

H B

496

COMMITTEE REPORT

HOUSE

FURTHER: JUDICIARY

(7)

1/9/84

Date: 2-8-84

Mr. Speaker: HEALTH, EDUCATION AND SOCIAL SERVICES
The Committee on SOCIAL SERVICES has had HB 496
"An Act relating to food banks."

under consideration and reports it back as follows:

- [ ] do pass [ ] do not pass
[ ] do pass with attached amendments(s)
[X] replace with CS for HB 476 (HESS) [X] same title [ ] new title
and recommends
[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note
[ ] reports it back without recommendation
[ ] referred to the Committee

MEMBERS SIGNING DO PASS

Handwritten signatures of committee members who signed in support of the bill.

MEMBERS HAVING OTHER RECOMMENDATIONS:

Blank lines for members to provide other recommendations.

Handwritten signature of the Chairman.

CHAIRMAN

COMMITTEE REPORT

HOUSE

FURTHER: JUDICIARY

(7)

Date: April 24, 1984

4/13/84

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had CSSB 384 (HESS)

"An Act relating to food banks."

under consideration and recommends:

- [ X ] do pass [ ] do not pass
[ ] do pass with attached amendments(s)
[ ] replace with CS for [ ] same title [ ] new title
and recommends
[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note
[ X ] Zero Fiscal Note Attached
[ ] reports it back without recommendation
[ ] referred to the Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

Handwritten signatures of Malachuk, Kirk Ulf, T.H. Martin, Mike Davis, and Sam Pestinger.

Blank lines for other recommendations.

Handwritten signature of Malachuk, CHAIRMAN

# First Reading

## Gleaners fight hunger, salvage food in 11 states

In produce fields and fruit groves scattered across America, hard-pressed Americans are increasingly using a concept as old as the Bible to fight hunger. It is gleaning, the salvaging of food that otherwise would rot in the fields, whether inadvertently left behind or discarded because of blemishes, bruises, or low prices.

Gleaners are gathering some of that food through privately organized efforts in at least 11 states: Arizona, California, Colorado, Florida, Kansas, Maryland, Michigan, Missouri, Oregon, Texas, and Washington. They help fill what Congress' General Accounting Office calls "an unmet need" for food assistance among those not qualifying for government food programs, and GAO says states can help increase the amount of gleaned food.

California and Oregon, for example, give state tax deductions to farmers for the value of food gleaned from their fields. First passed in 1977, California's A.B. 120 this year was extended through 1984.

"It's an incentive for churches and other groups to go out and get the produce and say to a store or grower that he can get a tax deduction," says California Assemblyman David Kelly, who sponsored the renewal. Stores and growers can claim a charitable deduction — in addition to the business expense — for the value of gleaned or discarded food. A study is underway to determine the amount of lost taxes on such food.

In addition, the Food Marketing Institute says that 34 states have passed "Good Samaritan" laws limiting the liability of food donors. Ohio's is illustrative: "No person who in good faith donates perishable food to an agency is liable in civil damage for injury, death, or loss to persons or property that arises because that perishable food . . . is not fit for human consumption," if the food was

reasonably considered safe at the time it was donated.

Tax deductions and Good Samaritan laws, the GAO said, are "positively affecting the amount of food being donated."

Gleaning takes its cue from Leviticus 19:9-10: "When you harvest the produce of your field, do not completely mow the edge of your field or gather the gleanings of your harvest . . . leave them for the poor." Today food is also gleaned from supermarket waste.

Gleaners are the needy or volunteers gathering food for others. The needy keep what they can use with the excess going to such places as food banks. "It's not a freebie program — you work for what you get," says Judi Amos, of Everett, Wash., who has labored as a gleaner among potatoes and peaches.

"The program's really helped out my budget," adds Rachel Brown, who supports three children on welfare and food stamps. After years of dependence on others, she says with pride, "I'm helping myself and helping others."

—Bill Curry



Los Angeles Times photo by Bob Griener

**GLEANING HARVEST** — Rachel Brown and her nephew, Anthony Miller, stand next to boxes of pears and vegetables that were her share for a day's work of gleaning in Washington state.

## In-state preference laws enacted to govern public contract awards

One sidelight of the recent recession is that several legislatures are worried about state and local government contracts being awarded to out-of-state firms. As a consequence, at least 21 legislatures have enacted in-state preference laws.

