

12201 HOUSE JUDICIARY

SB

121



HOUSE JUDICIARY COMMITTEE

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MEMORANDUM

Date: May 7, 2007

To: Representative John Coghill
Chairman House Rules Committee

From: Representative Jay Ramras
Chairman House Judiciary Committee

Re: Referral File HB121

Please accept this memorandum as the referral file for HB121. Attached you will find the following documents

- Sponsor Statement
- CSSB121(L&C) 25-LS0734L
- House Judiciary Committee Report
- SB121 (25-LS0734\A)
- Fiscal Notes
 - LAW - 0
 - DEC - 0
- Senate Journal
- Support
- Applicable Statutes



SENATOR KIM ELTON

SB 121

Sponsor Statement

“An Act relating to discharge from small commercial passenger vessels; relating to information-gathering requirements for small commercial passenger vessels; to providing for an effective date by repealing the delayed effective date found in sec. 16, ch. 153, SLA 2004; and providing for an effective date.”

SB 121 adopts an alternate compliance program for a group of small cruise vessels built before 2004. It is the same alternate compliance program employing “best management practices” passed by the legislature in 2004 as HB 522 (passed unanimously by both bodies) and enacted as Chapter 153, SLA 04.

When the Legislature enacted the alternate compliance provision in 2004, the drafters and the legislature did not account for the proposed initiative that eventually became law in 2006 and inadvertently repealed Chapter 153, SLA 04.

The initiative was drafted, submitted to the Division of Elections and certified in 2003. The signatures were subsequently gathered and the initiative was the subject of litigation. It was eventually approved by the voters in August 2006.

The problem developed because the supporters and drafters of the 2004 Legislation did not check the pending initiative for potential conflicts. This understandable oversight was unintended by the drafters of the initiative and the Legislature. Sponsors of the initiative do not oppose the corrective action applied by this bill (see letter by Joe Geldhof).

It is appropriate under these circumstances to reenact the 2004 provisions.

ALASKA SENATE

STATE CAPITOL • JUNEAU, ALASKA 99801-1182 • (907) 465-4947 • FAX (907) 465-2108

SENATOR_KIM_ELTON@LEGIS.STATE.AK.US

Sec. 46.03.462. Terms and conditions of discharge permits.

(a) An owner or operator may not discharge any treated sewage, graywater, or other wastewater from a large commercial passenger vessel into the marine waters of the state unless the owner or operator obtains a permit under AS 46.03.100 , which shall comply with the terms and conditions of vessel discharge requirements specified in (b) of this section.

(b) The minimum standard terms and conditions for all discharge permits authorized under this section require that the owner or operator

(1) may not discharge untreated sewage, treated sewage, graywater, or other wastewaters in a manner that violates any applicable effluent limits or standards under state or federal law, including Alaska Water Quality Standards governing pollution at the point of discharge;

(2) shall maintain records and provide the reports required under AS 46.03.465(a);

(3) shall collect and test samples as required under AS 46.03.465 (b) and (d) and provide the reports with respect those samples required by AS 46.03.475 (c);

(4) shall report discharges in accordance with AS 46.03.475 (a);

(5) shall allow the department access to the vessel at the time samples are taken under AS 46.03.465 for purposes of taking the samples or for purposes of verifying the integrity of the sampling process; and

(6) shall submit records, notices, and reports to the department in accordance with AS 46.03.475 (b), (d), and (e).

Sec. 46.03.463. Prohibited discharges; limitations on discharges.

(a) Except as provided in (h) of this section, a person may not discharge untreated sewage from a commercial passenger vessel into the marine waters of the state.

(b) Except as provided in (h) of this section or under AS 46.03.462 (c) - (e), a person may not discharge sewage from a commercial passenger vessel into the marine waters of the state that has suspended solids greater than 150 milligrams per liter or a fecal coliform count greater than 200 colonies per 100 milliliters except that the department may by regulation adopt a protocol for retesting for fecal coliform, if this discharge limit for fecal coliform is exceeded, under which a discharger will be considered to be in compliance with the fecal coliform limit if the geometric mean of fecal coliform count in the samples considered under the protocol does not exceed 200 colonies per 100 milliliters. Upon submission by the owner or operator of a small commercial passenger vessel of a plan for interim protective measures under AS 46.03.462 (c)(2) and (d), the department shall extend the time for compliance of that vessel with this subsection.

(c) Except as provided in (h) of this section or under AS 46.03.462 (c) - (e), a person may not discharge graywater or other wastewater from a commercial passenger vessel into the marine waters of the state that has suspended solids greater than 150 milligrams per liter or a fecal coliform count greater than 200 colonies per 100 milliliters except that the department may by regulation adopt a protocol for retesting for fecal coliform, if this discharge limit for fecal coliform is exceeded, under which a discharger will be considered to be in compliance with the fecal coliform limit if the geometric mean of fecal coliform count in the samples considered under the protocol does not exceed 200 colonies per 100 milliliters. Upon submission by the owner or operator of a large commercial passenger vessel of a plan for interim protective measures, the department shall extend the time for compliance of that vessel with this subsection for a period of time that ends not later than January 1, 2003. Upon submission by the owner or operator of a small commercial passenger vessel of a plan for interim protective measures under AS 46.03.462 (c)(2) and (d), the department shall extend the time for compliance of that vessel with this subsection.

(d) [Repealed, Sec. 5, 2006 Primary Election Ballot Measure No. 2].

(e) An owner or operator may not discharge any treated sewage, graywater, or other wastewater from a large commercial passenger vessel into the marine waters of the state unless the owner or operator obtains a permit under AS 46.03.100 and 46.03.462, and provided that the vessel is not in an area where the discharge of treated sewage, graywater, or other wastewaters is otherwise prohibited.

(f) Except as provided in (h) of this section, a person may not discharge sewage from a small commercial passenger vessel unless the sewage has been processed through a properly operated and properly maintained marine sanitation device.

(g) [Repealed, Sec. 5, 2006 Primary Election Ballot Measure No. 2].

(h) The provisions of (a) - (f) of this section do not apply to discharges made for the purpose of securing the safety of the commercial passenger vessel or saving life at sea if all reasonable precautions have been taken for the purpose of preventing or minimizing the discharge.

Sec. 46.03.465. Information-gathering requirements.

(a) The owner or operator of a commercial passenger vessel shall maintain daily records related to the period of operation while in the state, detailing the dates, times, and locations, and the volumes and flow rates of any discharges of sewage, graywater, or other waster into the marine waters of the state, provide electronic copies of such records on a monthly basis to the department no later than five days after each calendar month of operation in state waters.

(b) While a commercial passenger vessel is present in the marine waters of the state, the owner or operator of the vessel shall provide an hourly report of the vessel's location based on Global Positioning System technology and collect routine samples of the vessel's treated sewage, graywater, and other wastewaters being discharged into marine waters of the state with a sampling technique approved by the department.

(c) While a commercial passenger vessel is present in the marine waters of the state, the department, or an independent contractor retained by the department, may collect additional samples of the vessel's treated sewage, graywater, and other wastewaters being discharged into the marine waters of the state.

(d) The owner or operator of a vessel required to collect samples under (b) of this section shall ensure that all sampling techniques and frequency of sampling events are approved by the department in a manner sufficient to ensure demonstration of compliance with all discharge requirements under AS 46.03.462 .

(e) The owner or operator of a commercial passenger vessel shall pay for all reporting, sampling, and testing of samples under this section.

(f) If the owner or operator of a commercial passenger vessel has, when complying with another state or federal law that requires substantially equivalent information required under (a), (b), or (d) of this section, the owner or operator shall be considered to be in compliance with that subsection so long as the information is also provided to the department.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSSB 121(L&C)
 (S) Publish Date: 3/23/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title: An Act relating to cruise ship discharge RDU: Civil
 Component: ENVIRONMENTAL
 Sponsor: SENATOR(S) ELTON
 Requester: SENATE LABOR & COMMERCE Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2007) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See page 2.

Prepared by: Robert Meiners, Acting Director Phone 465-5427
 Division: Administrative Services Division Date/Time 3/19/07 4:12 PM
 Approved by: Robert Meiners for Talis Colberg, Attorney General Date 3/19/2007
 Agency: Department of Law

FISCAL NOTE # 1

**STATE OF ALASKA
2007 LEGISLATIVE SESSION**

BILL NO. CSSB 121(L&C)

ANALYSIS CONTINUATION

As described in the sponsor's statement, the bill "...adopts an alternate compliance program for a group of small cruise vessels built before 2004. It is the same alternate compliance program employing 'best management practices' passed by the legislature in 2004 as HB 522 and enacted as Chapter 153, SLA 04." This assertion in the sponsor statement appears to be essentially correct, although the bill apparently proposes, as a new concept, that all commercial passenger vessels (large and small) be required to have a GP when discharging in the state, rather than just large vessels as contemplated under the initiative. Law and DEC are still reviewing the bill to see if it deviates in any other respect from the previous implemented best management practices program. The bill was introduced by an apparent unintended consequence resulting from voter approval of the cruise ship initiative in August 1996 and its inadvertent repeal of Chapter 153, SLA 04. Enactment of the bill is not anticipated to fiscally impact the Department of Law.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSSB 121(L&C)
 (S) Publish Date: 3/23/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Dept of Environmental Conservation
 Title Act relating to discharge from commercial RDU Division of Water
passenger vessels Component Water Quality
 Sponsor Senator Elton
 Requester Labor and Commerce Component No. 2062

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact associated with this legislation.

Prepared by: Lynn J. Tomich Kent
 Division: Director
 Approved by: Larry Hartig, Commissioner
 Agency: Department of Environmental Conservation

Phone 907-269-7599
 Date/Time 3/16/07 4:50 PM
 Date 3/19/2007

JOSEPH W. GELDHOF

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HAND DELIVERED

March 16, 2007

Senator Kim Elton,
Alaska State Senate
Alaska Capitol
Juneau, Alaska 99801

Re: SB 121

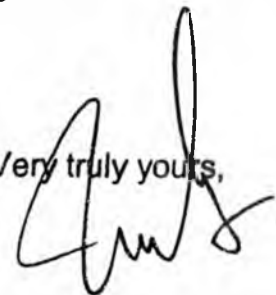
Dear Senator Elton:

I have reviewed SB 121, an act that would reinstate the "alternate compliance program" for small cruise vessels. This program was previously enacted by the Alaska Legislature in 2004 as Chapter 153, SLA 04. The alternate compliance provisions were eliminated with the passage of the recent cruise ship initiative in 2006 as a result of a drafting oversight in 2004. This oversight is completely understandable given that the cruise ship initiative was drafted and submitted in 2003 but not effective until 2006.

I have consulted with the other drafters and proponents of the 2006 cruise ship initiative; everyone that was involved with the successful initiative believes SB 121 should be promptly enacted and made effective as spelled out in the bill.

The legislature is to be commended for seeking to fix this matter. Thank you for seeking a just solution to this issue.

Very truly yours,



Joseph W. Geldhof

Copy: Gershon Cohen

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

March 26, 2007

SUBJECT: Constitutionality of CSSB 121() (Work Order No. 25-LS0734\L)

TO: Senator Kim Elton
Attn: Paula Cadiante

FROM: Alpheus Bullard 
Legislative Counsel

You have requested a legal opinion as to whether CSSB 121() (version L) offends the Alaska constitutional prohibition against the repeal of an initiated law. It is my opinion that the Committee Substitute, if challenged, will be found by a court to be constitutional. In this instance, without the benefit of a bright-line rule or clear precedent, a review of the relevant legal and historical information is helpful in providing a complete answer to your question. Allow me to provide a summary.

Constitutionality of Amending an Initiated Law

Two Alaska court decisions are implicated.

In early 1974, two related initiative petitions were filed with the lieutenant governor. One dealt with conflict of interest, and the other election campaign disclosure. Both petitions were certified as having sufficient signatures and were scheduled for inclusion on a statewide election ballot. The 1974 Legislature considered both matters. The legislature did not take any action on the conflict of interest petition, but did adopt legislation, approved as ch. 76, SLA 1974, on campaign disclosures.

The lieutenant governor concluded that the campaign disclosure enactment was substantially the same as the campaign disclosure petition and voided the initiative. That decision was challenged. The challenger, Cliff Warren, an initiative sponsor, contended that the legislature had short-circuited the initiative process by passing a law determined to be substantially the same as the proposed initiative. In its decision upholding the lieutenant governor's conclusion, the Alaska Supreme Court observed that the legislature enjoys broad authority to amend an initiative:

The final constitutional provision states in pertinent part:

An initiated law . . . is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time

The constitution thus vests broad authority in the legislature to vary the terms of an initiated law, after its adoption, by the process of amendment. This power amounts to a check or balance against the initiative process. No doubt the legislature was given this power to assure that initiatives which were ill-advised, which might seriously cripple or frustrate the sound workings of government, or which might be impracticable, could be altered or corrected rapidly by the legislature. It was obviously intended by the framers that the initiative process should not be permitted to disrupt vital government functions or to impose intolerable burdens upon established administrative systems. To this end the legislature was given the ability to substitute its judgment for that of the proponents of an initiative.

Warren v. Boucher, 543 P.2d 731, 737 (Alaska 1975).

But the legislature's authority to amend is not without limits. At the August 1974 primary election, the voters approved the second initiative petition, the conflict of interest proposal, and it was certified and became law on December 11, 1974. The 1975 Legislature amended the law to change deadlines and to exclude certain former officials, who under the initiative were required to file disclosures, from having to file. Ch. 2, SLA 1975. The law was amended again that session by adding a further delay to the filing deadline. Ch. 25, SLA 1975. Mr. Warren challenged the amendments, contending that the changes were beyond the authority of the legislature to approve and amounted to a "repeal" of the initiated law.

