

7100

11680 STAFFS

# Dealers defend car fees

■ **LEGISLATURE:** Oft-hidden charges would have to be shown to buyers.

By **PAULA DOBBYN**  
Anchorage Daily News

A bill that would beef up disclosure of the hidden fees and extra costs car dealers often charge has passed two committees in the Alaska Legislature.

Auto salesmen are fighting the legislation, saying it unfairly singles them out.

House Bill 383, sponsored by Anchorage Democratic Reps. Les Gara, Berta Gardner and Max Gruenberg and Rep. Bob Lynn, R-Anchorage, would close a loophole that allows dealers to add a "documentation fee" to the price of a car. They could still collect the discretionary fee, but it would have to be part of the negotiated price and not tacked on later.

"Doc fees are simply additional profit for car dealers, but many consumers are misled into believing they are mandated government fees," said Gara.

The bill, supported by the Alaska Attorney General's Office, would also make salesmen disclose a common but little-known practice called "dealer reserve" that consumer groups say costs



Gara

See Page F-4, DISCLOSURE

## DISCLOSURE: Bill addresses loophole

*Continued from F-1*

Americans hundreds of millions of dollars in unnecessary fees every year.

Dealer reserve is the profit some car dealers keep after getting customers to accept a higher interest rate on their loan than what a bank, working with the dealership, would offer the buyer.

Often dealers don't disclose this arrangement to the customer, according to the bill sponsors and the Consumer Federation of America. As a result, the buyer pays more money over the life of the loan and the dealer gets a payment from the bank.

It's standard industry practice, car dealers say. They view it as compensation for the convenience they offer clients by arranging financing.

"It's one-stop shopping," said Jim Arpino, general manager of Affordable Used Cars in Fairbanks.

"A lot of times a customer doesn't want to go all across town" to shop for loans, Arpino said.

The payment also compensates for they risk they take by assisting people with poor credit, dealers say.

"There are a lot of people

that we will fight to get financing for so they can get a car," said Caroline Allen, business development director for Auto Service Co., a Fairbanks dealership.

That's fine, the sponsors say. Just be upfront and disclose to the consumer what you're doing.

Rep. Carl Gatto, R-Palmer, likes the bill. From personal experience, he thinks it's necessary.

Gatto bought a new Subaru Forester in 2004 and paid about \$200 in doc fees. He didn't realize until he heard testimony in the House State Affairs Committee on HB 383 last week that the fee was a dealer add-on. The dealer he bought the Subaru from told him it was a required fee and there was no way around it. Gatto, who describes himself as a savvy consumer, feels duped.

"It's nothing but pure profit," Gatto said.

Dealers see it differently.

"It's just a cost of doing business. And people don't have to pay it. It's part of doing your homework as a consumer," Allen said.

The AARP Alaska disagrees.

"Participation in the mar-

ketplace requires unprecedented levels of sophistication and knowledge, but indications are that financial literacy levels are low. To make appropriate choices, consumers must have openly and honestly presented sales negotiations," wrote Marie Darlin, coordinator of Juneau's AARP task force.

HB 383 could close a loophole in state law that allows dealers to add doc fees into the sales price if the negotiated price of a vehicle is less than the price the dealer advertised.

When he gets back to Anchorage after the legislative session ends, Gatto said, he will demand a refund. If the dealer refuses, he plans to take him to small claims court.

Rep. Jay Ramras, R-Fairbanks, who voted against the bill last week, said he just bought a car in Juneau and paid the doc fee after questioning the dealer.

"I said, 'What's this?' and they said, 'It's profit,' and I said, 'OK,'" Ramras said.

HB 383 "messes with free enterprise," Ramras said.

The bill has passed the Transportation and State Affairs committees and is now in the Rules Committee. Its next stop would be the House floor.

March 29, 2006  
Anchorage Daily News



March 20, 2006

The Honorable Paul Seaton, Chair  
House State Affairs Committee  
Alaska Capitol, Room 102  
Juneau, AK 99801-1182

**HB 383 (Gara)—Support**

Dear Chair Seaton:

On behalf of the members of AARP in Alaska, we urge you and your colleagues on the House State Affairs Committee to support HB 383, authored by Representative Les Gara and co-sponsored by two of your Committee colleagues, Representatives Lynn and Gardner. The intent of HB 383 is to safeguard consumers from deceptive and unfair practices when purchasing an automobile. Being treated fairly in the marketplace is something we all have the right to expect.

When a consumer negotiates a sales price with an automobile dealer he/she has the right to expect no "surprises." Currently some dealers add "documentation fees" in addition to the previously negotiated sales price. HB 383 simply requires dealers to be up front and indicate any documentation fees as part of the presented sales price.

HB 383 would also require automobile dealers to be transparent in the financing documents presented to a purchaser, indicating clearly and plainly what the financing arrangements will be, particularly if the buyer takes control of the vehicle before financing is finalized.

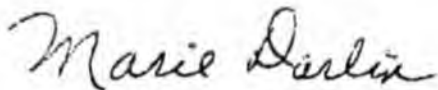
At this time participation in the marketplace requires unprecedented levels of sophistication and knowledge but indications are that financial literacy levels are low. To make appropriate choices, consumers must have openly and honestly presented sales negotiations. None of us should face "hidden costs." Consumers deserve fair treatment. HB 383 will certainly help automobile purchasers attain that.

AARP recommends an "AYE" vote on HB 383.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,



Marie Darlin, Coordinator  
AARP Capital City Task Force  
415 Willoughby Avenue, Apt. 506  
Juneau, AK 99801  
586-3637 (voice)  
463-3580 (fax)

CC: Vice-Chair Carl Gatto  
Representative Jim Elkins  
Representative Bob Lynn  
Representative Jay Ramras

Representative Berta Gardner  
Representative Max Gruenberg  
Representative Les Gara

**FAX TRANSMISSION**

This cover sheet is page 1 of 5 pages

DATL: April 5, 2006

**Dear Representatives Gara, Gatto, Gardner, Gruenberg, and Lynn:**

RE: House Bill 383

We have sent the following letter to Continental Honda of Anchorage. It relates to a bill in this year's legislature relating to undeclared – or unexplained – fees charged by auto dealerships, specifically documentation fees. While our inquiry with Continental may not bear fruit, we have sent this letter nonetheless. We were not happy to read that the fee Continental charged us may not have been mandatory. At least had we known this was possibly a discretionary fee, we would have contested it when we made the purchase.

Good luck with House Bill 383.

Bill and Elaine Wilson

FAX Transmission from 271-2917  
(Faxed from Work location of Bill Wilson)

Continental Honda  
5001 Old Seward Highway  
Anchorage, AK 99503

April 4, 2006

Dear Honda of Anchorage:

We have recently learned that Continental Honda of Anchorage has participated in the practice of charging people who purchase vehicles from you a special fee of about \$200 as a "handling fee". Government does not mandate this fee and, as we have learned, is simply another way for Continental Honda of Anchorage to extract profit from the sale of your vehicles.

On February 27, 2005 we purchased a new Honda Odyssey, purchase order number 71060. On the purchase agreement we note that we paid \$199.00 for a "Doc. Prep. & Handling Fee". The amount "199.00" is pre-printed on your purchase agreement forms, implying that it is a given that this fee must be paid. As I recall when we questioned our sales person, this was a mandatory fee and could not be contested.

But now we learn that this fee was not mandated at all, and is merely more profit for Continental Honda of Anchorage. A recent article in the Anchorage Daily News, dated Wednesday March 29, 2006, indicates that many automobile sales dealerships in Alaska follow this practice. However, the Alaska Legislature is currently reviewing this practice and finding it is misleading and they intend to pass a law that requires disclosure of the intent of this fee. The Anchorage Daily News article quotes Caroline Allen of a dealership in Fairbanks stating, "It's just a cost of doing business. And people don't have to pay it. It's part of doing your homework as a consumer."

Well, we were misled and we request that this \$199.00 be refunded to us. We agree with Representatives Gatto and Gara that this fee is misleading and we would have strongly contested this fee if we had known that paying it was discretionary. We paid a very large sum for the Odyssey; we also paid for some additional options and an extended warranty. We surely would not have paid a fee that was an added means of profit; sufficient profit is already built into the cost of the car.

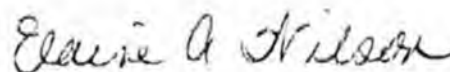
Enclosed are the newspaper article we mention above and a copy of our purchase agreement. We were led to believe that Continental Honda of Anchorage was required to charge this fee, which was unclear and misleading. We request that the \$199.00 we paid be refunded to us.

Thank you for your attention to this issue.

Sincerely,



William J. Wilson



Elaine A. Wilson

Cc: Representatives Gatto and Gara, Juneau

CS FOR HOUSE BILL NO. 383(TRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE TRANSPORTATION COMMITTEE

Offered: 2/13/06  
Referred: State Affairs

Sponsor(s): REPRESENTATIVE GARA

① Legal definition of negotiated price = Revenue - other expenses = not profit  
② Doc fee

A BILL

FOR AN ACT ENTITLED

1 "An Act limiting motor vehicle dealer charges for fees and costs; relating to the  
2 disclosures required for certain motor vehicle transactions; and relating to the financing  
3 of motor vehicle purchases."

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

5 \* Section 1. AS 45.25.440 is amended to read:

6 Sec. 45.25.440. Additional fees and costs [ADVERTISED PRICE]. (a)  
7 When selling a motor vehicle, a motor vehicle dealer may not charge any [DEALER]  
8 fees or costs in addition to the advertised or negotiated price, except for fees  
9 actually paid to a state agency for licensing, registration, or title transfers [, UNLESS  
10 THE FEES OR COSTS ARE INCLUDED IN THE ADVERTISED PRICE].

11 (b) In this section, "[DEALER] fees or costs" includes dealer preparation fees,  
12 document preparation fees, surcharges, <sup>charges</sup> and other [DEALER-IMPOSED] fees and  
13 costs.

14 \* Sec. 2. AS 45.25.610(c) is amended to read:

Handwritten initials in a circle

1 (c) If a motor vehicle dealer arranges financing for a buyer, the motor vehicle  
2 dealer may deliver the motor vehicle to the buyer before final approval by the  
3 financing entity if

4 (1) the buyer and seller sign an agreement separate from the motor  
5 vehicle installment contract on an 8 1/2 x 11 inch sheet of paper that clearly and  
6 conspicuously informs the buyer that final financing arrangements have not yet been  
7 approved and that clearly sets out the amount that will be financed, the annual  
8 percentage rate of the finance charge, the amount of the finance charge, the number  
9 and frequency of payments, and the amount of each payment;

10 (2) the separate agreement in (1) of this subsection clearly and  
11 conspicuously informs the buyer that accepting delivery of the vehicle before final  
12 financing approval obligates the buyer to terms of the motor vehicle sales contract if  
13 the terms on the separate agreement are identical to the terms finally approved by the  
14 financing entity; [AND]

15 (3) the motor vehicle dealer complies with the disclosure  
16 requirements of (f) of this section; and

17 (4) the separate agreement in (1) of this subsection provides that the  
18 separate agreement, the motor vehicle sales contract, and any and all other conditions  
19 of the purchase will be void if any of the terms contained in the separate agreement are  
20 changed by either the motor vehicle dealer or the financing institution as a condition  
21 of sale or final financing approval.

22 \* Sec. 3, AS 45.25.610 is amended by adding a new subsection to read:

23 (f) In addition to the other requirements of this section, if a motor vehicle  
24 dealer arranges financing for a proposed buyer, the dealer shall disclose in writing and  
25 before the sale is finalized *1 a offer being to a proposed buyer.*

26 (1) whether the interest rate quoted to the proposed buyer is different  
27 than the interest rate charged to the dealer; and

28 (2) that the interest rate quoted to the buyer may not be the lowest  
29 interest rate available.

*wording  
might place  
them in a  
"fiduciary role"*

Seaton's 2 concerns  
were:

- ① defining "negotiated price" — email from Ed says we don't need to in attached email
- ② making it banks & credit unions only — again, in both emails attached Ed says we don't need to, but says the amendment as drafted works

by Grunberg  
N.Y. - 1952

insert at P 1 line 8

after "price."

As follows "including the price stated

~~for the price~~ ~~at~~ at any point

during the negotiation or ~~trans~~

transaction,"

Emily McCoy

---

From: Ed Sniffen [Ed\_Sniffen@law.state.ak.us]  
Sent: Tuesday, March 07, 2006 3:30 PM  
To: Emily McCoy  
Subject: Re: Thank you!

Emily;

Thanks for having me testify. I had a lot more to say about the dealer reserve issue, but maybe next time. I've thought about a definition for "negotiated price" but I don't think we need one. It's pretty self explanatory to me. If we have to define it, it is "the price negotiated between the dealer and the buyer." This is already implied in the statute because it allows the addition of "fees actually paid to a state agency." I'd stay away from the phrase "price agreed upon between buyer and seller" because then every dealer will say the buyer agreed to the Doc fee by signing the purchase order. >

On the second issue, there really isn't a need to exclude GMAC or Ford Motor Credit, etc. because I don't think those entities offer a dealer reserve. If they do, then the customer should know that the dealer is making money on the financing.

Hope that helps.

ED

Paul - Here's Ed Sniffen  
on the Carz bill. I promise I'd let you know.  
1) no need to define "negotiated price"  
more  
2) Up to committee whether to narrow  
the Dealer reserve issue per the attached Amendment.