The "Buy Minnesota" law passed last May, for example, has received nationwide publicity reflecting the generic pros and cons of implementing such protectionist legislation. (These laws differ from "Buy American" laws requiring the purchase of American-made goods and services over those from foreign countries — which don't

specify whether they must come from in-state firms.)

According to the author of the Minnesota legislation, State Representative Pat Beard, the law was intended to improve in-state employment and thus increase state tax revenues.

Beard found that 13 other states exercise in-state preference laws that include a 2-15 percent break in bidding on public works jobs against out-of-state contractors. States exercising preference are Alaska, Arizona, Arkansas, Hawaii, Louisiana, Maine, Montana, New Mexico, Oklahoma, South Carolina, Washington, West

Virginia, and Wyoming. Among them, the preference law may apply only to state agencies or extend also to municipalities and school districts.

The Minnesota law includes a provision that says any contract awarded by a state agency for engineering services, erection, construction, alteration or repair of any public building or structure, or for any public work improvement, when competitive bidding is not required, must be awarded to a Minnesota resident.

"If competitive bidding is required by law," the statute continues, "the contract must be

813 W. 3<sup>rd</sup> Ave.

Anchorage, AK 99501

January 25, 1984

Representative Mae Trischer  
Alaska State Legislature  
Park U  
Juneau, AK 99801



Dear Representative Trischer,

I was present on Monday for the teleconference on HB 496 "relating to food banks" and HESS Committee hearing. Time ran out for us to testify and has been rescheduled for Saturday a.m. Unfortunately I have a conflict on Saturday and will not be able to make that teleconference.

I hope HESS will vote passage of this bill for consideration by the House. Those of us involved with food banks and non-profit organizations that depend on donated food feel that this will encourage those in the food industry to continue and increase donations to our organizations.

Because of the safeguards in the bill for inspection by food donor and food bank, I would ask that the bill be amended not to exclude those in the food industry who are manufacturers, packers, processors, bottlers or similar commercial entities from the protection of this bill - and thus encouraging their donations of surplus unmarketable food items.

The inspection of donated items by the donor at the time of the donation, plus inspection by the receiving food bank and its recipient agency provide needed safeguards for the individual receiving the donated food.

To date, similar legislation has been passed in 47 states. Alaska, Vermont, and New Hampshire are the last three to recognize the care given by the food industry and non profit organizations for the safe

redistribution of donated food items.

Again we hope this bill will have speedy progress through committee and House and Senate to the Governor's desk - and with the above mentioned amendment.

Families and organizations that depend on charitable donations of food will be the benefactors of this legislation.

Sincerely,

Mary Jane Lundstrom  
 Volunteer and organizing  
 Board for the Food Bank of  
 Alaska, Anchorage -  
 Currently President of Board  
 of Directors (incorporated  
 Aug. 1979)

**BILL SHEFFIELD, GOVERNOR**

REPLY TO:

1031 W 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-3550

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

465-3603

**DEPARTMENT OF LAW**

OFFICE OF THE ATTORNEY GENERAL

January 26, 1984



The Honorable Mae Tischer  
Alaska State House  
Pouch V  
Juneau, AK 99811

Dear Representative Tischer:

This office has reviewed HB 496 as you requested in your January 24, 1984, letter to the Attorney General. You have asked that this office concentrate on the legal questions raised in 1980 when Governor Hammond vetoed SCS CSHB 686 ams (limiting liability of donors of food). For your information I have included a copy of a letter drafted by the Department of Law which was sent to Governor Hammond regarding the 1980 bill. You will note that the "fatal flaw" was the fact that manufacturers, bottlers, and packers of food were included in the definition of donors thereby excluding them from a well established principle of law that they are liable for damages resulting from a failure to exercise that degree of care required to insure that the product that they produce is fit for use and is free from taint.

HB 496 excludes manufacturers, processors, bottlers or other similar entities from the definition of donor. In that respect this bill is different from the 1980 bill. However, HB 496 does not appear to change the law as it now exists.

Under HB 496 a donor of food will not be subject to civil or criminal liability arising from an injury or death attributable to the condition of the donated food if

1. the donor inspects the food and finds it apparently fit for human consumption;

2. the donor has no actual or constructive knowledge that there is anything wrong with the food or that it is harmful to health; and,

3. the injury or death is not a result of the negligence, recklessness, or intentional misconduct of the donor.