The court rejected his contentions in its decision in Warren v. Thomas, 568 P.2d 400 (Alaska 1977):

The central issue in the case at bar is whether the legislature has exceeded the broad power by passing an amendment which so vitiates the initiative as to "constitute its repeal." [Warren v. Boucher, 543 P.2d 731,] at 737. Warren argues that the changes are so drastic that they make a mockery of the law, that the trial court erred in concluding the legislation was merely "housekeeping," and that the amendments . . . amount to a repeal of the law. We disagree. "[A]n amendment of an act operates as a repeal of its provisions to the extent that they are materially changed by, and rendered repugnant to, the amendatory act." Meyers v. Board of Supervisors of Los Angeles County, . . . 243 P.2d 38, 42 (Cal. 1952); see also W.R. Grasle Company v. Alaska Workmen's Comp. Board, 517 P.2d 999 (Alaska 1974)

[T]here remains the question whether the amendments so emasculate the law that it is effectively repealed. We conclude that they do not. There are considerable language changes, but these clarify and render the law more precise. The fines for violations of the law have been reduced but the penalties are still significant Finally, the amended law still imposes substantial disclosure requirements on public officials and

effectuates the intent of the electorate that those in a position of public trust be held to a high standard of financial disclosure.

...

For the purposes of this appeal it is unnecessary for us to decide at what point an amendment might be so drastic as to constitute a repeal of an initiated law in violation of the Alaska Constitution. In this case the amendments only reduced the penalties for violation of the law and clarified some of the language. We are of the opinion that such an amendment did not constitute a repeal of an initiated law.

Warren v. Thomas, 568 P.2d 400, 402 - 404.

This pair of cases has not been the court's last word. In Yute Air Alaska, Inc. v. McAlpine, 698 P.2d 1173 (Alaska 1985), the court decided an appeal by setting out the full text of the trial court opinion, "which explains the questions presented and, in our view, properly resolves them." Id. at 1175. The trial court opinion, which the Supreme Court acknowledged, declared that "[t]he two Warren cases establish the proposition that the provisions of section 6 of article XI on amendment of adopted initiatives and on voiding pending initiatives vest the legislature with broad powers to protect the state against the untoward effects of initiatives." Id. at 1179.

2006 Ballot Measure No. 2, Secs. 4, 5, and 6

AS 46.03.462, 46.03.463, and 46.03.465 owe their current form to the 2006 Initiative entitled "An Initiative providing for taxation of certain commercial ship vessels, pertaining to certain vessel activities, and related to ship vessel operations taking place in the marine waters of the State of Alaska; and providing for an effective date." The initiative repealed and reenacted AS 46.03.462 and 46.03.465, and amended AS 46.03.463. These sections of the initiative are now the subject of amendment in CSSB 121() (version L). The pertinent inquiry is whether the contemplated amendment of these sections so vitiates the initiative as to "constitute its repeal." Warren v. Boucher at 737.

In summarizing the changes made to these sections, the August 22, 2006 Ballot¹ encapsulated the effect as "requir[ing] cruise ship operators to gather and report more information, and to get a new sort of permit for sewage, graywater or other wastewater before discharging in state marine waters." The Legislative Affairs Agency Summary in the 2006 Official Primary Election Voter Pamphlet² was marginally more informative: "[the initiative] requires wastewater discharge permits for cruise ships. It sets minimum standards and conditions for use of those permits. It prohibits wastewater discharges

¹ See State of Alaska Primary Election August 22, 2006, Official Primary Election Voter Pamphlet, available at <http://www.gov.state.ak.us/litgov/elections/publications.php>.

² See Id.

Senator Kim Elton

March 26, 2007

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without a permit. It changes the monitoring and record keeping requirements for waste water discharges." In the voter pamphlet, in the "Ballot Measure 2, Statement In Support" and "Ballot Measure 2, Statement In Opposition" pages, there was more rhetoric than analysis, and all discussion was directed at, or concerned, "cruise ships." There was no discussion of discharge or information gathering requirements from and for small commercial passenger vessels. This was the extent of analysis provided to the electorate about secs. 4, 5, and 6 of the initiative.

The initiative repealed and reenacted AS 46.03.462 and amended AS 46.03.463 (which prior to the initiative had provided terms, conditions, limitations, and prohibitions on discharges for all commercial passenger vessels) to apply only to large commercial passenger vessels, resulting in small passenger vessels dropping out of the regulatory regime altogether. It seems quite unlikely that this was an intended effect of the initiative.

While the initiative left AS 46.03.465 applicable to all commercial passenger vessels, I do not believe that the exception proposed by CSSB 121() "operates as a repeal of [the initiatives] provisions to the extent that they are materially changed by, and rendered repugnant to, the amendatory act." Meyers, 243 P.2d at 42. The draft returns small commercial passenger vessels to the regulatory framework of the chapter, an effort which is not at odds with the essence of the changes made by the initiative, or the will of the electorate.

Amendment of AS 46.03.462, 46.03.463, and 46.03.465 in CSSB 121()

If the initiative is understood as "effectuat[ing] the intent of the electorate" Warren v. Thomas (1977), the changes that would result by the enactment of CSSB 121() are constitutional. Ballot Measure No. 2 was aimed at the cruise ship industry. This is reflected in the "Statement In Support" and the initiative's provisions rather myopic focus on "large commercial passenger vessel[s]". I believe that the "broad power" of the legislature to amend adopted initiatives recognized by the courts is entirely sufficient in this instance to prevent the present amendments from being interpreted by a court as offending art. XI, sec. 6 of the Alaska Constitution. The bill draft's proposed amendments to AS 46.03.462, 46.03.463, and 46.03.465 address only three of eleven substantive sections (the twelfth provided an effective date) of the initiative, and the draft does not seek to change any application of the initiative's provisions to the "large" cruise ship industry at which it was directed. For these reasons, if the amendment were to be challenged, a court could find that the amendment does not operate as a repeal of the initiative's provisions "to the extent that they are materially changed by, and rendered repugnant to, the amendatory act." Meyers v. Board of Supervisors of Los Angeles County, 243 P.2d 38, 42 (Cal. 1952).

If you have questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:med
07-208.med



Alaska Division of Elections

**INITIATIVE PETITION BILL LANGUAGE
by Petition Sponsors**

Petition ID: 03CTAX

**FOR AN ACT PROVIDING FOR TAXATION OF CERTAIN
COMMERCIAL SHIP
VESSELS, PERTAINING TO CERTAIN VESSEL
ACTIVITIES and RELATED TO
SHIP VESSEL OPERATIONS TAKING PLACE IN THE
MARINE WATERS OF THE
STATE OF ALASKA**

Posted 7/13/06

Proposed Bill:

**FOR AN ACT PROVIDING FOR TAXATION OF CERTAIN COMMERCIAL SHIP
VESSELS, PERTAINING TO CERTAIN VESSEL ACTIVITIES and RELATED TO
SHIP VESSEL OPERATIONS TAKING PLACE IN THE MARINE WATERS OF THE
STATE OF ALASKA**

Be it enacted by the People of the State of Alaska:

***Section 1.** AS 43 is amended by adding a new chapter to read:

Chapter 52. Excise Tax on Travel Aboard Commercial Passenger Vessels.

Sec. 42.52.010. Levy of excise tax on overnight accommodations on commercial passenger vessels. There is imposed an excise tax on travel on commercial passenger vessels providing overnight accommodations in the state's marine waters.

Sec. 43.52.020. Rate of tax. The tax imposed by AS 43.52.010 - 43.52.095 is levied at a rate of \$46 a passenger per voyage.

Sec. 43.52.030. Liability for payment of tax. A passenger traveling on a commercial

passenger vessel providing overnight accommodations in state marine water is liable for the tax imposed by AS 43.52.010 -- 43.52.095. The tax shall be collected and is due and payable to the department

(1)) by the person who provides travel aboard a commercial vessel for which the tax is payable; and

(2) in the manner and at the times required by the department by regulation.

Sec. 43.52.040. Disposition of receipts. (a) (a) The proceeds from the tax on travel on commercial passenger vessels providing overnight accommodations in the state's marine water shall be deposited in a special "Commercial Vessel Passenger Tax Account" in the general fund. The legislature may appropriate money from this account for the purposes described in (b) and (c) of this section, for state-owned port and harbor facilities, other services to properly provide for vessel or watercraft visits, to enhance the safety and efficiency of interstate and foreign commerce and such other lawful purposes as determined by the legislature.

(b) For each voyage of a commercial passenger vessel providing overnight accommodations, the commissioner shall identify the first five ports of call in the state and the number of passengers on board the vessel at each port of call. Subject to appropriation by the legislature, the commissioner shall distribute to each port of call \$5 per passenger of the tax revenue collected from the tax levied under this chapter. If the port of call is a city located within a borough not otherwise unified with the borough, the commissioner shall, subject to appropriation by the legislature, distribute \$2.50 per passenger to the city and \$2.50 to the borough. Each port of call receiving funds under this section shall use the funds in a manner calculated to improve port and harbor facilities and other services to properly provide for vessel or watercraft visits and to enhance the safety and efficiency of interstate and foreign commerce.

(c) "Regional Cruise Ship Impact Fund" consisting of 25% of the proceeds from the tax on travel aboard commercial passenger vessels providing overnight accommodations in the state's marine water shall be established as sub-account of the funds established in (a), above, and deposited in the general fund. Subject to appropriation by the legislature and regulations adopted by the Department of Revenue, the commissioner shall distribute funds to municipalities or other governmental entities within the Prince William Sound Region, Southeast Alaska or any other distinctive region impacted by cruise ship related tourism activities but not entitled to receive funds based on port of call visitation as allowed by (b), above, provided that any funds used from this account shall be used to provide services and infrastructure directly related to passenger vessel or watercraft visits or to enhance the safety and efficiency of interstate and foreign commerce related to vessel or watercraft activities.

Sec. 43.52.050. Administration. (a) The department shall

(1) administer this chapter; and

(2) collect, supervise, and enforce the collection of taxes due under this chapter and penalties as provided in AS 43.05.

(b) The department may adopt regulations necessary for the administration of this chapter.

Sec. 43.52.060. Local levies. Any municipality, whether home rule or general law, that receives passenger ship fee funds under this chapter may not impose an additional form of tax on travel on commercial passenger vessels engaged in activities involving overnight accommodations for passengers in state marine waters. Any form of tax on travel on commercial passenger vessels engaged in activities involving overnight accommodations for passengers in state marine waters enacted by a municipality, whether home rule or general law, prior to the effective date of this legislation shall expire one year after enactment of this law if that municipality elects to receive funds under this chapter.

Sec. 43.52.095. Definitions. In this chapter, (1) "commercial passenger vessel" means a boat or vessel that is used in the common carriage of passengers in commerce; "commercial passenger vessel" does not include

(A) vessels with fewer than 250 berths or other overnight accommodations for passengers;

(B) noncommercial vessels, warships, and vessels operated by the state, the United States or a foreign government;

(2) "marine water of the state" and "state marine water" have the meaning given to "waters" in AS 46.03.900, except that they include only marine waters.

(3) "passenger" means a person whom a common carrier has contracted to carry from one place to another.

(4) "voyage" means any trip or itinerary lasting more than 72 hours.

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

Chapter 16. Games of Chance and Contests of Skill on Ships Operating on Waters Within the Jurisdiction of Alaska.

Sec. AS 05.16.010. Gambling activities aboard commercial vessels purportedly authorized by federal law. This chapter applies to the use of playing cards, dice, roulette wheels, coin-operated instruments or machines, or other objects or instruments used, designed, or intended for gaming or gambling used in the waters under the jurisdiction of the State of Alaska on a voyage described in 15 U.S.C. Section 1175(c)(2), and to any other gambling activities taking place aboard large passenger vessels in the state.

Sec. 05.16.020. Tax on gambling activities authorized by AS 05.16.010. There is imposed on the operator of a gaming or gambling activities aboard large passenger vessels in the state a tax of 33% of the adjusted gross income from those activities. "Adjusted gross income" means gross income less prizes awarded and federal and municipal taxes paid or owed on the income. The tax shall be collected and is due and payable to the department of revenue in the manner and at the times required by the department of revenue.

Sec. 05.16.030. Disposition of receipts. (a) The proceeds from the tax on gambling operations aboard commercial passenger vessels in the state's marine water shall be deposited in a special "Commercial Vessel Passenger Tax Account" in the general fund.

***Sec. 3.** AS 43.20.021 is repealed and reenacted as follows:

Sec. 43.20.021(a). Internal Revenue Code adopted by reference. (a) Sections 26 U.S.C. - 1399 and 6001 - 7872 (Internal Revenue Code), as amended, are adopted by reference as a part of this chapter. These portions of the Internal Revenue Code have full force and effect under this chapter unless excepted to or modified by other provisions of this chapter.

(b) Nothing in this chapter or in AS 43.19 (Multistate Tax Compact) may be construed as an exception to or modification of 26 U.S.C. 883.

(c) The provision in (b), above, does not apply to commercial passenger vessels as defined in AS 43.52.095.

***Sec 4.** AS 46.03.462 is repealed and re-enacted as follows:

Sec. 46.03.462. Terms and conditions of discharge permits.(a) An owner or operator may not discharge any treated sewage, graywater, or other wastewater from a large commercial passenger vessel into the marine waters of the state unless the owner or operator obtains a permit under AS 46.03.100, which shall comply with the terms and conditions of vessel discharge requirements specified in (b) of this section.