3/7/2006

**Emily McCoy**

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**From:** Ed Sniffen [Ed\_Sniffen@law.state.ak.us]

**Sent:** Monday, March 13, 2006 3:50 PM

**To:** Emily McCoy

**Subject:** RE: Thank you!

Sorry about the delay. I got some more information from the industry on GMAC, FMCC, and other manufacturer financing. These loans are marked up all the time by the dealers, just like "regular" bank loans. Often, consumers are told "GMAC will only offer a certain rate," etc. (just like other banks), but actually, the dealer gets a kickback.

So . . . I'm still not certain we want to limit this only to "banks and credit unions," but if that's the will of the legislature, it's better than nothing. The amendment you propose works for that purpose.

Ciao!

Ed

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 383(TRA)

1 Page 2, following line 21:

2 Insert a new bill section to read:

3 **\*\* Sec. 3. AS 45.25.610(e) is amended to read:**

4 (e) In this section,

5 **(1) "bank" has the meaning given in AS 06.05.990;**

6 **(2) "credit union" means a cooperative association organized**  
7 **under state or federal law for the purpose of promoting thrift among its members**  
8 **and creating a source of credit for provident or productive purposes;**

9 **(3) "sales contract" includes an installment sales contract, a short-term**  
10 **sales contract, and a single-payment contract."**

11

12 Renumber the following bill section accordingly.

13

14 Page 2, line 24, following "financing":

15 Insert "from a bank or credit union"

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSHB 383(TRA)  
 (H) Publish Date: 2/13/06

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
 Title: "An Act limiting motor vehicle dealer charges  
for fees and costs relating to the disclosure..." RDU: CIVIL  
 Component: Commercial and Fair Business  
 Sponsor: Representative Gara  
 Requester: House Transportation Component No. \_\_\_\_\_

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

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill amends AS 45.25.410 to require auto dealers to disclose all fees (other than title, registration, and licensing fees paid to the state), in the advertised or negotiated price of a motor vehicle. Currently, the law provides that only the advertised price must contain these fees. When a consumer begins to negotiate a price lower than the advertised price, the dealer can add these fees back into the final "selling price." The target of this bill is the "document preparation fee" charged by most dealers. This fee, normally around \$199, is disguised to look like a governmental or other third party transaction fee when, in reality, it is nothing more than an item of overhead for the dealer. HB 383 will require that all document preparation fees be included in the negotiated price.

The bill also amends AS 45.25.610 by adding a requirement that auto dealers disclose, in writing,

Prepared by: Kathryn Daughhete, Director Phone 465-3673  
 Division: Administrative Services Division Date/Time 2/7/06 1:29 PM  
 Approved by: Kathryn Daughhete for David Márquez, Attorney General Date 2/7/2006  
 Agency: Department of Law

FISCAL NOTE #1

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

BILL NO. CSHB 383(TRA)

ANALYSIS CONTINUATION

whether the motor vehicle dealer will receive a portion of the financing charge the buyer pays. This is aimed at transactions where the dealer is given an interest rate quote from a bank or credit union when arranging financing for a buyer, but then charges the buyer a higher rate, keeping the difference as a commission. Most consumers do not understand that the interest rate quoted by the dealer may be higher than the rate quoted by the financial institution.

Enforcement of these amendments will be absorbed within the Department's operating budget for consumer protection, and we do not anticipate a fiscal impact.

**Emily McCoy**

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**From:** Ed Sniffen [Ed\_Sniffen@law.state.ak.us]  
**Sent:** Thursday, January 19, 2006 8:57 AM  
**To:** Emily McCoy  
**Subject:** Auto Legislation

Hey Emily. Thanks for faxing a copy of Les' Bill regarding motor vehicle fees and costs. Here's the short explanation of how auto dealers are getting around the documentation fees ("doc fees") restriction currently found in AS 45.25.440. The current version of the statute requires all doc fees to be included in the advertised price. Here's what happens:

Dealer advertises a vehicle for \$29,999. This advertised price includes all doc fees. Customer goes to dealer and negotiates a lower price -- let's say \$27,000. The salesman says "great, we have a deal." Then, when all the paperwork is filled out, the \$199 doc fee is added to the \$27,000 price. The current statute allows this because the dealer included the doc fee in the advertised price. But as soon as negotiations start and the advertised price is no longer on the table for negotiation, dealers can add it back in.

Doc fees are particularly troublesome because consumers believe they are fees paid to the state. In fact, these fees are nothing more than overhead (like rent, utility bills, or janitorial service). Les' bill solves this problem by requiring that all fees and costs must be included in the advertised or "negotiated" price.

Hope that helps!

ED

Sec. 06.45.400. Definitions.

In this chapter,

(1) "commissioner" means the commissioner of commerce, community, and economic development;

(2) "credit union" means a cooperative association organized in accordance with the provisions of this chapter for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes;

**Emily McCoy**

---

**From:** Ed Sniffen [Ed\_Sniffen@law.state.ak.us]

**Sent:** Monday, March 13, 2006 3:50 PM

**To:** Emily McCoy

**Subject:** RE: Thank you!

Sorry about the delay. I got some more information from the industry on GMAC, FMCC, and other manufacturer financing. These loans are marked up all the time by the dealers, just like "regular" bank loans. Often, consumers are told "GMAC will only offer a certain rate," etc. (just like other banks), but actually, the dealer gets a kickback.

So . . . I'm still not certain we want to limit this only to "banks and credit unions," but if that's the will of the legislature, it's better than nothing. The amendment you propose works for that purpose.

Gao!

Ed

**HB**

**399**

# Alaska State Legislature

SESSION ADDRESS:  
Alaska State Capitol  
Juneau, Alaska 99801  
Phone: (907) 465-3743  
1-800-565-3743  
Fax: (907) 465-2381



INTERIM ADDRESS:  
600 E Railroad Avenue  
Wasilla, AK 99654  
Phone: (907) 376-2679  
Fax: (907) 373-4745

## Representative Carl Gatto

### MEMORANDUM

To: House Finance Co-Chair Kevin Meyer  
House Finance Co-Chair Mike Chenault  
From: House State Affairs Vice-Chair Carl Gatto  
Date: February 13, 2006  
Re: Issues raised in regard to HB 399

A handwritten signature in black ink, appearing to read "Carl Gatto", with a long horizontal line extending to the right.

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During the hearing in House State Affairs on HB 399 the House State Affairs committee raised a number of issues. HB 399 was sent from committee with the understanding that these issues would be addressed by the sponsor or the next committee of referral:

1. What problem are we trying to solve? Do we need another state agency providing services, or just better coordination between the existing agencies that provide services for elders/seniors who are victims of fraud or abuse? Numerous state agencies already exist to provide elder fraud/abuse services. What is the benefit of adding yet another agency to the mix? It can also be very confusing trying to navigate a system that includes all of the following agencies and potentially more:

Office of the Governor:

Attorney General's Office, Medicaid fraud unit

Department of Administration

Office of Public Advocacy, public guardians  
Assisted Living Licensing

Department of Health and Human Services

Senior and Disability Services,  
Senior Care Information Center  
Adult Protective Services  
Alaska Commission on Aging

Department of Revenue, Mental Health Trust Authority

Office of Long Term Care Ombudsman

Department of Community and Economic Development  
"elder wise campaign"

Various non-profit agencies that receive state funds  
Alaska Legal Services Corporation

2. There is a need to balance the desire for efficiency and streamlining efforts and the need for some checks and balance to exist between the many agencies that provide services.
3. There may be a conflict in housing the agency at OPA because OPA provides guardianship services, and it is highly likely that a guardian would eventually be the subject of an abuse/fraud complaint at some time.
4. The penalties imposed on those convicted of committing fraud against the elderly should be increased.

# ALASKA STATE LEGISLATURE

## News From The House Majority

web site: <http://www.akrepublicans.org>

House Majority Press  
Renée Limoge – (907) 269-0164



FOR IMMEDIATE RELEASE: January 27, 2006

CONTACT: Renée Limoge (907) 465-5446

## Chenault Sponsors Bill to Help Combat Elder Abuse

(ANCHORAGE) – Representative Mike Chenault (R-Nikiski) has introduced legislation in the House of Representatives to create a division within the Office of Public Advocacy to examine cases of elder abuse.

HB 399 would give the division the authority to investigate and turn over for prosecution, cases which fall under existing fraud statutes.

"In recent years the Kenai Peninsula has seen several cases of senior citizens being "fleeced," defrauded or otherwise taken advantage of financially by individuals, sometimes even relatives. Creating an office to look at these issues is a step that the Legislature can take to protect senior citizens in Alaska," said Representative Chenault.

Chenault went on to say, "Often times our senior citizens are embarrassed or too ashamed to ask for help when preyed upon by people they trust. This office will remove the stigma, which goes along with asking for help. It also insures our seniors can live safe happy lives without suffering financial hardship at the hands of those they may have trusted. After a lifetime of hard work and savings seniors should be able to experience the "Golden Years" while healthy and able. House Bill 399 sends a clear signal that Alaskan Senior Citizens will be protected from dishonorable individuals."

The most egregious case of senior abuse on the Peninsula is recent and is gratefully now in the hands of the Office of Public Advocacy.

HB 399 has been referred to the House State Affairs Committee.

###

HB0399a -1- HB 399

*New Text Underlined [DELETED TEXT BRACKETED]*

24-LS1517A

HOUSE BILL NO. 399

# LEGAL SERVICES

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

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

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

## MEMORANDUM

January 27, 2006

**SUBJECT:** Elder Fraud and Assistance (Work Order No. 24-LS1517\A)

**TO:** Representative Mike Chenault  
Attn: Sue Wright

**FROM:** Jean M. Mischel  
Legislative Counsel



You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

**Section 1.** Adds to the duties of the office of public advocacy the investigation of complaints involving elder fraud as defined in sec. 2 of the bill.

**Section 2.** Establishes an office of elder fraud and assistance within the office of public advocacy to investigate complaints involving elder fraud and to provide assistance to older Alaskans. Specifies investigatory and assistance duties of the office and defines terms used.

**Section 3.** Authorizes the Department of Health and Social Services or its designee to refer cases involving elder fraud to the office established under sec. 2 of the bill.

JMM:ljw  
06-039.ljw



State of Alaska Alaska Commission on Aging, PO Box, 110693, Juneau, AK 99811  
907-465-3250, FAX 465-1398 www.alaskaaging.org

**FAX**



DATE 2/10/06

Number of pages including cover sheet: 4

TO: Louie Hova

Rep. Seaton

Phone: 2689

Fax: 3472

FROM: Linda Gohl

LINDA GOHL

Executive Director

Alaska Commission on Aging

E-Mail: linda\_gohl@health.state.ak.us

REMARKS:  Urgent  Please Reply  For your info

Re: proposed federal law,  
Elder Justice Act

## The Elder Justice Act S.333 and H.R. 2490

Although the number of older Americans is fast growing, the problem of elder abuse, neglect and exploitation has long been invisible and presents among the gravest issues facing millions of American families. The Elder Justice Act would provide federal resources to support State and community efforts on the front lines dedicated to fighting elder abuse with scarce resources and fragmented systems. From a social perspective, elder justice means assuring adequate public-private infrastructure and resources to prevent, detect, treat, understand, intervene in and, where appropriate, prosecute elder abuse, neglect and exploitation. From an individual perspective, elder justice is the right of every older person to be free of abuse, neglect and exploitation. The Elder Justice Act would promote both aspects of elder justice with the following provisions:

**Elevate elder justice issues to a national attention.** Creation of (1) Offices of Elder Justice at the Departments of Health and Human Services and Justice to serve programmatic, grant-making, policy and technical assistance functions relating to elder justice, (2) a public-private and a Coordinating Council to coordinate activities of all relevant federal agencies, States, communities and private and not-for-profit entities, and (3) a consistent funding stream and national coordination for Adult Protective Services (APS).

**Improving the quality, quantity and accessibility of information.** An Elder Justice Resource Center and Library will provide information for consumers, advocates, researchers, policy makers, providers, clinicians, regulators and law enforcement and prevent "re-inventing" the wheel. A national data repository also will be developed to increase the knowledge base and collect data about elder abuse, neglect and exploitation.

**Increasing knowledge and supporting promising projects.** Given the paucity of research, Centers of Excellence will enhance research, clinical practice, training and dissemination of information relating to elder justice. Priorities include a national incidence and prevalence study, jump-starting intervention research, developing community strategies to make elders safer, and enhancing multi-disciplinary efforts.

**Developing forensic capacity.** There is scant data to assist in the detection of elder abuse, neglect and exploitation. Creating new forensic expertise (similar to that in child abuse) will promote detection and increase expertise. New programs will train health professionals in both forensic pathology and geriatrics.

**Victim assistance, "safe havens," and support for at-risk elders.** Elder victims' needs, which are rarely addressed, will be better met by supporting creation of "safe havens" for seniors who are not safe where they live and development of programs focusing on the special needs of at-risk elders and older victims.

**Increasing prosecution.** Technical, investigative, coordination, and victim assistance resources will be provided to law enforcement to support elder justice cases. Preventive efforts will be enhanced by supporting community policing efforts to protect at-risk elders.

**Training.** Training to combat elder abuse, neglect and exploitation is supported both within individual disciplines and in multi-disciplinary (such as public health-social service-law enforcement) settings.

