



(3) "family member" means a person who is

(A) legally related to an eligible individual through marriage or guardianship; or

(B) an eligible individual's sibling, parent, grandparent, son, daughter, grandson, granddaughter, uncle, aunt, niece, nephew, or first cousin;

(4) "program" means the senior care program established in AS 47.45.300 - 47.45.390;

(5) "public institution" means a governmentally owned establishment that furnishes food, shelter, and some additional treatment or services to 16 or more persons; "public institution" does not include the Alaska Pioneers' Home or Alaska Veterans' Home;

(6) "resident" has the meaning given in AS 47.25.430 (a).

Sec. 47.45.122. Eligibility for public assistance.

(a) An individual whose public assistance is denied or reduced solely because of the receipt of a bonus under AS 47.45.010 - 47.45.160 by the individual or by a member of the individual's household is eligible for assistance under the general relief assistance program in AS 47.25.120 - 47.25.300. Notwithstanding the limit in AS 47.25.130, the individual is entitled to receive the same amount as the individual would have received under other public assistance programs had the individual not received a longevity bonus.

(b) In this section "other public assistance" means

(1) Supplemental Security Income under 42 U.S.C. 1381 - 1385;

(2) Medicaid under 42 U.S.C. 1396 - 1396p; and

(3) Adult Public Assistance under AS 47.25.430 - 47.25.615.

Sec. 47.45.130. Death or cessation of residency.

The commissioner of health and social services shall establish procedures to stop a bonus when a recipient under AS 47.45.010 - 47.45.160 no longer qualifies. When a recipient dies or discontinues residency in the state the recipient's qualification for a bonus shall stop at the time of the recipient's last approved monthly application.

Sec. 47.45.140. Penalty for false statements.

A person who wilfully or knowingly makes a false statement, or falsifies or permits to be falsified any record required by AS 47.45.010 - 47.45.160, is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than \$500, or by imprisonment for not more than six months, or by both, forfeits all rights under AS 47.45.010 - 47.45.160, and shall make adequate restitution for any bonuses illegally received.

Sec. 47.45.150. Definitions.

In AS 47.45.010 - 47.45.160

(1) "bonus" means a monthly Alaska longevity bonus payment made to a person or the person's beneficiary who qualifies under AS 47.45.010 - 47.45.160;

(2) "resident" or "resident of the state" means an individual who is physically present in the state with the intent to remain in the state indefinitely and to make a home in the state; a person demonstrates the requisite intent by maintaining a principal place of abode in the state for one year and by providing other proof of intent the commissioner may require by regulation, including proof that the person is not claiming residency outside the state or obtaining benefits under a claim of residency outside the state.

LEGAL SERVICES

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

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

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

MEMORANDUM

February 8, 2007

SUBJECT: Reinstatement of the longevity bonus program (HB 79)

TO: All members of the House State Affairs Committee, and
All members of the House Judiciary Committee

FROM: Tamara Brandt Cook
Director

TBC

Enclosed is a copy of the Orders in the case Maggard v. Sipe, Superior Court, Third Judicial District, Case No. 3AN-94-03935 CI, June 6, 1996, and July 9, 1996, upholding the statute that established the "stair step" phase out of the longevity bonus program. This is being sent to you at the request of Representative Max Gruenberg.

TBC:ljw
07-063.ljw

Enclosure

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

RECEIVED

JUN 10 1996

Attorney General's Office
Juneau

MURREL MAGGARD, an individual
on his own behalf; and
MURREL MAGGARD, for and on behalf
of all others similarly situated,

Plaintiffs,

vs.

CONNIE SIPE, Director, Division
of Senior Services, Alaska
Department of Administration,
State of Alaska; and Does 1
through 25,

Defendants.

FILED IN THE TRIAL COURTS
State of Alaska, Third District

JUN 06 1996

Clerk of the Trial Courts

By [Signature] Deputy

Case No. 3AN-94-03935 CI

ORDER

Murrel Maggard, for himself and as named plaintiff of the plaintiff class, challenges the constitutionality of the 1993 Amendment to the statutes governing Alaska's Longevity Bonus Program, A.S. 47.45, on the grounds that the amendment violates the Equal Protection clause of the Fourteenth Amendment to the U.S. Constitution and the Equal Rights clause of the Alaska Constitution, Art. I, Sec. 1.

The parties have filed cross motions for summary judgment. Having reviewed all of the motions, corresponding oppositions and replies, and supporting evidence, IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment is GRANTED, and Plaintiffs' Motion for Summary Judgment is DENIED.

A memorandum supporting this order will be issued at a later time.

Done at Anchorage, this 6th day of June, 1996.

I certify that on 6/6/96
a copy of the above was mailed to each
of the following at their addresses of
record: Saguna / Buchholdt

[Signature]
Secretary/Deputy Clerk

[Signature]
Brian Shortell
Superior Court Judge

for at least one year could receive a monthly bonus from the state.

In 1993 the legislature decided to terminate the LBP. Rather than terminate the entire program immediately, however, the legislature chose to phase it out gradually, and "grandfathered in" current bonus recipients, and, at a reduced level, those future bonus recipients who would first become eligible and apply for the bonus by the end of 1996.

The 1993 Amendment completely grandfathered in anyone receiving a bonus at the end of 1993. This group of people would continue to receive \$250 every month for life (assuming eligibility). Persons first becoming eligible and applying for the bonus in 1994 would receive \$200 per month for life, instead of \$250. Those first eligible and applying in 1995 would receive \$150 per month for life, and those first eligible and applying in 1996 would receive \$100 per month for life. Those persons not eligible by the end of 1996, or those who may be eligible but who fail to apply by the end of 1996, are not eligible to receive benefits under the program. Thus, as of January 1, 1997, the LBP will continue to pay bonuses to those already in the program, but will not be open to any new participants.

The challenged amendment creates the following five classes of persons:

- (1) persons who receive \$250 per month;
- (2) persons who receive \$200 per month;
- (3) persons who receive \$150 per month;
- (4) persons who receive \$100 per month; and
- (5) persons who receive nothing.

DISCUSSION

A. Alaska Equal Protection Analysis.

Alaska has developed a "sliding scale" approach to equal protection questions. Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264, 269 (Alaska 1984). As a preliminary determination, if federal constitutional questions are involved, such as fundamental rights or suspect categories, the federal "strict scrutiny" test is applied. State v. Erickson, 574 P.2d 1, 11 (Alaska 1978). This test requires a compelling state interest. Id. If no fundamental rights or suspect classes are at issue, a flexible, sliding-scale analysis is used. Alaska Pacific

Insurance Co., 687 P.2d at 269. This approach places "a greater or lesser burden on the state to justify a classification depending on the importance of the individual right involved." Id.

A three-step analysis is employed:

First, it must be determined . . . what weight should be afforded the constitutional interest impaired by the challenged enactment. The nature of this interest is the most important variable in fixing the appropriate level of review.

Second, an examination must be undertaken of the purposes served by a challenged statute. Depending on the level of review determined, the state may be required to show only that its objectives were legitimate, at the low end of the continuum, or at the high end of the scale, that the legislation was motivated by a compelling state interest.

Third, an evaluation of the state's interest in the particular means employed to further its goals must be undertaken. . . . At the low end of the sliding scale, we have held that a substantial relationship between means and ends is constitutionally adequate. At the higher end of the scale, the fit between the means and ends must be much closer. If the purposes can be accomplished by a less restrictive alternative, the classification will be invalidated.

Alaska Pacific Assurance Co. . 687 P.2d at 269-70.

L. Nature of the Interest.

The first and most important step in the equal protection analysis is to determine the nature of the interest impaired by the challenged enactment. In the instant case, the interest at issue is the right to receive a longevity bonus of \$250. It would be difficult to say that the bonus is anything more than a government monetary benefit. The right to receive a bonus from the state is not an entitlement, it is not based on need and therefore could not be considered a basic necessity, and the right to receive it is not a fundamental right. It is best categorized as merely an economic interest. As such, it is entitled only to minimum protection under Alaska's equal protection analysis. State v. Anthony, 810 P.2d 155, 158 (Alaska 1991).

Maggard concedes that relatively little weight is afforded mere economic interests. He argues, however, that the amendment impacts a much greater interest, the constitutional right to travel, or migrate, and that the "impact of the statute on such a weighty interest should cause the court to insist that the fit between the classifications and the hardship suffered by the elderly be close." (Maggard's Memorandum of Points and Authorities in Support of Plaintiff's Motion

for Summary Judgment ["Maggard's Memo"] at 9-10.) Maggard suggests that the LBP amendment imposes durational residency requirements, which often trigger a higher level of scrutiny and, as a result, have often been found to be unconstitutional.

I find Maggard's argument unpersuasive for several reasons. First, the LBP amendment does not impose true durational residency requirements. A true durational residency requirement requires a person to be a resident for a specified number of years before he or she is eligible for whatever benefit or obligation is considered by the statute.

A good example of a true durational residency requirement is found in Williams v. Zobel, 619 P.2d 422 (Alaska 1980) ["Zobel I"], upon which Maggard heavily relies. In its simplest form, the challenged statute in Zobel I exempted from paying income tax anyone who had been an Alaskan resident for more than three years, while requiring newcomers to the state to pay income taxes for their first three years of residency. In Zobel I, the discrimination between taxpayers was based solely on years of residency; the statute had a true durational residency requirement.

In the instant case, the LBP amendment does not classify persons according to years of residency. Instead, it classifies them according to the year in which they (1) met all of the eligibility requirements (which includes both age and residency), and (2) applied for the bonus. This is not a durational residency requirement, and the effect is quite different. The distinction is illustrated by the state's following hypothetical: the LBP amendment will permanently disqualify from receiving the bonus a life-long Alaskan who is not 65 by the end of 1996 but will grant the bonus to someone who turned 65 and moved to the state in 1992.

Even focusing on just the residency factor, the LBP amendment still does not have a "durational" residency requirement, just a residency requirement. As the Court stated in Williams v. Zobel, 619 P.2d 448, 451 (Alaska 1980), *rev'd on other grounds*, 457 U.S. 55 (1982) ["Zobel II"].

A durational residency requirement, which draws a distinction between new and old residents based on the length of their residency, must be distinguished from

a residence requirement, which draws a distinction between residents and nonresidents.

The distinction is important because "a state has much more authority to draw distinctions between residents and nonresidents than between long- and short-term residents." Zobel II, 619 P.2d at 451 (citing Vlandis v. Kline, 412 U.S. 441, 452-53 (1973)).

Second, assuming arguendo that the challenged amendment imposes durational residency requirements, such requirements no longer automatically trigger "strict scrutiny" in Alaska, although they did at one time. In Zobel I, the Alaska Supreme Court expressly rejected a prior line of Alaska cases holding that durational residency provisions always trigger strict scrutiny, and instead utilized standard Alaska equal protection analysis. Zobel I, 619 P.2d at 426-27 ("We conclude now that durational residency requirements should be measured against the test discussed in Erickson.").

Within the framework of the equal protection analysis, the focus for analyzing durational residency requirements is clearly on whether, and to what extent, the operation of the requirement will have the effect of penalizing United States citizens for exercising their right to interstate migration. Zobel I, 619 P.2d at 431-32, and Zobel II, 619 P.2d at 457-58.

