	\$250	\$450	\$1,050	\$1,800	\$2,550	\$10,050	\$17,550	
TX	CR Misdemeanor	\$100	\$150	\$340	\$420	\$500	\$750	\$1000 Max	
UT	CR/classB/Misd (1)	\$50	\$170	\$350	\$450	\$650	\$1,850	calculation	(1) axle weight
	CR/classB/Misd (2)	\$50	\$200	\$350	\$450	\$550	\$1,050		(2) gross weight
WA	CR	\$223	\$283	\$523	\$763	\$1,003	\$2,803	\$5,803	
WY	CR	\$55	\$80	\$105	\$130	\$180	\$530	\$1,780	
NE	% over legal weight	0-5%	5-10%	10-15%	15-20%	20-25%	25%+		
	Gross weight	\$25	\$100	\$200	\$350	\$600	\$1,000		
NE	% over legal weight	0-5%	5-10%	10-15%	15-20%	20-25%	25-30%	40-45%	50%+
	Axle weight	\$25	\$75	\$150	\$350	\$500	\$750	\$1,550	\$2,500
18 states total									
15 Criminal									
3 Civil									
1 not reported									

Example of Proposed Overweight Penalty
DOT&PF, MSCVE
February 14, 2005

Overweight Ranges	Penalty per Pound	Amount of overweight	Total Penalty
1,001 to 2,000 lbs.	\$150 flat	2,000	\$ 150
2,001 to 4,000 lbs.	0.08 / lb	4,000	\$ 320
4,001 to 6,000 lbs.	0.12 / lb	6,000	\$ 720
6,001 to 8,000 lbs.	0.16 / lb	8,000	\$ 1,280
8,001 to 10,000 lbs.	0.20 / lb	10,000	\$ 2,000
over 10,000 lbs.	0.24 / lb	30,000	\$ 7,200

INTERMODAL SAFE CONTAINER ACT (AS AMENDED)

(D) the motor carrier shall bear the burden of proof to establish that it tendered the required notice to the operator.

- (2) *Reimbursement.* If the operator of a leased vehicle transporting a container or trailer subject to this chapter is fined because of a violation of a State's gross vehicle weight laws or regulations and the lessee motor carrier cannot establish that it tendered to the operator the notice required by paragraph (1) of this subsection, then the operator shall be entitled to reimbursement from the motor carrier in the amount of any fine and court costs resulting from the failure of the motor carrier to tender the notice to the operator.

§5904. STATE ENFORCEMENT

- (a) *General.* A State may enact a law to permit the State or a political subdivision of the State
- (1) to impose a fine or penalty, for a violation of a State highway weight law or regulation by a tractor-trailer combination carrying a loaded container or trailer for which a certification is required by section 5902(b) of this title, against the person tendering the loaded container or trailer to the first carrier if the violation results from the person's having provided erroneous information in the certification in violation of section 5903(a) of this title; and
 - (2) to impound the container or trailer until the fine or penalty has been paid by the owner or beneficial owner of the contents of the container or trailer or the person tendering the loaded container or trailer to the first carrier.
- (b) *Limitation.* This chapter does not require a person tendering a loaded container or trailer to a first carrier to ensure that the first carrier or any other carrier involved in the intermodal transportation will comply with any State highway weight law or regulation, other than as required by this chapter.

§5905. LIENS

- (a) *General.* If a person involved in the intermodal transportation of a loaded container or trailer for which a certification is required by section 5902(b) of this title is required, because of a violation of a State's gross vehicle weight laws or regulations, to post a bond or pay a fine, penalty, cost (including storage), or interest resulting from
- (1) erroneous information provided by the certifying party in the certification to the first carrier in violation of section 5903(a) of this title;
 - (2) the failure of the party required to provide the certification to the first carrier to provide it;
 - (3) the failure of a person required under section 5902(c) to forward the certification to forward it; or

AS 45.75.380(b)

Revision of Truck Overload Fine
Schedule

House Transportation Committee



Why Control the Weight of Trucks

- Pavement Damage
 - Pavements are designed for trucks
- Bridge Damage
 - Bridges are designed for trucks
- Safety
 - Truck brakes are designed for a maximum payload

Parks Highway Rehabilitation Projects Typically Cost \$500k/mile

- | Includes | Does not include |
|----------------------|------------------|
| • Asphalt Concrete | • Road Closures |
| • Reclaiming Base | • Drainage |
| • Traffic Control | • Improvements |
| • Design Costs | • State Funding |
| • Construction Admin | • Other |

The Parks Highway North of Wasilla
is Designed for 1.1 Million Trucks
Over 15 Years

Each Overweight Truck Reduces the
Life of the Project

Example

A 5-axle truck that is 4000 lbs overweight
is equal to 4.9 average 5-axle trucks on the
Parks or 1.2 legally loaded trucks

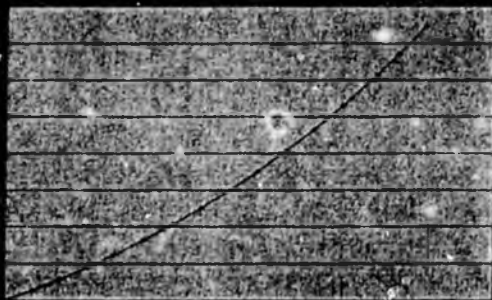
A legally loaded 5-axle truck cost
the State about \$0.70/mile or
\$210 trip to travel from Wasilla to
Fairbanks

Estimated User Delay Costs as a
result of a 5-axle truck overloaded
by 4000 is \$0.90/mile or \$270 from
Wasilla to Fairbanks

Assumes user salary of \$10/hour

A truck stands to make about \$100/mile if he carries an extra 4,000 lbs or \$300 if he travels from Wasilla to Fairbanks

Assumes a charge of \$0.50 ton-mile



Any Fine Schedule Should:

- Pay for Damage
- Pay for Public Costs such as Delay
- Remove any Profit Motive
- Be Large Enough to be a Deterrent

Last Year 262 Fines Were Levied Resulting in About \$58,000.

The new bill would generate about \$147,000 in fines.

Our Goal Is To Reduce Overloads

HB

268

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. John Coghill
Rep. Nancy Dahlstrom
Rep. Pete Kott
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
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Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: April 27, 2005
Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 24-LS0872A, HB 268, incorporating the attached amendment. The bill was passed out of committee today.

If you have any questions, please call me at 4990.
Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

Conceptual amendment #1 - PASSED

to HB 268

by Gruenberg

Page 1, Lines 6-7 & Lines 11-12:

Delete "in the act of removing an animal from
the roadway"

Insert "while performing official duties"

Representative Jay Ramras
Co-Chair, House Resources
V-Chair, Economic Develop.
Tourism & Trade
House State Affairs

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House District 10

House of Representatives

MEMO

To: Representative Lesil McGuire, Chair House Judiciary Committee

Fm: Representative Jay Ramras

Cc:

Date: April 19, 2005, 3:21 PM

Re: Request for hearing of HB 268

Please accept this memo as a request for the House Judiciary Committee to hear House Bill 268, "Relating to overtaking and passing certain stationary vehicles." HB 268 is a bill that works to keep more types of emergency vehicle operators safe when operating in hazardous traffic environments, specifically tow truck and animal control workers.

Thank you in advance for scheduling HB 268 before the Judiciary Committee.

Attachments: Sponsor Statement, HB 268, sectional, current statutes.

Representative Jay Ramras
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House District 10

House of Representatives

Sponsor Statement

HB 268

HB 268 is a bill that will further clarify the current law regarding drivers passing emergency vehicles that are required to display flashing emergency lights on a highway or roadway. Currently, AS 28.35.125 requires drivers to vacate the lane closest to stopped emergency vehicles. Emergency vehicles, under current law, are police and fire vehicles. HB 268 will change the law to include other vehicles that should be treated with the same amount of caution, specifically tow trucks and animal control vehicles.

HB 268 simply works to make sure that drivers are more cautious when approaching more kinds of emergency situations, especially situations where there is a significant risk of injury to the tow truck operator or animal control specialist.

Representative Jay Ramras
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House District 10

House of Representatives

Sectional Summary

HB 268/Overtaking and passing certain stationary vehicles

Work Order 24-LS0872\A

Section 1. Currently, the "move over" law applies to emergency police and fire vehicles, which requires drivers to merge into the lane farthest from the vehicles when they are stopped on the highway using their emergency lights. Section one of HB 268 adds both tow trucks and animal control vehicles to the list of vehicles that drivers must "move over" for. HB 268 does not change current statute in regards to the ability of police and fire officials to direct traffic as necessary.

HB

269

Representative Jay Ramras
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House District 10

House of Representatives

MEMO

To: Representative Lesil McGuire, Chair House Judiciary Committee

Fm: Jane Pierson *JWP*

Date: April 25, 2005

Re: House Bill 269 – Hazardous Substance Release Liability

Please accept this memo as a request for the House Judiciary Committee to hear HB 269. "An Act relating to contribution actions relating to the release of a hazardous substance; and providing for an effective date."