(b) The minimum standard terms and conditions for all discharge permits authorized under this provision require that the owner or operator:

(1) may not discharge untreated sewage, treated sewage, graywater, or other wastewaters in a manner that violates any applicable effluent limits or standards under state or federal law, including Alaska Water Quality Standards governing pollution at the point of discharge;

(2) shall maintain records and provide the reports required under AS 46.03.465(a);

(3) shall collect and test samples as required under AS 46.03.465(b) and (d) and provide the reports with respect those samples required by AS 46.03.475(c);

- (4) shall report discharges in accordance with AS 46.03.475(a);
- (5) shall allow the department access to the vessel at the time samples are taken under AS 46.03.465 for purposes of taking the samples or for purposes of verifying the integrity of the sampling process; and
- (6) shall submit records, notices, and reports to the department in accordance with AS 46.03.475(b), (d), and (e).

***Sec. 5.** AS 46.03.463 is amended to read as follows:

Sec. 46.03.463(d) is repealed.

Sec. 46.03.463(e) is repealed and reenacted to read: An owner or operator may not discharge any treated sewage, graywater, or other wastewater from a large commercial passenger vessel into the marine waters of the state unless the owner or operator obtains a permit under AS 46.03.100 and AS 46.03.462, and provided that the vessel is not in an area where the discharge of treated sewage, graywater or other wastewaters is otherwise prohibited.

Sec. 46.03.463(g) is repealed.

***Sec 6.** AS 46.03.465 repealed and reenacted to read as follows:

Sec. 46.03.465. Information-gathering requirements. (a) The owner or operator of a commercial passenger vessel shall maintain daily records related to the period of operation while in the State, detailing the dates, times, and locations, and the volumes and flow rates of any discharges of sewage, graywater, or other waster into the marine waters of the State, provide electronic copies of such records on a monthly basis to the department no later than 5 days after each calendar month of operation in State waters.

(b) while a commercial passenger vessel is present in the marine waters of the State, the owner or operator of the vessel shall provide an hourly report of the vessel's location based on Global Positioning System technology and collect routine samples of the vessel's treated sewage, graywater, and other wastewaters being discharged into marine waters of the State with a sampling technique approved by the department.

(c) while a commercial passenger vessel is present in the marine waters of the State, the Department, or an independent contractor retained by the Department, may collect additional samples of the vessel's treated sewage, graywater, and other wastewaters being discharged into the marine waters of the State.

(d) the owner or operator of a vessel required to collect samples under (b) of this section shall ensure that all sampling techniques and frequency of sampling events are approved by the department in a manner sufficient to ensure demonstration of compliance with all discharge requirements under AS 46.03.462.

(e) the owner or operator of a commercial passenger vessel shall pay for all reporting, sampling and testing of samples under this section.

(f) if the owner or operator of a commercial passenger vessel has, when complying with another state or federal law that requires substantially equivalent information required under (a), (b), or (d) of this section, the owner or operator shall be considered to be in compliance with that subsection so long as the information is also provided to the department.

***Sec. 7.** AS 46.03 is amended to include new provisions as follows:

Sec. 46.03.476. Ocean Rangers. (a) An owner or operator of a large commercial passenger vessel entering the marine waters of the state is required to have a marine engineer licensed by the United States Coast Guard hired or retained by the department on board the vessel to act as an independent observer for the purpose of monitoring state and federal requirements pertaining to marine discharge and pollution requirements and to insure that passengers, crew and residents at ports are protected from improper sanitation, health and safety practices.

(b) The licensed marine engineer shall monitor, observe and record data and information related to the engineering, sanitation and health related operations of the vessel, including but not limited to registration, reporting, record keeping and discharge functions required by state and federal law.

(c) Any information recorded or gathered by the licensed marine engineer shall be promptly conveyed to the Alaska Department of Environmental Conservation and the United State Coast Guard on a form or in a manner approved by the Commissioner of Environmental Conservation. The Commissioner may share information gathered with other state and federal agencies.

46.03.481. Citizens suits. (a) Any citizen of the State of Alaska may commence a civil action (1) against an owner or operator of a large passenger vessel alleged to have violated any provision of this chapter, or (2) against the department where there is an alleged failure to perform any act or duty under this chapter which is not discretionary. No civil action may be commenced under this section, however, prior to 45 days after the plaintiff has provided written notice of the intent to sue to the Attorney General of Alaska.

(b) Subject to appropriation, as necessary, up to 50% and not less than 25% of any fines, penalties or other funds recovered as a result of enforcement of this chapter shall be paid to the person or entity, other than the defendant, providing information sufficient to commence an investigation and enforcement of this chapter under this provision.

***Sec. 8.** AS 46.03.480 is amended as follows:

Sec. 46.03.480 is amended by adding a new section to read:

(d) An additional fee in the amount of \$4.00 per berth, is imposed on all large commercial passenger vessels, other than vessels operated by the state, for the purpose of operating the Ocean Ranger program established in AS 46.03.476; said program shall be subject to legislative appropriation.

Sec. 46.03.480(d) shall be repealed and reenacted as 46.03.480(e).

***Sec. 9.** As 46.03.760 is amended as follows:

Sec. AS 46.03.760 is amended by adding a new section to read:

(f) An owner, agent, employee or operator of a commercial passenger vessels as defined in AS 43.52.095 who falsifies a registration or report required by AS 46.03.460 or 46.03.475 or who violates or causes or permits to be violated a provision of AS 46.03.250 - 46.03.314, 46.03.460 - 46.03.490, AS 46.14, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under AS 46.03.250 - 46.03.314, 46.03.460 - 46.03.490, or AS 46.14 is liable, in a civil action, to the state for a sum to be assessed by the court of not less than \$5000 nor more than \$100,000 for the initial violation, nor more than \$10,000 for each day after that on which the violation continues, and that shall reflect, when applicable,

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, that shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality; for a violation relating to AS 46.14, the court, in making its determination under this paragraph, shall also consider the degree to which the discharge causes harm to persons or property; this paragraph may not be construed to limit the right of parties other than the state to recover for personal injuries or damage to their property;

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation;

(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged; and

(4) the need for an enhanced civil penalty to deter future noncompliance.

Sec. 46.03.760(f) shall be repealed and reenacted as 46.03.760(g).

***Sec. 10.** AS 45.50.474 is repealed and reenacted to read as follows:

Sec. 45.50.474. Required disclosures in promotions and shore side sales on board cruise ships.(a) A person may not conduct a promotion on board a cruise ship that mentions or features a business in a state port that has paid something of value for the purpose of having the business mentioned, featured or otherwise promoted, unless the person conducting the promotion clearly and fully discloses orally and in all written materials used in the promotion that the featured businesses have paid to be included in the promotion. All such written notice of disclosure shall be in a type not less than 14-point typeface and in a contrasting color calculated to draw attention to the disclosure.

(b) A person or other entity aboard a cruise ship conducting or making a sale of tours, flightseeing operations or other shore-side activities to be delivered by a vendor or other entity at a future port of call shall disclose, both orally and in writing, the amount of commission or percentage of the total sale retained or returned to the person making the sale. The person or entity aboard a cruise ship making or attempting to make a sale of services or goods provided by a shore-side vendor shall disclose the address and telephone number of the shore side vendor if asked by a consumer. All such written notice of disclosure shall be in a type not less than 14-point typeface and in a contrasting color calculated to draw attention to the disclosure.

(c) Each violation of this section constitutes an unfair trade practice under AS 45.50.471, and shall result in a penalty of not more than \$100 for each violation. In this section, "cruise ship" means a ship that operates at least 48 hours in length for ticketed passengers, provides overnight accommodations and meals for at least 250 passengers, is operated by an authorized cruise ship operator, and is certified under the International Convention for the Safety of Life at Sea or otherwise certified by the United States Coast Guard.

Section 11. Severability. It is the intention of the people of Alaska that any portion of this legislation that is declared unlawful shall be stricken in a manner that preserves the remaining portion of the remaining legislation to the maximum extent possible.

Section 12. Effective Date. This Act takes effect 90 days after enactment.

End

← Initiative Petition Status Report

← Alaska Division of Elections Home Page



LAWS OF ALASKA

2004

Source
HB 522 am

Chapter No.

AN ACT

Relating to discharges from small commercial passenger vessels; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

Enrolled HB 522

AN ACT

1 Relating to discharges from small commercial passenger vessels; and providing for an
2 effective date.

3

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) the Department of Environmental Conservation was required under sec. 8,
8 ch. 1, FSSLA 2001, to submit a report to the governor recommending whether small
9 commercial passenger vessels should remain in the commercial passenger vessel
10 environmental compliance program; due to concerns regarding discharges while vessels are
11 stationary in port or at anchorage, the department recommended that small commercial
12 passenger vessels remain in the commercial passenger vessel environmental compliance
13 program;

14 (2) small commercial passenger vessels built after December 31, 2003, can be

1 designed, constructed, and equipped to fully comply with the water discharge standards in
2 AS 46.03.460 - 46.03.490; and

3 (3) older small commercial passenger vessels, built before January 1, 2004,
4 cannot comply with AS 46.03.462(c) and 46.03.463(b) and (c) due to limitations of maritime
5 construction, United States Coast Guard stability restrictions, and licensing requirements;
6 therefore, a different regulatory scheme should be devised for this category of small
7 commercial passenger vessels.

8 (b) It is the intent of this Act to create a regulatory system that allows older small
9 commercial passenger vessels to continue to operate in Alaska waters, while taking steps to
10 minimize discharges and harm to the marine environment from vessel activities.

11 * Sec. 2. AS 46.03.462(a) is amended to read:

12 (a) An owner or operator required to register under AS 46.03.461 shall comply
13 with [EITHER] the standard terms and conditions of vessel discharges specified in (b)
14 of this section, [OR] the alternative terms and conditions of vessel discharges specified
15 in (c) of this section, or the alternative terms and conditions included in the plan
16 approved by the department under (e) of this section.

17 * Sec. 3. AS 46.03.462(a) is amended to read:

18 (a) An owner or operator required to register under AS 46.03.461 shall comply
19 with either the standard terms and conditions of vessel discharges specified in (b) of
20 this section or [,] the alternative terms and conditions of vessel discharges specified in
21 (c) of this section [, OR THE ALTERNATIVE TERMS AND CONDITIONS
22 INCLUDED IN THE PLAN APPROVED BY THE DEPARTMENT UNDER (e) OF
23 THIS SECTION].

24 * Sec. 4. AS 46.03.462(d) is amended to read:

25 (d) Alternative terms and conditions of vessel discharges approved by the
26 department under (c) of this section may, if determined appropriate by the department,
27 include a waiver by the department of portions of the requirements of AS 46.03.463
28 and 46.03.465, for the time period that the department determines to be appropriate
29 Alternative terms and conditions of vessel discharges approved by the
30 department under (e) of this section may, if determined appropriate by the
31 department, include a waiver by the department of portions of the requirements

1 of AS 46.03.463 for the time period for which the plan submitted under (e) of this
2 section is approved.

3 * Sec. 5. AS 46.03.462(d) is amended to read:

4 (d) Alternative terms and conditions of vessel discharges approved by the
5 department under (c) of this section may, if determined appropriate by the department,
6 include a waiver by the department of portions of the requirements of AS 46.03.463
7 and 46.03.465, for the time period that the department determines to be appropriate.
8 [ALTERNATIVE TERMS AND CONDITIONS OF VESSEL DISCHARGES
9 APPROVED BY THE DEPARTMENT UNDER (e) OF THIS SECTION MAY, IF
10 DETERMINED APPROPRIATE BY THE DEPARTMENT, INCLUDE A WAIVER
11 BY THE DEPARTMENT OF PORTIONS OF THE REQUIREMENTS OF
12 AS 46.03.463 FOR THE TIME PERIOD FOR WHICH THE PLAN SUBMITTED
13 UNDER (e) OF THIS SECTION IS APPROVED.]

14 * Sec. 6. AS 46.03.462 is amended by adding new subsections to read:

15 (e) The owner or operator of a small commercial passenger vessel may submit
16 a plan for alternative terms and conditions of vessel discharges if the keel of the vessel
17 was laid before January 1, 2004. Except as provided in (f) of this section, the
18 department shall approve the plan for a three-year period if the department finds that
19 the alternative terms and conditions in the plan incorporate the best management
20 practices for protecting the environment to the maximum extent feasible. The
21 department shall adopt regulations to implement this subsection but may not require
22 an owner or operator to retrofit a vessel solely for the purpose of waste treatment if the
23 retrofitting requires additional stability testing or relicensing by the United States
24 Coast Guard. In this subsection, "best management practices" means schedules of
25 activities, prohibitions of practices, maintenance procedures, and other management
26 practices to prevent or reduce the pollution of the marine waters of the state.

27 (f) A plan submitted under (e) of this section after December 31, 2012, may
28 not be approved by the department for a period extending beyond December 31, 2015.

29 * Sec. 7. AS 46.03.463(b) is amended to read:

30 (b) Except as provided in (h) of this section or under AS 46.03.462(c) - (e)
31 [AS 46.03.462(c) - (d)], a person may not discharge sewage from a commercial

1 passenger vessel into the marine waters of the state that has suspended solids greater
2 than 150 milligrams per liter or a fecal coliform count greater than 200 colonies per
3 100 milliliters except that the department may by regulation adopt a protocol for
4 retesting for fecal coliform, if this discharge limit for fecal coliform is exceeded, under
5 which a discharger will be considered to be in compliance with the fecal coliform limit
6 if the geometric mean of fecal coliform count in the samples considered under the
7 protocol does not exceed 200 colonies per 100 milliliters. Upon submission by the
8 owner or operator of a small commercial passenger vessel of a plan for interim
9 protective measures under AS 46.03.462(c)(2) and (d), the department shall extend
10 the time for compliance of that vessel with this subsection.