Using Zobel I and Zobel II as guides, it is clear that the amendment at issue does not penalize citizens for exercising their right to migrate. In Zobel I, the Court found that the tax statutes, which required new residents to pay income taxes for their first three years, penalized interstate migration. The Zobel II Court found that the PFD statutes did not penalize interstate migration. The Zobel II Court explained the different holdings as follows:

[The PFD statutes] cannot be said to "penalize" the right of interstate migration. In common sense terms, it is easy to see that the imposition of a tax primarily of new residents [referring to Zobel I], with older residents exempt, can be perceived as a penalty imposed on a person who chooses to exercise his or her right to move into Alaska. It is much more difficult to receive such a "penalty" here. The new resident does, in fact, receive financial gain for exercising his or her right to move into Alaska; and whatever "penalty" may accrue from the fact that this gain is not as large as that realized by a long-term resident we regard as de minimis.

Zobel II, 619 P.2d at 458.

The longevity bonus at issue in this case is more analogous to the PFD than to the tax statutes; the bonus is a grant of a benefit, such as the PFD, and not an imposition of tax. Accordingly, I find that the amendment does not impose a penalty on U.S. citizens for exercising their right to migrate. Because a penalty is not imposed, the amendment does not impinge on the right to travel.

In summary, therefore, I find that no federal constitutional issues are implicated by the amendment, that the amendment does not impinge on the right to travel, and that the nature of the right to receive a longevity bonus is merely an economic interest. As such, it is entitled only to minimum protection. Anthony, 810 P.2d at 158.

2. The State's Purpose.

Based on my finding that a person's interest in receiving a longevity bonus is reviewed at the low end of the scale, the state is required to show only that its objectives in enacting the LBP amendment were legitimate. Anthony, 810 P.2d at 158-59. It is not required to show that the purposes for which the amendment was enacted were carried out or effectively accomplished. Katmailand, Inc. v. Lake and Peninsula Borough, 904 P.2d 397, 401 (Alaska 1995).

Both parties agree that the state's overall purpose in changing the LBP program in 1993 was to save money; this is a legitimate state purpose. The parties offer different reasons, however, for the amendment's graduated grandfather provisions.

The state claims that its purpose in gradually phasing out the program while grandfathering in certain groups was to protect the interests of those who might have reasonably relied on receiving the bonus.

The purpose behind the grandfather provisions . . . is shown by Governor Hickel's letter to the legislature . . . [in which] [t]he governor explained that he was proposing a "phased elimination" of the LBP "because many Alaskans who will be reaching 65 in the next four years have counted on the bonus in planning for their retirement, and an abrupt termination of the program would not be fair."

State's Memorandum in Support of Defendant's Motion for Partial Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment ["State's Memo"] at 9-10.

This is also a legitimate state purpose. "The protection of reasonable reliance interests is not only a legitimate governmental objective: it provides an exceedingly persuasive justification. . . ." Nordlinger v. Hahn, 505 U.S. 1, 13 (1992) (internal quotations omitted).

In order to effectively challenge the state's stated purpose, Maggard must present sufficient credible evidence disproving the factual basis for the state's justification. Katnailand, Inc., 904 P.2d at 401-02. This Maggard has failed to do. Maggard argues that the state's real purpose behind the grandfather provisions was simply to curry political favor in order to ensure successful passage of the amendment, but he presents no credible evidence supporting his position or contradicting the state's justification.

Therefore, I find legitimate the state's purpose of protecting the reliance interests of those receiving and expecting to receive longevity bonus payments.

3. Fair and Substantial Relationship.

The third and final step in Alaska's equal protection analysis is an evaluation of the state's interest in the particular means employed to further its goals. At the low end of the sliding scale, a fair and substantial relationship between means and ends is constitutionally adequate. Alaska Pacific Assurance Co., 687 P.2d at 269-70 (Alaska 1984). The fair and substantial standard is not a rigorous one. "Despite the language in Isakson v. Rickey, 550 P.2d 359, 362 (Alaska 1976), indicating that this court's lower level of scrutiny will be more rigorous and less deferential than the federal rational basis test, we have invalidated only two legislative enactments under the fair and substantial relationship test since Isakson." Anthony, 810 P.2d at 159.

The issue is whether a fair and substantial relationship exists between the state's goals (protecting the reasonable reliance interests of present and future recipients) and its chosen means (the grandfather clause). I conclude that the state's means bear a fair and substantial relationship to its goal. The state's goal in enacting the grandfather clause was to protect reliance interests. Naturally, the people with the greatest reliance interests were those receiving

the bonus at the time the amendment was enacted. They were appropriately grandfathered in completely, and will receive the same amount, \$250, for life. The people with the next greatest reliance interest were those expecting to receive the bonus beginning the next year, in 1994. Because these people had less of a reliance interest than those already receiving the bonus, they were grandfathered in at a lesser amount, \$200. This pattern continues consistently for those expecting to receive the bonus in 1995 and 1996. People who in 1993 were expecting to receive the bonus in 1997, four years into the future, had even less of a reliance interest than the other groups already mentioned, and it is reasonable to conclude that their reliance interests were insufficient to warrant protection.

By grandfathering in the full \$250 bonus for those already receiving it, the legislature fully protected the interests of those person who it could reasonably conclude most relied on it. . . . By grandfathering in a lesser bonus for those who would first become eligible and apply in 1994, 1995, and 1996, the legislature partially protected the interests of those persons who, it again could reasonably conclude, had a substantial but lesser reliance on the LBP. . . . Again, the key difference is the amount of time available to make the necessary adjustments.

State's Memo at 16-17.

I recognize that the fit between protecting reliance interests and the actual phases created by the state is not perfect. Maggard correctly points out that the amendment is both over- and under-inclusive and that the bonus goes to persons who have varying incomes, assets, and family ties. However, "[t]he fair and substantial relationship test does not require a perfect fit between a legislative classification and the government objective it is intended to further," Anthony, 810 P.2d at 159, it only requires that the fit be reasonable and not arbitrary. Keyes v. Humana Hosp. Alaska, Inc., 750 P.2d 343, 357 (Alaska 1988). Such is the case here. As shown above, the classifications bear a reasonable and substantial relationship with the reliance interests the state sought to protect. The state adequately tailored the classifications to accomplish its purpose.

Therefore, I conclude that slowly phasing out the longevity bonus program by grandfathering in certain present and future recipients bears a fair and substantial relationship

to the goal of protecting the reliance interests of those who reasonably relied on receiving the bonus.


B. Federal Equal Protection Analysis.

I have already found that the amendment does not impinge on the right to travel, that no other fundamental rights are involved, and that no suspect classes are at issue. Furthermore, I have already found that an individual's interest in receiving a longevity bonus is entitled only to minimum protection. Therefore, given the fact that the federal equal protection clause is less protective of individual rights than Alaska's equal protection clause, and the federal equal protection analysis is less stringent, if the state's purpose and the relationship between means and ends satisfy the stricter Alaska standard, then they a fortiori meet the requirements of the less strict rational basis test. See Anthony, 810 P.2d at 162. Accordingly, the 1993 LBP amendment does not violate the equal protection clause of the United States Constitution.

CONCLUSION

In conclusion, I find that an individual's interest in a longevity bonus is entitled to minimum scrutiny, that the state's purpose in enacting the 1993 LBP Amendment, which was to protect the recipients' reasonable reliance interests, is legitimate, and that the amendment bears a fair and substantial relationship to this purpose. This memorandum accompanies my previous order of June 6, 1996, granting the state's motion for summary judgment.

Done at Anchorage, this 9 day of July, 1996.



Brian Shortell
Superior Court Judge

I certify that on 7/10/96
a copy of the above was mailed to each
of the following at their addresses of
record: Buchholdt / Gagnier

J. Herdman
Secretary/Deputy Clerk

HB

88

Norm

How many witnesses
have we to testify today
& who are they?

MX

- 1) Mike Cammisa - International Auto
Mechanics Ass'n
- 2) Jay Lerner - Recreational Veh Ass'n
- 3) Martha Moore - DHSS
- 4) Cindy Casken - DOT

These people have now come
twice. Can they testify today.
THX. MEX

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 88(), Draft Version "C"

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

2 Insert "relating to provisional drivers licenses and use of wireless telephones;"

3

4 Page 1, following line 3:

5 Insert a new bill section to read:

6 **** Section 1.** AS 28.15.057(b) is amended to read:

7 (b) A person authorized to drive a motor vehicle under a provisional driver's
8 license issued under AS 28.15.055 may not

9 (1) operate a motor vehicle that is carrying any passengers

10 (A) except a passenger who is a parent, legal guardian, sibling,
11 or a person at least 21 years of age; or

12 (B) unless at least one of the passengers is a parent, legal
13 guardian, or person at least 21 years of age; [OR]

14 (2) operate a motor vehicle between the hours of 1:00 a.m. and 5:00
15 a.m., except when the person is

16 (A) accompanied by a parent, legal guardian, or a person at
17 least 21 years of age who is licensed to drive the type or class of vehicle being
18 used; or

19 (B) driving to or from the person's place of employment or
20 within the scope of the person's employment and the driving is along the most
21 direct available route; or

22 (3) use a wireless telephone or wireless personal digital assistant
23 while operating a motor vehicle."

- 1
- 2 Page 1, line 4:
- 3 Delete "**Section 1**"
- 4 Insert "**Sec. 2**"
- 5
- 6 Renumber the following bill section accordingly.

25-LS0312C
Luckhaupt
2/12/07

CS FOR HOUSE BILL NO. 88()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES GATTO AND GRUENBERG

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to televisions, monitors, portable computers, and similar devices in**
2 **motor vehicles; and providing for an effective date."**

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

4 *** Section 1. AS 28.35 is amended by adding a new section to read:**

5 **Sec. 28.35.161. Driving a motor vehicle with a screen device operating;**
6 **unlawful installation of television, monitor, or similar device. (a) A person**
7 **commits the crime of driving with a screen operating if the person is driving ^athe motor**
8 **vehicle and ^adevice**

9 **(1) ~~the~~**
10 **(A) ^{the}a vehicle has, temporarily or permanently installed in the**
11 **vehicle or using power from the vehicle, a television, video monitor, portable**
12 **computer, or any other similar means to create a visual display visible to the**
13 **person while the person is driving the motor vehicle; and**

14 **(B) ^{the}a monitor or visual display is operating while the person is**

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driving; or

(2) ^{the person} is watching a program or reading from the ^{visual} display on a portable cellular telephone or personal data assistant.

(b) A person may not install or alter equipment described in (a)(1)(A) of this section that allows the display to be visible to the driver while the vehicle is in motion.

(c) Subsections (a) and (b) of this section do not apply to

(1) portable cellular telephones or personal data assistants being used for verbal communication;

(2) equipment that is displaying only

(A) audio equipment information, functions, and controls;

(B) vehicle information or controls related to speed, fuel level, battery charge, and other vehicle safety or equipment information;

(C) navigation or global positioning;

(D) maps;

(E) visual information to enhance or supplement the driver's view forward, behind, or to the sides of the motor vehicle for the purpose of maneuvering the vehicle;

(F) vehicle dispatching and response information for motor vehicles providing emergency road service or roadside assistance; or

(G) vehicle dispatching information for passenger transport or freight or package delivery.

(d) Subsections (a) and (b) of this section do not apply to ^{devices and} equipment ~~installed~~ in an emergency vehicle. In this subsection, "emergency vehicle" means a police, fire, or emergency medical service vehicle.

(e) It is an affirmative defense to a prosecution under (b) of this section that the equipment installed or altered ~~also~~ includes a device that, when the motor vehicle is being driven, disables the equipment for all uses except those described in (c) ⁽²⁾ of this section.

(f) A person who violates (a) of this section is guilty of

(1) a class A misdemeanor, unless any of the circumstances described in (2) - (4) of this subsection apply;

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(2) a class C felony if the person's driving causes physical injury to another person;

(3) a class B felony if the person's driving causes serious physical injury to another person;

(4) a class A felony if the person's driving causes the death of another person.