Thank you in advance for scheduling HB 269 before the House Judiciary Committee.

Attachments to this memo:

- Sponsor Statement
- Original Copy of HB 269 – 24-LS0879\A
- Sectional for HB 269 - 24-LS0879\A
- DEC Fiscal Note – 0
- LAW Fiscal Note - 0
- Applicable statute – AS 46.03.822
- Relevant Cases
 - *Cooper Industries, Inc. v. Aviall Services, Inc.*
 - *Federal Deposit Insurance Corp. v. Laidlaw Transit, Inc.*

Representative Jay Ramras
Co-Chair, House Resources
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House District 10

House of Representatives Sponsor Statement HB 269

House Bill 269 addresses contribution actions relating to the costs of environmental cleanups and the damages associated with hazardous substance releases. Current statutes impose joint and several liability associated with hazardous substance releases. They are known as responsible parties. A party who incurs cleanup costs and damages may bring a court action against other potentially responsible parties to have them pay for their fair share of the environmental cleanup.

Voluntary cleanups form the vast majority of the cleanups conducted in the State of Alaska. Voluntary cleanups allow the State of Alaska to focus its limited resources on monitoring responsible party cleanup actions, instead of undertaking costly administrative or judicial enforcement actions to force cleanups, or undertaking cleanups at public expense. The right to these contribution actions creates an important incentive for voluntary cleanups by allowing responsible parties to undertake effective cleanups themselves, and then be able to share the costs and other related damages with other responsible parties, who may be unwilling to voluntarily undertake or assist with the cleanup.

The United States Supreme Court, in *Cooper Industries v. Aviall Services*, found that a responsible party could not bring a contribution action until such time as it has been sued by the state or federal government, or had entered into a formal administrative settlement of liability. The *Aviall* decision has created confusion as to the contribution rights of responsible parties who undertake voluntary cleanups, and has placed in jeopardy the process of voluntary cleanups under AS 46.03.822.

Furthermore, the *Aviall* decision is in conflict with an earlier Alaska Supreme Court decision in, *Federal Deposit Insurance Corporation v. Laidlaw Transit*, and, in the absence of legislative action, responsible parties in Alaska may be fearful of undertaking voluntary cleanups at their own expense.

The purpose of HB 269, is to respond to the *Aviall* and *Laidlaw* decisions by clarifying the language in AS 46.03.822(j), ensuring that responsible parties who conduct voluntary cleanups may bring contribution actions against other responsible parties.

Representative Jay Ramras
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House District 10

House of Representatives Sectional Summary HB 269 Work Order 24-LS0879\A

Section 1. Describes the Legislative Findings and Purpose of this bill. The United States Supreme Court, in *Cooper Industries v. Aviall Services*, found that a responsible party could not bring a contribution action unless a state or the federal government had brought a suit against them, or had entered into a formal administrative settlement of its liability. The *Aviall* decision has created confusion as to the contribution rights of responsible parties, who have or will conduct voluntary cleanups, and has placed in jeopardy the process of voluntary cleanups under AS 46.03.822.

Furthermore, the *Aviall* decision is in conflict with an earlier Alaska Supreme Court decision, *Federal Deposit Insurance Corporation v. Laidlaw Transit*, and in the absence of legislative actions, responsible parties in Alaska may be fearful of undertaking voluntary cleanups.

Voluntary cleanups form the vast majority of the cleanups conducted in the State of Alaska. Voluntary cleanups allow the State of Alaska to focus its limited resources on monitoring responsible party cleanup actions, instead of undertaking costly administrative or judicial enforcement actions to force cleanups, or undertaking cleanups at public expense. The right to these contribution actions creates an important incentive for voluntary cleanups, by allowing responsible parties to undertake effective cleanups themselves, and then be able to recover some of those costs with other potentially responsible parties, who may fail to voluntarily undertake or assist with the cleanup.

Section 2. Ensures that a party may seek contribution from any other person who is liable for the contamination after the issuance of a potential liability determination by the Department of Environmental Conservation.

Section 3. Defines "potential liability determination".

Section 4. States that the changes made in sections 2 and 3 apply to liability for the release or threatened release of hazardous substances that occurred before or after this law takes effect.

Section 5. States that this Act will take effect immediately.

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

**COOPER INDUSTRIES, INC. v. AVIALL SERVICES,
INC.**

**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT**

No. 02–1192. Argued October 6, 2004—Decided December 13, 2004

The enabling clause of §113(f)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as added by the Superfund Amendments and Reauthorization Act of 1986 (SARA), provides that any person “may” seek contribution from any other person liable or potentially liable under CERCLA §107(a) “during or following any civil action” under CERCLA §106 (which authorizes the Federal Government to compel responsible parties to clean up contaminated areas, see *Key Tronic Corp. v. United States*, 511 U. S. 809, 814), or CERCLA §107(a) (which empowers the Government to recover its response costs from potentially responsible persons (PRPs)). Section 113(f)(1)’s saving clause provides: “Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under” §106 or §107. SARA also created a separate express right of contribution, §113(f)(3)(B), for “[a] person who has resolved its liability to the United States or a State for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement.”

Cooper Industries, Inc., owned four Texas properties until 1981, when it sold them to Aviall Services, Inc. After operating those sites for several years, Aviall discovered that both it and Cooper had contaminated them when hazardous substances leaked into the ground and ground water. Aviall notified the State of the contamination, but neither the State nor the Federal Government took judicial or administrative measures to compel cleanup. Aviall cleaned up the properties under the State’s supervision and sold them to a third party, but remains contractually responsible for \$5 million or more in cleanup

Syllabus

costs. Aviall filed this action against Cooper to recover such costs. The original complaint asserted, *inter alia*, a claim for cost recovery under §107(a) and a separate claim for contribution under §113(f)(1). Aviall later amended the complaint to, among other things, combine its two CERCLA claims into a single, joint claim that, pursuant to §113(f)(1), sought contribution from Cooper as a PRP under §107(a). Granting Cooper summary judgment, the District Court held that Aviall had abandoned its freestanding §107 claim, and that contribution under §113(f)(1) was unavailable because Aviall had not been sued under §106 or §107. The Fifth Circuit ultimately reversed, holding that §113(f)(1) allows a PRP to obtain contribution from other PRPs regardless of whether the PRP has been sued under §106 or §107. The court reasoned in part that "may" in §113(f)(1)'s enabling clause did not mean "may only."

Held: A private party who has not been sued under CERCLA §106 or §107(a) may not obtain contribution under §113(f)(1) from other liable parties. Pp. 6–12.

(a) Section 113(f)(1) does not authorize Aviall's suit. This Court disagrees with Aviall's argument that the word "may" in §113(f)(1)'s enabling clause should be read permissively, such that "during or following" a civil action is one, but not the exclusive, instance in which a person may seek contribution. First, the natural meaning of "may" in this context is that it authorizes certain contribution actions that satisfy the subsequent specified condition—*i.e.*, those that occur "during or following" a specified civil action—and no others. Second, reading §113(f)(1) to authorize contribution actions at any time, regardless of the existence of a §106 or §107(a) civil action, would render entirely superfluous the section's explicit "during or following" condition, as well as §113(f)(3)(B), which permits contribution actions after settlement. This Court is loath to allow such a reading. See, *e.g.*, *Hibbs v. Winn*, 542 U. S. ___, ___. Congress would not have bothered to specify conditions under which a person may bring a contribution claim, and at the same time allowed contribution actions absent those conditions. Section §113(f)(1)'s saving clause does not change the Court's conclusion. That clause's sole function is to clarify that §113(f)(1) does nothing to "diminish" any cause(s) of action for contribution that may exist independently of §113(f)(1), thereby rebutting any presumption that the express right of contribution provided by the enabling clause is the exclusive contribution cause of action available to a PRP. The saving clause, however, does not itself establish a cause of action, nor expand §113(f)(1) to authorize contribution actions not brought "during or following" a §106 or §107(a) civil action, nor specify what causes of action for contribution, if any, exist outside §113(f)(1). Reading the clause to authorize §113(f)(1) contribution ac-

Syllabus

tions not just "during or following" a civil action, but also before such an action, would again violate the settled rule that the Court must, if possible, construe a statute to give every word some operative effect. In light of provisions specifying two 3-year limitations periods for contribution actions beginning at the date of judgment, §113(g)(3)(A), and at the date of settlement, §113(g)(3)(B), the absence of any such provision for cases in which a judgment or settlement never occurs also supports the conclusion that, to assert a contribution claim under §113(f), a party must satisfy the conditions of either §113(f)(1) or §113(f)(3)(B). Given the clear meaning of CERCLA's text, there is no need to resolve the parties' dispute about CERCLA's purpose or to consult that purpose at all. See *Oncale v. Sundowner Offshore Services, Inc.*, 523 U. S. 75, 79. Because Aviall has never been subject to a civil action under §106 or §107(a), it has no §113(f)(1) claim. Pp. 6–9.