**Special programs to support underserved populations including rural, minority and Indian seniors.**

**Model State Laws and Practices.** A study will review state practices and laws relating to elder justice.

**Increasing Security, Collaboration, and Consumer Information in Long-Term Care.**

- Improving prompt reporting of crimes in long-term care setting
- Criminal background checks for long-term care workers
- Enhancing long-term care staffing
- Information about long-term care for consumers through a Long-Term Care Consumer Clearinghouse
- Promoting accountability through a new federal law to prosecute abuse and neglect in nursing homes

**Evaluations and accountability.** Provisions to determine "what works" and assure funds are properly spent.

## Elder Justice Goals

- Elevate national *awareness* about elder abuse, neglect and exploitation
- Increase *knowledge* about elder abuse
- *Train* as many disciplines as possible
- *Prosecute*, where appropriate
- *Combat* elder abuse with new programs in LTC

### Increase Knowledge about Elder Abuse, Neglect and Exploitation:

- National Incidence and Prevalence Study
- Resource Center and Library
- National Data Repository
- Underserved Populations
- Model State Laws
- Grants, Demonstration Projects and Studies

### Increase Training about Elder Abuse, Neglect and Exploitation:

- Health professionals in forensic pathology and geriatrics
- Promising practices through demonstration grants
- All relevant professionals

#### Grants, Demonstration Projects and Studies:

- 5 Centers of Excellence
- Data development
- Safe Havens
- Multi-disciplinary and inter-disciplinary grants
- Training Grants
- Healthcare professionals with geriatric training
- Special Needs Grants
- Public Awareness
- Forensic Centers
- Nursing Career Ladders
- LTC facility management and training
- Study the role/response by government and government funded entities
- CDC study - public health prospective
- Geriatric forensic training
- Elder Justice Innovation Fund

### Support Prosecutions of Elder Abuse, Neglect and Exploitation, as Appropriate:

- Technical, investigative, coordination, and victim assistance resources
- Prompt reporting of crimes in long-term settings

Require prompt reporting of crimes in long-term care settings

- LTC facilities - \$10,000
- Owner, operator, employee, agent, contractor
- Report "reasonable suspicion"
- To one or more LE
- 2 hrs - serious bodily injury
- 24 hrs - no serious bodily injury
- Penalty - up to \$200k and/or Medicare exclusion

Combat Elder Abuse, Neglect and Exploitation Through New LTC Programs

- Criminal Background Checks
- Long-Term Care Consumer Clearinghouse
- 60-Day Notice of LTC Closings
- Tax Incentives

Elevate Elder Abuse, Neglect and Exploitation to the National Stage

- Offices of Elder Justice at HHS & DOJ
- Public-Private Coordinating Council
- Federal Office for Adult Protective Services
- Reauthorization in 7 years



# Stolen 'Golden Years'

## States address the silent epidemic of elderly financial victimization

By Carrie Abner

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As many as 5 million elderly Americans are victims of financial exploitation each year, although estimates suggest that victims report the crime in only one of 25 cases. States are beginning to recognize this growing trend and are working to stop the abuse.

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In a March 2005 address announcing a new initiative to combat financial exploitation against the elderly in Illinois, Gov. Rod Blagojevich said, "Our seniors have worked hard, raised their families and they deserve a peaceful and safe retirement." The governor created a special statewide unit of investigators to provide a variety of services to seniors, including investigation of financial abuse cases, advocacy and education. The need for such state-led initiatives is growing.

In Missouri, a 91-year-old woman lives in a nursing home. Although mentally competent, she was taken to the facility for a visit and left there. While in the nursing home, she learned that one of her farms and a number of her household items had

been sold. Someone she trusted had obtained power of attorney when she was extremely ill and hospitalized. She had no memory of signing the document and had no intention of selling any of her property.

In Oregon, an elderly woman was living alone. At the age of 90, she was deaf, partially blind and in a wheelchair. She hired a full-time caregiver, who bilked her out of \$56,000 between March and September 1999, draining her accounts completely. Sadly, the woman's family and public officials only became aware of the abuse following her death.

While these true-life cases, reported to state and local officials, may seem extreme, they unfortunately represent a growing crisis in the United States. Too many Americans find their

"golden years"—a time to relax and enjoy family and friends—stolen from them as a result of financial exploitation and abuse.

## A Growing Crisis

The National Center on Elder Abuse (NCEA) defines elder financial exploitation as "the illegal or improper use of an elder's funds, property or assets." According to Paul Greenwood, the lead prosecutor on senior abuse cases in San Diego County, California, financial abuse takes many forms, including credit card fraud, real estate scams, identity theft and burglary.

And reports of elder financial exploitation, experts say, are on the rise.

Reported cases of elder financial exploitation have more than tripled in Oregon since 1993. Representatives of the Elder Safe Program in Washington County, Oregon, recently noted that senior citizens in that county lost almost \$2 million to financial exploitation and crime in 2004. And county officials estimate that actual losses may be even greater due to gross underreporting of such crimes. According to Joyce DeMonnin, coordinator for the program, "While the number is shockingly high, we know it is still a fraction of the amount of money seniors lost in Washington County last year." She adds that true losses to Washington County seniors could total \$10 million.

"Elder financial abuse is a crime of opportunity and it's on the rise," said Maine Attorney General Steven Rowe to participants at a May 2004 conference on elder abuse. "Seventy percent of the nation's net worth is owned by those aged 50 or older. This makes seniors a rich target. Forty percent of all reported elder abuse cases involve financial exploitation."

According to Rowe, Maine's Bureau of Elder and Adult Services referred substantiated cases totaling more than \$22 million to the Attorney General's Office between July 2001 and May 2004. The average victim reported losing \$39,000, Rowe said.

While reports of elder financial abuse are increasingly common, experts are unaware of the true scope of the crisis nationwide.

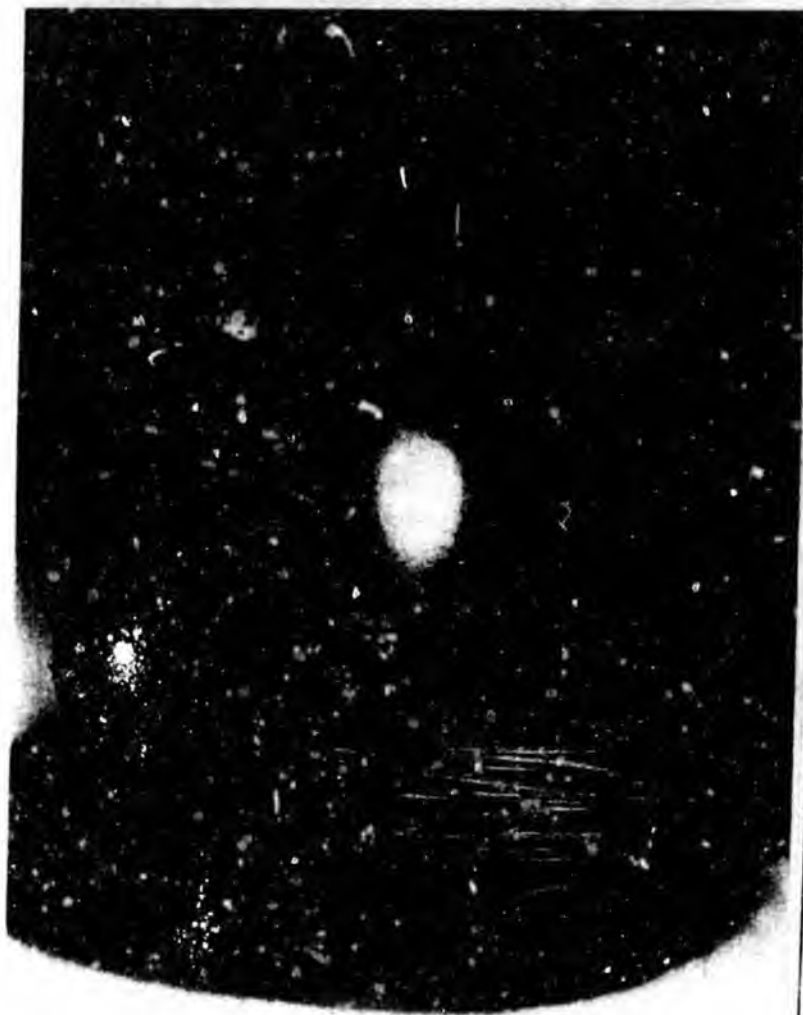
Like other forms of elder abuse, few cases of financial exploitation are reported to officials. A study conducted by NCEA in 1998 found that for every reported case of elder abuse, another five cases went unreported. And elders are less likely to report incidents of financial exploitation than any other category of abuse, according to a paper by The Archstone Foundation. NCEA recently cited estimates indicating that only 1 in 25 cases of elder financial abuse is reported to officials, suggesting that as many as 5 million seniors may be victims of financial exploitation each year.

And as the U.S. population ages, the incidence of elder financial abuse is likely to rise. In 2000, there were an estimated 35 million individuals age 65 or older in the United States, comprising nearly 13 percent of the total population. The Federal Interagency Forum on Aging-Related Statistics reports that the size of the older population is expected to double by 2030, growing to 70 million. This will create an even larger population of seniors vulnerable to financial exploitation.

According to a report issued in 2002 by the National Research Council, "The occurrence and severity of elder mistreatment are likely to increase markedly over the coming decades, as the population ages, caregiving responsibilities and

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### The Cost of Abuse

While little is known about the exact costs associated with elder abuse, experts note they are likely significant. "When elder abuse victims lose their homes or financial resources through exploitation and end up in a nursing home on Medicaid or in government-subsidized housing, the taxpayers pick up those costs," noted Lori Stiegel of the American Bar Association's Commission on Law and Aging at a 2003 hearing of the U.S. Judiciary Committee. "When elder abuse victims need services from adult protection programs, long-term care ombudsman programs, state regulatory agencies, law enforcement agencies, prosecutors, public guardians or the resources of a court system to help protect them from further abuse, the taxpayers bear those costs." The cost to the elderly victims is equally troubling.

"Losing the fruits of a lifetime's labor through financial exploitation can be devastating," said a recent paper on elder financial crimes by NCEA and the Goldman Institute on Aging. "It may compromise victims' independence and security, destroy legacies and lead to depression, hopelessness or even suicide. Although financial crimes are committed against members of all age groups, the impact is particularly great on the elderly."

For seniors, victimization can mean the loss of lifelong savings and pension benefits. As a result, elder victims may find themselves suddenly dependent on public assistance programs or going without food, medication or other necessities.

At a 1999 hearing of the U.S. Senate Judiciary Committee, Susan Herman of the National Center for Victims of Crime noted that financial exploitation of the elderly can have serious, lifelong impacts for victims. "Generally, senior citizens do not have the time or opportunity for financial recovery—their prime earning years are behind them. At a time when one tries to conserve assets, a blow to financial security is often a permanent and life-threatening setback," she stated.

### Challenges for State Officials

As state and local officials try to address the incredibly complex problem of elder financial abuse, they face a number of challenges.

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ed from the rest of the community. Elders tend to be home during the day, more trusting of strangers, less likely to report exploitation and increasingly dependent on others for daily tasks, such as home repairs. American seniors also hold a disproportionate percentage of the country's wealth and often have quick access to significant amounts of cash. Together, these factors render seniors at high risk of becoming victims of financial exploitation and fraud.

Yet, little is known about the extent of financial crimes against the elderly. While some research has been conducted on elderly victimization by telemarketing frauds, only limited information exists on other areas of elder financial abuse, including fraud and theft by family

members and domestic caregivers.

Further complicating the matter is the fact that few cases of elder financial abuse are reported to officials. According to experts, seniors may be reluctant to report such crimes against them out of shame or embarrassment. For other aging adults, financial matters remain a taboo subject—not one that is discussed openly. Some may fear being seen as incompetent, or worse, being deprived of their independence should they report having been defrauded. Elders who are victimized by family members, meanwhile, may be hesitant to report crimes against them, reluctant to get loved ones in trouble.

Experts also point out difficulties in regulating in-home care providers, one of the fastest-growing job segments in the country. Individual caregivers are rarely subjected to background checks, which poses a major risk to the well-being of elders. Greenwood reports, "The majority of cases I prosecute now are convicted felons ... taking care of the elderly."

Another challenge for state leaders is the complexity of elder financial abuse and the need for interagency coordination at state and local levels. Like other forms of elder abuse, effective state responses to financial exploitation require collaboration by a range of state and local agencies, including law enforcement, adult protective services, victim service agencies and private partners. Without adequate mechanisms in place for interagency coordination, for example, incidents of elder fraud reported to APS may never be passed on to law enforcement officials, preventing prosecution of cases and restitution to elder victims. Yet, coordination remains a major challenge for states due to limited agency mandates, finite resources, competing priorities and work force shortages.

Experts caution that the lack of coordination can be disastrous for elder victims. According to A. Ricker Hamilton, protective program administrator for Maine and past president of the National Adult Protection Services Association, the lack of interagency coordination means that "victims remain hidden. Elder abuse continues to be undetected and underreported. We need to develop a systemic response to elder abuse before we become victims."