(g) A person who violates (b) of this section is guilty of a class A misdemeanor.

* Sec. 2. This Act takes effect September 1, 2007.

AMENDMENT

OFFERED IN THE HOUSE
TO: HB 88

BY REPRESENTATIVE GRUENBERG

Page 2, line 4

Add "or other hand held device" after "portable cellular telephones."

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: HB 88

- 1 Page 1, lines 9 - 10:
- 2 Delete ", temporarily or permanently installed in the vehicle or using power from the
- 3 vehicle,"



Anchorage, PO Box 21110, Anchorage, Alaska 99521-1110
Physical: (907) 562-6805 Anchorage, Alaska 99504
Business Office: (907) 562-6805 Dispatch: (907) 929-0400

"Going Your Way 24 Hours a Day"

Dear Representative Gruenberg

We are in the taxicab dispatch business in Anchorage Alaska and are afraid this proposed bill will put our company out of business. We are the largest taxicab dispatch company in Alaska and cannot do it without our computerized digital dispatch system. Since installation of our system the crimes committed against taxicab drivers in Anchorage has significantly declined. The car accident rates have also declined. Overall it has made cabs in Anchorage safer and more efficient.

I drafted a possible way to amend HB12 so it will not restrict commercial vehicles utilizing computerized digital dispatch systems for package and passenger service. I think the intent of this bill is to prevent the viewing of DVDs the internet or video technology from distracting the driver of vehicles in motion. I feel this is a worthwhile bill as long as it does not prevent established commercial businesses to use custom designed digital dispatch equipment.

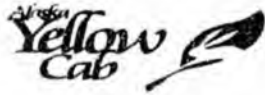
Wireless technology is advancing at a very rapid rate. I feel that customers who have this equipment and are willing to use it only in the backseat of a taxicab should be acceptable as long as it is out of view of the driver of the vehicle while the vehicle is in motion. There are a consider amount of riders who do use laptop computers and portable DVD players in taxicabs at this time. I feel it is wise to put a provision in this bill which allows this technology to be used by passengers located "out of the drivers view" in the behind the driver seating of the vehicle.

Below I have authored a draft of a possible amendment to this bill which will give make this bill reasonable for commercial business such as ours:

Computerized equipment used in commercial motor vehicles with the principal design, configuration and function for use in mobile vehicle digital dispatching exclusively for passenger transportation or package delivery service is allowed. Vehicles must be in compliance with all local and state regulated licensing requirements. If computerized equipment contained in commercial vehicles has the capability of two way internet web based video communication and/or has the ability to display copywrited motion video, then this equipment must be configured to blank out the screen from the view of the driver at all times when the vehicle is in motion. All internet based computers and video players intended for passenger use must be used only in seating located behind the driver of the vehicle and the screen must at all times when the vehicle is in motion be kept from the view of the driver.

You may also want to include a requirement for all commercial passenger carrying vehicles to display a sign inside with reads as follows:

WARNING: Use of portable computers or video equipment in the view of the driver while vehicle is in motion is prohibited and fineable by law.



Mailing: PO Box 231110, Anchorage, Alaska 99523-1110
Physical: 6707 Greenwood Dr, Anchorage, Alaska 99518
Business Office: (907)-562-6605 Dispatch: (907)-221-0999

"Going Your Way 24 Hours a Day"

Your consideration in the needed changes to this bill will be greatly appreciated.

Sincerely, Dean Paul (Co- Owner of Alaska Yellow Cab)



⊕ **13 AAC 04.260. Television receivers and headsets**

⊕ (a) A motor vehicle driven in this state may not be equipped with television-type receiving equipment located where the viewer or screen is visible from the driver's seat.

(b) A driver of a motor vehicle may not wear a headset, headphones, or other headgear designed for receiving sound and transmitting sound to the driver, or wear ear plugs or a similar device which reduces the driver's hearing ability while driving a vehicle.

(c) This section does not prohibit the use of television-type or headgear-receiving equipment used exclusively for safety or law enforcement purposes, used for and designed to improve a driver's hearing ability, or navigational devices such as Global Positioning System (GPS) or Loran.

⊕ **History:** Eff. 12/31/69, Register 31; am 6/28/79, Register 70; am 2/8/98, Register 145

⊕ **Authority:** AS 28.05.011



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E-MAIL: fw@gl.net

VIA HAND DELIVERY

February 2, 2007

The Honorable Carl Gatto
Alaska House of Representatives
State Capitol, Room 108
Juneau, Alaska 99801-1182

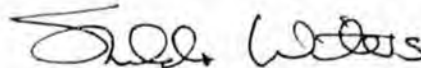
The Honorable Max Gruenberg
Alaska House of Representatives
State Capitol, Room 110
Juneau, Alaska 99801-1182

Re: House Bill 88

Dear Representative Gatto and Representative Gruenberg:

State Farm Insurance supports House Bill 88. If there is any information or assistance we can provide in getting this legislation passed, please let me know. Thank you for sponsoring this bill.

Sincerely,



Sheldon E. Winters
Lobbyist for State Farm Insurance Companies

SEW/caf

Gatto-Gruenberg HB88...pd

LEGISLATIVE RESEARCH REPORT

SEPTEMBER 20, 2004



REPORT NUMBER 05.011

STATE LAWS REGARDING TELEVISIONS, DVD PLAYERS, AND OTHER ELECTRONICS INSTALLED IN VEHICLES

PREPARED FOR REPRESENTATIVE LES GARA

BY CHERIE NIENHUIS, LEGISLATIVE ANALYST

You asked about DVD players in vehicles. Specifically, you asked about state or federal laws regarding the installation of DVD players in vehicles and the viewing of videos by drivers. You also requested information about how other states have resolved issues of illegal installation and viewing of video displaying devices in vehicles.

As you may know, the State of Alaska recently brought murder charges against a man who lost control of his vehicle and collided with another vehicle, killing both occupants.¹ The State sought the charge of second-degree murder because the driver was allegedly watching a video on his vehicle-installed DVD player when the accident occurred, a charge he denies. To be convicted of second-degree murder charges in this case, the State had to prove that the defendant "knowingly" engaged in conduct that caused another's death, and that such conduct displayed an "extreme indifference to the value of human life."² Although the jury ruled in favor of the defendant, the case drew nationwide attention as possibly the first of its kind—one in which serious criminal charges were filed against a driver whose attention was allegedly diverted from the road to a distracting electronic device—one of many such devices currently available for installation in automobiles.

Digital video disc (DVD) players join a growing list of electronic devices being modified for use in vehicles, causing concern that drivers are more distracted than ever before. Lawmakers in almost every state have considered bills to prohibit or modify the use of cellular phones while driving, but because there is still considerable debate as to whether talking on a cell phone is any more distracting than changing the dial on a car radio, few of the measures have passed. Regardless of the origin, distractions contribute to 25 percent of vehicle crashes each year—

¹ *State v. Petterson*, 3KN-03-00886CR, filed 5/12/2003. We include an MSNBC article describing the case as Attachment A.

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about 4,000 per day—reports the National Highway Traffic Safety Administration. Many lawmakers fear that the additional availability and affordability of in-vehicle electronic gadgets, such as TV monitors and DVD players, will exacerbate the distracted driving problem that already exists and result in higher accident rates.

STATE LAWS ON IN-VEHICLE TELEVISIONS, DISTRACTIONS

According to a list published in the *AAA Digest of Motor Laws 2004*, 37 states and the District of Columbia have laws or regulations that prohibit TV viewers, screens, or other such receiving equipment from being in a location visible to the driver.³ Section (a) of Alaska's regulation on in-vehicle TV equipment, 13 AAC 04.260, reads as follows:

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Section (c) of the code exempts equipment used for safety or law enforcement purposes, thereby allowing the use of Global Positioning System (GPS) and Loran systems for navigational purposes. This is a common exemption among states.

A violation of the above regulation, as well as of most such laws and regulations in other states, is generally treated like a minor traffic offense, and is punishable by a fine.

Many state laws, however, do not address other video displaying devices, such as DVD players. This was a distinction noted by attorneys in the criminal case, *State v. Petterson*, described above. Alaska law does not currently prohibit DVD players and other video displaying devices from being located within view of the driver's seat. The proliferation of in-vehicle devices has prompted state lawmakers to examine current laws and adapt them, if necessary, to the changing technological landscape. California and Texas are two states that have expanded their laws to include DVD players and other electronic devices; others, such as New York and Louisiana, have considered similar bills. We include copies of the California and Texas laws as Attachments C and D, respectively.

According to Matt Sundeen, Transportation Analyst, National Conference of State Legislatures, although Congress has held hearings on driver distraction issues, no federal laws currently target in-vehicle electronics of this nature.⁴

Some jurisdictions are choosing to strengthen and expand distracted driving laws; one such law is that enacted by the District of Columbia. The District's Distracted Driving Safety Act of 2004 now includes as distractions activities like reading, writing, performing personal grooming, and interacting with pets or unsecured cargo. A person found guilty of distracted driving in D.C. is fined \$100.⁵

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⁴ Matt Sundeen can be reached at (303) 364-7700.

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INDUSTRY, CONSUMER, AND LAW ENFORCEMENT INTERESTS

Not surprisingly, the Consumer Electronics Association (CEA) opposes legislation that prohibits the installation or use of mobile video equipment. In its official policy statement, the CEA recommends that TV or video monitors that are placed in view of the driver be installed so that they will only function when the vehicle is in park or when the parking brake is applied. If the monitors are to function without application of the brake, or when the vehicle is in some other gear than park, the CEA recommends installation where they will not be visible to the driver.

Most monitors are equipped with the safety features noted by the CEA, and only function when the vehicle is in park or the parking brake is applied, in effect, preventing their operation when the car is moving. Sources point out, however, that the safety features are easy to bypass, and safety circumventions of this type are not uncommon in vehicles where consumers have installed the devices themselves.

Other in-vehicle electronic devices, such as those installed to aid in navigation, actually enhance driving safety because they lessen the dependence on maps and road signs for directions, industry and consumer groups maintain, leaving drivers free to concentrate on the road. Many state laws exempt such systems from the driver visibility prohibitions applied to other electronic equipment.

Despite the increased regulation, mobile electronics sales are booming. According to an article posted in the *Christian Science Monitor*, sales of in-vehicle DVD players in 2003 increased 50 percent from 2002 sales figures, with 180,000 of the devices sold at a price of \$2,000 to \$4,000 apiece.⁶ Industry representatives predict that in the future, drivers will not only be reminded electronically to pump the vehicle's tires and change the oil, but they will also be able to check real-time stock quotes and weather, all from a small dashboard screen.

Industry officials contend that there is no need to craft new legislation every time a mobile electronic device is introduced because most states already have distracted driving laws. Law enforcement personnel agree with this argument in theory, but point out that in practice, proving that a driver is distracted is very difficult. According to Captain Allen Storey, Alaska State Troopers, most people involved in car crashes do not volunteer details, such as that they were talking on their cell phone, when accidents occur.⁷ As such, the devices are easier to regulate than the behavior, Captain Storey notes.

Alaska Administrative Code could be amended to include prohibitions for the placement of DVD players and other in-vehicle entertainment devices, following proper administrative procedures. Captain Storey indicates that the State Troopers would recommend that motorists violating the regulation be fined. If, however, a driver causes an accident and is subsequently discovered to have violated the regulation, Captain Storey believes stiffer penalties should apply.

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

⁶ Eric C. Everts, "New Peril in Driver's Seat: Films on DVD," *Christian Science Monitor*, August 6, 2004. We include a copy of this article as Attachment F.