The Honorable Mae Tischer  
Representative  
Re: HB 496

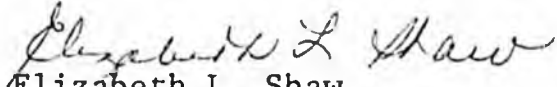
January 26, 1984  
Page 2

In essence the donor will be liable if he or she is negligent. Such would be the case without this bill. This office assumes that HB 496 is an attempt to encourage food donations by limiting the liability of food donors. In fact, however, the bill does not limit liability but merely provides that if a food donor is negligent, he or she will be liable. If he or she is not negligent, he or she will not be liable. The same analysis would hold true for the second part of the bill regarding a food bank.

If you have any further questions regarding this bill, please feel free to let me know.

Sincerely yours,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By:   
Elizabeth L. Shaw  
Assistant Attorney General

ELS:bap

Enclosure

465-3600

June 30, 1980

The Honorable Jay S. Hammond  
Governor  
State of Alaska  
Pouch A  
Juneau, Alaska 99811

Re: SCS CSHB 686 am S  
(limiting liability of  
donors of food)  
Our File: J-88-146-80

Dear Governor Hammond:

This office has reviewed SCS CSHB 686 am S, the principal thrust of which relieves a person donating food to a nonprofit organization of any civil or criminal liability flowing from any adulteration or misbranding of the food, unless the alteration is the result of intentional or grossly negligent conduct on the part of the donor.

"Grossly negligent conduct" is defined as "the intentional failure to perform a duty with reckless disregard of consequences that affect the life or property of another." (The legislature forgot the comma after "duty," thus changing the literal meaning, but we assume that we know what was intended.) A donee may ask the commissioner of health and social services to inspect the food to determine if it is adulterated or misbranded.

The commissioner may delegate this inspection duty, and a broad range of other enforcement and inspection duties, to the Department of Environmental Conservation.

This bill is apparently well intentioned; it is designed to encourage the donation of food to nonprofit

June 30, 1980

organizations for their use or distribution--presumably to needy persons. However, it exacts too great a price from prospective donees as a reward for the eleemosynary conduct.

The bill's failure to distinguish between donors who are manufacturers, packers, or bottlers and those who are not is, we think, a fatal flaw. It is a well-established principle of law that manufacturers, bottlers, and packers are liable for damages resulting from a failure to exercise that degree of care required to insure that the product is fit for use and is free from taint. See 32A C.J.S. Food, sections 59-60. This bill would relieve those manufacturers from liability for negligence for illness caused by unfit food when they give away rather than sell their products. While it is admirable to encourage the donation of food to needy causes, it is unwise to eliminate the ordinary standard of care and its attendant liability. We can, for example, imagine a manufacturer whose warehouse is laden with food of marginal fitness who would like to donate it for a tax deduction. We do not think it proper to eliminate this person's liability for negligence should one of the donees become ill from adulterated or unfit food. Poor people receiving donated food should have no less protection than people who buy food from the donor.

The class of persons who manufacture food should be held to a uniform standard of care regardless of whether the food is sold or given away. To do otherwise would be to encourage socially irresponsible conduct disguised as beneficent bounty. We would suggest that you veto this bill.

Sincerely,

Wilson L. Condon  
Attorney General

WLC:ml:MRL

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL



January 26, 1984

The Honorable Mae Tischer  
Alaska State House  
Pouch V  
Juneau, AK 99811

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3. the injury or death is not a result of the negligence, recklessness, or intentional misconduct of the donor.

BILL SHEFFIELD, GOVERNOR  
SB 384 / HB 496

REPLY TO:

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JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

465-3603

The Honorable Mae Tischer  
Representative  
Re: HB 496

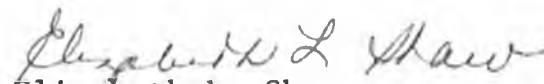
January 26, 1984  
Page 2

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If you have any further questions regarding this bill, please feel free to let me know.