(b) The Court declines to address in the first instance Aviall's claim that it may recover costs under §107(a)(4)(B) even though it is a PRP. In view of the importance of the §107 issue, the question whether Aviall waived a freestanding §107 claim, and the absence of briefing and decisions by the courts below, this Court is not prepared to resolve the §107 question solely on the basis of dictum in *Key Tronic*. Pp. 9–11.

(c) In addition, the Court declines to decide whether Aviall has an implied right to contribution under §107. To the extent that Aviall chooses to frame its §107 claim on remand as an implied right of contribution (as opposed to a right of cost recovery), the Court notes that it has visited the subject before, see, e.g., *Texas Industries, Inc. v. Radcliff Materials, Inc.*, 451 U. S. 630, 638–647, and that, in enacting §113(f)(1), Congress explicitly recognized a particular set (claims "during or following" the specified civil actions) of the contribution rights previously implied by courts from provisions of CERCLA and the common law, cf. *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U. S. 11, 19. Pp. 11–12.

312 F. 3d 677, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, SOUTER, and BREYER, JJ., joined. GINSBURG, J., filed a dissenting opinion, in which STEVENS, J., joined.

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 02-1192

**COOPER INDUSTRIES, INC., PETITIONER *v.* AVIALL
SERVICES, INC.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT**

[December 13, 2004]

JUSTICE THOMAS delivered the opinion of the Court.

Section 113(f)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)¹ allows persons who have undertaken efforts to clean up properties contaminated by hazardous substances to seek contribution from other parties liable under CERCLA. Section 113(f)(1) specifies that a party may obtain contribution “during or following any civil action” under CERCLA §106 or §107(a). The issue we must decide is whether a private party who has not been sued under §106 or §107(a) may nevertheless obtain contribution under §113(f)(1) from other liable parties. We hold that it may not.

I

Under CERCLA, 94 Stat. 2767, the Federal Government may clean up a contaminated area itself, see §104, or it may compel responsible parties to perform the cleanup,

¹Section 113(f)(1) is codified at 42 U. S. C. §9613(f)(1). We refer throughout, for the most part, to sections of CERCLA rather than the U. S. Code.

Opinion of the Court

see §106(a). See *Key Tronic Corp. v. United States*, 511 U. S. 809, 814 (1994). In either case, the Government may recover its response costs under §107, 42 U. S. C. §9607 (2000 ed. and Supp. I), the "cost recovery" section of CERCLA. Section 107(a) lists four classes of potentially responsible persons (PRPs) and provides that they "shall be liable" for, among other things, "all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan." §107(a)(4)(A).² Section 107(a) further provides that PRPs shall be liable for "any other necessary costs of response incurred by any other person consistent with the national contingency plan." §107(a)(4)(B).

After CERCLA's enactment in 1980, litigation arose over whether §107, in addition to allowing the Government and certain private parties to recover costs from PRPs, also allowed a PRP that had incurred response costs to recover costs from other PRPs. More specifically, the question was whether a private party that had incurred response costs, but that had done so voluntarily and was not itself subject to suit, had a cause of action for cost recovery against other PRPs. Various courts held that §107(a)(4)(B) and its predecessors authorized such a cause of action. See, e.g., *Wickland Oil Terminals v Asarco, Inc.*, 792 F. 2d 887, 890-892 (CA9 1986); *Walls v. Waste Resource Corp.*, 761 F. 2d 311, 317-318 (CA6 1985); *Philadelphia v. Stepan Chemical Co.*, 544 F. Supp. 1135, 1140-1143 (ED Pa. 1982).

After CERCLA's passage, litigation also ensued over the separate question whether a private entity that had been sued in a cost recovery action (by the Government or by

²The national contingency plan specifies procedures for preparing and responding to contaminations and was promulgated by the Environmental Protection Agency (EPA) pursuant to CERCLA §105, 42 U. S. C. §9605 (2000 ed. and Supp. I). The plan is codified at 40 CFR pt. 300 (2004).

Opinion of the Court

another PRP) could obtain contribution from other PRPs. As originally enacted in 1980, CERCLA contained no provision expressly providing for a right of action for contribution. A number of District Courts nonetheless held that, although CERCLA did not mention the word "contribution," such a right arose either impliedly from provisions of the statute, or as a matter of federal common law. See, e.g., *United States v. New Castle County*, 642 F. Supp. 1258, 1263–1269 (Del. 1986) (contribution right arises under federal common law); *Colorado v. ASARCO, Inc.*, 608 F. Supp. 1484, 1486–1493 (Colo. 1985) (same); *Wehner v. Syntex Agribusiness, Inc.*, 616 F. Supp. 27, 31 (E.D. Mo. 1985) (contribution right is implied from §107(e)(2)). That conclusion was debatable in light of two decisions of this Court that refused to recognize implied or common-law rights to contribution in other federal statutes. See *Texas Industries, Inc. v. Radcliff Materials, Inc.*, 451 U. S. 630, 638–647 (1981) (refusing to recognize implied or common-law right to contribution in the Sherman Act or the Clayton Act); *Northwest Airlines, Inc. v. Transport Workers*, 451 U. S. 77, 90–99 (1981) (refusing to recognize implied or common-law right to contribution in the Equal Pay Act of 1963 or Title VII of the Civil Rights Act of 1964).

Congress subsequently amended CERCLA in the Superfund Amendments and Reauthorization Act of 1986 (SARA), 100 Stat. 1613, to provide an express cause of action for contribution, codified as CERCLA §113(f)(1):

"Any person may seek contribution from any other person who is liable or potentially liable under section 9607(a) of this title, during or following any civil action under section 9606 of this title or under section 9607(a) of this title. Such claims shall be brought in accordance with this section and the Federal Rules of Civil Procedure, and shall be governed by Federal law.

Opinion of the Court

In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under section 9606 of this title or section 9607 of this title." *Id.*, at 1647, as codified in 42 U. S. C. §9613(f)(1).

SARA also created a separate express right of contribution, §113(f)(3)(B), for "[a] person who has resolved its liability to the United States or a State for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement." In short, after SARA, CERCLA provided for a right to cost recovery in certain circumstances, §107(a), and separate rights to contribution in other circumstances, §§113(f)(1), 113(f)(3)(B).³

II

This case concerns four contaminated aircraft engine maintenance sites in Texas. Cooper Industries, Inc., owned and operated those sites until 1981, when it sold them to Aviall Services, Inc. Aviall operated the four sites for a number of years. Ultimately, Aviall discovered that both it and Cooper had contaminated the facilities when petroleum and other hazardous substances leaked into the ground and ground water through underground storage tanks and spills.

Aviall notified the Texas Natural Resource Conservation Commission (Commission) of the contamination. The

³In *Key Tronic Corp. v. United States*, 511 U. S. 809 (1994), we observed that §107 and §113 created "similar and somewhat overlapping" remedies. *Id.*, at 816. The cost recovery remedy of §107(a)(4)(B) and the contribution remedy of §113(f)(1) are similar at a general level in that they both allow private parties to recoup costs from other private parties. But the two remedies are clearly distinct.

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Commission informed Aviall that it was violating state environmental laws, directed Aviall to clean up the site, and threatened to pursue an enforcement action if Aviall failed to undertake remediation. Neither the Commission nor the EPA, however, took judicial or administrative measures to compel cleanup.

Aviall cleaned up the properties under the State's supervision, beginning in 1984. Aviall sold the properties to a third party in 1995 and 1996, but remains contractually responsible for the cleanup. Aviall has incurred approximately \$5 million in cleanup costs; the total costs may be even greater. In August 1997, Aviall filed this action against Cooper in the United States District Court for the Northern District of Texas, seeking to recover cleanup costs. The original complaint asserted a claim for cost recovery under CERCLA §107(a), a separate claim for contribution under CERCLA §113(f)(1), and state-law claims. Aviall later amended the complaint, combining its two CERCLA claims into a single, joint CERCLA claim. That claim alleged that, pursuant to §113(f)(1), Aviall was entitled to seek contribution from Cooper, as a PRP under §107(a), for response costs and other liability Aviall incurred in connection with the Texas facilities.⁴ Aviall continued to assert state-law claims as well.

Both parties moved for summary judgment, and the District Court granted Cooper's motion. The court held that Aviall, having abandoned its §107 claim, sought contribution only under §113(f)(1). The court held that §113(f)(1) relief was unavailable to Aviall because it had

⁴Aviall asserts that it framed its claim in the manner compelled by Fifth Circuit precedent holding that a §113 claim is a type of §107 claim. *Geraghty & Miller, Inc. v. Conoco, Inc.*, 234 F. 3d 917, 924 (CA5 2000); see also, e.g., *Centerior Serv. Co. v. Acme Scrap Iron & Metal Corp.*, 153 F. 3d 344, 349-353 (CA6 1998); *Sun Co., Inc. v. Browning-Ferris, Inc.*, 124 F. 3d 1187, 1191 (CA10 1997); *Pinal Creek Group v. Newmont Mining Corp.*, 118 F. 3d 1298, 1301-1302 (CA9 1997).

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not been sued under CERCLA §106 or §107. Having dismissed Aviall's federal claim, the court declined to exercise jurisdiction over the state-law claims.