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State of California Code regarding televisions and video monitors in motor vehicles

27602. (a) A person may not drive a motor **vehicle** if a television receiver, a **video** monitor, or a television or **video** screen, or any other, similar means of visually displaying a television broadcast or **video** signal that produces entertainment or business applications, is operating and is located in the motor **vehicle** at any point forward of the back of the driver's seat, or is operating and visible to the driver while driving the motor **vehicle**.

(b) Subdivision (a) does not apply to the following equipment when installed in **vehicle**:

(1) A **vehicle** information display.

(2) A global positioning display.

(3) A mapping display.

(4) A visual display used to enhance or supplement the driver's view forward, behind, or to the sides of a motor **vehicle** for the purpose of maneuvering the **vehicle**.

(5) A television receiver, **video** monitor, television or **video** screen, or any other, similar means of visually displaying a television broadcast or **video** signal, if that equipment has an interlock device that, when the motor **vehicle** is driven, disables the equipment for all uses except as a visual display as described in paragraphs (1) to (4), inclusive.

(6) A mobile digital terminal installed in a **vehicle** owned or operated by an electrical corporation, as defined in Section 218 of the Public Utilities **Code**, a local publicly owned electric utility, as defined in Section 9604 of that **code**, a gas corporation, as defined in Section 222 of that **code**, or a telephone corporation, as defined in Section 234 of that **code**, if the mobile digital terminal is fitted with an opaque covering that does not allow the driver to view any part of the display while driving, even though the terminal may be operating.

(c) Subdivision (a) does not apply to a mobile digital terminal installed in an authorized emergency **vehicle** or to a motor **vehicle** providing emergency road service or roadside assistance.

(d) Subdivision (a) does not apply to a mobile digital terminal installed in a **vehicle** owned or operated by an electrical corporation, as defined in Section 218 of the Public Utilities **Code**, a local publicly owned electric utility, as defined in Section 9604 of that **code**, a gas corporation, as defined in Section 222 of that **code**, or a telephone corporation, as defined in Section 234 of that **code**, when the **vehicle** is deployed in an emergency to respond to an interruption or impending interruption of electrical, natural gas, or telephone service.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB088-LAW-CJL-2-6-07
 Bill Version: HB 88
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title An Act relating to TV's and monitors in motor vehicles. RDU Criminal
 Component Criminal Justice Litigation
 Sponsor Representative Gatto
 Requester House State Affairs 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

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)

The bill prohibits a person from driving a motor vehicle with a TV type monitor installed that is visible to the driver, if the monitor is operating while the vehicle is being driven. It also prohibits installing such a monitor or altering a monitor that so that a monitor is visible to the driver while operating the vehicle. There are several exceptions, such as GPS or other equipment or safety displays. The penalty for the new crime of operating a vehicle while a monitor visible and playing depends on the harm caused. If no injury results from the offense, it is a class A misdemeanor. If, for example, a person sustains serious physical injury, the offense is a class B felony. The penalty for installation or alteration is a class A misdemeanor. The department does not anticipate any significant fiscal impact.

Prepared by: Robert Meiners, Acting Director Phone 465-5427
 Division Administrative Services Division Date/Time 2/6/07 7:20 AM
 Approved by: Robert Meiners for Talis Colberg, Attorney General Date 2/6/2007
 Agency Department of Law

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

Representative Carl Gatto

Representative Max Gruenberg

Sponsor Statement and Sectional Analysis

HB 88 – Televisions and Monitors in Motor Vehicles

Sponsor Statement

The purpose of the bill is to prevent operators of motor vehicles from watching television, video, and any other programming by making it a crime. Furthermore the bill makes it a crime to install a device capable of being viewed while the vehicle is in operation. This bill is similar, in most respects, to the version of HB 12 that passed the House last year. The changes that were discussed in the Senate State Affairs Committee, when the bill died, are highlighted in the bill and italicized below.

Sectional Analysis

Section 1 amends AS 28.35 by adding a new section as follows:

Paragraph (a) sets forth the general rules that a person shall not drive a motor vehicle while watching television or video. The elements of the crime of "driving with a screen operating" are enumerated. *New language is added that includes equipment creating a visual display that is temporarily or permanently installed or is using power from the vehicle.*

Paragraph (b) prohibits installing or altering a video display in a motor vehicle that can be viewed by the driver while the vehicle is moving. This paragraph goes on to provide for specific means of disabling the equipment lawfully.

Paragraph (c) provides specific exemptions to the general rule including cell phones and equipment that is in the nature of aides to navigation or operation. *New language is added that exempts vehicle dispatching and response information for motor vehicles providing emergency road service or roadside assistance, and for vehicle dispatching information for freight or package delivery motor vehicles.*

Paragraph (d) makes it clear that the bill is not intended to cover equipment installed in an emergency vehicle. *New language defines emergency vehicle as a police, fire or*

emergency medical service vehicle. To close a potential loophole, other motor vehicles providing emergency road service or roadside assistance has been dropped from this paragraph.

Paragraph (e) establishes an affirmative defense so long as proper equipment is installed.

Paragraph (f) prescribes the types of crimes that a person who is in violation of the law will face under various circumstances including injury and death of another.

A person who violates the law is guilty of a

- 1) class A misdemeanor;
- 2) class C felony if as a result of that violation another person suffers a physical injury;
- 3) class B felony if as a result of that violation another person suffers a serious physical injury;
- 4) class A felony if as a result of that violation another person suffers death.

Paragraph (g) prescribes the crime and punishment of a person who installs equipment in violation of the law.

Section 2 of the bill sets forth an effective date of September 1, 2007.

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

Representative Carl Gatto

Representative Max Gruenberg

MEMORANDUM

Date: January 30, 2007

To: Representative Bob Lynn
House State Affairs Committee

From: Representative Max Gruenberg
Representative Carl Gatto

Re: House Bill 88

We respectfully request that House Bill 88, "An act relating to televisions, monitors, portable computers, and similar devices in motor vehicles," be scheduled for hearing in the House State Affairs Committee at your earliest possible convenience.

Enclosed please find:

- The most recent version of the bill
- Sponsor statement
- Sectional analysis
- List of recommended witnesses or interested parties
- Additional background materials

We thank you.

Alaska State Legislature

Chairman
State Affairs Committee

Vice-Chairman
Economic Development, Trade & Tourism
Committee

Member
Judiciary Committee
Joint Armed Services Committee

Finance Subcommittees
Corrections
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety



A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

E-Mail: Representative_Bob_Lynn@legis.state.ak.us
"Bob Lynn's Alaska Blog" RepBobLynnBlog.com

Session:
Alaska State Capitol
Juneau, AK 99801-1182

Phone: (907) 465-4931
Fax: (907) 465-4316
Toll Free: (800) 870-4391

Interim:
716 W. 4th Ave., #650
Anchorage, AK 99501-2133

Phone: (907) 269-0205
Fax: (907) 269-0207

FAX

February 20, 2007

To: Legal Services

Fax #: 2029

From: Nancy Manly x2794
Alaska State Capitol, room 104
Juneau, AK 99801-1182

of Pages (including cover): 1

Phone: 907-465-4931

Fax: 907-465-4316

Re: State Affairs Final CS for HB 88

Please draft a final CS for HB 88. The committee adopted a CS for House Bill 88 Version E (25-LS0312E). Thanks.

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: HB 88

- 1 Page 1, lines 9 - 10:
- 2 Delete ", temporarily or permanently installed in the vehicle or using power from the
- 3 vehicle."



Stalling, PO Box 21110, Anchorage, Alaska 99521-1110
Physical 6707 Greenwood Dr, Anchorage, Alaska 99518
Business Office (907) 562-6803 Dispatch (907) 520-0000

"Going Your Way 24 Hours a Day"

Dear Representative Gruenberg

We are in the taxicab dispatch business in Anchorage Alaska and are afraid this proposed bill will put our company out of business. We are the largest taxicab dispatch company in Alaska and cannot do it without our computerized digital dispatch system. Since installation of our system the crimes committed against taxicab drivers in Anchorage has significantly declined. The car accident rates have also declined. Overall it has made cabs in Anchorage safer and more efficient.

I drafted a possible way to amend HB12 so it will not restrict commercial vehicles utilizing computerized digital dispatch systems for package and passenger service. I think the intent of this bill is to prevent the viewing of DVDs the internet or video technology from distracting the driver of vehicles in motion. I feel this is a worthwhile bill as long as it does not prevent established commercial businesses to use custom designed digital dispatch equipment.

Wireless technology is advancing at a very rapid rate. I feel that customers who have this equipment and are willing to use it only in the backseat of a taxicab should be acceptable as long as it is out of view of the driver of the vehicle while the vehicle is in motion. There are a consider amount of riders who do use laptop computers and portable DVD players in taxicabs at this time. I feel it is wise to put a provision in this bill which allows this technology to be used by passengers located "out of the drivers view" in the behind the driver seating of the vehicle.

Below I have authored a draft of a possible amendment to this bill which will give make this bill reasonable for commercial business such as ours:

Computerized equipment used in commercial motor vehicles with the principal design, configuration and function for use in mobile vehicle digital dispatching exclusively for passenger transportation or package delivery service is allowed. Vehicles must be in compliance with all local and state regulated licensing requirements. If computerized equipment contained in commercial vehicles has the capability of two way internet web based video communication and/or has the ability to display copywrited motion video, then this equipment must be configured to blank out the screen from the view of the driver at all times when the vehicle is in motion. All internet based computers and video players intended for passenger use must be used only in seating located behind the driver of the vehicle and the screen must at all times when the vehicle is in motion be kept from the view of the driver.

You may also want to include a requirement for all commercial passenger carrying vehicles to display a sign inside with reads as follows:

WARNING: Use of portable computers or video equipment in the view of the driver while vehicle is in motion is prohibited and fineable by law.



Mailings: PO Box 211110, Anchorage, Alaska 99521-1110
Physical: 6707 Greenwood Dr. Anchorage, Alaska 99518
Business Office: (907)-562-8805 Dispatch: (907)-929-9999

"Going Your Way 24 Hours a Day"

Your consideration in the needed changes to this bill will be greatly appreciated.

Sincerely, Dean Paul (Co- Owner of Alaska Yellow Cab)



⊕ **13 AAC 04 260. Television receivers and headsets**


⊕ (a) A motor vehicle driven in this state may not be equipped with television-type receiving equipment located where the viewer or screen is visible from the driver's seat.

(b) A driver of a motor vehicle may not wear a headset, headphones, or other headgear designed for receiving sound and transmitting sound to the driver, or wear ear plugs or a similar device which reduces the driver's hearing ability while driving a vehicle.

(c) This section does not prohibit the use of television-type or headgear-receiving equipment used exclusively for safety or law enforcement purposes, used for and designed to improve a driver's hearing ability, or navigational devices such as Global Positioning System (GPS) or Loran.

⊕ **History:** Eff. 12/31/69, Register 31; am 6/28/79, Register 70; am 2/8/98, Register 145

⊕ **Authority:** AS 28.05.011



LESSMEIER & WINTERS

LAWYERS - LLC

VINTAGE BUSINESS PARK
3000 VINTAGE BOULEVARD
SUITE 100
JUNEAU, ALASKA 99801

MICHAEL L. LESSMEIER
GREGORY W. LESSMEIER
SHELDON E. WINTERS

TELEPHONE: (907) 796-4999
FACSIMILE: (907) 796-4998
E-MAIL: lw@gcl.net

VIA HAND DELIVERY

February 2, 2007

The Honorable Carl Gatto
Alaska House of Representatives
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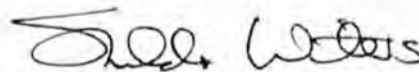
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SEW/caf

Gatto-Gruc. rg HB88 wpl

LEGISLATIVE RESEARCH REPORT

SEPTEMBER 20, 2004



REPORT NUMBER 05.011

STATE LAWS REGARDING TELEVISIONS, DVD PLAYERS, AND OTHER ELECTRONICS INSTALLED IN VEHICLES

PREPARED FOR REPRESENTATIVE LES GARA

BY CHERIE NIENHUIS, LEGISLATIVE ANALYST

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(3) A mapping display.