11 * **Sec. 8.** AS 46.03.463(b) is amended to read:

12 (b) Except as provided in (h) of this section or under AS 46.03.462(c) - (d)
13 [AS 46.03.462(c) - (e)], a person may not discharge sewage from a commercial
14 passenger vessel into the marine waters of the state that has suspended solids greater
15 than 150 milligrams per liter or a fecal coliform count greater than 200 colonies per
16 100 milliliters except that the department may by regulation adopt a protocol for
17 retesting for fecal coliform, if this discharge limit for fecal coliform is exceeded, under
18 which a discharger will be considered to be in compliance with the fecal coliform limit
19 if the geometric mean of fecal coliform count in the samples considered under the
20 protocol does not exceed 200 colonies per 100 milliliter. Upon submission by the
21 owner or operator of a small commercial passenger vessel of a plan for interim
22 protective measures [UNDER AS 46.03.462(c)(2) AND (d)], the department shall
23 extend the time for compliance of that vessel with this subsection.

24 * **Sec. 9.** AS 46.03.463(c) is amended to read:

25 (c) Except as provided in (h) of this section or under AS 46.03.462(c) - (e)
26 [AS 46.03.462(c) - (d)], a person may not discharge graywater or other wastewater
27 from a commercial passenger vessel into the marine waters of the state that has
28 suspended solids greater than 150 milligrams per liter or a fecal coliform count greater
29 than 200 colonies per 100 milliliters except that the department may by regulation
30 adopt a protocol for retesting for fecal coliform, if this discharge limit for fecal
31 coliform is exceeded, under which a discharger will be considered to be in compliance

1 with the fecal coliform limit if the geometric mean of fecal coliform count in the
2 samples considered under the protocol does not exceed 200 colonies per 100
3 milliliters. Upon submission by the owner or operator of a large commercial
4 passenger vessel of a plan for interim protective measures, the department shall extend
5 the time for compliance of that vessel with this subsection for a period of time that
6 ends not later than January 1, 2003. Upon submission by the owner or operator of a
7 small commercial passenger vessel of a plan for interim protective measures under
8 AS 46.03.462(c)(2) and (d), the department shall extend the time for compliance of
9 that vessel with this subsection.

10 * Sec. 10. AS 46.03.463(c) is amended to read:

11 (c) Except as provided in (h) of this section or under AS 46.03.462(c) - (d)
12 [AS 46.03.462(c) - (e)], a person may not discharge graywater or other wastewater
13 from a commercial passenger vessel into the marine waters of the state that has
14 suspended solids greater than 150 milligrams per liter or a fecal coliform count greater
15 than 200 colonies per 100 milliliters except that the department may by regulation
16 adopt a protocol for retesting for fecal coliform, if this discharge limit for fecal
17 coliform is exceeded, under which a discharger will be considered to be in compliance
18 with the fecal coliform limit if the geometric mean of fecal coliform count in the
19 samples considered under the protocol does not exceed 200 colonies per 100
20 milliliters. Upon submission by the owner or operator of a large commercial
21 passenger vessel of a plan for interim protective measures, the department shall extend
22 the time for compliance of that vessel with this subsection for a period of time that
23 ends not later than January 1, 2003. Upon submission by the owner or operator of a
24 small commercial passenger vessel of a plan for interim protective measures [UNDER
25 AS 46.03.462(c)(2) AND (d)], the department shall extend the time for compliance of
26 that vessel with this subsection.

27 * Sec. 11. AS 46.03.463(e) is amended to read:

28 (e) Except as provided in (g) and (h) of this section or under AS 46.03.462(c) -
29 (e) [AS 46.03.462(c) - (d)], a person may not discharge any treated sewage, graywater,
30 or other wastewater from a large commercial passenger vessel into the marine waters
31 of the state unless

1 (1) the vessel is underway and proceeding at a speed of not less than
2 six knots;

3 (2) the vessel is at least one nautical mile from the nearest shore,
4 except in areas designated by the department;

5 (3) the discharge complies with all applicable vessel effluent standards
6 established under the federal cruise ship legislation and any other applicable law; the
7 standards under the federal cruise ship legislation and other applicable law may be
8 adopted by regulation by the department; and

9 (4) the vessel is not in an area where the discharge of treated sewage,
10 graywater, or other wastewater is prohibited.

11 * Sec. 12. AS 46.03.463(e) is amended to read:

12 (e) Except as provided in (g) and (h) of this section or under AS 46.03.462(c) -
13 (d) [AS 46.03.462(c) - (e)], a person may not discharge any treated sewage, graywater,
14 or other wastewater from a large commercial passenger vessel into the marine waters
15 of the state unless

16 (1) the vessel is underway and proceeding at a speed of not less than
17 six knots;

18 (2) the vessel is at least one nautical mile from the nearest shore,
19 except in areas designated by the department;

20 (3) the discharge complies with all applicable vessel effluent standards
21 established under the federal cruise ship legislation and any other applicable law; the
22 standards under the federal cruise ship legislation and other applicable law may be
23 adopted by regulation by the department; and

24 (4) the vessel is not in an area where the discharge of treated sewage,
25 graywater, or other wastewater is prohibited.

26 * Sec. 13. AS 46.03.462(e) and 46.03.462(f) are repealed.

27 * Sec. 14. The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 **RETROACTIVE EFFECT FOR 2004 SEASON.** (a) If the owner or operator of a
30 small passenger vessel whose keel was laid before December 31, 2003, submits a plan under
31 AS 46.03.462(e), enacted by sec. 6 of this Act, within 30 days after the effective date of this

1 section and the Department of Environmental Conservation accepts the plan, the plan is
2 considered to be approved retroactively to the first day the vessel operated in the marine
3 waters of the state in 2004.

4 (b) The plan of an owner or operator is considered to be submitted by the deadline in
5 (a) of this section if initial submission is by that date, notwithstanding that amendments to the
6 plan may be required after that date in order for the department to approve the plan.

7 (c) Notwithstanding (a) and (b) of this section, the retroactive effect of the
8 department's approval under this section applies only if the plan submitted under
9 AS 46.03.462(e) is approved by December 31, 2004.

10 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 **RETROACTIVITY.** Sections 1, 2, 4, 6, 7, 9, and 11 of this Act are retroactive to
13 January 1, 2004.

14 * **Sec. 16.** Sections 3, 5, 8, 10, 12, and 13 of this Act take effect January 1, 2016.

15 * **Sec. 17.** Except as provided in sec. 16 of this Act, this Act takes effect immediately under
16 AS 01.10.070(c).

Journal Text for HB522 in the 23rd Legislature



Full Journal

04-06-2004

House Journal

3228

Representative Weyhrauch moved and asked unanimous consent that Amendment No. 1 be adopted.

Representative Fate objected and withdrew the objection.

There being no further objection, Amendment No. 1 was adopted.

Representative Coghill moved and asked unanimous consent that HB 522 am be considered engrossed, advanced to third reading, and placed on final passage. There being no objection, it was so ordered.

HB 522 am was read the third time.

The question being: "Shall HB 522 am pass the House?" The roll was taken with the following result:

HB 522 am
Third Reading
Final Passage

YEAS: 40 NAYS: 0 EXCUSEL: 0 ABSENT: 0

Yeas: Anderson, Berkowitz, Chenault, Cissna, Coghill, Crawford, Croft, Dahlstrom, Fate, Foster, Gara, Gatto, Gruenberg, Guttenberg, Harris, Hawker, Heinze, Holm, Joule, Kapsner, Kerttula, Kohring, Kookesh, Kott, Lynn, Masek, McGuire, Meyer, Morgan, Moses, Ogg, Rokeberg, Samuels, Seaton, Stepovich, Stoltze, Weyhrauch, Williams, Wilson, Wolf

And so, HB 522 am passed the House.

Representative Coghill moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clause. There being no objection, it was so ordered.

HB 522 am was referred to the Chief Clerk for engrossment.

Bill Root:

Display Bill Root

Next Bill

To Report Problems with Basis Inquiry

Journal Text for HB522 in the 23rd Legislature



Full Journal

05-07-2004

Senate Journal

3428

HB 522

HOUSE BILL NO. 522 am "An Act relating to discharges from small commercial passenger vessels; and providing for an effective date" was read the second time.

Senator Ben Stevens moved and asked unanimous consent that the bill be advanced to third reading and placed on final passage. Without objection, it was so ordered.

HOUSE BILL NO. 522 am was read the third time.

The question being: "Shall HOUSE BILL NO. 522 am "An Act relating to discharges from small commercial passenger vessels; and providing for an effective date" pass the Senate?" The roll was taken with the following result:

HB 522 am
Third Reading - Final Passage
Effective Dates

YEAS: 20 NAYS: 0 EXCUSED: 0 ABSENT: 0

Yeas: Bunde, Cowdery, Davis, Dyson, Ellis, Elton, French, Green, Guess, Hoffman, Lincoln, Ogan, Olson, Seekins, Stedman, Stevens B, Stevens G, Theriault, Wagoner, Wilken

and so, HOUSE BILL NO. 522 am passed the Senate.

Senator Ben Stevens moved and asked unanimous consent that the vote on the passage of the bill be considered the vote on the effective date clauses. Without objection, it was so ordered and the bill was signed by the President and Secretary and returned to the House.

Bill Root:

Display Bill Root

Next Bill

To Report Problems with Basis Inquiry

Live KTOO Streams



SB

139



HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
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Rep. Max Gruenberg
Room 110
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: January 17, 2008

To: Representative John Coghill
Chairman House Rules Committee

From: Representative Jay Ramras
Chairman House Judiciary Committee

Re: Transmittal for HCS SSSB 139(JUD)

Enclosed please find the following documents pertaining to HCS SSSB 139(JUD):

- Sponsor Statement
- HCS SSB 139(JUD) 25-LS0792\M
- HCR re: Title Change
- House Judiciary Committee Report
- SSSB 139 25-LS0792\C
- SB 139 25-LS0792\A
- Fiscal Notes
 - ADM - 0
 - LAW - 0
- AS 09.65.093
- *McLemore v. Harris* 374 P.2d 410 (Alaska 1962)

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Nome, AK 99762-1630
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Alaska State Legislature



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SENATOR DONALD C. OLSON

DISTRICT T

SPONSOR STATEMENT

SSSB 139, Liability for Airports and Airstrips

Alakanuk
Ambler
Anaktuvuk Pass
Atkasuk
Barrow
Brovig Mission
Browerville
Buckland
Chevak
Deering
Diomedea
Elim
Emmonak
Gambell
Golovin
Hooper Bay
Kaktovik
Kiana
Kivalina
Kobuk
Kotlik
Kotzebue
Koyak
Mountain Village
Noatak
Nome
Noorvik
Nuiqsut
Nunam Iqua
Pilot Station
Pitka's Point
Point Hope
Point Lay
Savoonga
Scammon Bay
Selawik
Shaktolik
Shishmaref
Shungnak
St. Mary's
St. Michael
Stebbins
Teller
Unalakleet
Wainwright
Wales
White Mountain

SB 139 is introduced to correct changes to the limited liability statutes for runways, airfields, and landing areas enacted by Chapter 39, SLA 04 that inadvertently negated the purpose and intent of that legislation. The original liability limitation applied to airstrips and landing areas on public and private land that are both marked by placement of a large "X" on the ground and are listed as closed in FAA charts and publications.

Specifically, the wording of AS 09.65.093 (b) created confusion as to the requirements an airport owner or operator had to meet to be exempt from liability during time when an airstrip was not actively in use. The problem is that under federal regulations the X marking and the FAA notification is only for "abandoned" airstrips. This was neither the intent of the legislation's sponsors nor the 37 representatives and 20 senators that voted for its enactment.

The proposed House Judiciary Committee substitute for SB 139 resolves the impairment of chapter 39 by deleting the (b) subsection with a corresponding adjustment to include airstrip owners in the (a) subsection. In this way, SB 139 preserves the original intention of AS 09.65.093 to limit the liability for those Alaskans who own, operate and maintain airfields and landing strips on private and public lands. These facilities are often essential for transportation to vast areas of the state that lack public access.

The bill does not change liability protections against acts of gross negligence, recklessness or intentional misconduct.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SSSB 139
 () Publish Date: _____

Identifier (file name): SB139SS-DOA-RM-12-04-07 Dept. Affected: Administration
 Title An act relating to liability for certain airfield RDU Risk Management
owners or operators Component Risk Management
 Sponsor Senators Oson and Huggins
 Requester _____ Component Number _____

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This bill repeals existing law limiting civil liability in circumstances where a listed or chartered runway is marked closed in accordance with Federal Aviation Administration (FAA) guidelines and that closure is published in the appropriate FAA aeronautical charts and publications.

The specific conditions precedent to this protection are rarely in place - typically only in a major reconstruction project of an existing runway.

Given the rarity of these circumstances, Risk Management anticipates no measurable effect to the state's airport insurance program, therefore no fiscal impact is presented.

Prepared by: J. Brad Thompson, Director
 Division: Risk Management
 Approved by: Kevin Brooks, Deputy Commissioner
Department of Administration

Phone 465-5723
 Date/Time 12/4/07 12:00 AM
 Date 12/4/2007

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: SSSB139-LAW-CIV-01-15-08
 Bill Version: SSSB139
 () Publish Date: _____

Identifier (file name): _____ Dept. Affected: LAW
 Title An Act relating to liability for airports and airstrips RDU CIVIL
 Component Torts & Workers Compensation
 Sponsor Senator(s) Olson, Huggins
 Requester House Judiciary Component Number _____

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES							
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated of any current year (FY2008) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

The bill would limit liability of an owner or operator of an aircraft runway, airfield or landing area listed or charted, and designated as private in the appropriate aeronautical charts and publications published by the Federal Aviation Administration. Enactment of the bill is not anticipated to fiscally impact the Department of Law.