## States Respond

Despite these and other challenges, states are becoming increasingly aware of elder financial abuse and are taking steps to address the problem through legislative and programmatic

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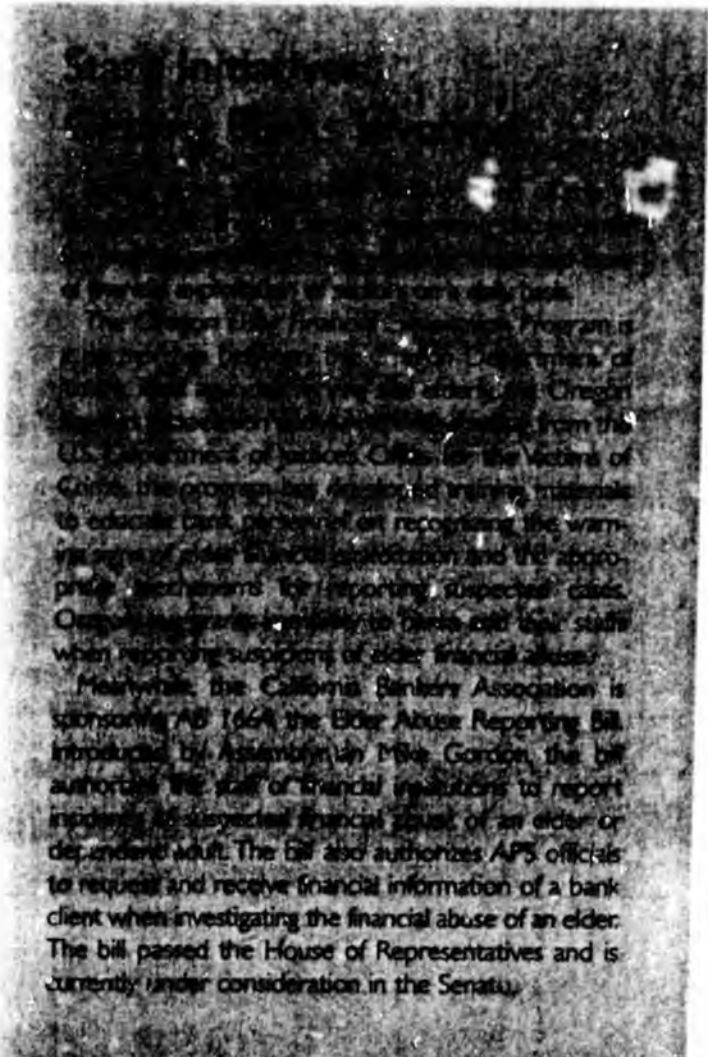
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According to Arizona law, individuals in a position of trust who use deception or intimidation to gain permanent control of a senior's assets are considered guilty of theft. Individuals guilty of violating their duties to elders are further subject to damages in civil actions equal to three times the amount of monetary damages to the elder and forfeit their claims to an elder's estate.



# CORRECTION

THE FOLLOWING DOCUMENT(S)  
HAVE BEEN REFILMED TO  
ASSURE LEGIBILITY OR PAGINATION



Central Microfilm Services  
Department of Education & Early Development  
State of Alaska

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L.T.O.: - should be conducted in LTO after  
"one stop shop"

~~string of~~  
~~with~~

Like to toughen-up  
see maps

OPA respects when L.T.O. did not  
troubled but want w/o O.P.A.

win track

- ① Ethics - stages
- ② Gardner w/ Ombudsman - way to give respect to  
which agency is best equipped → if ombudsman
- ③ Legislators in a working group - Greenberg  
→ Max - wants to see records + working group that OPA/et.al  
are on.

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→ in Juneau Legal Svcs Company and PA  
Work in C.I.N.A. Cos

Lots of D. flt agents/lots of litig. business

Final Note

Question: how many civil fraud cases can an OPA attorney  
handle in a year - look to get into/students

2 attorneys: net of .5 million  
w/ staff  
+ space

→ Kevin J. J. set up ready

→ Div. In of occupied license (assisted about nucleus)

to an LIC. in Delaware: the "Genesis" "Blessings Ranch" Craig (Walsted)

history there in 5-10 years

fleece

Wire - fraud

F.B.I. express that there are weaknesses

Dr. G. - Long term can obtain - short state

- an issue Subpoena

- request to legal counsel

- currently <sup>2 cases</sup> ~~perhaps~~ proceedings

Real Svcs (physical through network to court + CBS)

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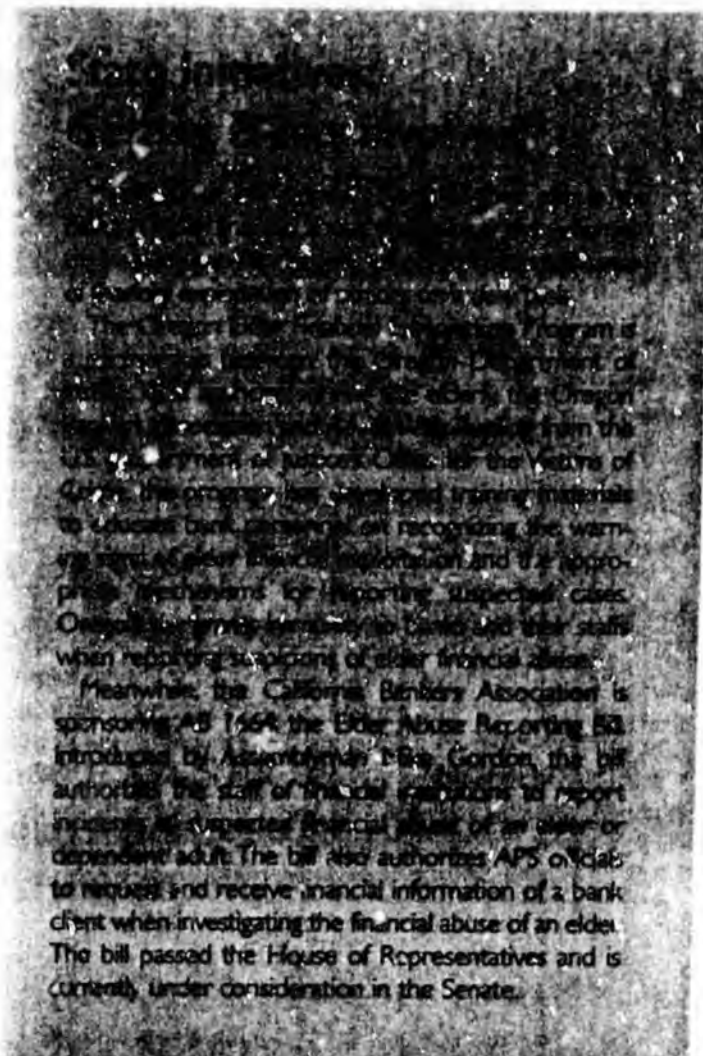
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Conservator/Guardian

→ 900 adults OPA settings → So opa can take act if not  
→ 10% suffered financial exploitation  
Guardian of Prop

J-sh file fiscal Note still being worked out

- ② → Committee may need to look at an audit to needs based
- ① → Committee Mechanism to review actual costs if no financial hardship in part of their litigating for
- ③ → May want to need to extend definition of eligible to 65 from 55

6 "hard cases" = ~~that~~ ombudsman - Not watchdog or guardianship  
 2 mismanaged funds cases long term case -  
 currently - 1 A.g. working with him

Don't want to duplicate what she's against dig  
 Get together in a working group

- ① who does what should fund
- ② how costs are borne
- ③ if a civil action brought should get full actual attorney fees (see consumer protection statute)

~~4/1~~

→ currently covered

④ → include language on page 3 lines 2-4  
 not the civil action - behalf of

**HB**

**403**





## REPRESENTATIVE BILL THOMAS

ALASKA STATE LEGISLATURE DISTRICT 5

e-mail: Representative.Bill.Thomas@legis.state.ak.us webpage: www.akrebublicans.org/thomas/

State Capitol

Juneau AK, 99801-1182

907-465-3732

888-461-3732

FAX 907-465-2652

### SPONSOR STATEMENT

#### HB 403

#### **“An act relating to registration and operation of neighborhood electric vehicles”**

As new motor vehicle technologies are developed, our legal structure must sometimes be modified to account for these changes. In recent years a number of manufacturers have designed and produced several models of small low-speed electrical vehicles that have come to be known collectively as Neighborhood Electric Vehicles (NEV). NEVs have become popular in Europe and increasingly in North America. 36 states have already enacted legislation to permit and encourage their use.

These vehicles typically are limited by design to a top speed of 25 miles per hour and have a range of . . . . depending on usage. They are powered by a bank of traditional lead-acid or sealed gel cell batteries. NEVs offer numerous advantages over gas powered vehicles, such as vastly improved energy usage, zero emissions, no necessity of anti-freeze for cooling, space efficiency in parking, and significant potential cost savings for private, commercial and government applications.

Unfortunately, under current law, the State of Alaska cannot license NEVs and as a result Alaska has yet to realize any of the benefits these new vehicles offer. Therefore HB 403 has been introduced to rectify this situation and encourage private citizens and municipalities to utilize NEVs. This legislation has been modeled after federal requirements and laws instituted by other states to govern the registration and use of NEVs in a safe and effective manner.

24-LS1229F  
Luckhaupt  
2/22/06

**CS FOR HOUSE BILL NO. 403( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FOURTH LEGISLATURE - SECOND SESSION**

**BY**

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

**Sponsor(s): REPRESENTATIVES THOMAS, Croft**

**A BILL**  
**FOR AN ACT ENTITLED**

1 **"An Act relating to registration and operation of low-speed vehicles."**

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

3 **\* Section 1.** AS 28.10.041 is amended by adding a new subsection to read:

4 (e) The department may not refuse to register a low-speed vehicle as a  
5 passenger vehicle if that vehicle meets the safety and equipment requirements set for  
6 passenger vehicles by this state or meets federal motor vehicle safety standards for  
7 low-speed vehicles.

8 **\* Sec. 2.** AS 28.10.421(b) is amended to read:

9 (b) The biennial registration fees under this subsection are imposed within the  
10 following classifications for:

11 (1) a passenger vehicle, a low speed vehicle, or motor home not used  
12 or maintained for the transportation of persons or property for hire or for other  
13 commercial use ..... \$100;

14 (2) a pick-up truck or a van not exceeding 10,000 pounds unladen  
15 weight and not registered in the name of a company or business .....\$100;

- 1 (3) a taxicab ..... \$160;
- 2 (4) a motor bus with a seating capacity for 20 or more persons and
- 3 used exclusively for commercial purposes in the transporting of visitors or tourists
- 4 .....\$300;
- 5 (5) a motorcycle or a motor-driven cycle ..... \$60;
- 6 (6) a trailer not used or maintained for the transportation of persons or
- 7 property for hire or for other commercial use, including, but not limited to, a boat
- 8 trailer, baggage trailer, box trailer, utility trailer, house trailer, travel trailer, or a trailer
- 9 rented or offered for rent ..... \$30.

10 \* Sec. 3. AS 28.35 is amended by adding a new section to article 5 to read:

11 **Sec. 28.35.261. Operation of low-speed vehicles.** (a) The operator of a low-  
12 speed vehicle is subject to all the traffic and other laws applicable to operators of  
13 passenger vehicles.

14 (b) The operator of a low-speed vehicle may not operate that vehicle on a  
15 highway that has a maximum speed of more than 35 miles an hour. Notwithstanding  
16 this subsection, the operator of a low-speed vehicle may cross a highway that has a  
17 maximum speed limit of more than 35 miles an hour if the crossing is made at the  
18 intersection with a highway that is authorized for low-speed vehicles.

19 \* Sec. 4. AS 28.40.100(a) is amended by adding a new paragraph to read:

20 (27) "low-speed vehicle" means <sup>a</sup>an electric motor vehicle that has four  
21 wheels and an unladen weight of 1,800 pounds or less, that was manufactured to be  
22 capable of propelling itself and achieving a minimum speed of 20 miles an hour and a  
23 maximum speed of 25 miles an hour, and that has not been modified to have a  
24 maximum speed greater than 25 miles an hour.

#2  
Local jurisdictions  
can help regulate  
for safety concerns.

#1  
Conceptual low speed vehicle has the  
identified meaning as in federal law.

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB403-DPS-AST-2-22-06  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: "An Act relating to registration and operation of RDU Alaska State Troopers  
neighborhood electric vehicles." Component: AST Detachments  
 Sponsor: Representative Thomas  
 Requester: House State Affairs Committee Component No. 2325

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

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) 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)  
 Passage of this legislation would allow smaller electric vehicles to be registered by the Department of Motor Vehicles and to co-mingle these vehicles with full-size motor vehicles on the roadways as long as the posted speed limit is not above 35 miles per hour.

Since the operators of these electric vehicles would have to comply with all other traffic laws applicable to the operation of passenger vehicles, any enforcement of traffic laws would be absorbed by the existing resources within the Department of Public Safety.

Prepared by: Lieutenant James Helgoe Phone 907-269-4532  
 Division: Alaska State Troopers Date/Time 2/22/06 9:26 AM  
 Approved by: Commissioner William Tandeske Date 2/22/2006  
 Agency: Department of Public Safety

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 403  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): 2/21/2006 11:00 a.m. Dept. Affected: Administration  
 Title: "An Act relating to registration and operation of RDU Division of Motor Vehicles"  
neighborhood electric vehicles." Component: Motor Vehicles  
 Sponsor: Rep. Thomas  
 Requester: (H) State Affairs Component No.: 2348

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

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual	5.0					
Supplies	5.5					
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>10.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 Receipt Supported Svcs	10.5					
<b>TOTAL</b>	<b>10.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill will allow a very specific type of vehicle, as defined by federal regulations as a 'Low Speed Vehicle' to receive Alaska Title and Registration for use on certain roadways.