A divided panel of the Court of Appeals for the Fifth Circuit affirmed. 263 F. 3d 134 (2001). The majority, relying principally on the "during or following" language in the first sentence of §113(f)(1), held that "a PRP seeking contribution from other PRPs under §113(f)(1) must have a pending or adjudged §106 administrative order or §107(a) cost recovery action against it." *Id.*, at 145. The dissent reasoned that the final sentence of §113(f)(1), the saving clause, clarified that the federal common-law right to contribution survived the enactment of §113(f)(1), even absent a §106 or §107(a) civil action. *Id.*, at 148–150 (opinion of Wiener, J.).

On rehearing en banc, the Fifth Circuit reversed by a divided vote, holding that §113(f)(1) allows a PRP to obtain contribution from other PRPs regardless of whether the PRP has been sued under §106 or §107. 312 F. 3d 677 (2002). The court held that "[s]ection 113(f)(1) authorizes suits against PRPs in both its first and last sentence[,] which states without qualification that 'nothing' in the section shall 'diminish' any person's right to bring a contribution action in the absence of a section 106 or section 107(a) action." *Id.*, at 681. The court reasoned in part that "may" in §113(f)(1) did not mean "may only." *Id.*, at 686–687. Three members of the en banc court dissented for essentially the reasons given by the panel majority. *Id.*, at 691–693 (opinion of Garza, J.). We granted certiorari, 540 U. S. 1099, and now reverse.

III

A

Section 113(f)(1) does not authorize Aviall's suit. The first sentence, the enabling clause that establishes the right of contribution, provides: "Any person *may* seek

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contribution . . . *during or following* any civil action under section 9606 of this title or under section 9607(a) of this title," 42 U. S. C. §9613(f)(1) (emphasis added). The natural meaning of this sentence is that contribution may only be sought subject to the specified conditions, namely, "during or following" a specified civil action.

Aviall answers that "may" should be read permissively, such that "during or following" a civil action is one, but not the exclusive, instance in which a person may seek contribution. We disagree. First, as just noted, the natural meaning of "may" in the context of the enabling clause is that it authorizes certain contribution actions—ones that satisfy the subsequent specified condition—and no others.

Second, and relatedly, if §113(f)(1) were read to authorize contribution actions at any time, regardless of the existence of a §106 or §107(a) civil action, then Congress need not have included the explicit "during or following" condition. In other words, Aviall's reading would render part of the statute entirely superfluous, something we are loath to do. See, e.g., *Hibbs v. Winn*, 542 U. S. ___, ___ (2004) (slip op., at 10). Likewise, if §113(f)(1) authorizes contribution actions at any time, §113(f)(3)(B), which permits contribution actions after settlement, is equally superfluous. There is no reason why Congress would bother to specify conditions under which a person may bring a contribution claim, and at the same time allow contribution actions absent those conditions.

The last sentence of §113(f)(1), the saving clause, does not change our conclusion. That sentence provides: "Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under section 9606 of this title or section 9607 of this title." 42 U. S. C. §9613(f)(1). The sole function of the sentence is to clarify that §113(f)(1) does nothing to "diminish" any cause(s) of action for contribution that may exist independently of §113(f)(1). In other words, the

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sentence rebuts any presumption that the express right of contribution provided by the enabling clause is the exclusive cause of action for contribution available to a PRP. The sentence, however, does not itself establish a cause of action; nor does it expand §113(f)(1) to authorize contribution actions not brought "during or following" a §106 or §107(a) civil action; nor does it specify what causes of action for contribution, if any, exist outside §113(f)(1). Reading the saving clause to authorize §113(f)(1) contribution actions not just "during or following" a civil action, but also before such an action, would again violate the settled rule that we must, if possible, construe a statute to give every word some operative effect. See *United States v. Nordic Village, Inc.*, 503 U. S. 30, 35-36 (1992).

Our conclusion follows not simply from §113(f)(1) itself, but also from the whole of §113. As noted above, §113 provides two express avenues for contribution: §113(f)(1) ("during or following" specified civil actions) and §113(f)(3)(B) (after an administrative or judicially approved settlement that resolves liability to the United States or a State). Section 113(g)(3) then provides two corresponding 3-year limitations periods for contribution actions, one beginning at the date of judgment, §113(g)(3)(A), and one beginning at the date of settlement, §113(g)(3)(B). Notably absent from §113(g)(3) is any provision for starting the limitations period if a judgment or settlement never occurs, as is the case with a purely voluntary cleanup. The lack of such a provision supports the conclusion that, to assert a contribution claim under §113(f), a party must satisfy the conditions of either §113(f)(1) or §113(f)(3)(B).

Each side insists that the purpose of CERCLA bolsters its reading of §113(f)(1). Given the clear meaning of the text, there is no need to resolve this dispute or to consult the purpose of CERCLA at all. As we have said: "[I]t is ultimately the provisions of our laws rather than the

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principal concerns of our legislators by which we are governed." *Oncala v. Sundowner Offshore Services, Inc.*, 523 U. S. 75, 79 (1998). Section 113(f)(1), 100 Stat. 1647, authorizes contribution claims only "during or following" a civil action under §106 or §107(a), and it is undisputed that Aviall has never been subject to such an action.⁵ Aviall therefore has no §113(f)(1) claim.

B

Aviall and *amicus* Lockheed Martin contend that, in the alternative to an action for contribution under §113(f)(1), Aviall may recover costs under §107(a)(4)(B) even though it is a PRP. The dissent would have us so hold. We decline to address the issue. Neither the District Court, nor the Fifth Circuit panel, nor the Fifth Circuit sitting en banc considered Aviall's §107 claim. In fact, as noted above, Aviall included separate §107 and §113 claims in its original complaint, but then asserted a "combined" §107/§113 claim in its amended complaint. The District Court took this consolidated claim to mean that Aviall was relying on §107 "not as an independent cause of action," but only "to the extent necessary to maintain a viable §113(f)(1) contribution claim." Civ. Action No. 3:97-CV-1926-D (ND Tex., Jan. 13, 2000), App. to Pet. for Cert. 94a, n. 2. Consequently the court saw no need to address any freestanding §107 claim. The Fifth Circuit panel likewise concluded that Aviall no longer advanced a stand-alone §107 claim. 263 F. 3d, at 137, n. 2. The en banc court found it unnecessary to decide whether Aviall had waived the §107 claim, because it held that Aviall could rely instead on §113. 312 F. 3d, at 685, n. 15. Thus, the court did not address the waiver issue, let alone the merits

⁵Neither has Aviall been subject to an administrative order under §106; thus, we need not decide whether such an order would qualify as a "civil action under section 9606 . . . or under section 9607(a)" of CERCLA. 42 U. S. C. §9613(f)(1).

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of the §107 claim.

"We ordinarily do not decide in the first instance issues not decided below." *Adarand Constructors, Inc. v. Mineta*, 534 U. S. 103, 109 (2001) (*per curiam*) (internal quotation marks omitted). Although we have deviated from this rule in exceptional circumstances, *United States v. Mendenhall*, 446 U. S. 544, 551–552, n. 5 (1980), the circumstances here cut *against* resolving the §107 claim. Both the question whether Aviall has waived this claim and the underlying §107 question (if it is not waived) may depend in part on the relationship between §§107 and 113. That relationship is a significant issue in its own right. It is also well beyond the scope of the briefing and, indeed, the question presented, which asks simply whether a private party "may bring an action seeking contribution pursuant to CERCLA Section 113(f)(1)." Pet. for Cert. i. The §107 claim and the preliminary waiver question merit full consideration by the courts below.

Furthermore, the parties cite numerous decisions of the Courts of Appeals as holding that a private party that is itself a PRP may not pursue a §107(a) action against other PRPs for joint and several liability. See, e.g., *Bedford Affiliates v. Sills*, 156 F. 3d 416, 423–424 (CA2 1998); *Centerior Serv. Co. v. Acme Scrap Iron & Metal Corp.*, 153 F. 3d 344, 349–356 (CA6 1998); *Pneumo Abex Corp. v. High Point, T. & D. R. Co.*, 142 F. 3d 769, 776 (CA4 1998); *Pinal Creek Group v. Newmont Mining Corp.*, 118 F. 3d 1298, 1301–1306 (CA9 1997); *New Castle County v. Halliburton NUS Corp.*, 111 F. 3d 1116, 1120–1124 (CA3 1997); *Reducing Carriers, Inc. v. Saraland Apartments*, 94 F. 3d 1489, 1496, and n. 7 (CA11 1996); *United States v. Colorado & E. R. Co.*, 50 F. 3d 1530, 1534–1536 (CA10 1995); *United Technologies Corp. v. Browning-Ferris Industries*, 33 F. 3d 96, 98–103 (CA1 1994). To hold here that Aviall may pursue a §107 action, we would have to consider whether these decisions are correct, an issue that Aviall has flagged but not briefed. And we

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might have to consider other issues, also not briefed, such as whether Aviall, which seeks to recover the share of its cleanup costs fairly chargeable to Cooper, may pursue a §107 cost recovery action for some form of liability other than joint and several. We think it more prudent to withhold judgment on these matters.