Prepared by: Robert Meiners, Administrative Services Manager
 Division: Administrative Services Division
 Approved by: Talis Colberg, Attorney General
Department of Law

Phone 907-465-5427
 Date/Time 1/15/08 8:00 AM
 Date 1/15/2008

Westlaw.

AK ST § 09.65.093

Page 1

AS § 09.65.093



West's Alaska Statutes Annotated Currentness

Title 9. Code of Civil Procedure

Chapter 65. Actions, Immunities, Defenses, and Duties

→ § 09.65.093. Civil liability relating to aircraft runways, airfields, and landing areas

(a) Except as provided in (c) of this section, a person who without compensation constructs, maintains, or repairs an aircraft runway, airfield, or landing area may not be held civilly liable, except for an act or omission that constitutes gross negligence or recklessness or intentional misconduct, for the injury to or death of a person or for damage to an aircraft, resulting from the use of the runway, airfield, or landing area to take off, land, park, or operate an aircraft.

(b) A person who is the owner or operator of an aircraft runway, airfield, or landing area is not civilly liable, except for an act or omission that constitutes gross negligence or recklessness or intentional misconduct, for the injury to or the death of a person or for damage to an aircraft, resulting from the use or attempted use of the runway, airfield, or landing area to take off, land, park, or operate an aircraft while the runway, airfield, or landing area is

(1) marked as closed by placement of a large "X" on the runway, in accordance with Federal Aviation Administration guidelines; and

(2) listed or charted, and designated as closed in the appropriate aeronautical charts and publications published by the Federal Aviation Administration.

(c) The immunity from civil liability under (a) of this section does not limit the liability of an owner or operator of an aircraft runway, airfield, or landing area to a provider of flight services or its passengers under contract with the owner or operator.

SLA 2001, ch. 56, § 12; SLA 2004, ch. 39, § 1, 2.

LIBRARY REFERENCES

Aviation ↪ 232.

Westlaw Key Number Search: 48Bk232.

C.J.S. Aeronautics and Aerospace §§ 71 to 72, 76 to 82, 131.

AS § 09.65.093, AK ST § 09.65.093

Current through the 2007 First Regular and First Special Sessions of the 25th Legislature

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END OF DOCUMENT

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CJS AERO § 146

Page 1

2A C.J.S. Aeronautics & Aerospace § 146

Corpus Juris Secundum
Database updated December 2007

Aeronautics & Aerospace
By Lucas Martin, J.D.

IX. Duties and Liabilities Arising Generally from Operation of Aircraft

A. Nature and Grounds of Liability

3. Proximate Cause; Contributory Negligence and Assumption of Risk; Damage to Aircraft by Third Person

Topic Summary References Correlation Table

§ 146. Damage to aircraft caused by third person

West's Key Number Digest

West's Key Number Digest, Aviation ☞ 145. 147.

A person may be liable for injuries to another's aircraft caused by his negligence.

A person may be liable for injuries to another's aircraft caused by his negligence.[FNI]

[FNI] Mich.—Lawrence C. Young, Inc. v. Servair, Inc., 33 Mich. App. 643, 190 N.W.2d 316 (1971).

Deliberately parking truck on airfield

A defendant's deliberately parking a truck on a bush airfield in a position in which it was struck by a plaintiff's landing aircraft, with full knowledge of hazards he was thereby creating, evidenced reckless disregard of possible consequences and indifference to the rights of others, and such a showing supported a finding that he was guilty of gross and wanton negligence.

Alaska—McLemore v. Harris, 374 P.2d 410 (Alaska 1962).

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CJS AERO § 146

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(Cite as: 374 P.2d 410)

C

McLEMORE v. HARRIS
Alaska 1962

Supreme Court of Alaska.
Larche R. McLEMORE, Appellant.

v.

James HARRIS, Appellee.
No. 197.

Sept. 5, 1962.

Action to recover for damage to airplane allegedly caused by collision with truck wilfully or recklessly left by defendant on a bush airstrip where the plaintiff landed. The Superior Court of the State of Alaska, Third Judicial District, Hubert A. Gilbert, J., affirmed the magistrate court's judgment for the plaintiff. An appeal was taken. The Supreme Court, Arend, J., held that defendant's deliberately parking truck on bush airfield in position in which it was struck by plaintiff's landing aircraft, with full knowledge of hazards he was thereby creating, evidenced reckless disregard of possible consequences and indifference to rights of others, and such showing supported finding that he was guilty of gross and wanton negligence.

Affirmed.

West Headnotes

[1] Aviation 48B ⇨ 231

48B Aviation

48BV Airports and Services

48Bk231 k. Obstructions and Hazards. Most Cited Cases

Defendant's deliberately parking truck on bush airfield in position in which it was struck by plaintiff's landing aircraft, with full knowledge of hazards he was thereby creating, evidenced reckless disregard of possible consequences and indifference to rights of others, and such showing supported

finding that he was guilty of gross and wanton negligence. Laws 1960, c. 174, § 1; 1961, ch. 65; A.C.L.A.Supp. §§ 32-5A-2(1), 32-7-5(a); A.C.L.A. 1949, § 32-4-6.

[2] Appeal and Error 30 ⇨ 740(2)

30 Appeal and Error

30XI Assignment of Errors

30k735 Including Errors in One Assignment

30c740 Determination

30k740(2) k. Findings of Fact and

Conclusions of Law. Most Cited Cases

Specification of error in failing to find contributory negligence was not properly before reviewing court where it was not separately set out but had been combined with another alleged error in single specification.

[3] Negligence 272 ⇨ 547

272 Negligence

272XVI Defenses and Mitigating Circumstances

272k545 Effect of Others' Fault

272k547 k. As Bar to Recovery;

Contributory Negligence Doctrine. Most Cited Cases

(Formerly 272k100)

Ordinary contributory negligence is not a defense to action for injury from reckless or wanton misconduct, but only if plaintiff's own conduct is wilful or wanton will it balance against similar conduct by defendant.

*410 Charles E. Tulin, Anchorage, for appellant.
James E. Fisher, Kenai, for appellee.

Before NESBETT, C. J., and DIMOND and
AREND, JJ.
AREND, Justice.

The principal question before us on this appeal is whether the lower court erred in finding that Larche R. McLemore, the defendant below, was guilty of gross or wanton negligence in parking his

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(Cite as: 374 P.2d 410)

motor vehicle on a 'bush' airfield

The term 'bush airfield' or 'bush airstrip' connotes in Alaska an unregulated field for light aircraft.^{FN1} These fields played an important part in the settlement and development of the Territory of Alaska and continue to do so under statehood. They are often found adjacent to a village but in many instances have been carved out of the wilderness to accommodate miners, prospectors, trappers and fishermen in near and faraway places. They are usually constructed on the sandbar of a river, lake shore, or other suitable ground by removing trees, brush, rocks and other obstructions. Sometimes the runway for the wheels of the aircraft is 'dragged' to provide a smoother landing surface. In the winter season they may even be laid out upon frozen bodies of water. Sometimes they are located on private property and at other times on the public domain.

FN1. Bush airfields have been specifically referred to by that name by the Alaska state legislature in S.L.A.1960, ch. 174, § 1, which provides for the issuance of general obligation bonds, 'for the purpose of paying all or part of the cost of acquiring, constructing, equipping, and making necessary capital improvements to bush airfields.' See also S.L.A.1961, ch. 65. The general term 'airport' has been defined by the legislature as 'any area of land or water designed for the landing and taking-off of aircraft and utilized or to be utilized as a point of arrival or departure by air.' S.L.A.1951, ch. 12, § 1 (§ 32-5A-2(1) A.C.L.A.Cum.Supp.1957).

In 1937 the territorial legislature made it unlawful to park or place upon the runway of any aviation field in Alaska any wagon, sled, vehicle or other article unless used in the construction or repair of such field.^{FN2} Then in 1951 the legislature further provided:

FN2. S.L.A.1937, ch. 71, § 1 (now § 32-4-6 A.C.L.A.1949).

'It shall be unlawful for any person to place any object on the surface of any public or private airport which because of its nature or location might cause injury or damage to any aircraft or person riding therein.'^{FN3}

FN3. S.L.A.1951, ch. 43, § 5(a) (§ 32-7-5(a) A.C.L.A.Cum.Supp.1957).

With that bit of history in mind we turn to the case at hand. The plaintiff, James Harris, brought this action in the district magistrate court to recover for damages to his Piper PA-11 airplane, allegedly caused by collision with an obstruction 'wilfully or lecklessly' left by the defendant on the airstrip where the plaintiff landed the plane. The defendant denied the allegations of the complaint and charged the plaintiff with contributory negligence in the premises.

The magistrate court, sitting as trier of the facts, found that the defendant, with full knowledge that the field in question was used as an airfield, was 'grossly negligent or wantonly negligent to park [his truck] there.' Judgment was for the plaintiff for the full amount of the damages claimed. An appeal was taken to the superior court where the case was heard on the record made in the magistrate court and the judgment affirmed. An appeal to this court followed.

Since the defendant has challenged the finding of the trial court as to negligence, we must take the view of the evidence most favorable to the prevailing party, in this case the plaintiff, and give him the benefit of all inferences in his favor which may be drawn from the facts proved.^{FN4} The evidence in the record most favorable to the plaintiff is as follows:

FN4. Los Angeles Shipbuilding & Drydock Corp. v. United States, 289 F.2d 222, 226-227 (9th Cir. 1961); Chirikoff Island Cattle Corp. v. Robinette, 372 P.2d 791 (Alaska 1962).

The Oshetna Strip is a bush airfield, which was

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(Cite as: 374 P.2d 410)

built by the plaintiff, with some help from others, on the public domain, specifically on a creek bed and sandbar at the confluence of the Big Oshetna and Little Oshetna Rivers, about 45 miles from the town of Eureka. The gravel bar upon which the airstrip is located is over 900 feet in length and about 60 feet wide with a clump of willows on one side and water on the other. The actual runway is on the willow side of the field and is only about 15 to 20 feet in width. It was once dragged with a 17 foot railroad iron and shows wear from the wheels of aircraft using it. From pictures admitted as exhibits at the trial it appears that there was enough open space between the runway and the willows to allow for the spread of one wing of a light plane. The Oshetna Strip is used only during the hunting and fishing seasons. As many as six planes have been seen on the strip at one time.

On the evening of August 19, 1959 the plaintiff flew in his Piper aircraft to land some gear at the Oshetna Strip. As he came in for the landing he observed defendant's truck (also referred to in the record as a swamp buggy) parked on the strip and obstructing the runway. So he made a pass over the field and shouted to the defendant and the men with him to move the truck off the strip. The defendant promptly moved the truck but only a few feet. Nevertheless the plaintiff was able to land his plane without mishap and stayed on the #412 field that night. Immediately after landing and again on the following morning the plaintiff explained to the defendant the dangers inherent in parking the truck on the strip and asked him to park it in the brush or somewhere else off the strip. The defendant finally complied and moved it out of there.

Later on the morning of August 20, the plaintiff came in for another landing on the Oshetna Strip, this time with a passenger whom he had picked up at Eureka. Before landing he checked the wind and made certain that there were no planes on the field. The windshield of his own plane was splattered by rain from intermittent showers, and he testified that on account of this condition 'I had poor visibility in front of me.' Not until just as he set the plane down on the runway did the plaintiff see the defendant's truck parked on the airstrip right at the edge of the willow patch. The front end of the truck was headed

toward the willows but at such an angle that about eighteen inches of the right wing tip of the plane struck the left tail gate of the truck. This caused the plane to spin around and to dig its left wing into the ground.

As stated earlier the runway of the airstrip measured 15 to 20 feet in width. Other facts to be noted are that the total wingspread of the plaintiff's airplane was 36 feet; that the distance from the left tail gate of the truck to the center of the runway was between 12 and 15 feet; that it was at the most 25 feet from the edge of the brush where the truck was parked to the center of the runway; that a pilot coming down for a landing on the strip would 'have to go close to the brush to sit down and square up with the strip,' as the plaintiff explained; that the defendant admitted that he knew the Oshetna Strip to be an airfield; that the defendant and his companions were gathered around the truck and watched the plaintiff come in for a landing; and that immediately after the accident, upon being reproved by the plaintiff for having parked the truck on the airstrip again, the defendant stated that he was sorry and then moved the truck completely into the brush when told that a second plane was following in for a landing.

[1] In the face of such evidence in the record we cannot say that the magistrate court erred in its finding that 'the defendant was guilty of gross or wanton negligence. The behavior of the defendant in deliberately parking his truck in the position it was when struck by the plaintiff's aircraft, with full knowledge of the hazards he was thereby creating, evidenced a reckless disregard of possible consequences and indifference to the rights of others and supported the trial court's finding.'^{FN5}

FN5. See McDonald v. International & G. N. R. Co., 21 S.W. 774, 775 (Tex.Civ.App.1893).

[2][3] Another error specified by the defendant is that the trial court erred in failing to find that the contributory negligence of the plaintiff was a defense barring plaintiff's recovery. We need not consider that specification of error for two reasons.