Sincerely yours,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By:   
Elizabeth L. Shaw  
Assistant Attorney General

ELS:bap

Enclosure

# ALASKA STATE LEGISLATURE

INTERIM OFFICE:  
P.O. BOX 81435  
FAIRBANKS, ALASKA 99708

IN SESSION:  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 485-4930/4941



CHAIRMAN  
1083 INTERIOR DELEGATION

MEMBER  
TRANSPORTATION  
HEALTH, EDUCATION AND SOCIAL SERVICES  
LABOR SUBCOMMITTEE  
JOINT OIL AND GAS  
RURAL EDUCATION ATTENDANCE AREAS

Representative Mike Davis  
House District 19

## MEMORANDUM

To: House HESS Committee  
From: Rep. Mike Davis  
Date: Feb. 4, 1984  
Re: HB 496



Dear Rep. Tischer,

Please include the following written testimony in the  
HB 496 bill packet for all members of the Hess Committee.

Sincerely,

Rep. Mike Davis

GARY C. NEWMAN  
S.R. BOX 51233  
FAIRBANKS, ALASKA 99701

January 23, 1984

House HESS Committee

I am in support of House Bill 496, relating to food banks.

This bill would remove the impediment of liability from the donation by food vendors of surplus or waste food. By doing so, it would allow the use of tons of food for human or animal consumption that is presently being destroyed by the vendors.

For one who has had animals such as pigs, chickens and cows, this bill would allow them to have the waste that is presently thrown away by food vendors. At present, the vendors won't give away food which is waste by their standards even for animal use because there is the chance that the food would really be used for human consumption and they are concerned about the liability question, as I stated earlier.

While this issue may affect only a small proportion of our state's population, it would allow the use of tons of resources that are expensively imported into our state for use for something other than landfill.

I do have one suggested change to this bill. I would like to see the definition on page 2 from line 27 to page 3 line 1 deleted or tightened up to not be so inclusive. For example, a meat packer, who might have a substantial amount of waste available for animal or human consumption, will still have a liability problem. If there are concerns related to a particular industry or type of processor, please be more specific in their exclusion.

I urge your support of this bill.



STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: H.B. 496  
Title: An Act relating to Food Banks

FISCAL DETAIL

Agency Affected: Environmental Conservation  
Program Category Affected: NRMEC

Sponsor: Koponen and M. M. Miller  
Requestor: \_\_\_\_\_  
Date of Request: 1/23/84

BRU, Program or Subprogram(s) Affected: \_\_\_\_\_  
Environmental Quality Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		0	0	0		
200 TRAVEL		0	0	0		
300 CONTRACTUAL		0	0	0		
400 SUPPLIES		0	0	0		
500 EQUIPMENT		0	0	0		
600 LAND & STRUCTURES		0	0	0		
700 GRANTS, CLAIMS		0	0	0		
800 MISCELLANEOUS		0	0	0		
TOTAL OPERATING		0	0	0		
CAPITAL		0	0	0		
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0		
FEDERAL FUNDS	0	0	0		
OTHER	0	0	0		
TOTAL	0	0	0		

POSITIONS:

FULL-TIME	0	0	0		
PART-TIME	0	0	0		
TEMPORARY	0	0	0		

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Joe Cladouhos, Director Phone: 465-2640  
Division: Environmental Quality Management Date: 1/23/84

Approved by Commissioner: Richard Newell Date: 1/23/84  
Agency: Environmental Conservation

Distribution (by Agency preparing fiscal note):

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

12/1/83

# Alaska State Legislature

Representative Niilo Koponen

FAIRBANKS  
Box 252  
Fairbanks, Alaska 99707  
479-6782

JUNEAU  
Pouch V  
Juneau, Alaska 99814  
465-4992

## MEMORANDUM

TO: Representative Niilo Koponen

FROM: Deborah Niedermeyer, Legislative Aide *DMN*

DATE: 6 February, 1984

RE: Foodstamp Program

The foodstamp program does not adequately cover the needs of Alaska's poor. An income low enough to meet foodstamp eligibility standards only barely meets other basic monthly costs. Applicants with no income at all must wait at least 5 days before receiving assistance. This memorandum details foodstamp waiting periods and eligibility requirements which force many Alaskans to turn to foodbanks for help.

### Eligibility

In December, 1983 5% of Alaskans (22,000 people) were using the foodstamp program.

To be eligible for benefits, a person who lives alone must make less than \$659.00 per month. At that income level, a person receives \$10.00 per month in foodstamps. A single person with no income receives the maximum assistance level of \$112.00 in foodstamps per month.