In view of the importance of the §107 issue and the absence of briefing and decisions by the courts below, we are not prepared—as the dissent would have it—to resolve the §107 question solely on the basis of dictum in *Key Tronic*. We held there that certain attorney's fees were not “necessary costs of response” within the meaning of §107(a)(4)(B). 511 U. S., at 818–821. But we did not address the relevance, if any, of Key Tronic's status as a PRP or confront the relationship between §§107 and 113. In discussing §107, we did not even classify it precisely as a right of cost recovery or a right of contribution, as the dissent's descriptions of the decision reveal. *Post*, at 1–2 (opinion of GINSBURG, J.) (describing *Key Tronic* as recognizing a right to “seek recovery of cleanup costs” (quoting 511 U. S., at 818), but in the following paragraph saying that *Key Tronic* identified a “right to contribution”). “Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents.” *Webster v. Fall*, 266 U. S. 507, 511 (1925). Aviall itself recognizes the need for fuller examination of the §107 claim; it has simply requested that we remand for consideration of that claim, not that we resolve the claim in the first instance.

C

In addition to leaving open whether Aviall may seek cost recovery under §107, Part III-B, *supra*, we decline to decide whether Aviall has an implied right to contribution under §107. Portions of the Fifth Circuit's opinion below might be taken to endorse the latter cause of action, 312

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F. 3d, at 687; others appear to reserve the question whether such a cause of action exists, *id.*, at 685, n. 15. To the extent that Aviall chooses to frame its §107 claim on remand as an implied right of contribution (as opposed to a right of cost recovery),⁶ we note that this Court has visited the subject of implied rights of contribution before. See *Texas Industries*, 451 U. S., at 638-647; *Northwest Airlines*, 451 U. S., at 90-99. We also note that, in enacting §113(f)(1), Congress explicitly recognized a particular set (claims "during or following" the specified civil actions) of the contribution rights previously implied by courts from provisions of CERCLA and the common law. Cf. *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U. S. 11, 19 (1979). Nonetheless, we need not and do not decide today whether any judicially implied right of contribution survived the passage of SARA.

* * *

We hold only that §113(f)(1) does not support Aviall's suit. We therefore reverse the judgment of the Fifth Circuit and remand the case for further proceedings consistent with this opinion.

It is so ordered.

⁶As noted above, we do not address whether a §107 cost recovery action by Aviall (if not waived) may seek some form of liability other than joint and several.

GINSBURG, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 02-1192

**COOPER INDUSTRIES, INC., PETITIONER v. AVIALL
SERVICES, INC.**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

[December 13, 2004]

JUSTICE GINSBURG, with whom JUSTICE STEVENS joins,
dissenting.

Aviall Services, Inc., purchased from Cooper Industries, Inc., property that was contaminated with hazardous substances. Shortly after the purchase, the Texas Natural Resource Conservation Commission notified Aviall that it would institute enforcement action if Aviall failed to remediate the property. Aviall promptly cleaned up the site and now seeks reimbursement from Cooper. In my view, the Court unnecessarily defers decision on Aviall's entitlement to recover cleanup costs from Cooper.

In *Key Tronic Corp. v. United States*, 511 U. S. 809, 818 (1994), all Members of this Court agreed that §107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U. S. C. §9607, "unquestionably provides a cause of action for [potentially responsible persons (PRPs)] to seek recovery of cleanup costs." The Court rested that determination squarely and solely on §107(a)(4)(B), which allows *any* person who has incurred costs for cleaning up a hazardous waste site to recover all or a portion of those costs from any other person liable under CERCLA.¹

¹Key Tronic, a PRP, asserted a cost-recovery claim under §107(a) to recoup approximately \$1.2 million in costs that it allegedly incurred

GINSBURG, J., dissenting

The *Key Tronic* Court divided, however, on the question whether the right to contribution is implicit in §107(a)'s text, as the majority determined, or whether §107(a) expressly confers the right, as the dissenters urged. The majority stated: Section 107 "*implies—but does not expressly command—that [a PRP] may have a claim for contribution against those treated as joint tortfeasors.*" 511 U. S., at 818, and n. 11 (emphasis added). The dissent maintained: "Section 107(a)(4)(B) states, as clearly as can be, that '[c]overed persons . . . shall be liable for . . . necessary costs of response incurred by any other person.' Surely to say that A shall be liable to B is the *express* creation of a right of action." *Id.*, at 822. But no Justice expressed the slightest doubt that §107 indeed did enable a PRP to sue other covered persons for reimbursement, in whole or part, of cleanup costs the PRP legitimately incurred.

In its original complaint, Aviall identified §107 as the federal-law basis for an independent cost-recovery claim against Cooper, and §113 as the basis for a contribution claim. App. 8A, 16A–17A. In amended pleadings, Aviall alleged both §§107 and 113 as the federal underpinning for its contribution claim. *Id.*, at 27A, 48A. Aviall's use of §§113 and 107 in tandem to assert a contribution claim conformed its pleading to then-governing Fifth Circuit precedent, which held that a CERCLA contribution action arises through the joint operation of §107(a) and §113(f)(1). See *Geraghty and Miller, Inc. v. Conoco, Inc.*, 234 F. 3d 917, 924 (2000) ("[W]hile section 113(f) is the

cleaning up its site "at its own initiative." *Key Tronic Corp. v. United States*, 984 F. 2d 1025, 1026 (CA9 1993). Although Key Tronic settled a portion of its liability with the Environmental Protection Agency (EPA), the claim advanced in Key Tronic's §107(a) suit rested on remedial action taken before the EPA's involvement, remediation that did not figure in the settlement. *Id.*, at 1026–1027, *Key Tronic Corp. v. United States*, 511 U. S. 809, 811–812 (1994).

GINSBURG, J., dissenting

vehicle for bringing a contribution action, it does not create a new cause of action or create any new liabilities. Rather, it is a mechanism for apportioning costs that are recoverable under section 107." (footnote omitted). A party obliged by circuit precedent to plead in a certain way can hardly be deemed to have waived a plea the party could have maintained had the law of the Circuit permitted him to do so. But cf. *ante*, at 9–10.

In the Fifth Circuit's view, §107 supplied the right of action for Aviall's claim, and §113(f)(1) prescribed the procedural framework. 312 F.3d 677, 683, and n. 10 (2002) (stating that §107 "impliedly authorizes a cause of action for contribution" and §113(f) "govern[s] and regulate[s]" the action (citing *Geraghty and Miller*, 234 F.3d, at 924) (internal quotation marks omitted)); see §113(f)(1) (calling for the governance of "Federal law" and the application of "the Federal Rules of Civil Procedure," and specifying that "[i]n resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate"). Notably, Aviall expressly urged in the Court of Appeals that, were the court to conclude that §113(f)(1)'s "during or following" language excluded application of that section to this case, Aviall's suit should be adjudicated independently under §107(a). See Response of Appellant Aviall Services, Inc., to the *Amicus Curiae* Brief of the United States in No. 00–10197 (CA5), p. 24 ("[P]arties who are excluded from seeking contribution under section 113(f)(1) must therefore have available to them the broader right of cost recovery [covering both full recovery and contribution] under section 107(a)."); cf. *Key Tronic*, 511 U. S., at 816 ("[T]he statute now expressly authorizes a cause of action for contribution in §113 and impliedly authorizes a similar and somewhat overlapping remedy in §107.").

I see no cause for protracting this litigation by requiring

GINSBURG, J., dissenting

the Fifth Circuit to revisit a determination it has essentially made already: Federal courts, prior to the enactment of §113(f)(1), had correctly held that PRPs could “recover [under §107] a proportionate share of their costs in actions for contribution against other PRPs,” 312 F. 3d, at 687;² nothing in §113 retracts that right, *ibid.* (noting that §113(f)'s saving clause preserves all preexisting state and federal rights of action for contribution, including the §107 implied right this Court recognized in *Key Tronic*, 511 U. S., at 816). Accordingly, I would not defer a definitive ruling by this Court on the question whether Aviall may pursue a §107 claim for relief against Cooper.

²The cases to which the Court refers, *ante*, at 12, *Texas Industries, Inc. v. Radcliff Materials, Inc.*, 451 U. S. 630 (1981), and *Northwest Airlines, Inc. v. Transport Workers*, 451 U. S. 77 (1981), do not address the implication of a right of action for contribution under CERCLA. *Texas Industries* concerned the Sherman and Clayton Acts, 451 U. S., at 639–646. *Northwest Airlines*, the Equal Pay Act and Title VII, 451 U. S., at 90–99. A determination suitable in one statutory context does not necessarily carry over to a different statutory setting.

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(Cite as: 21 P.3d 344)

H

Supreme Court of Alaska.
**FEDERAL DEPOSIT INSURANCE
 CORPORATION**, as statutory successor to the
 Resolution
 Trust Corporation, in its capacity as Receiver for
 Sun Savings and Loan
 Association, Plaintiff,

v.