(4) A visual display used to enhance or supplement the driver's view forward, behind, or to the sides of a motor **vehicle** for the purpose of maneuvering the **vehicle**.

(5) A television receiver, **video** monitor, television or **video** screen, or any other, similar means of visually displaying a television broadcast or **video** signal, if that equipment has an interlock device that, when the motor **vehicle** is driven, disables the equipment for all uses except as a visual display as described in paragraphs (1) to (4), inclusive.

(6) A mobile digital terminal installed in a **vehicle** owned or operated by an electrical corporation, as defined in Section 218 of the Public Utilities **Code**, a local publicly owned electric utility, as defined in Section 9604 of that **code**, a gas corporation, as defined in Section 222 of that **code**, or a telephone corporation, as defined in Section 234 of that **code**, if the mobile digital terminal is fitted with an opaque covering that does not allow the driver to view any part of the display while driving, even though the terminal may be operating.

(c) Subdivision (a) does not apply to a mobile digital terminal installed in an authorized emergency **vehicle** or to a motor **vehicle** providing emergency road service or roadside assistance.

(d) Subdivision (a) does not apply to a mobile digital terminal installed in a **vehicle** owned or operated by an electrical corporation, as defined in Section 218 of the Public Utilities **Code**, a local publicly owned electric utility, as defined in Section 9604 of that **code**, a gas corporation, as defined in Section 222 of that **code**, or a telephone corporation, as defined in Section 234 of that **code**, when the **vehicle** is deployed in an emergency to respond to an interruption or impending interruption of electrical, natural gas, or telephone service.

Motor vehicle image display devices.

(1) As used in this section, "image display device" means equipment capable of displaying to the driver of a motor vehicle:

(a) A broadcast television image; or

(b) A visual image from a digital video disc or other storage device.

(2) Except as provided in subsection (4) of this section, a person commits the offense of unlawful use of an image display device if the person drives a motor vehicle on a public roadway while viewing a broadcast television image or a visual image from an image display device.

(3) Except as provided in subsection (4) of this section, a person may not install in a motor vehicle an image display device intended to display images visible to a driver in a normal driving position when the vehicle is in motion.

(4) Subsection (2) and (3) of this section do not apply to:

(a) Emergency vehicles; or

(b) Image display devices that are displaying images that provide the driver with navigation and related traffic, road, and weather information; or

(c) Image display devices providing vehicle information or information related to the driving task; or

(d) Image display devices used to enhance or supplement the driver's view forward, behind, or to the sides of a motor vehicle; or

(e) Image display devices that permit the driver to monitor vehicle occupants seated rearward of the driver; or

(f) Any use of an image display device while a vehicle is parked.

2000-2005 Statewide Driver Inattention Crash Statistics

2000 Crashes Related Directly to Driver Distraction

Driver Type	Total
All Drivers	1955
Teenagers	434

Per Times of Day

0100-0300	39
0301-0500	27
0501-0700	21
0701-0900	140
0901-1100	143
1101-1300	221
1301-1500	300
1501-1700	349
1701-1900	349
1901-2100	158
2101-2300	95
2301-0059	73

2001 Crashes Related Directly to Distraction

Driver Type	Total
All Drivers	2133
Teenagers	447

Per Times of Day

0100-0300	56
0301-0500	33
0501-0700	24
0701-0900	172
0901-1100	142
1101-1300	268
1301-1500	351
1501-1700	379
1701-1900	334
1901-2100	146
2101-2300	121
2301-0059	59

2002 Crashes Related Directly to Distraction

Driver Type	Total
All Drivers	2417
Teenagers	545

Per Times of Day

0100-0300	50
0301-0500	42
0501-0700	42
0701-0900	179
0901-1100	143
1101-1300	269
1301-1500	367
1501-1700	481
1701-1900	443
1901-2100	168
2101-2300	105
2301-0059	80

2002 Crashes Related Directly to Driver Cell Phone Use

Driver Type	Total
All Drivers	53
Teenagers	14

Per Times of Day

00-0300	3
0301-0500	1
0501-0700	1
0701-0900	4
0901-1100	4
1101-1300	2
1301-1500	11
1501-1700	9
1701-1900	5
1901-2100	3
2101-2300	5
2301-0059	8

2003 Crashes Related Directly to Cell Phone Use

Driver Type	Total
All Drivers	55
Teenagers	18

Per Times of Day

0100-0300	2
0301-0500	1
0501-0700	0
0701-0900	3
0901-1100	1
1101-1300	6
1301-1500	6
1501-1700	6
1701-1900	11
1901-2100	7
2101-2300	7
2301-0059	5

2004 Crashes Related Directly to Cell Phone Use

Driver Type	Total
All Drivers	58
Teenagers	13

Per Times of Day

0100-0300	4
0301-0500	1
0501-0700	1
0701-0900	3
0901-1100	6
1101-1300	6
1301-1500	6
1501-1700	7
1701-1900	7
1901-2100	6
2101-2300	3
2301-0059	4

2003 Crashes Related Directly to Distraction

Driver Type	Total
All Drivers	2558
Teenagers	530

Per Times of Day

0100-0300	52
0301-0500	30
0501-0700	45
0701-0900	172
0901-1100	140
1101-1300	338
1301-1500	412
1501-1700	515
1701-1900	458
1901-2100	181
2101-2300	108
2301-0059	83

2004 Crashes Related Directly to Distraction

Driver Type	Total
All Drivers	2241
Teenagers	473

Per Times of Day

0100-0300	52
0301-0500	23
0501-0700	48
0701-0900	188
0901-1100	169
1101-1300	289
1301-1500	350
1501-1700	384
1701-1900	358
1901-2100	157
2101-2300	110
2301-0059	89

2005 Crashes Related Directly to Cell Phone Use

Driver Type	Total
All Drivers	59
Teenagers	23

Per Times of Day

0100-0300	4
0301-0500	1
0501-0700	1
0701-0900	0
0901-1100	5
1101-1300	3
1301-1500	10
1501-1700	9
1701-1900	18
1901-2100	4
2101-2300	6
2301-0059	0

2005 Crashes Related Directly to Distraction

Driver Type	Total
All Drivers	2108
Teenagers	418

Per Times of Day

0100-0300	42
0301-0500	32
0501-0700	58
0701-0900	172
0901-1100	135
1101-1300	291
1301-1500	340
1501-1700	382
1701-1900	335
1901-2100	132
2101-2300	86
2301-0059	64

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 88(), Draft Version "C"

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

2 Insert "relating to provisional drivers licenses and use of wireless telephones;"

3

4 Page 1, following line 3:

5 Insert a new bill section to read:

6 **** Section 1. AS 28.15.057(b) is amended to read:**

7 (b) A person authorized to drive a motor vehicle under a provisional driver's
8 license issued under AS 28.15.055 may not

9 (1) operate a motor vehicle that is carrying any passengers

10 (A) except a passenger who is a parent, legal guardian, sibling,
11 or a person at least 21 years of age; or

12 (B) unless at least one of the passengers is a parent, legal
13 guardian, or person at least 21 years of age; [OR]

14 (2) operate a motor vehicle between the hours of 1:00 a.m. and 5:00
15 a.m., except when the person is

16 (A) accompanied by a parent, legal guardian, or a person at
17 least 21 years of age who is licensed to drive the type or class of vehicle being
18 used; or

19 (B) driving to or from the person's place of employment or
20 within the scope of the person's employment and the driving is along the most
21 direct available route; or

22 **(3) use a wireless telephone or wireless personal digital assistant**
23 **while operating a motor vehicle."**

1

2 Page 1, line 4:

3 Delete "Section 1"

4 Insert "Sec. 2"

5

6 Renumber the following bill section accordingly.

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 88, Draft Version "C"

"AS 28.15.051(a) is amended to add at the end of the subsection to read:

The permittee shall not use a wireless telephone or wireless personal digital assistant while operating a vehicle."

2007 Bills relating to cell phone use and teen drivers

Missouri HB 609

Requires every school district to offer a driver's education course available to students 15 years of age or older and prohibits cell phone use by temporary permit or intermediate license holders.

Representative Judy Baker (D)

01/25/2007 - Introduced and read first time in House. 01/29/2007 - Read second time.

North Dakota HB 1196

Prohibits minors from operating a motor vehicle while using a cell phone.

Rep. Lawrence Klemin (R) et. al.

Introduced 1/5/07. To House Transportation Committee 1/5/07.

Vermont HB 85

Prohibits the use of cellular telephones by a person operating a motor vehicle with a learner permit or junior operator license.

Representative Sue Minter (D)

1/18/07 - Introduced. 1/19/07 - Referred to House Judiciary Committee.

Virginia HB 1876

Prohibits the use of all wireless phones by holders of provisional licenses, learner's permits and motorcycle license permits while operating motor vehicles. Provides exceptions for emergencies, when the vehicle is parked or when the vehicle is stationary.

Rep. C. Charles Clapton (D)

Introduced 1/4/07

Arkansas SB 19

Prohibits any driver under age 18 from using a phone while operating a motor vehicle. Enforced as a secondary offense.

Warnings for a first offense, \$50 fines for subsequent offenses.

Sen. Kim Hendren (R)

Introduced 1/8/07. To Senate Transportation, Technology and Legislative Affairs Committee 1/8/07.

Georgia HB 4

Prohibits holders of instruction permits or Class D licenses from using any phone while operating a motor vehicle.

Rep. Mary Oliver (D)

Introduced 1/8/07.

Maine LD 161

Prohibits a person under the age of 18 from using a mobile telephone while operating a motor vehicle.

Rep. George Hogan (D)

Referred to the Committee on Transportation on 1/16/07.

Utah HB 217

Prohibits a person younger than 18 years of age from using a wireless telephone while operating a motor vehicle; provides exceptions; provides that it is an infraction for violating the prohibition; provides it is a reportable violation and requires the Driver License Division to assess points against a person's driving record for being convicted of violating prohibition.

Representative Kory Holdaway (R)

1/15/2007 - Introduced. 1/17/2007 To standing committee on Transportation. 1/23/2007 - House Transportation Committee recommended amendment, recommendation favorable.

California SB 33

Prohibits a holder of an instructional permit, student license or a provisional license from driving a motor vehicle while operating a mobile telephone. The bill does not exempt hands-free mobile telephones. Also prohibits a police officer from pulling over a driver for the sole purpose of determining if the driver is violating the provision.

Sen. Joe Simitian (D)

Referred to the Senate Committee on Transportation and Housing

Illinois HB 559

Provides that a person under the age of 19 years may not drive a vehicle on a roadway while using a wireless phone. Provides that a violation is a petty offense punishable by a fine of \$100.

Rep. Bob Rita (D)

Assigned to Drivers Education and Safety Committee on 2/7/07

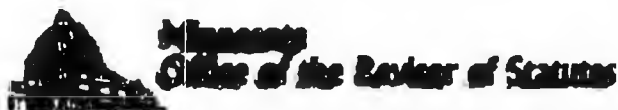
In 2006 there were a few bills that were passed that may be of some interest to you:

Minnesota HF 2656

North Carolina SB 1289 (Prohibits drivers 18 years and younger from using mobile phone technology.)