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(Cite as: 374 P.2d 410)

First, it is not separately set out as required by our rule 11(a) but has been combined with another alleged error in a single specification of error.^{FN6} In *Parks v. Brown*^{FN7} we held that a specification of error which sets out more than one error is improper and does not need to be considered by this court. Secondly, ordinary contributory negligence on the part of the plaintiff is not a defense to an action for injury caused by the defendant's reckless or wanton misconduct.^{FN8} Only if the plaintiff's own conduct is wilful or wanton will it be balanced against similar conduct on the part of the *413 defendant and recognized as a defense.^{FN9} The defendant in the instant case did not allege or undertake to prove any wanton or reckless misconduct on the part of the plaintiff as a bar to recovery.

For the reasons set forth above, we find no error in the record and therefore the judgment below is affirmed.

FN6. The plaintiff's second specification of error reads: 'That the trial court erred in finding the defendant to be guilty of gross and wanton negligence *and* in failing to find that the contributory negligence of plaintiff was a defense barring plaintiff's recovery.' [Emphasis added.]

FN7. 368 P.2d 220 (Alaska 1962).

FN8. *Falls v. Mortensen*, 207 Or. 130, 295 P.2d 182, 184-187 (1956); Prosser, *Torts* § 51 at 289-90 (2d ed. 1955).

FN9. *Cawog v. Rothbaum*, 165 Cal.App.2d 577, 331 P.2d 1063, 1071 (1958); Prosser, *op. cit. supra* note 8, at 290.

So ordered.

Alaska 1962
McLemore v. Harris
374 P.2d 410

END OF DOCUMENT

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SB

164



HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
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Rep. Bob Lynn
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Rep. Ralph Samuels
Room 204
(907) 465-2095

Rep. Max Gruenberg
Room 110
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: March 28, 2008

To: Representative John Coghill
Chair House Rules Committee

From: Representative Jay Ramras
Chair House Judiciary Committee

Re: Referral File for CSSB164(JUD) 25-LS0867M

-
- Sponsor Statement
 - CSSB164(JUD) 25-LS0867M
 - Amendment #1 and HCR re: Title Change (withdrawn)
 - Fiscal Note LAW - 0
 - Relevant Statutes
 - Back-up
 - Letters of Support
 - HJUD Committee Report

ALASKA STATE LEGISLATURE

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Chair
Senate State Affairs
Administrative Regulation Review

Member
Senate Judiciary Committee
Senate Resources Committee

SENATOR LESIL MCGUIRE

SPONSOR STATEMENT

SB 164 – Used Motor Vehicle Sales

SB 164 repeals part of the Automobile Dealer Act of 2004 and removes language that is no longer of any benefit to consumers, dealerships, or the state.

SB 164 repeals subsection (c) of AS 45.25.465, which requires that all used vehicles for sale by a dealer are posted with a notice that the vehicle:

- (1) is not subject to Alaska's "lemon law"
- (2) is not covered under a manufacturers warranty
- (3) was not manufactured for sale in Canada or another foreign country.

While subsection (c) was enrolled with good intentions, it has since become obsolete. This provision was added to Alaska law in 2004 in response to an influx of Canadian vehicles that, while technically used, were being sold as new. The market has since corrected itself and vehicles manufactured for sale in Canada are no longer being sold in Alaska as new vehicles.

The provisions of subsection (c) now provide no additional consumer protection in that:

- (1) Alaska's "lemon law" applies only to new vehicles
- (2) the Federal Trade Commission already requires dealers to disclose that the vehicle is not covered under a manufacturers warranty
- (3) AS 45.25.470 already requires dealers to "disclose in writing whether a motor vehicle was originally manufactured for sale in Canada or another foreign country."

One unintended consequence of subsection (c) is that it may be leaving auto dealers exposed to law suites that were never the intent of the Automobile Dealer Act of 2004. Not posting the information outlined in subsection (c) amounts to an unfair trade practice and allows for law suites that demand treble damages and reimbursement of full legal costs, even though consumers have not suffered any actual harm or damages. The retroactive clause of SB 293 addresses this problem without affecting current litigation.

While one might argue that you can never have too much consumer protection, when the state starts unnecessarily burdening Alaskan businesses while providing no additional consumer protection, it is time to reevaluate. We have reevaluated Subsection (c) and found that it no longer provides the consumer protections it once did and now merely places unnecessary requirements on auto dealers. For these reasons we urge you to support SB 164.

w/D

AMENDMENT #1

Holmes

OFFERED IN THE HOUSE
TO: CSSB 164(JUD)

1 Page 1, line 1, following "Act":

2 Insert "**limiting motor vehicle dealer charges for fees and costs, and**"

3

4 Page 1, following line 3:

5 Insert a new bill section to read:

6 "Section 1. AS 45.25.440 is amended to read:

7 Sec. 45.25.440. Additional fees and costs [ADVERTISED PRICE]. (a)

8 When selling a motor vehicle, a motor vehicle dealer may not charge any dealer fees
9 or costs in addition to the advertised or negotiated price, except for

10 (1) fees actually paid to a state agency for licensing, registration, or
11 title transfers;

12 (2) charges for optional equipment, for substantial additions to the
13 motor vehicle, for warranties, for services, and for style, design, or color features
14 [, UNLESS THE FEES OR COSTS ARE INCLUDED IN THE ADVERTISED
15 PRICE]

16 (b) In this section, "dealer fees or costs" includes dealer preparation
17 fees, document preparation fees, surcharges, charges, and other dealer-imposed fees
18 and costs."

19

20 Page 1, line 4:

21 Delete "Section 1"

22 Insert "Sec. 2"

23

1 Renumber the following bill sections accordingly:

2
3 Page 1, line 2:

4 Delete "sec. 1"

5 Insert "sec. 2"

6

7 Page 1, line 14:

8 Delete "sec. 1"

9 Insert "sec. 2"

w/D

LEGISLATIVE
COUNCIL
32701

HOUSE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY

Introduced:
Referred:

A RESOLUTION

1 Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State
2 Legislature, concerning Senate Bill No. 164, relating to disclosures required for the sale
3 of a used motor vehicle, including a trailer, by a motor vehicle dealer.

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

5 That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of
6 Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding
7 changes to the title of a bill, are suspended in consideration of Senate Bill No. 164 relating to
8 disclosures required for the sale of a used motor vehicle, including a trailer, by a motor
9 vehicle dealer.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 164
 (S) Publish Date: 2/15/08

Identifier (file name): _____ Dept. Affected: LAW
 Title An Act relating to disclosures on used motor vehicles. RDU Civil
 Component Commercial & Fair Business
 Sponsor SENATOR(S) MCGUIRE
 Requester SENATE TRANSPORTATION Component Number _____

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

SB 164 will repeal AS 45.25.465(c). This statute requires motor vehicle dealers to make certain disclosures when selling used cars. The language in AS 45.25.465(c) was originally intended to apply only to "current model" used vehicles. In 2006, AS 08.66.015 was amended to delete reference to "current model vehicles" so all motor vehicles are considered either new or used for purposes of application of Alaska's "Lemon Law" and manufacturer warranties. Given other disclosure requirements already required in Alaska and federal law, the requirements of AS 45.25.465(c) are no longer necessary. There should be no fiscal impact to the Department of Law from this bill.

Prepared by: Robert Meiners, Administrative Services Manager
 Division Administrative Services Division
 Approved by: Talis Colberg, Attorney General
Department of Law

Phone 907-465-5427
 Date/Time 2/12/08 2:50 PM
 Date 2/12/2008

AS 45.25.465. Sales of Used Motor Vehicles; Required Disclosures.

(a) Before the sale of a used motor vehicle, a motor vehicle dealer shall,

(1) when obtaining a used motor vehicle from an individual consumer, make a reasonable inquiry of the seller into the condition of the vehicle, including the accident and repair history of the vehicle; the information shall be recorded in writing and verified by the seller; the dealer shall provide this information to a prospective purchaser of the vehicle;

(2) when a motor vehicle dealer obtains a used motor vehicle from another motor vehicle dealer, a wholesaler, or an auction, disclose to a prospective purchaser of the vehicle that the vehicle was purchased from another dealer, a wholesaler, or an auction.

(b) Nothing in this section creates an express warranty by the dealer.

(c) When a motor vehicle dealer sells a used motor vehicle or a current model used motor vehicle, the motor vehicle dealer shall disclose to the buyer in writing in a manner that is clear and conspicuous and posted in the window of the vehicle

(1) that the warranty provisions of AS 45.45.300 - 45.45.360 do not apply to the purchase of the motor vehicle;

(2) that, if applicable, the vehicle is not subject to a manufacturer's warranty; and

(3) that, if applicable, the vehicle was originally manufactured for sale in Canada or another foreign country.

AS 45.25.470 Sales of vehicles manufactured for sale in a foreign country

Before sale, a motor vehicle dealer shall disclose in writing whether a motor vehicle was originally manufactured for sale in Canada or another foreign country.

YEAR _____ MAKE _____ MODEL _____
VIN _____ MILEAGE _____

NOTICE TO CONSUMER. This vehicle was previously owned. Consequently, the provisions of AS 45.45.300 through 45.45.360 (commonly referred to as the Alaska "lemon law") do not apply to the purchase of this vehicle. In addition, **This vehicle is / is not subject to a manufacturer's warranty.** **This vehicle was / was not manufactured for sale in Canada or another foreign country.**

*The purchase price is for the vehicle only. Price listed does not include licensing fee (subject to plate expiration) or finance charges. Optional products such as gap waivers and extended service contracts can be added for an additional charge.

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE _____ MODEL _____ YEAR _____ VIN NUMBER _____

DEALER STOCK NUMBER (optional) _____

WARRANTIES FOR THIS VEHICLE:

AS IS - NO WARRANTY

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about this vehicle.

WARRANTY

FULL **LIMITED WARRANTY.** The dealer will pay _____% of the labor and _____% of the parts for the covered systems that fall during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.

SYSTEMS COVERED:

DURATION:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.

DISTRIBUTED BY KAR KARE

Reorder (714) 891-1497 - Outside Ca. 1-(800) 331-4836

Frame & Body

Frame—cracks, corrective welds, or rusted through
Dogtracks—bent or twisted frame

Engine

Oil leakage, excluding normal seepage
Cracked block or head
Belts missing or inoperable
Knocks or misses related to camshaft lifters and push rods
Abnormal exhaust discharge

Transmission & Drive Shaft

Improper fluid level or leakage, excluding normal seepage
Cracked or damaged case which is visible
Abnormal noise or vibration caused by faulty transmission or drive shaft
Improper shifting or functioning in any gear
Manual clutch slips or clatters

Differential

Improper fluid level or leakage, excluding normal seepage
Cracked or damaged housing which is visible
Abnormal noise or vibration caused by faulty differential

Cooling System

Leakage including radiator
Improperly functioning water pump

Electrical System

Battery leakage
Improperly functioning alternator, generator, battery, or starter

Fuel System

Visible leakage

Inoperable Accessories

Gauges or warning devices
Air conditioner
Heater & Defroster

Brake System

Failure warning light broken
Pedal not firm under pressure (DOT spec.)
Not enough pedal reserve (DOT spec.)
Does not stop vehicle in straight (DOT spec.)
Hoses damaged
Drum or rotor too thin (Mfr. specs)
Lining or pad thickness less than 1/32 inch
Power unit not operating or leaking
Structural or mechanical parts damaged

Steering System

Too much free play at steering wheel (DOT specs.)
Free play in linkage more than 1/4 inch
Steering gear binds or jams
Front wheels aligned improperly (DOT specs.)
Power unit belts cracked or slipping
Power unit fluid level improper

Suspension System

Ball joint seals damaged
Structural parts bent or damaged
Stabilizer bar disconnected
Spring broken
Shock absorber mounting loose
Rubber bushings damaged or missing
Radius rod damaged or missing
Shock absorber leaking or functioning improperly

Tires

Tread depth less than 2/32 inch
Sizes mismatched
Visible damage

Wheels

Visible cracks, damage or repairs
Mounting bolts loose or missing

Exhaust System

Leakage

DEALER

ADDRESS

SEE FOR COMPLAINTS

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 455).

I HAVE READ AND ACKNOWLEDGED RECEIPT OF A COPY OF THIS BUYER'S GUIDE.

STATE OF ALASKA

SARAH PALIN, GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE (907)269-5100
FAX (907)276-8554

February 19, 2008

Senator Lesil McGuire
State Capitol, Room 125
Juneau, AK 99801-1182

Re: SB 164 re Sale of Used Motor Vehicles

Dear Senator McGuire:

Thank you for sponsoring SB 164. As you know, this bill will repeal AS 45.25.465(c), a provision of the Automobile Dealer Act that requires used motor vehicle dealers to post a written disclosure in the window of every used vehicle that: (1) Alaska's "lemon law" does not apply, (2) the manufacturer's warranty may not apply, and (3) whether the vehicle was originally manufactured for sale in Canada or another foreign country. These provisions were added to Alaska law in 2004 to address a common practice at the time (which does not appear to be continuing today) involving the sale of "current model" used vehicles.

A "current model" used vehicle is a vehicle still within the manufacturer's current model year (i.e. still manufactured and offered for sale), but has been previously sold so that it is considered "used." Typically, these vehicles were purchased from dealers in Canada to take advantage of favorable exchange rates, then brought to Alaska with very low miles (sometimes 10 or less) and sold as "new." Because the vehicle had been sold once, it is no longer considered a new vehicle. This, in turn, excludes application of Alaska's lemon law, which only applies to new vehicles. In addition, some manufacturers would not honor warranties on vehicles manufactured for sale in Canada that were titled in Alaska.