There will be an increase in revenue as a result, yet we are unable to determine that amount as the estimated numbers of these LSV's requesting title & registration remains unknown. The DMV database, the Alaska Licensing and Vehicle Information Network (ALVIN), will require minimal modification to allow this process.

We intend to purchase 500 sets of these new, distinctive LSV plates in anticipation of registration; any unused plates will be carried as inventory. Titles, registration forms and tabs will be used from existing supplies.

Prepared by: Duane Bannock, Director Phone 269 5008  
 Division: Motor Vehicles Date/Time 2/21/06 11.00am  
 Approved by: Mike Tibbles, Deputy Commissioner Date 2/21/2006  
 Agency: Department of Administration

# 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

February 24, 2006

**SUBJECT:** Definition of low-speed vehicles (CSHB 403(STA),  
Work Order No. 24-LS1229Y)

**TO:** Representative Paul Seaton  
Attn: Louie Flora

**FROM:** Gerald P. Luckhaupt *RLP*  
Legislative Counsel

Enclosed is the CS(STA) you requested. I have one comment about the definition the committee adopted for low-speed vehicles. The definition appears to be deficient for several reasons.

First, the bill does not cite to a specific federal definition and members of the public do not know what the definition is. There could be different definitions in federal statutes and in regulations.

Second, the bill does not cite to a specific definition as it read on a specific day. Citing to material enacted or adopted by other groups is potentially an improper delegation of law-making powers problem but those problems are lessened or eliminated by adopting another code, or section of a code as it appeared on a specific day or in a specific edition. In *Northern Lights Motel v. Sweaney*, 561 P.2d 1176 (Alaska 1977), *reh. den.* 563 P.2d 256, the Alaska Supreme Court rejected the purported adoption of the Uniform Building Code and "all future amendments thereto" as the delegation of the future law-making power to a private organization. The court said:

One reason for the prohibition against delegation to private groups is that when amendments are adopted by these groups the public does not necessarily receive notice of, or have an opportunity to comment on or criticize the amendments, as it does when they are adopted by the legislature or promulgated under the Alaska Administrative Procedure Act.

*Northern Lights, supra*, at 1181. While *Northern Lights* only dealt with a delegation to a private group the opinion does not appear to be limited to just those delegations.<sup>1</sup>

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<sup>1</sup> In *Northern Lights, supra*, at 1181, the court noted that "the adoption of future amendments has been upheld in certain cases" but recognized "that the due process

Representative Paul Seaton  
February 24, 2006  
Page 2

Finally, the legislature has traditionally adopted its own definitions of vehicles even though the federal government has definitions for passenger cars, trucks, SUVs, motor homes, and sundry other vehicles. Is there some overriding reason why we cannot create a definition in this instance?

GPL:lmb  
06-074.lmb

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problem is a serious one." In footnote 7 of that opinion, the court noted that the drafting manual for administrative regulations at that time stated "an agency may *not* adopt by reference a code or set of standards from another state, the federal government, or a private organization *and provide that future amendments as they become effective are being adopted also.*" Id.



Skagway  
Development Corporation  
ECONOMIC AND COMMUNITY DEVELOPMENT

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P.O. Box 1236 • Skagway, Alaska 99840 • Phone/Fax: (907) 983-3414 • [skagdev@aptalaska.net](mailto:skagdev@aptalaska.net)

February 17, 2006

The Honorable Paul Seaton, Chairman  
House State Affairs Committee  
Alaska State Capitol  
Juneau, Alaska 99801-1182

Re: An Act relating to registration and operation of neighborhood electric vehicles  
HB403

Dear Representative Seaton:

The Skagway Development Corporation (SDC) is a private non-profit economic and community development organization working towards diversifying and enhancing Skagway's year round economy, and increasing the quality of life for its residents. The request for the introduction of Bill 403 pertaining to changes in Alaska code that would allow the use of Neighborhood Electric Vehicles (NEV) was made by me on behalf of a Skagway resident.

With the significant increases in fuel costs and the expectation that these costs will not be returning to previous levels there is national concern regarding the effects that this is having on the consumer and small business owner. This is nowhere more apparent than in Alaska, and especially in rural communities, where gasoline and diesel prices are well above the national average. As hybrid and electric vehicle technologies mature their efficiencies also provide increased cost benefits to the user. This increased effectiveness will translate to significant financial savings for users and lessen our nation's reliance on foreign oil reserves.

Statistics suggest that 65 percent of U.S. families own a second car; over 50 percent of urban trips last less than ten minutes; and 80 percent of all trips are within 10 miles or less. The results are cold running motors that translate into excessive engine wear, increased pollutants, and higher costs for the operator.

NEVs are designated as low-speed vehicles by the National Highway Traffic Safety Administration and are capable of up to 25 mph. As low-speed vehicles, these 20 to 25 mile-per-hour vehicles are subject to Federal Motor Vehicle Safety Standard No. 500 (49 CFR 571.500). This standard requires low-speed vehicles be equipped with headlamps, stop lamps, turn signal lamps, tail lamps, reflex reflectors, parking brakes, rearview mirrors, windshields, seat belts, and vehicle

identification numbers. The National Highway Traffic Safety Administration believes that these requirements appropriately address the safety of low-speed vehicle occupants and other roadway users, given the sub-25 mph speed capability of these vehicles and the controlled environments in which they operate.

NEVs are designed to be used in residential areas and rural communities with low density traffic and low speed zones. With a top speed of 25 mph, low-speed vehicles can be used on streets with a posted 35 mph speed limit or less. It would appear that NEVs are an appropriate vehicle for most of our transportation needs. These passenger-carrying vehicles, although low-speed, offer a variety of advantages, including comparatively low-cost and energy-efficient mobility<sup>2</sup>, zero emissions, and up to 90 percent reduction in noise.

Unfortunately, at present NEVs are not allowable forms of transport in the state of Alaska, although being legal in 37 states. I believe that the time has come for Alaska to seriously explore the synergies that these vehicles can bring to the state's citizenry and economy. Alaska businesses are often at a competitive disadvantage with Lower 48 firms because of the cost differential in operating expenses. Many local businesses, especially microenterprises, should see a noticeable decrease in their operating costs if given the opportunity to use an efficient NEV over a regular gas or diesel powered vehicle.

I would ask that the committee look favorably upon this bill and allow Alaskans the opportunity to engage in an inexpensive, safe, efficient, and pollution free form of transportation. The benefits that ensue will trickle down and out across our communities and the state as a whole.

Thank you for your consideration, and should you require additional information please do not hesitate to contact me.

Regards,



Michael Catsi  
Executive Director

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<sup>1</sup> <http://www.electric-bikes.com/legalnev.htm>

<sup>2</sup> <http://www.electric-bikes.com/nev.htm>

## Neighborhood Electric Vehicles (NEVs)



The National Highway Transportation Safety Administration has defined a new category "low-speed vehicles" or "Neighborhood Electric Vehicles." These are small, 4-wheeled motor vehicles with top speeds of 20 to 25 miles per hour. NEVs must comply with safety standards that require them to have automotive grade headlights, seatbelts, windshields, brakes and other safety equipment. These vehicles can only be used on streets with a posted speed limit of 35 mph or less.

These vehicles are intended for short commutes on city streets, trips generally of 2 to 3 miles or less, going shopping, taking the kids to school, running errands, etc. They are also used by law enforcement for parking patrol, Parks and zoos for grounds maintenance etc.

The costs run from \$7,000 to over \$15,000. As you can see they are not toys. They do require a valid drivers license and are restricted to a top speed of 25 MPH. They MAY NOT be operated on any road with a posted speed limit over 35 MPH.

I have included in this package several pictures from different manufacturers to show what is available, I have also included copies of the statutes from several different states, also included is the complete Federal Code from the National Traffic Highway Safety Administration, this document includes all of information that the agency used to formulate the final rule.

When you look at some of the state laws you will notice that some have added their own additional rules allowing each county or city to place further limits on the operation of these vehicles. I would suggest that this approach be avoided as it will only lead to a hodge podge of differing laws scattered across the state.

If a person is interested in purchasing one of these cars they would first have to check with the local city and borough to find out what if any restrictions may apply in that area, then if you moved to another town you might find the laws different there.

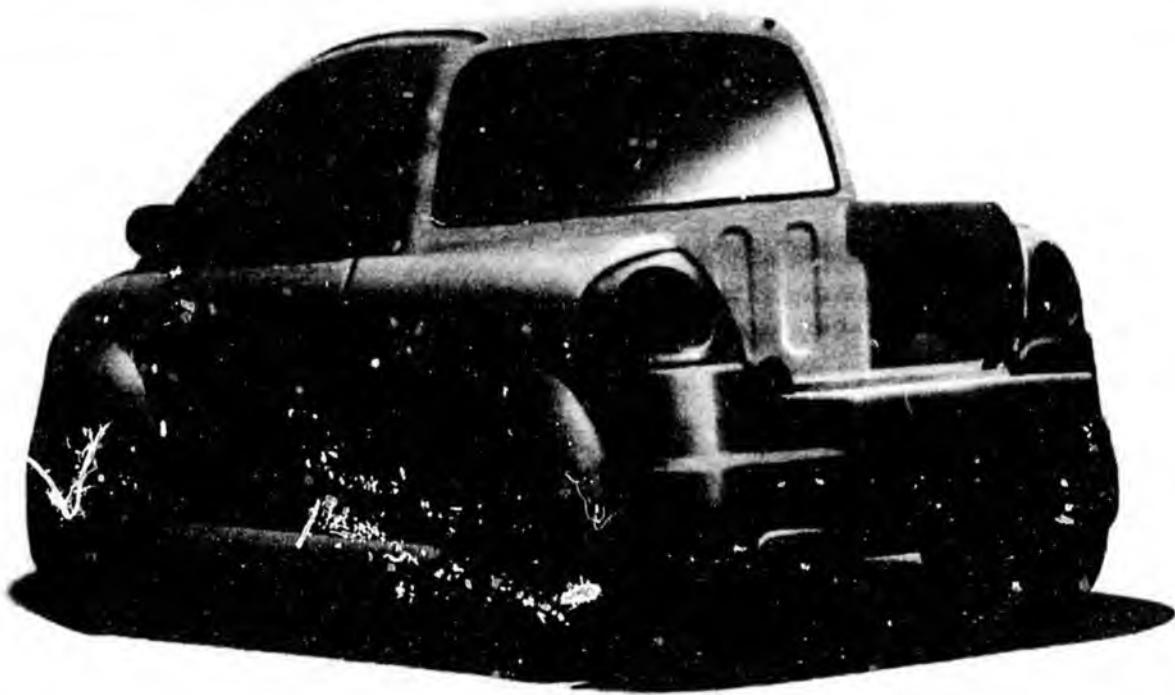
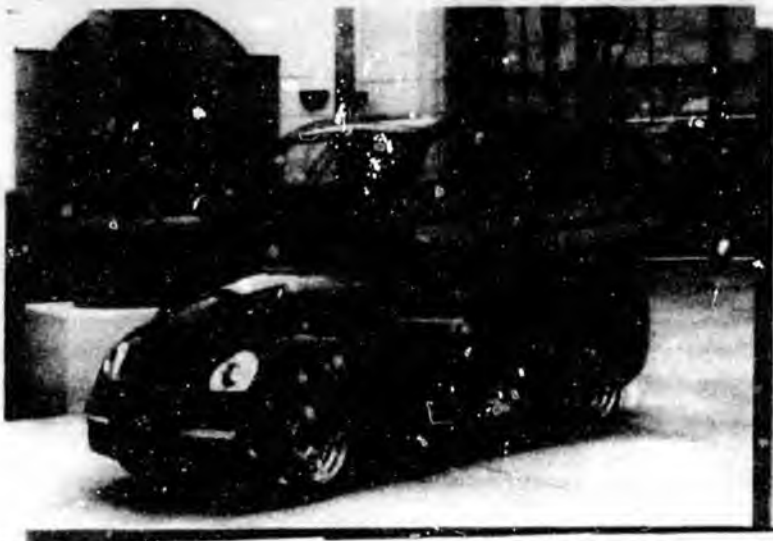
The federal guidelines are well thought out and simple.

I feel that with the high cost of fuel and the concern over air pollution, that the time for a efficient, low maintenance, zero emission vehicle that is safe and easy to operate time has come, and its time for Alaska to join the 36 plus States that already allow their use.

In closing and on a personal note, as I stated I am trying to start a small rental and sales business. While nothing can be done this season, would it be possible to expedite this legislation so that perhaps by early spring this could become a reality.

I thank you for your time and your consideration.

Ed Ibbotson



February 7, 2006

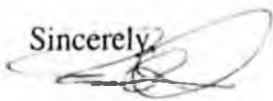
Rep. Bill Thomas  
Alaska State Legislature  
Juneau, AK 99801

I would like to propose that the motor vehicle statutes be amended to allow the use of Neighborhood Electric Vehicles on roads with speed limits of 35 MPH or less. I feel that these vehicles may be of use to many people who only use their cars for short trips to the grocery store, post office, church etc. With the high cost of vehicle ownership, gas, oil, tune ups, and insurance, these electric cars provide an affordable alternative mode of transportation. I realize that they will not work for all people in all areas, however for towns like Skagway and short local trips in larger cities like Anchorage these are ideal. There may be additional benefits to cities for use in parking enforcement, parks departments, airport security and so forth. These vehicles are legal in approximately 38 other states including, California, Washington and Florida. NEVs are approved by the National Transportation Highway Safety Administration as long as they meet the federal standards.