Rhode Island HB7372, SB 2451 (prohibits minors from operating a motor vehicle while on a cell phone.)

West Virginia SB 219 (Prohibits drivers with an instruction permit or provisional license from using a phone while driving. Provides emergency exception).



171.05, Minnesota Statutes 2006

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171.05 INSTRUCTION PERMIT.

Subdivision 1. Person 18 or more years of age. (a) Any person who is 18 or more years of age and who, except for a lack of instruction in operating a motor vehicle, would otherwise be qualified to obtain a class D driver's license under this chapter, may apply for an instruction permit and the department shall issue the permit. The instruction permit entitles the applicant to drive a motor vehicle for which a class D license is valid upon the highways for a period of two years if the permit holder:

- (1) has the permit in immediate possession; and
 - (2) is driving the vehicle while accompanied by an adult licensed driver who is actually occupying a seat beside the driver.
- (b) Any license of a lower class may be used as an instruction permit to operate a vehicle requiring a higher class license for a period of six months after passage of the written test or tests required for the higher class and when the licensee is accompanied by and receiving instruction from a holder of the appropriate higher class license. A copy of the record of examination taken for the higher class license must be carried by the driver while using the lower class license as an instruction permit.

Subd. 1a. Minimum period to possess instruction permit. An applicant who has received an instruction permit under subdivision 1 and has not previously been licensed to drive in Minnesota or in another jurisdiction must possess the instruction permit for not less than six months for an applicant who is 18 years of age, and not less than three months for all other applicants, before qualifying for a driver's license. An applicant with an instruction permit from another jurisdiction must be credited with the amount of time that permit has been held.

Subd. 1b. Instruction permit not issued. Notwithstanding subdivision 1, the commissioner shall not issue an instruction permit to a person under age 18 if the person has ever been convicted of a violation of section [169A.20](#), [169A.33](#), or [169A.35](#); a violation of a provision of sections [169A.50](#) to [169A.53](#); or a crash-related moving violation.

Subd. 2. Person less than 18 years of age. (a) Notwithstanding any provision in subdivision 1 to the contrary, the department may issue an instruction permit to an applicant who is 15, 16, or 17 years of age and who:

- (1) has completed a course of driver education in another state, has a previously issued valid license from another state, or is enrolled in either:
 - (i) a public, private, or commercial driver education program that is approved by the commissioner of public safety and that includes classroom and behind-the-wheel training; or
 - (ii) an approved behind-the-wheel driver education program when the student is receiving full-time instruction in a home school within the meaning of sections [120A.22](#) and [120A.24](#), the student is working toward a homeschool diploma, the student's status as a homeschool student has been certified by the superintendent of the school district in which the student resides, and the student is taking home-classroom driver training with classroom materials approved by the commissioner of public safety;
- (2) has completed the classroom phase of instruction in the driver education program;
- (3) has passed a test of the applicant's eyesight;
- (4) has passed a department-administered test of the applicant's knowledge of traffic laws;
- (5) has completed the required application, which must be approved by (i) either parent when

both reside in the same household as the minor applicant or, if otherwise, then (ii) the parent or spouse of the parent having custody or, in the event there is no court order for custody, then (iii) the parent or spouse of the parent with whom the minor is living or, if items (i) to (iii) do not apply, then (iv) the guardian having custody of the minor or, in the event a person under the age of 18 has no living father, mother, or guardian, or is married or otherwise legally emancipated, then (v) the applicant's adult spouse, adult close family member, or adult employer; provided, that the approval required by this clause contains a verification of the age of the applicant and the identity of the parent, guardian, adult spouse, adult close family member, or adult employer; and (6) has paid the fee required in section 171.06, subdivision 2.

(b) The instruction permit is valid for two years from the date of application and may be renewed upon payment of a fee equal to the fee for issuance of an instruction permit under section 171.06, subdivision 2.

Subd. 2a. Permit for six months. (a) An applicant who has applied for and received an instruction permit pursuant to subdivision 2 must possess the instruction permit for not less than six months before qualifying for a driver's license.

(b) [Expired]

Subd. 2b. Instruction permit use by person under age 18. (a) This subdivision applies to persons who have applied for and received an instruction permit under subdivision 2.

(b) The permit holder may, with the permit in possession, operate a motor vehicle, but must be accompanied by and be under the supervision of a certified driver education instructor, the permit holder's parent or guardian, or another licensed driver age 21 or older. The supervisor must occupy the seat beside the permit holder.

(c) The permit holder may operate a motor vehicle only when every occupant under the age of 18 has a seat belt or child passenger restraint system properly fastened. A person who violates this paragraph is subject to a fine of \$25. A peace officer may not issue a citation for a violation of this paragraph unless the officer lawfully stopped or detained the driver of the motor vehicle for a moving violation as defined in section 171.04, subdivision 1. The commissioner shall not record a violation of this paragraph on a person's driving record.

(d) The permit holder may not operate a vehicle while communicating over, or otherwise operating, a cellular or wireless telephone, whether handheld or hands free, when the vehicle is in motion. The permit holder may assert as an affirmative defense that the violation was made for the sole purpose of obtaining emergency assistance to prevent a crime about to be committed, or in the reasonable belief that a person's life or safety was in danger. Violation of this paragraph is a petty misdemeanor subject to section 169.89, subdivision 2.

(e) The permit holder must maintain a driving record free of convictions for moving violations, as defined in section 171.04, subdivision 1, and free of convictions for violation of section 169A.20, 169A.33, 169A.35, or sections 169A.50 to 169A.53. If the permit holder drives a motor vehicle in violation of the law, the commissioner shall suspend, cancel, or revoke the permit in accordance with the statutory section violated.

Subd. 3. Motorized bicycle. Notwithstanding any provision in subdivision 1 to the contrary, the department, upon application and payment of the fee prescribed in section 171.02, subdivision 3, may issue a motorized bicycle instruction permit to an applicant who is 15 years of age and who has successfully completed the written portion of the examination prescribed by the commissioner. The holder of this instruction permit who has the permit in possession may operate a motorized bicycle within one mile of the holder's residence for the purpose of practicing to take the operator portion of the examination prescribed by the commissioner.

History: (2720-144b) 1939 c 401 s 5; 1949 c 91 s 1; 1961 c 33 s 1; 1963 c 382 s 2; 1971 c 644 s 7; 1973 c 95 s 1; 1980 c 446 s 1; 1986 c 444; 1986 c 454 s 22; 1987 c 384 art 1 s 19; 1990 c 529 s 6,7; 1996 c 275 s 4; 1996 c 455 art 3 s 25; 1997 c 250 s 8; 1998 c 388 s 10-12; 1999 c 238 art 2 s 24,25; 2000 c 478 art 2 s 7; 2000 c 489 art 6 s 31; 2002 c 371 art 1 s 53; 2004 c 177 s 2; 1Sp2005 c 6 art 3 s 62-64; 2006 c 260 art 2 s 15

Sec. ~~11.81.900~~. Definitions.

(b) In this title, unless otherwise specified or unless the context requires otherwise,

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

(56) "serious physical injury" means

(A) physical injury caused by an act performed under circumstances that create a substantial risk of death; or

(B) physical injury that causes serious and protracted disfigurement, protracted impairment of health, protracted loss or impairment of the function of a body member or organ, or that unlawfully terminates a pregnancy;

Sec. 28.90.990. Definitions for title.

(a) Unless otherwise specifically defined, or unless the context otherwise requires, in this title and in regulations adopted under this title

(22) "serious physical injury" has the meaning given in AS ~~11.81.900~~(b);

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 88(), Draft Version "C"

1 Page 1, line 2, following "vehicles;":

2 Insert "relating to the definition of physical injury for the Alaska Uniform Vehicle
3 Code;"

4

5 Page 2, following line 8:

6 Insert a new bill section to read:

7 "* Sec. 2. AS 28.90.990(a) is amended by adding a new paragraph to read:

8 (29) "physical injury" has the meaning given in AS 11.81.900."

9

10 Renumber the following bill section accordingly.

25-LS0312C
Luckhaupt
2/12/07

CS FOR HOUSE BILL NO. 88()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES GATTO AND GRUENBERG

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to televisions, monitors, portable computers, and similar devices in
2 motor vehicles; and providing for an effective date."

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

4 * Section 1. AS 28.35 is amended by adding a new section to read:

5 **Sec. 28.35.161. Driving a motor vehicle with a screen device operating;**
6 **unlawful installation of television, monitor, or similar device.** (a) A person
7 commits the crime of driving with a screen operating if the person is driving the motor
8 vehicle and

9 (1) the

10 (A) vehicle has, temporarily or permanently installed in the
11 vehicle or using power from the vehicle, a television, video monitor, portable
12 computer, or any other similar means to create a visual display visible to the
13 person while the person is driving the motor vehicle; and

14 (B) monitor or visual display is operating while the person is

1 driving; or

2 (2) is watching a program or reading from the display on a portable
3 cellular telephone or personal data assistant.

4 (b) A person may not install or alter equipment described in (a)(1)(A) of this
5 section that allows the display to be visible to the driver while the vehicle is in motion.

6 (c) Subsections (a) and (b) of this section do not apply to

7 (1) portable cellular telephones or personal data assistants being used
8 for verbal communication;

9 (2) equipment that is displaying only

10 (A) audio equipment information, functions, and controls;

11 (B) vehicle information or controls related to speed, fuel level,
12 battery charge, and other vehicle safety or equipment information;

13 (C) navigation or global positioning;

14 (D) maps;

15 (E) visual information to enhance or supplement the driver's
16 view forward, behind, or to the sides of the motor vehicle for the purpose of
17 maneuvering the vehicle,

18 (F) vehicle dispatching and response information for motor
19 vehicles providing emergency road service or roadside assistance; or

20 (G) vehicle dispatching information for passenger transport or
21 freight or package delivery.

22 (d) Subsections (a) and (b) of this section do not apply to equipment installed
23 in an emergency vehicle. In this subsection, "emergency vehicle" means a police, fire,
24 or emergency medical service vehicle.

25 (e) It is an affirmative defense to a prosecution under (b) of this section that
26 the equipment installed or altered also includes a device that, when the motor vehicle
27 is being driven, disables the equipment for all uses except those described in (c) of this
28 section.

29 (f) A person who violates (a) of this section is guilty of

30 (1) a class A misdemeanor, unless any of the circumstances described
31 in (2) - (4) of this subsection apply;

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(2) a class C felony if the person's driving causes physical injury to another person;

(3) a class B felony if the person's driving causes serious physical injury to another person;

(4) a class A felony if the person's driving causes the death of another person.

(g) A person who violates (b) of this section is guilty of a class A misdemeanor.

* Sec. 2. This Act takes effect September 1, 2007.

HB

92

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 16, 2007

FURTHER REFERRALS: Finance

Date of Committee Action: 3-24-07

The STATE AFFAIRS Committee considered:

HB 92

HOUSE BILL NO. 92

JURISDICTION OF OMBUDSMAN

"An Act removing the victims' advocate and the staff of the office of victims' rights from the jurisdiction of the office of the ombudsman in the legislative branch."