LIDLAW TRANSIT, INC. d/b/a Laidlaw Transit
 (AK), Inc., Burton Carver & Co., K
 Beach Parts & Equipment, Peninsula Sanitation
 Co., Inc., Defendants.

No. S-8540.

April 12, 2001.

Current landowner brought action against former landowner and its tenants, seeking to recover hazardous waste cleanup costs. The United States District Court for the District of Alaska, James K. Singleton Jr., J., certified questions. The Supreme Court, Bryner, J., held that: (1) statute imposing strict liability on polluters for the release of hazardous substances provides a private cause of action for the owner of private property damaged by a release; (2) affirmative defenses, such as the statute of limitations, may be applied to such an action; (3) an action for contribution accrues after the direct action is concluded; and (4) current landowner's action could not be characterized as one for continuing nuisance or trespass.

Questions answered.

West Headnotes

[1] Federal Courts ⇨392

170Bk392 Most Cited Cases

Because the Supreme Court addresses questions of law and essentially stands in the shoes of the certifying court, it must exercise its independent judgment when answering certified

questions. Rules App.Proc., Rule 407.

[2] Action ⇨3

13k3 Most Cited Cases

Statute imposing strict liability on polluters for the release of hazardous substances provides a private cause of action for the owner of private property damaged by a release. AS 46.03.822(a).

[3] Environmental Law ⇨444

149Ek444 Most Cited Cases

Actions.

(Formerly 199k25.5(5.5) Health and Environment)

Statute imposing strict liability on polluters for the release of hazardous substances allows a potentially responsible party who denies responsibility to pursue a direct cause of action for joint and several strict liability against other potentially responsible parties. AS 46.03.822(a), (j).

[4] Environmental Law ⇨461

149Ek461 Most Cited Cases

(Formerly 199k25.15(5) Health and Environment)

[4] Environmental Law ⇨669

149Ek669 Most Cited Cases

(Formerly 199k25.15(5) Health and Environment)

Affirmative defenses, such as the statute of limitations, may be applied to a private cause of action to recover costs that is brought by an owner of private property damaged by a release of hazardous substances. AS 46.03.822(a).

[5] Statutes ⇨190

361k190 Most Cited Cases

The threshold question in ascertaining the correct interpretation of a statute is whether the language of the statute is clear or arguably ambiguous.

[6] Statutes ⇨190

361k190 Most Cited Cases

Even when the meaning of a statute's language seems plain on its face, ambiguity may arise if

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applying that meaning would yield anomalous consequences.

[7] Statutes ↩️188

361k188 Most Cited Cases

[7] Statutes ↩️205

361k205 Most Cited Cases

In ascertaining the plain meaning of a statute, the court must look to the particular language at issue, as well as to the language and design of the statute as a whole.

[8] Statutes ↩️223.1

361k223.1 Most Cited Cases

When a statute or regulation is part of a larger framework or regulatory scheme, even a seemingly unambiguous statute must be interpreted in light of the other portions of the regulatory whole.

[9] Statutes ↩️206

361k206 Most Cited Cases

In general, a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.

[10] Limitation of Actions ↩️49(6)

241k49(6) Most Cited Cases

In actions to recover costs for cleanup of hazardous waste, a potentially responsible party's cause of action for contribution does not accrue until the direct cause of action concludes. AS 46.03.822(a), (j).

[11] Contribution ↩️9(1)

96k9(1) Most Cited Cases

In actions to recover costs for cleanup of hazardous waste, potentially responsible parties may assert contribution claims in actions prosecuted either in court or through administrative proceedings. AS 46.03.822(j).

[12] Environmental Law ↩️670

149Ek670 Most Cited Cases

(Formerly 199k25.15(5) Health and Environment)

Current landowner's action against former landowner and its tenants to recover hazardous

waste cleanup costs could not be characterized as one for continuing nuisance or trespass, so as to avoid the statute of limitations applicable to suit to recover costs by the owner of private property damaged by the release of hazardous substances, where former owner and tenants did not exacerbate the contamination that they allegedly caused over a decade earlier. AS 46.03.822(a).

*345 Joseph R.D. Loescher and Carl J.D. Bauman, Hughes, Thorsness, Powell, Huddleston & Bauman LLC, Anchorage, for Plaintiff.

Ann W. Resch and Richard L. Waller, Brown, Waller & Gibbs, Anchorage, for Defendant Peninsula Sanitation Company, Inc.

Nelson G. Page, Burr, Pease & Kurtz, Anchorage, for Defendant Laidlaw Transit Alaska, Inc.

Before MATTHEWS, Chief Justice, EASTAUGH, FABE, BRYNER, and CARPENETI, Justices.

OPINION

BRYNER, Justice.

I. INTRODUCTION

The Federal Deposit Insurance Corporation (FDIC), as receiver of a failed bank's assets, acquired land that had been contaminated by hazardous waste many years previously. After undertaking voluntary cleanup at the request of the Alaska Department of Environmental Conservation, the FDIC filed suit in federal court against the former landowner and the owner's tenants, seeking to recoup its cleanup costs. FDIC claimed a right to compensation under AS 46.03.822, which imposes strict liability on a joint and several basis for release of hazardous substances and, in addition, allows responsible parties to sue for contribution.

Since this court had not yet determined whether section .822 creates a private cause of action other than for contribution or is governed by a statute of limitations, the federal district court certified these questions to us. We conclude that the statute allows private parties to sue directly for damages,

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not just for contribution, and that suits under the statute--both direct and for contribution--are governed by a statute of limitations.

II. FACTS AND PROCEEDINGS

For purposes of this decision, we accept the facts alleged in FDIC's complaint. In May 1988 Sun Savings and Loan Association, F.A., foreclosed on land that was owned by Burton Carver & Co. and that had been occupied by Carver and three tenants, Laidlaw Transit, K Beach Parts and Equipment, and Peninsula Sanitation Co. Carver and these tenants allegedly had contaminated the land by releasing various hazardous substances, including fuel oil.

In December 1989, a year and a half after Sun Savings foreclosed on the land, the Alaska Department of Environmental Conservation asked it to enter into a Compliance Order by Consent for the purpose of investigating and remediating contamination on the property. Not long after this, Sun Savings failed, and the Resolution Trust Corporation took over its assets. In July 1990 Resolution Trust wrote two of Carver's tenants--Peninsula Sanitation and Laidlaw--to inform them of the Department's action.

Nearly seven years later, in February 1997, FDIC, which by then had become the Resolution Trust Corporation's statutory successor, filed suit in federal district court against Laidlaw, K Beach Parts, Peninsula Sanitation, and Carver. FDIC alleged that these defendants were both strictly liable under AS 46.03.822(a) and liable in contribution under AS 46.03.822(j) for cleanup costs and other damages resulting from contamination of its land by their release of hazardous substances. FDIC alternatively alleged liability for the same damages under other theories, including continuing nuisance and trespass.

*346 Peninsula moved for summary judgment, alleging that FDIC's claims are barred by AS 09.10.070(a), Alaska's statute of limitations for liability created by a statute. Finding that FDIC's complaint and Peninsula's summary judgment motion raised unresolved issues of Alaska law, the

federal district court certified four questions for our review:

1. Is a statute of limitations defense available for a direct cause of action under AS 46.03.822(a)?
2. Does a private cause of action imposing joint and several liability exist under AS 46.03.822(a)?
3. When does a cause of action for contribution accrue under AS 46.03.822(j)?
4. Can continuing trespass and nuisance claims for environmental contamination be brought where the original act leading to the contamination occurred outside of the limitations period?

We accepted these questions under Alaska Appellate Rule 407 and answer them as follows.

III. DISCUSSION

A. Standard of Review

[1] Under Appellate Rule 407, a decision by this court upon certification from another court necessarily involves determinative questions of Alaska law as to which there is no controlling precedent. [FN1] Because we address questions of law and essentially stand in the shoes of the certifying court, we must exercise our independent judgment. [FN2]

FN1. Appellate Rule 407(a) provides:

The supreme court may answer questions of law certified to it by ... a United States district court ... when requested by the certifying court if there are involved in any proceeding before it questions of law of this state which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the supreme court of this state.

FN2. See *M.A. v. United States*, 951 P.2d 851, 853 (Alaska 1998).

B. Alaska Statute 46.03.822(a) Provides Private Plaintiffs with a Cause of Action for Strict Joint and

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Several Liability.

[2] FDIC alleges that the defendants are subject to joint and several strict liability under AS 46.03.822(a), which provides that "the owner and the operator of a ... facility, from which there is a release ... of a hazardous substance" are among those "strictly liable, jointly and severally, for damages, for the costs of response, containment, removal, or remedial action incurred by the state, a municipality, or a village...." The passive language of this provision does not specify whether a private party may sue for damages. But the legislative history of this provision and our case law dealing with the creation of statutory causes of action establish that it provides a private cause of action for the owner of private property damaged by a release.