I do not know how large a demand there will be for these types of cars, but I do know that at least 5 people here in Skagway have expressed an interest in them, and this is without any promotion or advertising.

Considering that due to the fact they are non-polluting, have no oil or anti freeze to dispose of and operate very economically (it will cost approx. \$1.10 to travel 35 miles for power here in Skagway at 18 cents a KW hour. I think Juneau's rate is 8 cents) If gas is close to \$3.00 a gallon, this means about the equivalent of 100 miles to a gallon. The purchase price delivered to Skagway of a fully loaded car, stereo, chrome wheels, high efficiency motors, zero maintenance batteries, heater, etc would be about \$17,000. With more and more talk of energy efficient, zero emissions type vehicles, perhaps these NEVs are just a start in that direction. Thank you for your time in the consideration of this matter.

Sincerely,

  
Ed Ibbotson  
Skagway resident



**HB**

**413**



During Session:  
Alaska State Capitol  
Juneau, Alaska 99801-1182  
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Representative\_Reggie\_Joule@legis.state.ak.us



During Interim:  
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## Alaska State Legislature REPRESENTATIVE REGGIE JOULE

### SPONSER STATEMENT

"An Act relating to the burning capability of cigarettes being sold, offered for sale, or possessed for sale; and providing for an effective date."

House Bill 413 identifies cigarettes as one of the leading causes of fire deaths. As such, HB 413 provides a way to reduce these incidents by instituting fire-safe cigarettes that are designed to extinguish when not being actively smoked. Annually, smoking materials are responsible for nearly 4% of all residential structure fires in Alaska alone. Within a 10-year period there were 163 wildfires attributed to lit cigarettes, resulting in 7,699 acres of Alaska being burned. Fire safe cigarettes represent an avenue to help prevent and reduce such incidents.

HB 413 sets the groundwork for establishing a state standard for fire safety. The state legislatures in California and New York have already enacted similar legislation and the states of Washington, Vermont, and Massachusetts are considering related policy. The National Fire Protection Association statistics document that nationally smoking materials in one year have led to 900 fire related deaths, 2,500 injuries, and \$410 million in property losses. HB 413 allows for Alaska to participate in a national movement to reduce the number of incidents caused by cigarette related fires. Fire safe cigarette standards serve to protect the public and the environment.

Cigarette related fires are contributing factors in an unnecessary financial loss not only to an individual, but also to the State and Federal governments. However, there has been no indication that fire safe cigarettes reduce the sale figures for manufacture's and with the adoption of similar standards by other states, consumer prices are expected to be minimally affected.

Human factors contribute to the incidents related to cigarette caused fires. In most occurrences a lighted tobacco product, which caused a fire, was the result of a smoker falling asleep with a lit cigarette. Fire safe cigarettes help reduce these human caused incidents of fire.

**HOUSE BILL NO. 413**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FOURTH LEGISLATURE - SECOND SESSION**

**BY REPRESENTATIVE JOULE**

**Introduced: 2/1/06**

**Referred: State Affairs, Judiciary, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the burning capability of cigarettes being sold, offered for sale, or  
2 possessed for sale; and providing for an effective date."

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

4 \* Section 1. The uncodified law of the State of Alaska is amended by adding a new section  
5 to read:

6 **LEGISLATIVE FINDINGS AND INTENT.** (a) The legislature finds that

7 (1) cigarettes are the leading cause of fire deaths in the United States each  
8 year, claiming 1,000 lives and causing nearly 2,000 injuries and nearly \$400,000,000 in direct  
9 property damage;

10 (2) technology exists to significantly reduce the number of fires caused by  
11 cigarettes;

12 (3) the states of New York and California have enacted cigarette fire safety  
13 statutes that require that cigarettes sold in those states meet a fire safety performance  
14 standard;

1 (4) New York state's cigarette fire safety performance standard is based on  
2 decades of research by the National Institute of Standards and Technology, congressional  
3 research groups, and private industry; and

4 (5) cigarettes meeting fire safety performance standards have been found not  
5 to increase the costs to consumers.

6 (b) It is the intent of the Legislature to adopt

7 (1) a cigarette fire safety performance standard that is similar to the standard  
8 that is in effect in California in order to reduce the likelihood that cigarettes will cause fires  
9 that result in deaths, injuries, and property damage;

10 (2) a cigarette fire safety performance standard that has a minimum cost to the  
11 state.

12 (c) The legislature declares that establishing fire safety performance standards for  
13 cigarettes sold in this state in order to protect the health and safety of the people of this state is  
14 within the police powers of this state.

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

16 **Chapter 74. Cigarette Fire Safety.**

17 **Sec. 18.74.010. Requirement for sale.** A person may not sell, offer to sell, or  
18 possess for sale in this state cigarettes unless

19 (1) the cigarettes are tested by the manufacturer under AS 18.74.030  
20 and satisfy the standard in AS 18.74.030(d), are tested under AS 18.74.050 and satisfy  
21 a standard equivalent to the standard in AS 18.74.030(d), or are exempt under  
22 AS 18.74.060;

23 (2) the cigarettes comply with the banding requirement of  
24 AS 18.74.040, if applicable;

25 (3) the cigarettes comply with the marking requirements of  
26 AS 18.74.120 - 18.74.150; and

27 (4) the manufacturer complies with the certification requirements of  
28 AS 18.74.080 - 18.74.100.

29 **Sec. 18.74.020. Exemptions from requirement.** (a) The prohibition in  
30 AS 18.74.010 does not prohibit a person from manufacturing or selling cigarettes that  
31 do not meet the requirements of AS 18.74.010 if the cigarettes are or will be affixed

1 with a tax stamp payment indicator for sale in another state or are placed in packaging  
 2 for sale outside the United States. In this subsection, "tax payment indicator" means  
 3 the indicator of payment of a tobacco tax, including a stamp, a meter impression, or  
 4 another method for indicating the payment of the tax.

5 (b) This chapter does not apply to cigarettes sold by a facility operated by an  
 6 agency of the United States, including a facility operated by the uniformed services of  
 7 the United States. In this subsection, "uniformed services" has the meaning given in 5  
 8 U.S.C. 2101.

9 **Sec. 18.74.030. Testing of cigarettes.** (a) Cigarettes shall be tested under

10 (1) the ASTM International Standard E2187-04, entitled "Standard  
 11 Test Method for Measuring the Ignition Strength of Cigarettes"; or

12 (2) a test method established under (b) of this section.

13 (b) The state fire marshal may adopt an ASTM International standard test  
 14 method that is adopted by the American Society of Testing and Materials after the  
 15 standard test method identified under (a) of this section. The state fire marshal may not  
 16 adopt this standard test method unless the state fire marshal makes a finding regarding  
 17 the test method. The finding must state that the method does not result in a change in  
 18 the percentage of full-length burns exhibited by any tested cigarette when compared to  
 19 the percentage of full-length burns that the same cigarette would exhibit when tested  
 20 under

21 (1) the standard test method identified under (a)(1) of this section; and

22 (2) the criteria established under (c) - (e) of this section.

23 (c) The testing under this section shall be conducted on 10 layers of filter  
 24 paper. A complete test trial consists of 40 replicate tests of each cigarette.

25 (d) When tested under (a) of this section, only 25 percent or less of the  
 26 cigarettes tested in a test trial may exhibit full-length burns in order to pass the test.

27 (e) A laboratory that conducts cigarette testing under this section shall  
 28 implement a quality control and quality assurance program that ensures the  
 29 repeatability of the testing results. The repeatability value may not be greater than 0.19  
 30 under (d) of this section. In this subsection,

31 (1) "quality control and quality assurance program" means the

1 laboratory procedures implemented to ensure that operator bias, systematic and  
 2 nonsystematic methodological errors, and equipment-related problems do not affect  
 3 the results of the testing quality control program;

4 (2) "repeatability" means the range of values within which the repeat  
 5 results of cigarette test trials from a single laboratory will fall 95 percent of the time.

6 **Sec. 18.74.040. Banding requirement.** Each cigarette listed in a certification  
 7 submitted under AS 18.74.080 that uses lowered permeability bands in the cigarette  
 8 paper to achieve compliance with the testing standard in AS 18.74.030(d) must have at  
 9 least two nominally identical bands on the paper surrounding the tobacco column. At  
 10 least one complete band must be located at least 15 millimeters from the lighting end  
 11 of the cigarette. For cigarettes on which the bands are positioned by design, there must  
 12 be at least two bands fully located at least

13 (1) 15 millimeters from the lighting end, and

14 (2) 10 millimeters from

15 (A) the filter end of the tobacco column; or

16 (B) the labeled end of the tobacco column of a nonfiltered  
 17 cigarette.

18 **Sec. 18.74.050. Alternate test method.** A manufacturer of cigarettes that  
 19 cannot be tested by a test method established in AS 18.74.030(a) may use a test  
 20 method that is different from the test method established in AS 18.74.030(a) and may  
 21 satisfy a standard that is equivalent to the testing standard in AS 18.74.030(d). The  
 22 manufacturer may employ that test method and performance standard to certify the  
 23 cigarette under AS 18.74.080, but all other applicable requirements of this chapter  
 24 apply to the manufacturer of the cigarette.

25 **Sec. 18.74.060. Exemption from testing.** AS 18.74.030 does not require  
 26 cigarettes to be tested if the cigarettes are tested for another purpose and the testing is  
 27 consistent with AS 18.74.030 - 18.74.050.

28 **Sec. 18.74.070. Maintenance of records.** A manufacturer shall keep data from  
 29 testing conducted by the manufacturer to comply with AS 18.74.030 - 18.74.050 on  
 30 file for three years after the initial date of certification or for three years after each  
 31 recertification required under AS 18.74.100. The manufacturer shall provide the data

1 to the state fire marshal and the attorney general on the request of the state fire  
2 marshal or the attorney general.

*under oath*

3 **Sec. 18.74.080. Certification requirement.** A manufacturer shall certify in  
4 writing to the state fire marshal that each brand of cigarette listed       , the certificate has  
5 been tested under AS 18.74.030 and satisfies the testing standard in AS 18.74.030(d),  
6 or has been tested under AS 18.74.050 and satisfies a standard equivalent to the  
7 standard in AS 18.74.030(d).

[

8 **Sec. 18.74.090. Contents of certification.** The certification required by  
9 AS 18.74.080 must provide the following information for each brand of cigarette  
10 listed in the certification:

- 11 (1) the brand;
- 12 (2) the style;
- 13 (3) the length in millimeters;
- 14 (4) the circumference in millimeters;
- 15 (5) the flavor, if applicable;
- 16 (6) whether the cigarette is filtered or nonfiltered;
- 17 (7) a description of the pack; and
- 18 (8) the marking approved under AS 18.74.120.

19 **Sec. 18.74.100. Recertification schedule.** Each brand of cigarette certified  
20 under AS 18.74.080 shall be recertified every three years.

21 **Sec. 18.74.110. Provision of copies.** A manufacturer who certifies a brand of  
22 cigarette under AS 18.74.080 shall provide a copy of the certification to each  
23 distributor or wholesaler to whom the manufacturer sells the cigarette. The  
24 manufacturer shall also provide the distributor or wholesaler with sufficient copies of  
25 an illustration of the cigarette packaging marking used by the manufacturer under  
26 AS 18.74.130 to enable the distributor or wholesaler to give a copy to each retailer to  
27 whom the distributor or wholesaler sells cigarettes. A distributor or wholesaler shall  
28 provide a copy of the cigarette packaging markings received from a manufacturer to  
29 each retailer to whom the distributor or wholesaler sells cigarettes.

30 **Sec. 18.74.120. Certification marking approval.** Before a brand of cigarette  
31 may be sold in the state, a manufacturer shall submit its proposed marking to the state

*under oath*

↑  
①  
*Completed*

1 fire marshal. The state fire marshal shall approve the marking if the state fire marshal  
2 finds that it complies with AS 18.74.130. Proposed markings shall be considered  
3 approved if the state fire marshal fails to act within 10 business days after receiving a  
4 proposed marking.

5 **Sec. 18.74.130. Contents of certification marking.** The packaging containing  
6 a brand and style of cigarette that a manufacturer certifies under AS 18.74.080 must be  
7 marked to indicate compliance with the requirements of this chapter. The marking  
8 must be in eight-point type or larger and consist of

9 (1) a modification of the universal product code to include a visible  
10 mark printed at or around the area of the code; the mark may consist of alphanumeric  
11 or symbolic characters and must be permanently stamped, engraved, embossed, or  
12 printed in conjunction with the universal product code;

13 (2) any visible combination of alphanumeric or symbolic characters  
14 permanently stamped, engraved, or embossed on the packaging; or

15 (3) printed, stamped, engraved, or embossed text on the cigarette  
16 packaging that indicates that the cigarettes satisfy the requirements of this chapter.

17 **Sec. 18.74.140. Uniformity in marking.** A manufacturer shall use only one  
18 marking for certification and apply this marking uniformly to all packaging and to all  
19 brands marketed by the manufacturer.