Recommends it be replaced with HCS or CS for _____ (_____)
 For Senate Bills with new title: Technical Title New Title: HCR _____ | Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts.:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 HSS
 LEG
 LAW
 LWF
 MVA
 DNR
 DPS
 REV
 DGT
 UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
Legislature				X

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
<i>Craig For</i>	Johnson	X			
<i>Kyle B. Don</i>	Schwartz	X			
<i>Max [unclear]</i>	Greenberg	✓			
<i>John [unclear]</i>	Coghlin	✓			
<i>DA [unclear]</i>	Dull		✓		
Chair: <i>[Signature]</i>	LYNN	X			
Chair:					

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

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FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM

March 23, 2007

SUBJECT: Authority of Ombudsman over records of the Office of Victims' Rights

TO: Representative Andrea Doll
Attn: Terry Harvey

FROM: Tamara Brandt Cook
Director

of the Ombudsman

TBC

(1) As an agency of the legislature, is the Office of Victims' Rights subject to the jurisdiction of the Ombudsman?

Under AS 24.55.150, the Ombudsman has jurisdiction to investigate an act of an agency if the ombudsman "has reason to believe" the act may be defective in one or more of the ways listed in the statute. In carrying out an investigation the Ombudsman is granted access to state records, including those of agencies not the subject of the investigation. AS 24.55.160(a) states:

In an investigation, the ombudsman may . . . (4) notwithstanding other provisions of law, have access at all times to records of every state agency, including confidential records, except sealed court records, production of which may only be compelled by subpoena, and except for records of active criminal investigations and records that could lead to the identity of confidential police informants.

Under AS 24.55.160(b) the ombudsman is forbidden from disclosing a confidential record obtained from an agency.

AS 24.55.330(2) provides a definition of "agency" for purposes of AS 24.55, the chapter that deals with the Office of the Ombudsman (emphasis added):

(2) "agency" includes a department, **office**, institution, corporation, authority, organization, commission, committee, council, or board of a municipality or **in the** executive, **legislative**, or judicial branches of the state government. . . .

Representative Andrea Doll

March 23, 2007

Page 2

Only certain elected officials and judicial officials are specifically exempted from coverage under the definition of "agency." The Alaska Office of Victims' Rights is an "agency" for purposes of AS 24.55 and is subject to the jurisdiction of the Ombudsman.

(2) Does the Office of Victims' Rights privilege not to produce documents under AS 24.65.110(d) and AS 24.65.200 yield to the Ombudsman's power to obtain information?

While the matter is not entirely free from doubt, it appears the better reading of the statutes would result in the conclusion that the Ombudsman does have access to records of the Office of Victims' Rights. AS 24.55.160(a) unambiguously grants access to confidential records of "every" state agency (with specific exceptions that probably do not apply to most records of the Office of Victims' Rights) and grants that access "**notwithstanding other provisions of law.**" I read that phrase as superseding contrary provisions in AS 24.65. Under (b) of that section the Ombudsman is, in turn, required to maintain the confidentiality of those records.

TBC:med

07-206.med

HOUSE STATE
AFFAIRS
COMMITTEE
PACKET

March 20, 2007

1

HB 166
*Contributions from Perm
Fund Dividends*

2

HB 151
*Indemnity Clause in
Public Contracts*

3

HB 92
Jurisdiction of Ombudsman

4

5

6

7

ALASKA STATE LEGISLATURE

Vice Chair:
House Finance Committee

Chair:
House Finance Subcommittees for,
Department of Public Safety
Department of Law



Session:
Alaska State Capitol
Juneau, AK 99801-1182
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BILL STOLTZE

State Representative

Representative_Bill_Stoltze@legis.state.ak.us

House Bill 92

Jurisdiction of Ombudsman

"An Act removing the victims' advocate and the staff of the office of victims' rights from the jurisdiction of the office of the ombudsman in the legislative branch."

House Bill 92 would amend Alaska statutes to explicitly exempt the Office of Victims' Rights (OVR) from the jurisdiction of the ombudsman. The statute should be amended to clarify the legislature's intent to have the OVR act as a special ombudsman for the legislature in criminal matters on behalf of crime victims. If this is not cleaned up, several problems arise.

If the Ombudsman continues to have jurisdiction over the OVR, it will add an unnecessary layer of investigation in which the "ombudsman investigates the ombudsman".

The OVR is staffed by attorneys with specialized knowledge; the ombudsman is not. This raises the question of "institutional competency" when the Ombudsman lacks that special legal knowledge necessary to investigate. Additionally, since the victims' advocate and staff are attorneys, they are already subject to ethical obligations to their clients in the Alaska Rules of Professional conduct, including the ARPC 1.3 requirement to exercise due diligence.

The OVR has access to confidential information and records beyond the scope of the access allowed to the Ombudsman. Currently, the OVR is prohibited by statute from providing confidential information and documents to the Ombudsman under confidentiality requirements.

For these reasons it is imperative that the legislature clarify their intent and remove the OVR from the jurisdiction of the Ombudsman.

DISTRICT 16

BIRCHWOOD • BUTTE • CHUGIAK • EKLUTNA • FAIRVIEW LOOP
KNIK RIVER ROAD • LAZY MOUNTAIN • PALMER • PETERS CREEK

ALASKA STATE LEGISLATURE

Vice-Chair:
House Finance Committee

Member:
House Finance Subcommittees for,
Department of Public Safety
Department of Law



Session:
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BILL STOLTZE State Representative

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MEMORANDUM

TO: Representative Bob Lynn, Chairman
House State Affairs Committee

FROM: Bill Stoltze *BS*

DATE: February 28, 2007

SUBJECT: Hearing Request

I respectfully request a hearing be scheduled for House Bill 92, removing the victims' advocate and the office of victims' rights from the jurisdiction of the office of the ombudsman in the legislative branch.

Thank you for your consideration.

DISTRICT 16

BIRCHWOOD • BUTTE • CHUGIAK • EKLUTNA • FAIRVIEW LOOP
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HB

109

HOUSE BILL NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced:
Referred:

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to the requirement for candidates, groups, legislators, public officials,
2 and other persons to submit reports electronically to the Alaska Public Offices
3 Commission; relating to disclosures by legislators, public members of the Select
4 Committee on Legislative Ethics, legislative directors, public officials, and certain
5 candidates for public office concerning services performed for compensation and
6 concerning certain income, gifts, and other financial matters; requiring legislators,
7 public members of the Select Committee on Legislative Ethics, legislative directors,
8 public officials, and municipal officers to make certain financial disclosures when they
9 leave office; relating to insignificant ownership interest in a business and to gifts from
10 lobbyists for purposes of the Alaska Executive Branch Ethics Act; relating to certain
11 restrictions on employment after leaving state service for purposes of the Alaska
12 Executive Branch Ethics Act; and providing for an effective date."

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

2 * Section 1. AS 15.13.040(m) is amended to read:

3 (m) The commission shall require [MAY REQUEST] that the information
4 required under this chapter be submitted electronically but may, when extraordinary
5 circumstances warrant an exception, [SHALL] accept any information required
6 under this chapter that is typed in clear and legible black typeface or hand-printed in
7 dark ink on paper in a format approved by the commission or on forms provided by
8 the commission and that is filed with the commission

9 * Sec. 2. AS 24.60.200 is amended to read:

10 Sec. 24.60.200. Financial disclosure by legislators, public members of the
11 committee, and legislative directors. A legislator, a public member of the committee,
12 and a legislative director shall file a disclosure statement, under oath and on penalty of
13 perjury, with the Alaska Public Offices Commission giving the following information
14 about the income received by the discloser, the discloser's spouse or domestic partner,
15 the discloser's dependent children, and the discloser's nondependent children who are
16 living with the discloser:

17 (1) the information that a public official is required to report under
18 AS 39.50.030, other than information about gifts,

19 (2) as to income in excess of \$1,000 received as compensation for
20 personal services, the name and address of the source of the income, the amount of
21 the income, the number of hours of services performed to earn that income, and a
22 statement describing in detail the nature of the services performed; [IF THE SOURCE
23 OF INCOME IS KNOWN OR REASONABLY SHOULD BE KNOWN TO HAVE
24 A SUBSTANTIAL INTEREST IN LEGISLATIVE, ADMINISTRATIVE, OR
25 POLITICAL ACTION AND THE RECIPIENT OF THE INCOME IS A
26 LEGISLATOR OR A LEGISLATIVE DIRECTOR, THE AMOUNT OF INCOME
27 RECEIVED FROM THE SOURCE SHALL BE DISCLOSED,]

28 (3) as to each loan or loan guarantee over \$1,000 from a source with a
29 substantial interest in legislative, administrative, or political action, the name and
30 address of the person making the loan or guarantee, the amount of the loan, the terms
31 and conditions under which the loan or guarantee was given, the amount outstanding

1 at the time of filing, and whether or not a written loan agreement exists.

2 * Sec. 3. AS 24.60.210 is amended to read:

3 Sec. 24.60.210. **Deadlines for filing of disclosure statements.** (a) A person
4 required to file a disclosure statement under AS 24.60.200 shall file an annual report
5 with the Alaska Public Offices Commission, covering the previous calendar year,
6 containing the disclosures required by AS 24.60.200, on or before March 15 of each
7 year. On or before the 90th day after ending service as a legislator or legislative
8 director, a former legislator or legislative director shall file with the Alaska
9 Public Offices Commission a report containing the disclosures required by
10 AS 24.60.200, covering any period of that service for which the legislator or
11 legislative director has not already filed a report.

12 (b) Notwithstanding (a) of this section, a public member and a public member
13 nominee of the committee shall file an annual report with the Alaska Public Offices
14 Commission, covering the previous calendar year, containing the disclosures required
15 by AS 24.60.200, on or before the second Monday in January of each year. On or
16 before the 90th day after ending service on the committee, a former public
17 member of the committee shall file with the Alaska Public Offices Commission a
18 report containing the disclosures required by AS 24.60.200, covering any period
19 of that service for which the public member has not already filed a report.

20 * Sec. 4. AS 24.60.210 is amended by adding a new subsection to read:

21 (c) The Alaska Public Offices Commission shall require that the reports
22 required under this section be submitted electronically but may, when extraordinary
23 circumstances warrant an exception, accept any information required under this
24 section that is typed in clear and legible black typeface or hand-printed in dark ink on
25 paper in a format approved by the commission or on forms provided by the
26 commission and that is filed with the commission.

27 * Sec. 5. AS 39.50.020 is amended to read:

28 Sec. 39.50.020. **Report of financial and business interests.** (a) A public
29 official other than the governor or the lieutenant governor shall file a statement giving
30 income sources and business interests, under oath and on penalty of perjury, within 30
31 days after taking office as a public official. Candidates for state elective office other

1 than a candidate who is subject to AS 24.60 shall file the statement with the director of
 2 elections at the time of filing a declaration of candidacy or a nominating petition or
 3 becoming a candidate by any other means. Candidates for elective municipal office
 4 shall file the statement at the time of filing a nominating petition, declaration of
 5 candidacy, or other required filing for the elective municipal office. Refusal or failure
 6 to file within the time prescribed shall require that the candidate's filing fees, if any,
 7 and filing for office be refused or that a previously accepted filing fee be returned and
 8 the candidate's name removed from the filing records. A statement shall also be filed
 9 by public officials no later than March 15 in each following year. On or before the
 10 90th day after leaving office, a former public official shall file a statement
 11 covering any period during the official's service in that office for which the public
 12 official has not already filed a statement. Persons who are members of boards or
 13 commissions not named in AS 39.50.200(b) are not required to file financial
 14 statements.

15 (b) A public official or former public official other than an elected or
 16 appointed municipal officer shall file the statement with the Alaska Public Offices
 17 Commission. Candidates for the office of governor and lieutenant governor and, if the
 18 candidate is not subject to AS 24.60, the legislature shall file the statement under
 19 AS 15.25.030 or 15.25.180. Municipal officers, former municipal officers, and
 20 candidates for elective municipal office, shall file with the municipal clerk or other
 21 municipal official designated to receive their filing for office. All statements required
 22 to be filed under this chapter are public records.