1. *The legislative history behind subsection .822(a) supports a private cause of action.*

The original version of AS 46.03.822, enacted in 1972, created a cause of action imposing strict liability on polluters who damaged private property:

To the extent not otherwise preempted by federal law, a person owning or having control over a hazardous substance which enters in or upon the waters, surface or subsurface lands of the state is strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by the entry.... [FN3]

FN3. Ch. 122, § 1, SLA 1972 (emphasis added).

The act defined "damages" to include "injury to or loss of persons or property, real or personal, loss of income, loss of the means of producing income, or the loss of an economic benefit." [FN4] A separate provision, AS 46.03.870, specified that causes of action under AS 46.03 "inure solely to and are for the benefit of the state" "[e]xcept as provided under AS 46.03.822--46.03.828," implying that those sections provide for private causes of action. [FN5]

FN4. *Id.*

FN5. Ch. 122, § 2, SLA 1972. Title 46, Chapter 3 includes AS 46.03.010-900.

*347 In 1989 the legislature amended section .822 to "strengthen the State's ability to obtain cleanup of hazardous substance spill sites." [FN6] The amendments explicitly allowed the state and municipalities to recover damages, including cleanup and remediation costs, under the strict liability language of subsection .822(a):

FN6 Position Paper, March 16, 1989, Dennis D. Kelso, Commissioner, Alaska Department of Environmental Conservation.

Notwithstanding any other provision or rule of law and subject only to the defenses set out in (b) of this section[,] ... the following persons are strictly liable, jointly and severally, for damages to persons or property, whether public or private, including damage to the natural resources of the state or a municipality, and for the costs of response, containment, removal, or remedial action incurred by the state or a municipality, resulting from an unpermitted release of a hazardous substance....

....
(2) the owner and the operator of a vessel or facility from which there is a release ... of a hazardous substance[.] [FN7]

FN7. Ch. 39, § 2, SLA 1989 (emphasis added).

Legislative history indicates that this amendment was modeled after the Federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA), [FN8] which Congress enacted in 1980. [FN9]

FN8 See 42 U.S.C. §§ 9601-9675 (1994).

FN9. The Department of Environmental Conservation stated in its position paper: The bill [CSHB 68 (Resources)] was introduced at the request of the Governor. The Department strongly supports the bill

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and feels that it is necessary to provide appropriate tools to ensure that hazardous substance releases may be responded to properly. The first two sections of the law [including the re-enacted section .822] incorporate provisions similar to [those in] the federal "Superfund" law into state law.

See Position Paper, March 16, 1989, Dennis D. Kelso, Commissioner, Alaska Department of Environmental Conservation.

In addition, Senate Judiciary Chairwoman Jan Faiks explained that the 1989 amendments to AS 46.03.822 were modeled after CERCLA. See Committee Minutes, Senate Judiciary Committee (May 2, 1989).

In 1991 the legislature passed a number of amendments to AS 46.03.822. First, it amended subsection .822(a) to add villages to the governmental entities that could recover cleanup and remediation costs. [FN10] In so doing, the legislature retained the "public or private" damages language quoted above. [FN11] Later in the same session, the legislature moved the damages language from subsection .822(a) to a new subsection. .822(k), but did not change its content. [FN12]

FN10. See Ch. 83, § 9, SLA 1991.

FN11. *Id.*

FN12. See Ch. 92, §§ 1, 3, SLA 1991 (including "damage to persons or to public or private property [and] damage to natural resources of the state or a municipality" in subsection .822(k) among the harms that trigger strict liability, as section .822 has always done). The amendments contained in §§ 1 and 3 took effect July 3, 1991. In the same Act, these sections were to be repealed effective July 1, 1992, with the language in the new subsection (k) reverting to subsection (a). See *id.* at §§ 10, 12. However, this repeal and re-enactment was itself repealed in 1992.

See Ch. 83, § 15, SLA 1992.

In each of the foregoing amendments, the legislature also retained AS 46.03.824, a provision defining damages to include injuries to persons or property, real or personal, and loss of income. [FN13] The legislature likewise retained the original version of AS 46.03.870, which, as mentioned above, specifically provides that causes of action under section .822 are not limited to the state. Moreover, every version of section .822 has subjected polluters *348 of either private or public property to joint and several strict liability.

FN13. While the definition of damages does not expressly include cleanup costs outside the context of those incurred by the state, a municipality, or a village, other courts have held that damages include cleanup costs. See, e.g., *One Wheeler Road Assocs. v. Foxboro Co.*, 843 F.Supp. 792, 796-97 (D.Mass.1994) (applying Massachusetts law); *Borough of Rockaway v. Klockner & Klockner*, 811 F.Supp. 1039, 1051 (D.N.J.1993) (applying New Jersey law). The inclusion of cleanup costs in damages also furthers the legislative purpose of protecting the environment from pollution. See *Stock v. State*, 526 P.2d 3, 12 (Alaska 1974).

In sum, this history strongly suggests that the legislature originally contemplated a private cause of action against parties who release hazardous substances and that it never repealed that cause of action. It would be incongruous for the legislature to create strict liability for damage to private land without providing a way for private parties to get compensation for that damage.

2. *Alaska Statute 46.03.822(a) necessarily implies a private cause of action under the Hendsch Analysis.*

In *Alaska Marine Pilots v. Hendsch*, we identified six factors as relevant to determine whether a statute implies a private cause of action in tort: "the nature of the legislative provision, the adequacy of existing

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remedies, the extent to which a tort action will interfere with existing remedies, the importance of the purpose of the provision, how drastically the new tort will change the law, and the burden the [cause of action] will place on the court system." [FN14] Here, these factors support a private cause of action.

FN14. 950 P.2d 98, 104-05 (Alaska 1997) (citing Restatement (Second) of Torts § 874A cmt. h (1977)); *see also Walt v. State*, 751 P.2d 1345, 1351 n. 12 (Alaska 1988).

(1) *Nature of subsection .822(a)*: Subsection .822(a) is easily amenable to individual enforcement. The prohibited conduct and the potential defendants are clearly identified by subsection .822(a), which attaches strict liability for the release of hazardous substances, and by subsection .822(k), which identifies damage to "persons or to public or private property" as a kind of damage covered by subsection .822(a). [FN15] An injured property owner who, like FDIC, identifies parties responsible for contaminating the property need only show that the parties owned or operated the facility causing the contamination. [FN16]

FN15. *See* AS 46.03.822(k) (" '[D]amages' has the meaning given in AS 46.03.824 and includes damage to persons or to public or private property, damage to the natural resources of the state or a municipality, and [certain damages caused by cleanup contractors]."). AS 46.03.824 reads: "Damages include but are not limited to injury to or loss of persons or property, real or personal, loss of income, loss of the means of producing income, or the loss of an economic benefit."

FN16. *See* AS 46.03.822(a).

(2) *Adequacy of existing remedies*: When the legislature created a strict liability regime for hazardous substance contamination, it expressed its judgment that negligence remedies were not

adequately controlling the hazardous substance contamination problem. Nevertheless, Peninsula and Laidlaw insist that the subsection .822(j) right of contribution is an adequate remedy. We disagree. Under subsection .822(j), a damaged party can seek contribution only "during or after" an action against the party under subsection .822(a). Since private parties who voluntarily undertake cleanup efforts cannot compel the state to commence an action against them, they would be forced to wait for government action and, if no action were brought, would lose funds spent cleaning up another's contamination. That is not an adequate remedy. A more convincing reading of subsections .822(a) and (j) gives private parties the means to recover private damages, while allowing defendants a way to spread the costs of that recovery among the responsible parties.

(3) *Interference with existing remedies, and (4) importance of purpose of the provision*: A private cause of action under subsection .822(a) would not interfere with existing remedies, such as contribution claims; and it would enhance the important purposes of Alaska's contamination responsibility regime. As discussed above, allowing private parties to initiate cleanup while they bring an action against others who may be responsible--without waiting for government action--promotes the goal of quick response to discovered contamination. At the same time, actions for contribution allow the parties to sort out ultimate responsibility for the contamination afterwards.

(5) *Scope of change in the law*: Allowing a private cause of action under subsection .822(a) is not a departure from the way the law already operates in Alaska. In *Chenega Corp. v. Exxon Corp.*, for example, the parties³⁴⁹ litigated a complex private strict liability claim under subsection .822(a) stemming from the EXXON VALDEZ disaster. [FN17] No party questioned that subsection .822(a) allowed the action, and Exxon ultimately conceded strict liability, contesting only causation and damages. [FN18]

FN17. 991 P.2d 769, 776 (Alaska 1999).

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FN18. *See id.* Several Alaska superior courts have adopted similar approaches. *See University of Alaska v. Texaco*, No. 4FA-93- 2486 CI (Alaska Super., November 14, 1995) (memorandum decision); *Parks Hiway Enters., LLC v. CEM Leasing, Inc.*, No. 4FA-95-2117 CI (Alaska Super., December 22, 1997) (memorandum and order granting defendant's motion for summary judgment).