20 **Sec. 18.74.150. Modification of marking.** A manufacturer who modifies the  
21 manufacturer's marking shall notify the state fire marshal of this modification and  
22 submit to the state fire marshal a copy of the new marking. The new marking must  
23 comply with AS 18.74.130 and 18.74.140.

24 **Sec. 18.74.160. Penalties for violations.** (a) A manufacturer or another person  
25 who knowingly sells or offers to sell cigarettes other than through retail sale and in  
26 violation of this chapter is subject to a civil penalty not to exceed \$10,000 for each  
27 sale.

28 (b) A retailer, distributor, or wholesaler who knowingly sells or offers to sell  
29 cigarettes in violation of this chapter is subject to

30 (1) a civil penalty not to exceed \$500 for each sale or offer for sale in  
31 which the total number of cigarettes sold or offered for sale does not exceed 50 packs

1 of cigarettes;

2 (2) a civil penalty not to exceed \$1,000 for each sale or offer for sale in  
3 which the total number of cigarettes sold or offered for sale exceeds 50 packs of  
4 cigarettes.

5 (c) In addition to any other penalty prescribed by law, a person engaged in the  
6 manufacture of cigarettes who knowingly makes a false certification under  
7 AS 18.74.080 is subject to a civil penalty not to exceed \$10,000 for each false  
8 certification.

9 (d) If a person violates a provision of this chapter and a civil penalty is not set  
10 for the violation, the person is subject to a civil penalty not to exceed \$1,000 for each  
11 violation.

12 (e) The state fire marshal and the attorney general may enforce the penalties  
13 established under this section.

14 **Sec. 18.74.170. Defense to action for civil penalty.** It is a defense in an action  
15 for a civil penalty under AS 18.74.160 that a distributor, wholesaler, retailer, or  
16 another person in the stream of commerce relied in good faith on the manufacturer's  
17 certification or marking that the cigarettes complied with the requirements of this  
18 chapter.

19 **Sec. 18.74.180. Separate accounting.** The civil penalties imposed under  
20 AS 18.74.160 shall be deposited into the general fund and separately accounted for  
21 under AS 37.05.142. The legislature may appropriate the money received under this  
22 section to the cigarette fire safety fund established under AS 18.74.220.

23 **Sec. 18.74.190. Seizure of cigarettes.** (a) If the state fire marshal or a law  
24 enforcement agency of the state discovers that a person is offering or possesses for  
25 sale, or has made a sale of, a cigarette in violation of AS 18.74.010, the state fire  
26 marshal or the law enforcement agency may seize or dispose of the cigarette.

27 (b) If a cigarette is sold or offered for sale and the cigarette does not comply  
28 with the testing standard in AS 18.74.030(d), does not comply with an equivalent  
29 standard under AS 18.74.050, or is not exempt under AS 18.74.020 or 18.74.060, the  
30 state fire marshal or a law enforcement agency of the state may seize and dispose of  
31 the cigarette.

1 (c) Before disposal of a cigarette under (a) or (b) of this section, the state fire  
 2 marshal or the law enforcement agency of the state shall provide the person from  
 3 whom the cigarette was seized with notice of the seizure and an opportunity for a  
 4 hearing regarding the seizure.

5 **Sec. 18.74.200. Other remedies.** The attorney general may bring an action to  
 6 restrain violations of this chapter and to obtain other relief that may be appropriate.

7 **Sec. 18.74.210. Inspection of violation sitc.** (a) The state fire marshal or a law  
 8 enforcement agency of the state may inspect a site where cigarettes are sold, offered  
 9 for sale, or stored, or any site where there is evidence of a violation of AS 18.74.010.

10 (b) A manufacturer, distributor, wholesaler, or retailer shall permit an  
 11 employee of the state fire marshal or a law enforcement agency of the state, on  
 12 presentation of the appropriate identification and credentials, to enter into and conduct  
 13 an inspection of a building, facility, or other site described in (a) of this section.

14 **Sec. 18.74.220. Cigarette fire safety fund.** (a) The cigarette fire safety fund is  
 15 established. The fund consists of appropriations made to the fund.

16 (b) The purpose of the fund is to pay the expenses of the state fire marshal for  
 17 implementing and enforcing this chapter.

18 (c) Money appropriated to the fund may be spent for the purposes of the fund  
 19 without further appropriation. Money appropriated to the fund does not lapse.

20 **Sec. 18.74.230. Relationship to federal law.** If a provision of this chapter is  
 21 preempted by or conflicts with federal law in a particular situation, the provision does  
 22 not apply to the extent of the preemption or conflict.

23 **Sec. 18.74.290. Definitions.** In this chapter,

24 (1) "cigarette" means any roll for smoking, made wholly or in part of  
 25 tobacco, irrespective of size or shape and irrespective of whether the tobacco is  
 26 flavored, adulterated, or mixed with another ingredient, if the roll has a wrapper or  
 27 cover made of paper or another material, unless the wrapper is wholly or in the greater  
 28 part made of tobacco and the roll weighs over three pounds for each one thousand  
 29 cigarettes;

30 (2) "distributor" means a person who distributes cigarettes or who sells  
 31 or accepts orders for cigarettes that are to be transported from a point outside this state

1 to a person in this state;

2 (3) "manufacturer" means

3 (A) a person who manufactures or otherwise produces  
4 cigarettes, or causes cigarettes to be manufactured or produced, if the  
5 manufacturer intends the cigarettes to be sold in the state, including cigarettes  
6 intended to be sold in the United States through an importer;

7 (B) the first purchaser who intends to resell in the United States  
8 cigarettes that the original manufacturer or maker does not intend to be sold in  
9 the United States; or

10 (C) a person who becomes a successor of a person described in  
11 (A) or (B) of this paragraph;

12 (4) "offer to sell" means to offer or agree to sell;

13 (5) "pack" means the individual pack, box, or other container in which  
14 retail sales of cigarettes are normally made or intended to be made, but does not  
15 include a container that contains smaller packaging units of cigarettes;

16 (6) "packaging" includes packs, boxes, cartons, cases, other containers  
17 and wrapping;

18 (7) "retailer" has the meaning given in AS 43.50.170;

19 (8) "sale" or "sell" means a transfer, exchange, or barter, in any manner  
20 or by any means, or an agreement to transfer, exchange, or barter, and includes

21 (A) giving cigarettes as samples, prizes, or gifts; or

22 (B) exchanging cigarettes for any consideration other than  
23 money;

24 (9) "wholesaler" has the meaning given in AS 43.50.849.

25 **Sec. 18.74.295. Short title.** This chapter may be cited as the Alaska Cigarette  
26 Fire Safety Act.

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

29 **TRANSITION.** ~~AS 18.74.010~~, enacted by sec. 2 of this Act, does not prohibit a  
30 distributor, wholesaler, or retailer from selling or offering to sell an inventory of cigarettes  
31 existing on July 1, 2007, if the distributor, wholesaler, or retailer establishes that

1                   (1) a stamp or meter impression was affixed to the cigarettes under AS 43.50  
2 before July 31, 2007; and

3                   (2) the inventory was purchased before July 1, 2007, in comparable quantity to  
4 the inventory purchased during the same period of 2005.

5           (b) In this section,

6                   (1) "distributor," "offer to sell," "retailer," "sell," and "wholesaler" have the  
7 meanings given in AS 18.74.290;

8                   (2) "tax payment indicator" has the meaning given in AS 18.74.020(a).

9       \* Sec. 4. This Act takes effect July 1, 2007.

During Session:  
Alaska State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-4833  
Fax (907) 465-4586  
1-800-782-4833  
Representative\_Reggie\_Joule@legis.state.ak.us



During Interim:  
P.O. Box 673  
Kotzebue, Alaska 99752  
(907) 442-3880  
Fax (907) 442-3022

Alaska State Legislature  
REPRESENTATIVE REGGIE JOULE

MEMORANDUM

DATE: February 1, 2006

TO: Representative Paul Seaton, Chair  
House State Affairs Committee

FROM: Representative Reggie Joule

RE: Hearing Request for HB 413

I respectfully request that House Bill 413, "An Act relating to the burning capability of cigarettes being sold, offered for sale, or possessed for sale; and providing for an effective date" be scheduled for a hearing in the House State Affairs Committee. Conveniently, the Fire Chief Association will be in Juneau next week. It would be much appreciated if they were allowed to testify for this bill in person. Please feel free to contact me or my aide Mikayla Saito, with questions or thoughts at 465-4833.

Attached you will find a background packet for HB 114. This includes the current version of the bill, and a sponsor's statement.

Thank you for your consideration.

AM #1

line 4 "~~Amended~~ shall certify under oath

P 5. line 3-7

P 5. line 31 - require certificates to be under oath

P 7. line 5-11 civil penalty in addition to

P. 6. lines 24-27 (may read in Judicant)

in subsection a → "in this state"?

# LEGAL SERVICES

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

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

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

## MEMORANDUM

February 14, 2006

**SUBJECT:** Proposed amendment to CSHB 413(STA) relating to the burning capability of cigarettes (Work Order No. 24-LS1495\G.1)

**TO:** Representative Max Gruenberg

**FROM:** Theresa Bannister *MB for TB*  
Legislative Counsel

This memo accompanies the amendment described above. You requested that the amendment be prepared to the bill described above if it would be helpful. I am not sure what you mean by being helpful, so I have prepared an amendment for you to use if you find it will help achieve your goals. The amendment adds "in this state" to proposed sec. 18.74.160(a) (penalties for violations).

The amendment is probably not needed because the terms of the bill are limited by the state's jurisdiction (only in the state), by the need to establish minimum contacts with the state for the state's jurisdiction to apply, and by the basic prohibition in the chapter at sec. 18.74.010. That provision prohibits certain activities "in this state." This provision covers all but one of the provisions of the chapter that might constitute violations, since sec. 18.74.010 lists the specific requirements of the chapter that must be complied with in this state. Sec. 18.74.010 does not list sec. 18.74.070, but sec. 18.74.070 is tied in to the state by its reference to testing done to comply with other provisions of the chapter.

If the above comments do not address what you were concerned with, please contact me so that we can discuss them.

If I may be of further assistance, please advise.

TLB:ljw  
06-074.ljw

Enclosure

AMENDMENT

OFFERED IN THE HOUSE  
TO: CSHB 413(STA)

BY REPRESENTATIVE GRUENBERG

- 1 Page 6, line 25, following "cigarettes":
- 2       Insert "in this state"

## Fire Safe Cigarettes

### The Problem

Nationally, cigarette fires cause close to 1,000 deaths and 3,000 injuries each year in the United States. As the ignition source in fires responsible for over 25% of all fire deaths, cigarettes are the nation's largest single cause of such deaths. Property losses alone are over half a billion dollars. The economic costs in health care and productivity losses, and the human cost of pain and suffering raise total annual costs to an estimated \$6 billion dollars. Among all injury profiles, the one for cigarette fire injuries is unusually lethal. In fires attributed to dropped cigarettes, there is one death to every four injuries. Please note that smoking-related injuries started by matches or lighters were excluded for these statistics. This problem is not going away, as cigarette related fires are up 19% nationally.

The "fire-safe" cigarette concept addresses the typical scenario in which such injuries occur. In these cases, dropped cigarettes, because they are expressly manufactured not to go out until totally consumed, burn through the cover of a seat cushion or a mattress, starting fires, which may smolder for hours. These hidden fires produce toxic gases, which render sleeping victims even more unconscious before the cushion or mattress bursts into flame. At this point, the superheated air in the room of origin quickly reaches flashover, and any people in the residence are seriously threatened. Those who survive such fires normally have a severe inhalation injury. When they are also burned, they are normally transferred to burn treatment centers. There, they are frequently the most critically ill patients in a setting already dedicated to serious burn injury.

The age profile for cigarette fire mortality in NFPA data shows a moderate death rate among young children, a low rate for ages 10 to 17, and then a steadily rising rate, which peaks above age 85. Since the smoking rate among the elderly is half that of younger adults, those elderly who do smoke, especially males, and those with whom they live, are exceedingly vulnerable to smoking-fire death and injury. This vulnerability is even greater if the elderly smoker uses alcohol or sedating medications.

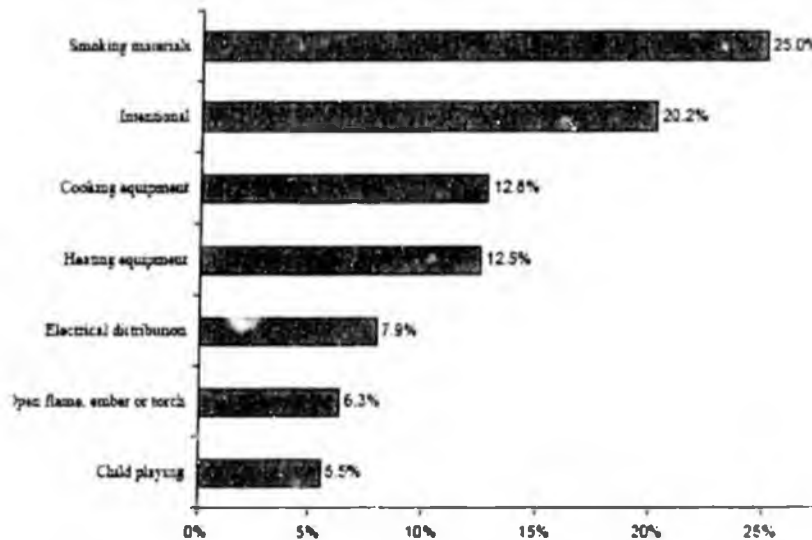
In fires in which a cigarette was known to have ignited upholstery, bedding or clothing, 29% victims making it to a burn center did not survive their initial hospital stay. This is five times the overall burn center fatality rate of about 6%. In addition, many of the elderly victims who survived their burn center stay were discharged to nursing care facilities from which they would never go home.