Because these vehicles had all the earmarks of a new vehicle, consumers were sometimes misled about the vehicle, buying what appeared to be a new vehicle when in fact it was used. Thus, the disclosure requirements of AS 45.25.465(c) were added to the statute in 2004 to protect consumers from this practice. Unfortunately, there appears to have been a drafting error when the statute was finalized. Instead of applying these requirements only to "current model" vehicles, the statute was passed with the language "used motor vehicle or current model vehicle." As the primary drafter of the statute, it was not the intent to require application of these disclosure requirements to all used vehicle sales.

In 2006, another statute was amended that addressed the sale of "current model" vehicles. AS 08.66.015 was amended to remove reference to the sale of current model vehicles. Instead, in order to sell a motor vehicle as "new," the vehicle must have a certificate of origin (which is lost upon first sale), and the dealer must have a franchise agreement with the manufacturer. The effect of this amendment was to treat all used vehicles the same, regardless of whether the vehicle happens to be a current model year vehicle.

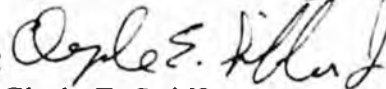
Considering amendments to AS 08.66.015, we considered two potential "fixes" to address the over-broad requirements of AS 45.25.465(c). The first was to simply remove language in the statute that applies the disclosure requirement to all used vehicles, making the statute only applicable to "current model" vehicles. With the amendment of AS 08.66.015, however, this was problematic because all reference to current model vehicles was removed from the law. Thus, we would need to develop a definition of "current model vehicle" if this language were to remain.

The second approach, and the one adopted by SB 164, is to simply repeal this section. This makes sense for several reasons. First, the disclosure concerning the applicability of the manufacturer's warranty has been addressed by most manufacturers. We understand from the Automobile Dealer's Association that major manufacturers are honoring warranties on vehicles manufactured for sale in Canada. Second, the disclosure relating to vehicles manufactured for sale in Canada is already required by AS 45.25.470, so this disclosure is duplicative. Third, manufacturers have taken action to prohibit Canadian auto dealers from selling vehicles that are intended for resale in the United States. Finally, with the removal of the "current model" language of AS 08.66.015, it would add unnecessary requirements on auto dealers that will not add significant consumer protections.

The Department of Law supports this repeal, and is available to answer questions as this bill moves through the legislative process.

Sincerely,

TALIS J. COLBERG
ATTORNEY GENERAL

By: 
Clyde E. Sniffen, Jr.

Senior Assistant Attorney General

CES/ljt

cc: Russ Kelly
Mike Ford
Deborah Behr

Alaska Automobile Dealers Association

May 11, 2007

Senator Lesil McGuire
Alaska State Capitol Building #125
Juneau, Alaska 99801

Dear Senator McGuire,

The Alaska Auto Dealers Association, with the full support of the State of Alaska Department of Law, supports SB 164. SB 164 will clean up unintended consequences of the Dealer Practices Act which was passed several years ago. The language that will be deleted does not benefit dealers or consumers and is only being used to generate frivolous lawsuits against dealers.

AS.45.25.465 Subsection (C) requires a separate sticker be posted on **all** used vehicles. This sticker is unnecessary and redundant. Subsection (C)(1) requires that dealers inform the consumer that the vehicle is not subject to Alaska's "Lemon Law." Since Alaska's "Lemon Law" only applies to new vehicles, this requirement is unnecessary. Subsection (C)(2) requires that the dealer advise a customer that a vehicle is not subject to a manufacturer's warranty. The presumption is that most used vehicles are not subject to a warranty, since most used vehicles are sold "as is". Further, required FTC postings for used vehicles (commonly known as the As-Is sticker) require dealerships to disclose whether the vehicle is sold as is or if the vehicle has any remaining manufacturer's warranty. Finally, subsection (C)(3) requires dealerships to disclose whether the used vehicle was originally manufactured for sale in Canada or another foreign country. There was a "Canadian" vehicle influx of several years ago which was short term in nature. This portion of the separate sticker is also redundant as AS.45.25.470 requires a separate disclosure if a vehicle was originally manufactured for sale in Canada.

The only people who stand to benefit from Subsection (C)(1) are class action attorneys who have sued Alaskan dealerships who do not display this unnecessary and redundant sticker. Not displaying this sticker is an unfair trade practice violation which means the plaintiff's attorney can sue for treble damages and full legal costs even though the consumers have not suffered any actual harm or damages. There is a two year look back on unfair trade practices so a class action attorney can search for enough car buyers to create a class and then subpoena all records going back two years.

Two class action suits of this nature are progressing in Anchorage at this time. Dealerships are still predominantly family owned small businesses in the State of Alaska and frivolous litigation as described above could well bankrupt many well run and respected dealerships.

The Alaska Auto Dealers Association and Senior Assistant Attorney General Ed Sniffen all agree that there is no benefit to consumers or dealers provided by Subsection C which is why all parties have agreed that these amendments should be retroactive to the extent allowed by law. For the reasons outlined above, we support SB 164.

Sincerely,

Jon Cook
Alaska Auto Dealers Association
Legislative Director

SB

1966

ALASKA STATE LEGISLATURE



Interim:
600 East Railroad Avenue
Wasilla, Alaska 99654
(907) 376-3370
(907) 376-3157 Fax

Session:
State Capitol
Juneau, Alaska 99801-1182
(907) 465-6600
(907) 465-3805 Fax

SENATOR LYDA GREEN
SENATE DISTRICT G

Sponsor Statement: Senate Bill 196 Prescription Drug Monitoring Program

“An Act relating to establishing a controlled substance prescription database.”

Posted: January 15, 2008

Contact: Ginger Blaisdell, 465-5038, Professional Aide

“According to the 2002 National Survey on Drug Use and Health, if tobacco and alcohol are discounted, prescription medication ranks second only to marijuana as a source of drug abuse in the United States. Psychoactive medications are most often targeted for abuse, especially opiates intended for pain relief. For several decades, a community-based matrix of physicians, pharmacists, law enforcement entities, state medical boards and federal regulatory agencies has evolved to attempt to prevent prescription drug abuse.”¹

During the past decade, 40 states have launched Prescription Drug Monitoring Programs (PDMP) with intention to curb prescription drug abuse. PDMPs provide a tool for prescribers, dispensers, law enforcement and medical boards to review drug trends. The PDMP database will provide immediate information to doctors as they review a patient's prescription needs, and pharmacists to review a customer's history before dispensing medication. This proactive approach to reviewing prescription trends will help control the availability of prescription narcotics to those who may not medically need them. Licensing boards will be able to use the data at the time of licensure and law enforcement will be able to request information as part of a court order, subpoena or affidavit for an active case.

Federal funding is available to establish and operate a PDMP and cost savings to the State of Alaska can be achieved by eliminating unnecessary prescription use. A PDMP will provide timely prescription drug information to assist in prevention of diversion and promote safe and effective health care for Alaska's citizens.

I would appreciate your support of this bill.

Additional materials can be found at <http://www.aksenate.org/SB196>

¹ <http://www.mayoclinicproceedings.com>

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman
(907) 465-3004
Fax: (907) 465-2070
Representative_Jay_Ramras@legis.state.ak.us

1292 Sadler Way, Suite 324
Fairbanks, AK 99701



Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Fax

To: Jerry Luckhaupt

Fax #: 2029

Number of pages including cover: 1

From: Jane Pierson

Date: February 25, 2008

Re: HJUD Final for SB196 (25-LS1092\O)

Please go final on the above-referenced bill to include the following changes:

1. Rescind amendment #2. Page 4, Line 12-13, "in this paragraph, "practitioner" has the meaning given in AS 08.80.480."
2. Conceptual amendment #1 Page 5, Line 12 and 13, delete the words "improperly" and insert "contrary to this section"

For consideration at House Judiciary Committee, Monday February 25, 2008:

1. Rescind amendment 2 offered by Rep Gruenberg.
 - There are two definitions for "practitioner" in statute.
 - Title 08 is specific to individual prescribers and has a broad definition of a prescriber.
 - AS 11.71.900 (19) contains the definition already implied in SB 196 and defines a practitioner in relation to controlled substance activities. Title 11 specifically includes professionals such as veterinarians and professionals engaging in experimental research.
 - Legal services placed the "prescriber" definition on page 4, lines 12-13 referring to the specific paragraph rather than the whole Act. I, Ginger, did not ask legal services to redraft the amendment until the committee had decided which definition would be best for this act.
 - If the committee decides that the Title 11 definition should be used, the motion should be to **delete "; in this paragraph, "practitioner" has the meaning given in AS 08.80.480"**
 - If the committee decides that the Title 8 definition should be used, the motion should be to **delete "; in this paragraph, "practitioner" has the meaning given in AS 08.80.480"** and add the definition as passed in the original amendment to the definition section on page 6 by **"adding a new subsection (5) following line 21"**.

2. How are the documents disposed of by the Board?
 - An amendment was not needed to specify management of the data captured by the prescription drug monitoring program.
 - Page 4, lines 3-8 addresses confidentiality of the information contained within the database. "The board shall undertake to ensure the security and confidentiality of the database and the information contained within the database."
 - The specific procedures for disposing of reports of information in the database should be clearly defined in regulation.

3. Is there an appeals process for the patient who feels incorrect data has been submitted/reported?
 - Legal services incorporated a section to allow for individual challenges on page 5, lines 30-31, continuing to page 6, line 1.
 - In the regulations adopted under this section, the board shall provide: **"(2) a method for an individual to challenge information in the database about the individual that the person believes is incorrect or was incorrectly entered by a dispenser."**

4. Representative Coghill asked about the potential federal "immunity issues" in the event the state enters into a memorandum of agreement with federal health care agencies. Concern was expressed that there might be conflict with state misdemeanor or felony charges as stated in this bill.
- Legal services added additional language to subsection (f) page 5, lines 10-14: **"The board shall prohibit a dispenser that is not regulated by the state from accessing the database if the dispenser has accessed information in the database improperly, discloses information in the database improperly, or allows nonauthorized persons access to the database."**
 - This section essentially 'cuts off' access by the dispenser to the data. Most states' experience would find that this 'cut off' would be sufficient to deter inappropriate activity.
 - I have contacted program managers from other states who have entered into memorandums of agreement with I HS entities or military entities. Many of these states have created an information sharing agreement verbally rather than in writing. Most federally regulated entities want access to the data and have approached the states asking to be allowed to participate.
 - A letter is in your bill files stating that states can ask military health care entities to participate. In the third paragraph; "Under 38 USC 5701 the Secretary can release information: 'to any criminal or civil law enforcement government agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such agency or instrumentality has made a written request that such name or address be provided for a purpose authorized by law.'"

HOUSE CS FOR CS FOR SENATE BILL NO. 196(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - SECOND SESSION
BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS GREEN, Ellis, Davis, Dyson, Stevens

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to establishing a controlled substance prescription database."**

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

3 *** Section 1. AS 08.80.030(b) is amended to read:**

4 (b) In order to fulfill its responsibilities, the board has the powers necessary
5 for implementation and enforcement of this chapter, including the power to

6 (1) elect a president and secretary from its membership and adopt rules
7 for the conduct of its business;

8 (2) license by examination or by license transfer the applicants who are
9 qualified to engage in the practice of pharmacy;

10 (3) assist the department in inspections and investigations for
11 violations of this chapter, or of any other state or federal statute relating to the practice
12 of pharmacy;

13 (4) adopt regulations to carry out the purposes of this chapter;

14 (5) establish and enforce compliance with professional standards and
15 rules of conduct for pharmacists engaged in the practice of pharmacy;

1 (6) determine standards for recognition and approval of degree
2 programs of schools and colleges of pharmacy whose graduates shall be eligible for
3 licensure in this state, including the specification and enforcement of requirements for
4 practical training, including internships;

5 (7) establish for pharmacists and pharmacies minimum specifications
6 for the physical facilities, technical equipment, personnel, and procedures for the
7 storage, compounding, and dispensing of drugs or related devices, and for the
8 monitoring of drug therapy;

9 (8) enforce the provisions of this chapter relating to the conduct or
10 competence of pharmacists practicing in the state, and the suspension, revocation, or
11 restriction of licenses to engage in the practice of pharmacy;

12 (9) license and regulate the training, qualifications, and employment of
13 pharmacy interns and pharmacy technicians;

14 (10) issue licenses to persons engaged in the manufacture and
15 distribution of drugs and related devices;

16 (11) establish and maintain a controlled substance prescription
17 database as provided in AS 17.30.200.

18 * Sec. 2. AS 17.30 is amended by adding a new section to read:

19 **Article 4A. Controlled Substance Prescription Database.**

20 **Sec. 17.30.200. Controlled substance prescription database.** (a) The
21 controlled substance prescription database is established in the Board of Pharmacy.
22 The purpose of the database is to contain data as described in this section regarding
23 every prescription for a schedule IA, IIA, IIIA, IVA, or VA controlled substance under
24 state law or a schedule I, II, III, IV, or V controlled substance under federal law
25 dispensed in the state to a person other than an inpatient in a licensed health care
26 facility. The Department of Commerce, Community, and Economic Development
27 shall assist the board and provide necessary staff and equipment to implement this
28 section.