(b) *Burden on the courts of creating a private action:* While allowing private parties to bring causes of action may increase the number of claims under subsection .822(a), it will be consistent with what the legislature intended. We do not see that as an undue burden on the courts.

Because subsection .822(a) meets all of the criteria for an implied cause of action under our *Hensch* analysis, and since the legislative history of the provision supports the conclusion that the legislature meant to permit private actions, we hold that subsection .822(a) creates a private cause of action for joint and several strict liability. In the following section, we briefly consider the scope of this private action.

3. *The private cause of action created in subsection .822(a) extends to potentially responsible parties.*

[3] In arguing that the only remedy available to FDIC is a subsection .822(j) action for contribution, the defendants place great weight on FDIC's status as a potentially responsible party. They contend that potentially responsible parties should not be allowed joint and several recovery, but should be limited to contribution from other potentially responsible parties.

Any entity that may be required to take financial responsibility for cleaning up a contaminated site is a potentially responsible party. Alaska Statute 46.03.822(a)(3) imposes strict liability on the owners of a facility that releases hazardous material. Insofar as FDIC stands in the shoes of the owner of the contaminated property at the time of the

release--allegedly Sun Savings--FDIC is a potentially responsible party and, as such, is theoretically subject to the same liability as those who caused the contamination. [FN19]

FN19. We note in passing that FDIC's exact status is not clear. FDIC is the ultimate receiver of property owned by Carver that was pledged as security to Sun Savings. The defendants allege that FDIC is potentially responsible, but FDIC does not address the question. Under AS 46.03.826(8) "owner" and "operator" are defined to exclude a person who "without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect that person's security interest in the vessel or facility." The federal district court's certified questions do not require us to interpret this provision or to determine whether FDIC is a potentially responsible party, and we decline to do so here. Nevertheless, we note that federal courts that have interpreted the CERCLA equivalent of this section are divided. *Compare United States v. Fleet Factors Corp.*, 901 F.2d 1550, 1557-58 (11th Cir.1990) (actual management unnecessary for secured creditor liability) with *In re Bergsøe Metal Corp.*, 910 F.2d 668, 672 (9th Cir.1990) ("[T]here must be some actual management of the facility before a secured creditor will [be liable under CERCLA]."). Moreover, AS 46.03.822(a) differs from its federal counterpart in the way it describes owner liability. *Compare* AS 46.03.822(a)(2) (imposing liability on "the owner ... of a ... facility, from which there is a release ... of a hazardous substance") with 42 U.S.C. § 9607(a)(1) (imposing liability on "the owner ... of a ... facility"). Alaska's law appears to focus on the owner at the time of the release, rather than on subsequent owners.

The defendants maintain that allowing one potentially responsible party to claim direct

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damages under subsection .822(a) from other potentially responsible parties would give the claimant an unfair advantage over the defending parties, because the claimant's joint and several recovery under subsection .822(a) might include compensation for damages caused by absentee or judgment-proof polluters; the claimant would then receive full compensation despite being a potentially responsible--and possibly culpable--party, whereas the defending parties might be left with a worthless claim for contribution under subsection .822(j). The defendants reason that, in these situations, cleanup costs should *350 be borne by all potentially responsible parties equally.

This argument seems to assume that courts cannot distinguish among potentially responsible parties to avoid inequitable results. But federal case law shows that courts can. In *Rumpke of Indiana, Inc. v. Cummins Engine Co.*, the Seventh Circuit Court of Appeals found that when a potentially responsible party sues for direct damages under the federal counterparts to subsections . 822(a) and (j), the federal statutes allow the claim, but leave room for equitable distinctions upon conclusion of the litigation. [FN20] Thus, the court approved a direct action for joint and several liability by Rumpke--a potentially responsible party that denied actual responsibility for the contamination:

FN20. 107 F.3d 1235, 1240-42 (7th Cir.1997).

[W]e see nothing in the language of § 107(a) [the subsection .822(a) analog] that would make it unavailable to a party suing to recover for direct injury to its own land, under circumstances where it is not trying to apportion costs (i.e., where it is seeking to recover on a direct liability theory, rather than trying to divide up its own liability for someone else's injuries among other potentially responsible parties).[FN21]]

FN21. *Id.* at 1240.

But the court went on to observe: "If the facts show, contrary to Rumpke's protestations, that it

was partially responsible for the mess ..., it can proceed only under § 113(f)(1) [the subsection .822(j) analog] in a suit for contribution." [FN22]

FN22. *Id.* at 1242 (citing *Akzo Coatings, Inc. v. Aigner Corp.*, 30 F.3d 761 (7th Cir.1994)). More recently, other federal courts have similarly allowed CERCLA's direct cost-recovery action to be recast as an action for contribution when brought by a potentially responsible party who is ultimately determined not to be "innocent."

See, e.g., Pinal Creek Group v. Newmont Mining Corp., 118 F.3d 1298 (9th Cir.1997). The *Pinal* court found that CERCLA's analog to subsection .822(a) placed cleanup responsibility on the plaintiff Pinal Group because it was a potentially responsible party. At the same time, Pinal Group was entitled to recover from other potentially responsible parties for their share of the cleanup costs under CERCLA's subsection .822(j) analog. The court found that "this duality is best implemented by permitting a [potentially responsible party] who has incurred cleanup costs to assert only a contribution claim against other [potentially responsible parties]." *Id.* at 1301.

We agree with *Rumpke* that the possibility of inequitable results need not bar a potentially responsible party who denies responsibility from pursuing a direct cause of action for joint and several strict liability against other potentially responsible parties. Insofar as a plaintiff is an "innocent" potentially responsible party, that is, one who ultimately would not be liable for contribution, that plaintiff should recover jointly and severally. On the other hand, if a plaintiff ends up being among those responsible for the damage, the court may recast the direct claim as a claim for contribution upon conclusion of the litigation.

C. *Alaska's Statute of Limitations Applies to Actions Under Subsection . 822(a).*

[4] The defendants contend that FDIC's action is

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barred by the statute of limitations. FDIC responds that subsection .822(a) precludes a statute of limitations defense. [FN23] In advancing this argument, FDIC points to the opening language of AS 46.03.822(a):

FN23. The defendants assert, without elaboration, that this case is governed by AS 09.10.070(a), which establishes a two-year limit for "an action ... upon a liability created by statute." But it seems that this case might alternatively be governed by AS 09.10.050, which specifies a six-year limit for "an action for waste or trespass upon real property." Yet the relevant portion of the federal court's certification order only asks us to address FDIC's claim that no statute of limitations defense is available for a direct cause of action under AS 46.03.822(a). The question of which statute applies has not been adequately briefed, and the facts recited in the federal court's certification order suggest that the point may be time-barred under any applicable limit. Given these circumstances, we decline to consider which statute of limitations provision would govern FDIC's direct cause of action.

*Notwithstanding any other provision or rule of law and subject only to the defenses set out in (b) of this section, the exception set out in (i) of this section, the exception set out in AS 09.65.240, and the limitation on liability provided under AS 46.03.825, the following persons are strictly liable, jointly and severally, for damages [and *351 other costs associated with hazardous substance spills].* [FN24]

FN24. AS 46.03.822(a) (emphasis added).

Asserting that this provision's "notwithstanding" phrase plainly excludes all "defenses" to a subsection .822(a) action except those listed in subsection .822(b), FDIC argues that the provision's plain meaning precludes a statute of limitations defense.

We reject FDIC's plain meaning argument, for, as we explain below, FDIC's literal reading of the "notwithstanding" phrase strains common sense, is contextually implausible, and is at odds with legislative history.

[5][6] "[T]he threshold question in ascertaining the correct interpretation of a statute is whether the language of the statute is clear or arguably ambiguous." [FN25] Here, subsection .822(a)'s "notwithstanding" phrase's meaning may indeed seem clear and unambiguous. But "'words are necessarily inexact and ambiguity is a relative concept.'" [FN26] Hence, even when a statute's language meaning seems plain on its face, ambiguity may arise if applying that meaning would yield anomalous consequences. [FN27]

FN25. *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 293 n. 4, 108 S.Ct. 1811, 100 L.Ed.2d 313 (1988).

FN26. *State v. Alex et al.*, 646 P.2d 203, 208-09 n. 4 (Alaska 1982) (quoting *United States v. United States Steel Corp.*, 482 F.2d 439, 444 (7th Cir.1973) and adopting a sliding scale approach to statutory interpretation).

FN27. Thus, courts adhering to the "plain meaning" rule of statutory interpretation commonly define the rule to apply only "where language of a statute is clear and construction according to its terms does not lead to absurd consequences." *North Slope Borough v. Sohio Petroleum Corp.*, 85 P.2d 534, 540 n. 7 (Alaska 1978).

FDIC's proposal to enforce subsection .822(a)'s literal meaning by categorically barring all "defenses" except those listed in subsection .822(b) would have the nonsensical effect of eliminating a host of generally available "defenses" serving vital purposes wholly unrelated to the elements or underlying purposes of a direct action arising under subsection .822(a). If enforced literally, for instance, the "notwithstanding" phrase would bar a defendant who had previously settled and paid a