A household of four must make no more than \$1,342 per month to receive receive the minimum of \$30.00 in foodstamp assistance. At zero monthly income, the four person household receives \$374 per month in foodstamps.

### Waiting Period

There is a maximum waiting period of 30 days between application for foodstamps and determination of eligibility. The Division of Public Assistance says, however, that due to the caseload, the thirty day legal maximum waiting period is also the minimum. Public Assistance admits that in some cases applicants wait even longer to find out if they will be eligible. Foodstamps must be in the mail to an applicant within 10 days of having been found eligible. Thus, the total waiting period is at least 40 days.

Foodstamp memorandum p.2

Households of any size which demonstrate that the household income for the previous month was less than \$150.00 and that the household has less than \$100.00 in liquid resources, qualify for "expedited determination". A quarter of Alaska's foodstamps applicants do qualify. In this case the foodstamps must be in the mail within 5 days of application. All those who are eligible for expedited determination are supposed to get the service automatically, however the Fairbanks office of the Alaska Legal Services Corporation routinely deals with cases where this has not happened.

<u>State</u>	<u>Provisions for nonprofit organizations</u>
Alabama	not liable
Arizona	not liable
Arkansas	not mentioned
California	liable
Colorado	liable
Florida	not mentioned
Georgia	liable
Hawaii	not liable
Idaho	liable
Illinois	not liable
Indiana	not liable
Iowa	not liable
Kentucky	not liable
Louisiana	
Maine	not liable
Maryland	not mentioned
Michigan	not mentioned
Minnesota	not liable
Missouri	not liable
Montana	not liable
Nebraska	not liable
Nevada	not liable
New Mexico	not liable
New York	not mentioned
North Carolina	liable
Ohio	not mentioned
Oklahoma	not mentioned
Oregon	not liable
Pennsylvania	not liable
Rhode Island	not liable
South Carolina	not liable
South Dakota	not liable
Tennessee	not liable
Texas	not liable

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

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1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

465-3603

February 6, 1984



The Honorable Mae Tischer  
Alaska State House  
Pouch V  
Juneau, AK 99811

Dear Representative Tischer:

On February 2, 1984, I met with Representative Niilo Koponen; Deborah Neidermeyer, Administrative Assistant; and Russ Josephson, Legislative Affairs Attorney. We discussed HB 496. We focused on the concern which this office had that the legislation did not change the law but merely restated law as it stands now.

Although I have not seen the wording of a sponsor substitute for this house bill, I believe that language will be offered which will limit the liability on donors of food. The care standard for food donors will be gross negligence. The care standard for food banks, however, will be negligence.

I would like to note that included among donors are retailers which would include food markets. It is also our understanding that there will be language changes which will allow slaughter houses which are inspected by the state to be included as food donors. Also a change may be made in the wording of proposed AS 17.20.347(1)(B) which will state that certain persons that work in commercial capacities will be excluded from the definition of donor only if their primary activity is being a manufacturer, packer, processor, or bottler. These language changes bring the definition closer and closer to the problem identified in the legislation in 1980 ... that commercial business will be treated the same as non-business donors.

The Honorable Mae Tischer  
Representative  
Re: HB 496

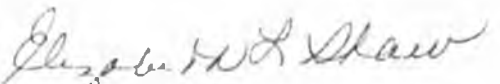
February 6, 1984  
Page 2

If you have any further questions regarding this bill,  
please feel free to let me know.

Sincerely yours,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By:

  
Elizabeth L. Shaw  
Assistant Attorney General

ELS:bap

Enclosure

cc: Honorable Niilo Koponen  
Representative

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU ALASKA 99801  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 24, 1984

SUBJECT: Food Banks  
Sectional analysis on HB 496

TO: Representative Mae Tischer  
Chairman, House HESS Committee

FROM: Russ Josephson  
Legislative Counsel



You have requested a sectional analysis of HB 496. This bill contains three sections of new law. The first concerns the immunity of a food donor from civil and criminal liability, the second concerns the immunity of a food bank, and the third is a definitions section. The provisions of this bill are very straightforward. Essentially, immunity will be granted to donors and food banks if they meet requirements listed in the bill.