These survivors of cigarette fires remained in the hospital an average of 33 days on their initial admission. This is 60% longer than the burn center average of 20.5 days. Per diem costs were one-third higher than the burn center average. Cigarette fire admissions thus consumed twice as many resources as other burn center patients, with hospital charges alone averaging over \$125,000 per admission.

### What is a Fire Safe Cigarette?

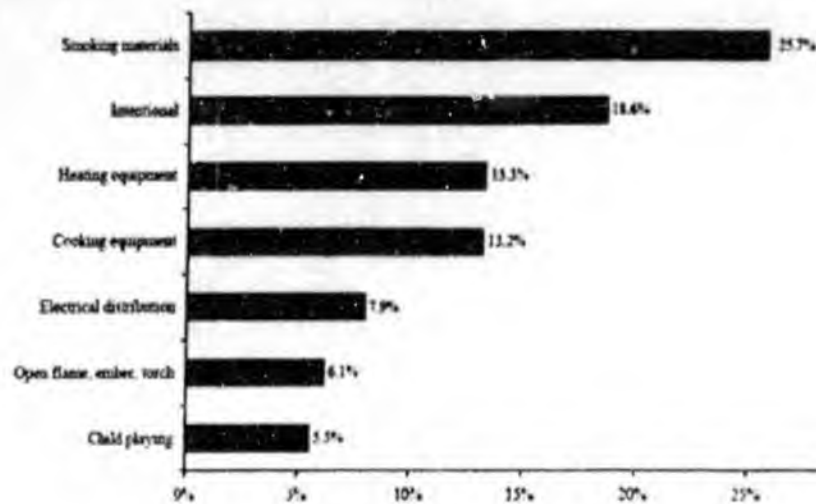
A fire safe cigarette, also known as a "reduced propensity cigarette," has less propensity to ignite upholstered furniture or mattresses when dropped, forgotten or carelessly discarded. This can be accomplished through small design changes including, the use of less dense tobacco, less porous paper, a smaller diameter, a filter tip, the addition of "speed bumps" on the filter paper, and the elimination of citrates that are added to the paper to maintain burning.

### Leading Causes of Structure Fire Deaths in 1999



Source: National estimates based on NFIRS/NFPA survey.

### Leading Causes of Home Fire Deaths in 1999



Source: National estimates based on NFIRS/NFPA survey.

### Other Legislation

In 2000, New York State passed the nation's first law requiring the establishment of a fire safety standard for cigarettes sold in the state that was due to take effect July 1, 2003. It was later changed to have the regulations set to go into effect by June 30, 2004. In 2005 both Vermont and California passed similar legislation, which requires cigarettes to meet the ASTM standard.

Following the lead of New York State, the Canadian Parliament passed legislation that will reduce the number of cigarette-caused fires in Canada. Bill C-260, an Act to amend the Hazardous Products Act (fire-safe cigarettes), will make it mandatory for all tobacco manufacturers to sell reduced ignition propensity (RIP) cigarettes by the end of this year.

## **Alaska HB 413 Will Save Lives in Alaska Fire Safe Cigarettes Result in a Safer State**

Too many Alaskans are hurt needlessly by fires that start because of the careless use of cigarettes. Every year, people are injured and homes are destroyed and damaged by cigarette ignited fires. That is largely because cigarettes are designed to continue to burn if left unattended. Cigarettes that are forgotten or dropped by smokers have the potential to start fires.

Following are a few facts about cigarette ignited fires:

- Cigarettes are the leading cause of fatal home fires in the United States, representing 25 percent of all fire deaths.
- Annually, approximately 1,000 people in the United States die from fires started by cigarettes and an additional 3,000 are injured.
- More than 100 victims who die every year are children or nonsmokers.
- Two out of five victims are 65 or older.
- Cigarette-ignited fires cause more than \$6 billion in property damage every year.
- In 1997 alone, there were more than 130,000 cigarette related fires in the U.S.

Now, Alaska has a chance to change those frightening statistics in a way that will better protect people and property in this state.

Alaska legislators recently introduced HB 413, addressing cigarette fire safety. That bill would save lives in Alaska and would likely lead to significant advances in public safety throughout the country.

**HB 413 would require that all cigarettes marketed and sold in the state of Alaska be fire safe with a reduced propensity to burn when left unattended.**

Cigarettes are designed to continue to burn when left unattended. The typical scenario for a cigarette ignited fire is the delayed ignition of a sofa, chair, mattress or rubbish from a lit cigarette that was forgotten or dropped by a smoker. Cigarettes vary in their potential to start fires, depending on cigarette design and content. The term "fire safe" is defined as a cigarette with reduced propensity for starting a fire when dropped or left unattended. The technology needed to produce fire safe cigarettes has been available for over a decade.

How does a fire safe cigarette work?

- A fire-safe cigarette has significantly less tendency to ignite furniture or mattresses when carelessly discarded. Small design changes including use of less dense tobacco, less porous paper, a smaller diameter, filter tip, and no added citrates to the paper are key components of a fire-safe cigarette.

Jurisdictions that have passed fire-safe cigarette legislation:

- Canada (2003)
- New York (2000)
- Vermont (2005)
- California (2005)

In addition, a recently released report out of New York noted that annual fire deaths blamed on cigarettes have fallen by one-third since that state's fire safe cigarette legislation went into effect.

## Fire Safe Cigarette Fact Sheet

- Smoking-related injuries started by matches or lighters were excluded for these statistics. Cigarette related fires are up 19% nationally.
- Cigarettes are the leading cause of fatal home fires in the United States, accounting for approximately 25% of our nation's fire deaths.
- Annually, between 900 and 1,000 people in the United States die from fires started by cigarettes and an additional 2,500 to 3,000 people are injured.
- It is not only the smoker who is injured or killed. Family members, other residents in multi-family dwellings, firefighters, emergency medical services personnel, and other non-smokers are also affected.
- In 1997 (the latest year for which data is available), there were more than 130,000 cigarette-related fires, which resulted in the deaths of 140 children.
- The annual cost of human life and property damage exceeds \$6 billion.
- At present, no federal regulation requires cigarettes to meet fire safety standards. New York is the first and only state to mandate that all cigarettes sold or offered for sale in the state must be fire safe. Similar legislation has been introduced in other states and in the US Congress.
- In fires in which a cigarette was known to have ignited upholstery, bedding or clothing, 29% victims making it to a burn center did not survive their initial hospital stay.
- The Fire Safe Cigarettes do not carry an increased cost to the consumer.
- The change in taste, if any, is undetectable to the smoker.
- 2 of 5 victims are 65 or older.
- Fire Safe Cigarettes are mandated in The States of California, New York and Vermont and the entire country of Canada.



# State of Alaska

Department of Public Safety  
Division of

## Fire Prevention

Frank H. Murkowski, Governor  
William Tandenke, Commissioner

February 1, 2006

The Honorable Reggie Joule  
House of Representatives  
State Capitol, Room 405  
Juneau, AK 99801-1182

The Division of Fire Prevention supports the legislation sponsored by you "An Act relating to the burning capability of cigarettes being sold, offered for sale, or possessed for sale and providing for an effective date."

This bill embodies the focus of the Division's mission statement which is to prevent the loss of life and property from fire and explosion. This bill recognizes significant losses of life and property due to cigarettes, as the following statistics will show.

Between 1996 and 2004 Alaska lost \$5.6 million in property to fires with cigarettes as an ignition source.

Between 1996 and 2004 Cigarette related fires caused 25% (36 Alaskans) of the deaths due to fire. This is the leading cause of fire fatalities in Alaska.

It is our belief that this bill will significantly lower fire fatalities in Alaska related to cigarettes, as the manufacturers will have to meet the new requirements for a cigarette that meets a fire safety standard. This would be at minimal cost to the state.

The states that have enacted similar legislation are New York, Vermont and California. Those states are closely monitoring their fire statistics for the expected decline in fire fatalities. The legislation enactment is recent, therefore the information on fire fatalities is just now being collected for analysis.

If you have any questions or need more information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Gary L. Powell".

Gary L. Powell  
State Fire Marshal

**ALASKA DEPARTMENT OF PUBLIC SAFETY**  
**Division of Fire Prevention**

**1996 - 2004 Alaska Fires Caused by Cigarettes**

Type of Fire	Count and Sum	Civ Inj	Civ Fat	FF Inj	FF Fat
(Confined) Trash Fire	3 \$0				
Fire, Other	17 \$87,455	1			
Motor Mobile Property (Vehicle)	49 \$30,628	1	1		
Outside Rubbish Fire	72 \$2,376				
Special Outside Fire	7 \$1,000				
Structure Fire	315 \$5,248,260	28	35	6	
Structure Fire (Mobile Property)	19 \$190,521	1			
Wildland Fire	91 \$2,531				
<b>Total Count of Inc. ID</b>	<b>573</b>	<b>31</b>	<b>36</b>	<b>6</b>	<b>0</b>
<b>Total Sum of Loss Total</b>	<b>\$5,562,771</b>				

It's correct to say that between 1996 - 2004.....

3.33% of all reported firefighter injuries a cigarette was the cause of fire

25% of all civilian deaths, smoking and/or smoking materials was the cause of fire



**Facts About the Tobacco Industry's Arguments  
Against Laws Regulating the Ignition Strength of Cigarettes  
March 2005**

*Introduction*

In 2002, the most recent year with complete data, lighted tobacco products caused an estimated 37,000 structure fires in the United States, according to the National Fire Protection Association (NFPA). Some 760 individuals died in these fires, with roughly 200 victims estimated not to have been the smoker. And more than half a billion dollars (\$526 million) in direct property damage was caused by these fires. Lighted tobacco products remain the leading cause of fatal structure fires in the United States.

Efforts to reduce this deadly toll directly, by requiring cigarettes to meet fire resistance standards in the United States, received a boost on June 28, 2004, when the State of New York adopted the nation's first cigarette fire safety regulation. Canada has also enacted legislation that requires cigarettes to meet the same requirement as New York.

Major cigarette manufacturers have already altered the design of cigarette brands to meet the New York regulation, through "banding" of the cigarette paper for many brands (though New York's regulation is a performance standard and does not dictate how the standard should be met). Since these companies are currently selling lower ignition strength versions of their cigarette brands in New York, it seems that the way has been paved for other states to follow New York's lead.

The life-saving potential of this legislation is so strong and so apparent that even some major cigarette manufacturers have stopped opposing it. However, opponents in the cigarette industry continue to strongly oppose all legislation that would require lower ignition strength cigarettes in other states, and they offer arguments that can sound persuasive to anyone who does not know the facts. This paper will rebut the arguments being offered by the cigarette industry.

- **Cigarette Industry Argument:** There is no such thing as a cigarette that reduces the risk of fire.

**Fact:** New research by the Harvard School of Public Health (HSPH), funded by the American Legacy Foundation, indicates several benefits of implementing the New York regulation. *"Fire Safer" Cigarettes: The Effect of the New York State Cigarette Fire Safety Standard on Ignition Propensity, Smoke Toxicity and the Consumer Market* (<http://www.hsph.harvard.edu/press/releases/press01232005.html>) compared the physical properties of cigarettes sold in New York with cigarettes of the same brands sold in Massachusetts and California. The report found that New York cigarettes were far less likely to exhibit full length burns (only 10 percent) than those of the other states (99.8 percent). The HSPH researchers found no valid reason why cigarette manufacturers should not sell lower ignition strength cigarettes nationwide.

The Harvard study confirmed the 20-year-old conclusion of the Federal Technical Study Group on Cigarette and Little Cigar Fire Safety. This group, created by the Cigarette Fire Safety Act of 1984 (Public Law 98-567), concluded that it was technically feasible to develop cigarettes with a reduced propensity to ignite upholstered furniture and mattresses. As the Harvard study makes clear, the Federal study was correct, and the tobacco industry can make reduced ignition strength cigarettes if it chooses to do so or is required to do so.

- **Cigarette Industry Argument:** State laws are unnecessary. The U.S. Congress is about to pass a national law.

**Fact:** Those following Capitol Hill politics understand this argument is a complete myth. Passing legislation in the past few years has been nearly impossible. Bills requiring cigarettes to meet fire safety standards have been introduced in Congress since 1979, and there is still no national law in place. This is in large part because the cigarette industry fights national bills as vigorously as it fights state bills. But the industry always fights state laws by pointing to the existence of federal bills.

In fact, state legislation is necessary to put pressure on Congress to pass a national law. The cigarette industry needs to see that it is economically in its best interest to make lower ignition strength cigarettes for the entire nation rather than for just one or two states. The more states that pass these bills, the more likely it will be that the benefit of lower ignition strength cigarettes will be made available to all Americans.

- **Cigarette Industry Argument:** The push for lower ignition strength cigarettes is just another anti-smoking campaign.

**Fact:** This is about fire safety, and preventing deaths and injuries from cigarette-ignited fires. This is not about getting people to stop smoking or to smoke less. This is about making sure that the cigarettes that are smoked are less likely to cause fires.