23 * Sec. 6. AS 39.50.030(b) is amended to read:

24 (b) Each statement filed by a public official or candidate under this chapter
 25 must include the following:

26 (1) for [THE SOURCE OF] all income over \$1,000 [\$5,000] during
 27 the preceding calendar year, including taxable and nontaxable capital gains, and each
 28 gift with a value exceeding \$250, received by the person, the person's spouse or
 29 domestic partner, or the person's dependent child, [EXCEPT THAT A SOURCE OF
 30 INCOME THAT IS A GIFT MUST BE INCLUDED IF THE VALUE OF THE GIFT
 31 EXCEEDS \$250]

1 (A) the source of the income or gift;

2 (B) the recipient of the income or gift;

3 (C) the amount of the income or value of the gift;

4 (D) the number of hours of services performed, if any, to
 5 earn the income or for which the gift was given; and

6 (E) a detailed description of the nature of the services
 7 performed.

8 (2) the identity, by name and address, of each business in which the
 9 person, the person's spouse or domestic partner, or the person's dependent child has an
 10 interest or was a stockholder, owner, officer, director, partner, proprietor, or employee
 11 during the preceding calendar year, except that an interest of less than \$1,000 [~~\$5,000~~]
 12 in the stock of a publicly traded corporation need not be included;

13 (3) the identity and nature of each interest in real property, including
 14 an option to buy, owned at any time during the preceding calendar year by the person,
 15 the person's spouse or domestic partner, or the person's dependent child;

16 (4) the identity of each trust or other fiduciary relation in which the
 17 person, the person's spouse or domestic partner, or the person's dependent child held a
 18 beneficial interest exceeding \$1,000 [~~\$5,000~~] during the preceding calendar year, a
 19 description and identification of the property contained in each trust or relation, and
 20 the nature and extent of the beneficial interest in it.

21 (5) any loan or loan guarantee of more than \$1,000 [~~\$5,000~~] made to
 22 the person, the person's spouse or domestic partner, or the person's dependent child,
 23 and the identity of the maker of the loan or loan guarantor and the identity of each
 24 creditor to whom the person, the person's spouse or domestic partner, or the person's
 25 dependent child owed more than \$1,000 [~~\$5,000~~]; this paragraph requires disclosure of
 26 a loan, loan guarantee, or indebtedness only if the loan or guarantee was made, or the
 27 indebtedness incurred, during the preceding calendar year, or if the amount still owing
 28 on the loan, loan guarantee, or indebtedness was more than \$1,000 [~~\$5,000~~] at any
 29 time during the preceding calendar year;

30 (6) a list of all contracts and offers to contract with the state or an
 31 instrumentality of the state during the preceding calendar year held, bid, or offered by

1 the person, the person's spouse or domestic partner, or the person's dependent child, a
2 partnership or professional corporation of which the person is a member, or a
3 corporation in which the person or the person's spouse, domestic partner, or dependent
4 children, or a combination of them, hold a controlling interest; and

5 (7) a list of all mineral, timber, oil, or any other natural resource lease
6 held, or lease offer made, during the preceding calendar year by the person, the
7 person's spouse or domestic partner, or the person's dependent child, a partnership or
8 professional corporation of which the person is a member, or a corporation in which
9 the person or the person's spouse or domestic partner or dependent children, or a
10 combination of them, holds a controlling interest.

11 * Sec. 7. AS 39.50.050(a) is amended to read:

12 (a) The Alaska Public Offices Commission created under AS 15.13.020(a)
13 shall administer the provisions of this chapter. The commission shall prepare and keep
14 available for distribution standardized forms on which the reports required by this
15 chapter shall be filed. The commission shall print the forms provided under this
16 section so that the front and back of each page have the same orientation when the
17 page is rotated on the vertical axis of the page. The commission shall require [MAY
18 REQUEST] that the information required under this chapter be submitted
19 electronically but may, when extraordinary circumstances warrant an exception,
20 [SHALL] accept any information required under this chapter that is typed in clear and
21 legible black typeface or hand-printed in dark ink on paper in a format approved by
22 the commission or on forms provided by the commission and that is filed with the
23 commission.

24 * Sec. 8. AS 39.52.110 is amended by adding a new subsection to read:

25 (d) Stock or other ownership interest in a business is presumed to be
26 insignificant if the value of the stock or other ownership interest is less than \$5,000.

27 * Sec. 9. AS 39.52.130(a) is amended to read:

28 (a) A public officer may not solicit, accept, or receive, directly or indirectly, a
29 gift, whether in the form of money, service, loan, travel, entertainment, hospitality,
30 employment, promise, or in any other form, that is a benefit to the officer's personal or
31 financial interests, under circumstances in which it could reasonably be inferred that

1 the gift is intended to influence the performance of official duties, actions, or
 2 judgment. A gift from a person required to register as a lobbyist under
 3 AS 24.45.041 to a public officer or a public officer's immediate family member is
 4 presumed to be intended to influence the performance of official duties, actions,
 5 or judgment unless the giver is an immediate family member of the person
 6 receiving the gift.

7 * Sec. 10. AS 39.52.180(a) is amended to read:

8 (a) A public officer who leaves state service may not, for two years after
 9 leaving state service, represent, advise, or assist a person for compensation regarding a
 10 matter that was under consideration by the administrative unit served by that public
 11 officer, and in which the officer participated personally and substantially through the
 12 exercise of official action. For the purposes of this subsection, "matter" includes a
 13 case, proceeding, application, contract, or determination [, BUT DOES NOT
 14 INCLUDE THE PROPOSAL OR CONSIDERATION OF LEGISLATIVE BILLS,
 15 RESOLUTIONS AND CONSTITUTIONAL AMENDMENTS, OR OTHER
 16 LEGISLATIVE MEASURES, OR THE PROPOSAL, CONSIDERATION, OR
 17 ADOPTION OF ADMINISTRATIVE REGULATIONS]

18 * Sec. 11. AS 39.52.180(d) is amended to read:

19 (d) A former governor, lieutenant governor, [OR] head or deputy head of a
 20 principal department in the executive branch, or employee of the Office of the
 21 Governor in a policy-making position may not engage in activity as a lobbyist under
 22 AS 24.45 for a period of one year after leaving service as the governor, lieutenant
 23 governor, [OR] department head or deputy head, or employee of the Office of the
 24 Governor in a policy-making position, as appropriate. This subsection does not
 25 prohibit service as a volunteer lobbyist described in AS 24.45.161(a)(1) or a
 26 representational lobbyist as defined under regulations of the Alaska Public Offices
 27 Commission.

28 * Sec. 12. The uncodified law of the State of Alaska is amended by adding a new section to
 29 read:

30 APPLICABILITY Sections 10 and 11 of this Act apply to a person who leaves state
 31 service on or after the effective date of secs. 10 and 11 of this Act.

- 1 * Sec. 13. Sections 1, 4, and 7 of this Act take effect July 1, 2007.
- 2 * Sec. 14. Except as provided in sec. 13 of this Act, this Act takes effect immediately under
- 3 AS 01.10.070(c).

Alaska State Legislature

Chairman
State Affairs Committee

Vice-Chairman
Economic Development, Trade & Tourism
Committee

Member
Judiciary Committee
Joint Armed Services Committee

Finance Subcommittees
Corrections
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety



A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

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Date: March 6, 2007

To: Jane Pierson
Fr: Mike Sica
Re: Handoff of CS for HB 109 (Version O)

Several issues that may need to be addressed in the House Judiciary Committee for the ethics omnibus bill include:

Sec. 6 AS 24.45.121

You need an Amendment to restore language from the Version K of CSHB 109 for subsection AS 24.45.121(d), which prohibits a spouse or domestic partner of a legislator from lobbying for pay.

It was unintentionally deleted by an Amendment by the Governor that also happened to include a subsection (d) with different language, which is now included in Version O. It was the intention of the State Affairs Committee to include the spouse/domestic partner lobbying prohibition in the bill.

A copy of the original language from Version K subsection 24.45.121 (d) and the Governor's amendment subsection 24.45.121 (d) are attached.

Dan Wayne is aware of the situation and can draft the Amendment to remedy this.

Sec. 20 AS 24.60.130

This may require an amendment that could satisfy everyone from Ethics Committee Administrator Joyce Anderson to Rep. Max Gruenberg (it almost qualifies as a miracle) on Amendment 10:

See Dan Wayne memo of March 6, 2007 (Number 3.) It is attached.

Again, Dan Wayne is available to draft this Amendment.

(more)

Other items of interest for Judiciary:

Amendment 5 (K.6) by Rep. Johnson dealing with AS 15.13.078(c) was withdrawn with the intent that it be addressed in the House Judiciary Committee.

A copy of Amendment 5 (K.6) is attached.

Revised Amendment 22 on 39.50.040 Blind Trusts

The State Affairs Committee wanted to make sure that the Judiciary Committee looks closely at this because it is such an overhaul of the existing statute.

A copy of Revised Amendment 22 is attached.

Amendment 32 (K.36) regarding 39.52.910 Nepotism

The officials with the Governor's office (John Bitney) and the Labor organizations (Tom Brice) are trying to deal with this issue through regulation. If that falls through, this Amendment could serve as a starting point for including a solution in possible legislation.

A copy of Amendment 32 is attached.

Amendment 34 by Rep. Gruenberg

This deals with including "limited liability company in the definition for "source of income" as defined in 39.50.200(a)(10).

A copy of Amendment 34 and the related statute is attached.

Sectional Analysis for the new CS for HB 109

I have requested a copy of this for Judiciary.

Jane, if there is anything else I can help you with in handing off this comprehensive ethics bill, please let me know.

Mike

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MEMORANDUM

March 6, 2007

SUBJECT: Comments by Drafter regarding CSHB 109(STA)
(Work Order No. 25-GH1059\O)

TO: Representative Bob Lynn
Chair of the House State Affairs Committee
Attn: Mike Sica

FROM: Dan Wayne 
Legislative Counsel

Attached is the above-referenced bill draft for your review. In particular please note the following:

1. On page 28, line 10, I removed sec. 2 from the list of sections that would become effective July 1, 2007. In drafting the amendment that eventually was adopted and became sec. 2, I was permitted to discuss it with your staff, Representative Gruenberg's staff, and David Jones of the Department of Law. In those discussions I think it was generally understood that the effective date of the section, except as specifically noted otherwise in the language of the section itself, would be the same as the general effective date of the bill. Therefore, instead of giving a specific May 1, 2007, effective date for persons campaigning for or against a ballot proposition or initiative, as in the previous draft adopted by the committee (which was later rescinded for other reasons), I was able to accomplish the same thing but in leaner and simpler language. By removing sec. 2 from the list of sections that become effective July 1, 2007, sec. 2 becomes effective at the time as I believe the committee intended.
2. Regarding the section amending AS 39.52.180(d) (page 26, lines 19 - 28), I modified the language of oral amendment 35 (by Representative Bob Roses) to conform with drafting requirements. I conformed the language of new subsection 39.52.180(e) (page 26, line 29, through page 27, line 7) and corresponding applicability sections as well, by adding the amended language.
3. The next committee of referral may want to consider two changes to sec. 20 of the bill, to better define the term "caucus" in AS 24.60.130(p). I recommend adding the word "organizational" following the word majority on page 15, lines 24, 27, and 31, the word minority, on page 15, line 28, and page 16, lines 2 and 3. With that change the sentence on page 16, line 4 that begins "In this paragraph," should be deleted because "minority organizational caucus" is already defined in the section and the extra reference