29 (b) The pharmacist-in-charge of each licensed or registered pharmacy,
30 regarding each schedule IA, IIA, IIIA, IVA, or VA controlled substance under state
31 law or a schedule I, II, III, IV, or V controlled substance under federal law dispensed

1 by a pharmacist under the supervision of the pharmacist-in-charge, and each
2 practitioner who directly dispenses a schedule IA, IIA, IIIA, IVA, or VA controlled
3 substance under state law or a schedule I, II, III, IV, or V controlled substance under
4 federal law other than those administered to a patient at a health care facility, shall
5 submit to the board, by a procedure and in a format established by the board, the
6 following information for inclusion in the database:

7 (1) the name of the prescribing practitioner and the practitioner's
8 federal Drug Enforcement Administration registration number or other appropriate
9 identifier;

10 (2) the date of the prescription;

11 (3) the date the prescription was filled and the method of payment; this
12 paragraph does not authorize the board to include individual credit card or other
13 account numbers in the database;

14 (4) the name, address, and date of birth of the person for whom the
15 prescription was written;

16 (5) the name and national drug code of the controlled substance;

17 (6) the quantity and strength of the controlled substance dispensed;

18 (7) the name of the drug outlet dispensing the controlled substance;

19 and

20 (8) the name of the pharmacist or practitioner dispensing the controlled
21 substance and other appropriate identifying information.

22 (c) The board shall maintain the database in an electronic file or by other
23 means established by the board to facilitate use of the database for identification of

24 (1) prescribing practices and patterns of prescribing and dispensing
25 controlled substances;

26 (2) practitioners who prescribe controlled substances in an
27 unprofessional or unlawful manner;

28 (3) individuals who receive prescriptions for controlled substances
29 from licensed practitioners and who subsequently obtain dispensed controlled
30 substances from a drug outlet in quantities or with a frequency inconsistent with
31 generally recognized standards of dosage for that controlled substance; and

1 (4) individuals who present forged or otherwise false or altered
2 prescriptions for controlled substances to a pharmacy.

3 (d) The database and the information contained within the database are
4 confidential, are not public records, and are not subject to public disclosure. The board
5 shall undertake to ensure the security and confidentiality of the database and the
6 information contained within the database. The board may allow access to the
7 database only to the following persons, and in accordance with the limitations
8 provided and regulations of the board:

9 (1) personnel of the board regarding inquiries concerning licenses or
10 registrants of the board or personnel of another board or agency concerning a
11 practitioner under a search warrant, subpoena, or order issued by an administrative law
12 judge or a court; in this paragraph, "practitioner" has the meaning given in
13 AS 08.80.480;

14 (2) authorized board personnel or contractors as required for
15 operational and review purposes;

16 (3) a licensed practitioner having authority to prescribe controlled
17 substances, to the extent the information relates specifically to a current patient of the
18 practitioner to whom the practitioner is prescribing or considering prescribing a
19 controlled substance;

20 (4) a licensed or registered pharmacist having authority to dispense
21 controlled substances, to the extent the information relates specifically to a current
22 patient to whom the pharmacist is dispensing or considering dispensing a controlled
23 substance;

24 (5) federal, state, and local law enforcement authorities may receive
25 printouts of information contained in the database under a search warrant, subpoena,
26 or order issued by a court establishing probable cause for the access and use of the
27 information; and

28 (6) an individual who is the recipient of a controlled substance
29 prescription entered into the database may receive information contained in the
30 database concerning the individual on providing evidence satisfactory to the board that
31 the individual requesting the information is in fact the person about whom the data

1 entry was made and on payment of a fee set by the board under AS 37.10.050 that
2 does not exceed \$10.

3 (e) The failure of a pharmacist-in-charge, pharmacist, or practitioner to submit
4 information to the database as required under this section is grounds for the board to
5 take disciplinary action against the license or registration of the pharmacy or
6 pharmacist or for another licensing board to take disciplinary action against a
7 practitioner.

8 (f) The board may enter into agreements with dispensers that are not regulated
9 by the state and practitioners in this state to submit information to and access
10 information in the database subject to this section and the regulations of the board. The
11 board shall prohibit a dispenser that is not regulated by the state from accessing the
12 database if the dispenser has accessed information in the database improperly,
13 discloses information in the database improperly, or allows nonauthorized persons
14 access to the database.

15 (g) The board shall promptly notify the president of the senate and the speaker
16 of the house of representatives if, at any time after the effective date of this Act, the
17 federal government fails to pay all or part of the costs of the controlled substance
18 prescription database.

19 (h) An individual who has submitted information to the database in
20 accordance with this section may not be held civilly liable for having submitted the
21 information. Nothing in this section requires or obligates a dispenser or practitioner to
22 access or check the database before dispensing, prescribing, or administering a
23 medication, or providing medical care to a person. Dispensers or practitioners may not
24 be held civilly liable for damages for accessing or failing to access the information in
25 the database.

26 (i) In the regulations adopted under this section, the board shall provide

27 (1) that prescription information in the database shall be purged from
28 the database after two years have elapsed from the date the prescription was
29 dispensed;

30 (2) a method for an individual to challenge information in the database
31 about the individual that the person believes is incorrect or was incorrectly entered by

1 a dispenser.

2 (j) A person

3 (1) with authority to access the database under (d) of this section who
4 knowingly

5 (A) accesses information in the database beyond the scope of
6 the person's authority commits a class A misdemeanor;

7 (B) accesses information in the database and knowingly
8 discloses that information to a person not entitled to access or to receive the
9 information commits a class C felony;

10 (C) allows another person who is not authorized to access the
11 database to access the database commits a class C felony;

12 (2) without authority to access the database under (d) of this section
13 who knowingly accesses the database or knowingly receives information that the
14 person is not authorized to receive under (d) of this section from another person
15 commits a class C felony.

16 (k) In this section,

17 (1) "board" means the Board of Pharmacy;

18 (2) "database" means the controlled substance prescription database
19 established in this section;

20 (3) "knowingly" has the meaning given in AS 11.81.900;

21 (4) "pharmacist-in-charge" has the meaning given in AS 08.80.480.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSSB 196(L&C)
 (S) Publish Date: 2/6/08
 Dept. Affected: Health & Social Services
 RDU: Health Care Services
 Component: Medicaid Services

ID(File name) SB196-DHSS-MS-1-28-08
 Title PRESCRIPTION DATABASE
 Sponsor GREEN
 Requester SENATE L&C

Component No. 2077

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation		Information					
	Required		FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims	(86.0)		(92.3)	(98.8)	(105.6)	(113.1)	(121.0)	
Miscellaneous								
TOTAL OPERATING	(86.0)	0.0	(92.3)	(98.8)	(105.6)	(113.1)	(121.0)	
CAPITAL EXPENDITURES								
CHANGE IN REVENUES (0)								

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	(44.0)		(46.2)	(49.6)	(52.8)	(56.6)	(60.5)
1003 GF Match	(42.0)		(46.1)	(49.2)	(52.8)	(56.5)	(60.5)
1004 GF							
1037 GF/Mental Health							
Other (Specify Type-do not abbreviate)							
Other (Specify Type-do not abbreviate)							
TOTAL	(86.0)	0.0	(92.3)	(98.8)	(105.6)	(113.1)	(121.0)

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

The Prescription Drug Monitoring Program will save money in the Medicaid Agency for controlled drug prescriptions. The savings will result from a decrease in the number of prescriptions that are filled and then illegally re-sold, a practice known as "diversion." Last year expenditures in the pharmacy program reached \$68,432.0, of which \$8,600.0 were related to controlled drugs. Conservatively, the prescription monitoring program can save 1% of the controlled drug expenditures in the Medicaid program due to prevention of diversion. Therefore, savings will amount to \$86,000.0 in FY 09 if the prescription drug monitoring database is brought on line in FY 09. Year-to-year inflation in the drug program is 7%. Federal financial participation in FY10 and FY11 is slightly over 50% and 50% thereafter.

Prepared by: William J. Streur
 Division: Health Care Services
 Approved by: Karleen Jackson, Commissioner
 Agency: Department of Health and Social Services

Phone 269-7827
 Date/Time 01/25/2008
 Date 01/28/2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSSB 195(FIN)
 (S) Publish Date: 2/15/08

Identifier (file name): SB196CS(L&C)-CED-OL-02-13-08
 Title: Prescription Database
 Sponsor: Green
 Requester: Senate Finance
 Dept. Affected: DCCED
 RDU: Corp. Bus & Prof Licensing (117)
 Component: Corp. Bus & Prof Licensing
 Component Number: 2360

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	3.0							
Travel	10.0							
Contractual	385.0							
Supplies	5.0							
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	400.0	0.0	0.0	0.0	0.0	**	**	**

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

1002 Federal Receipts	400.0							
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
1156 Receipt Supported Services								
TOTAL	400.0	0.0	0.0	0.0	0.0	**	**	**

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This legislation authorizes the establishment of a controlled substance prescription database under authority of the Alaska Board of Pharmacy with assistance of the Division of Corporations, Business, and Professional Licensing within the Department of Commerce, Community, and Economic Development.

The Federal Government is providing planning and implementation grants to states to implement a prescription drug monitoring database. In FY 08, Alaska received a Federal grant in the amount of \$49.4 to begin plans to develop this database in Alaska. The department is seeking authorization in the supplemental budget for this grant.

Prepared by: Jennifer Strickler, Chief Phone (907) 465-2144
 Division: Corporations, Business, and Professional Licensing Date/Time 2/13/08 5:27 PM
 Approved by: Emil R. Notti, Commissioner Date 1/25/2008
Commerce, Community, and Economic Development

ANALYSIS CONTINUATION

In FY 09, the department anticipates applying for a federal grant of \$400.0 to develop and implement Alaska's Prescription Drug Monitoring database.

Implementation grant funds may be used to enhance a data collection and analysis system; develop infrastructure to support programmatic activities; support collaborations with law enforcement and prosecutors; support collaborations with treatment providers and drug courts; facilitate information sharing among states; expand monitoring to Schedules III, IV, and V; and assess the efficiency and effectiveness of the program.

The division anticipates using the bulk of the grant to develop the database. Funds for travel and supplies would be needed to educate pharmacists about the use and reporting requirements associated with the development of this database.

Many decisions need to be made regarding program. This legislation calls for the board to notify the president of the senate and the speaker of the house of representatives, if at any time after the effective date of this act, the federal government fails to pay the costs of the controlled substance prescription database. An estimated amount of maintenance costs and fees needed cannot be estimated at this time.

Prescription Drug Monitoring Program and Database

Senate Bill 196
Offered by Senator Green

1

Introduction

- o All states have laws and regulations that govern the distribution and handling of controlled substances.
- o Diversion of controlled substances and other pharmaceuticals is generally recognized as a serious problem throughout the United States.

2



Introduction

- States have found that prescription drug monitoring programs (PDMPs) are among the most effective tools available to identify and prevent drug diversion.

3



Drug Diversion

- Diversion is taking a legal prescriptive substance and altering it to provide a different effect or selling/giving it to someone other than the person to whom it was intended.
- Diversion affects the health of our citizens.
- Diversion often promulgates other criminal activity.

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Goals

- o PDMPs are intended to promote pharmaceutical care while deterring diversion through education and law enforcement.
- o PDMPs are aimed at upholding statutory mandates in a manner that is most supportive of and least disruptive to medical and pharmacy practices. (2 minutes per day)

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Nationally Speaking

- o Nov 29: 20/20 reported that as many as 50% of military personnel returning from Iraq may be prescribed prescription narcotics.
- o Dec 11: President Bush's 5-year plan to reduce illicit drug was met by reaching 24% decline. Negatively, the report of an increase of Rx drug abuse has increased approximately 50% during the same time frame.

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Nationally Speaking

- The White House Office of Drug Policy implemented a nationwide Rx drug abuse campaign with its first advertisement shown during the Super Bowl.
 - \$30 Million is leveraged for this campaign
 - www.theantidrug.com

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Understanding the Rx Problem

- There is a national presumption that the misuse of prescription drugs is safer than using illicit "street" drugs.
- Prescription and OTC medications are fast becoming the new 'party' drugs for many teenagers and adults.
 - 25-40% of MySpace users include posting on how to get Rx on the internet

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What Rx are Commonly Abused?

- o Pain Killers
 - Vicodin, OxyContin, Percocet, Codeine
- o Stimulants
 - Ritalin, Concerta, Adderall, Dexedrine
- o Sedatives and Tranquilizers
 - Valium, Xanax, Ambien, Lunesta
- o Over-The-Counter drugs
 - Coricidin, Contac, Theraflu, Robitussin, Tylenol brand cough, cold and flu products

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Rx Abuser Profiles

- o Children through elderly individuals abuse for themselves or for personal profit.
- o Nearly 70% of Rx drugs are obtained for free from friends and family.
- o Pain killers are the number one abused drug because of the feeling of euphoria and/or high resale value.

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Why Legislation?

- o The DCCED, Board of Pharmacy currently conducts research and licensee investigations regarding drug diversion practices.
 - A PDMP will provide the direction and tool for collecting accurate and timely prescription drug information to assist in prevention of diversion and **promote safe and effective health care for Alaska's citizens.**

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Why Legislation?

- o State and local law enforcement agencies are experiencing a rise in prescription drug diversion criminal activity.
- o This legislation was requested by Alaskan pharmacists, doctors and law enforcement officials.
- o With legislation, the state will be eligible for federal funding.

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● ● ● | What does this bill do?

- Establishes a PDMP within the responsibilities of the Board of Pharmacy.
- Tracks all schedule I-V controlled substances in state and federal law.
- Data will be electronic rather than paper.

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● ● ● | Data Use

- Data can be used by licensed prescribers who have the authority to prescribe when caring for a patient.
- Data can be used by a licensed or registered dispenser who is considering a controlled substance to an individual.

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Data Use

- o Data can be used by the personnel of the Board of Pharmacy regarding licensing inquiries, and for database management.
- o Data can be requested through the Board by law enforcement entities with a subpoena or court ordered warrant.

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Data Use

- o Data can be used to:
 - improve health care for patients
 - identify prescribing and dispensing practices that may be of question; and
 - identify individuals who show a pattern of inappropriate use.

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