Liability of Donors. A donor of food to a food bank that will distribute the food for free must meet the following requirements:

1. The donor must inspect the food reasonably when it is donated and must find the food to be apparently fit for consumption at that time.
2. The donor must not have actual or constructive knowledge that the food is adulterated, tainted, or contaminated, or that it would be harmful to the health or well-being of a person eating it. By "constructive knowledge" we mean that the donor should have known those things even if the donor denies actual knowledge is denied.
3. If an injury or death occurs, it must not be the direct result of the negligence, recklessness, or intentional misconduct of the donor.

If any of the requirements listed above is not met, the donor will not be immune from liability.

Liability of Food Banks. To be immune from civil and criminal liability for an injury or death attributable to the condition of food that it bank distributes, a food bank must meet the following requirements:

1. The food bank must make a reasonable inspection of the food it receives and must find the food apparently fit for human consumption at the time of distribution.
2. The food bank must have no actual or constructive knowledge that the food it distributes is adulterated, tainted, or contaminated, or that it would be harmful to the health or well-being of a person eating it.
3. An injury or death that occurs must not be the direct result of the negligence, recklessness, or intentional misconduct of the food bank.

If all of the above requirements are not met, the food bank will not be immune from liability.

This section of the proposed statute also addresses the problems of food that is misbranded, missing the label, or is not readily marketable. (Food may be misbranded in several ways detailed in AS 17.20.040.) This section specifically allows a food bank to distribute food that is misbranded, missing the label, or that is not readily marketable because of its appearance or grade or because it is surplus.

Definitions. "Donor" is defined to include certain persons and entities and to exclude others. The lists in this definition should be read carefully. Essentially, the definition excludes those who commercially produce or prepare food. This prevents the "dumping" of food by those who produce or prepare food that could not be sold commercially. (This was the primary concern of Governor Hammond when he vetoed prior legislation. He did not want the producers or preparers of food to be able to dump the food they could not sell and then be able to take a tax credit for the loss.) As "donor" is defined, individuals, retailers, and others would be able to donate food with immunity from liability if they meet the requirements detailed above. Those excluded from the definition of "donor" would of course be able to

Representative Mae Tischer

Page 3

January 24, 1984

donate food, but they would not enjoy the immunity of those defined as donors.

"Food bank" is defined as an organization recognized as a nonprofit organization that principally operates to collect, inspect, and salvage donated food for free distribution to needy persons. This definition by implication excludes the occasional collector and distributor of food. The idea here was to limit the granting of immunity to those organizations that handle food often enough to inspect food knowledgeably and to have good judgement about the quality of the food being distributed.

RS:ojb  
J2/073

advertisement;  
 inspection, or to permit the taking  
 17.20.200;  
 undertaking which is false, except by  
 or undertaking to the same effect  
 and address of the person residing  
 who relied on the guarantee or  
 device, or cosmetic in good faith;  
 retained or embargoed article in  
 17.20.200;

destruction, obliteration, or removal  
 or the doing of any other act with  
 intent, if the act is done while the  
 the article being misbranded;  
 labeling, or falsely representing, or  
 mark, stamp, tag, label or other  
 required by regulations adopted

of a drug or in an advertisement  
 or suggestion that an application  
 under AS 17.20.110 or that the drug  
 is not safe for use;

representing frozen fish as fresh fish;  
 or substitution by pharmacists

of a food product or a designee of  
 enforcing the provisions of para-  
 1 and (10) of this section, if the  
 food or cosmetics, and the provi-  
 sions of this section. This subsection does not limit

of a food product or a designee of  
 enforcing the provisions of para-  
 1 and (10) of this section, if the  
 drugs or devices, and the provi-  
 sions of this section. This subsection  
 does not limit. (§ 3 ch 129 SLA 1949; am  
 1971; am Executive Order No.

of amendments. — The 1961  
 amendment added subsections (b) and (c).

leading labeling or adver-  
 tising is misbranded because the  
 information is alleged to be false

because it is misleading, in determining whether the labeling or advertisement is misleading, there shall be taken into account among other things representations made or suggested by statement, word, design, device, sound or combination of them, and the extent to which the labeling or advertisement fails to reveal facts material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement or under customary or usual conditions of use. (§ 2(l) ch 129 SLA 1949)

**Collateral references.** — Products liability of manufacturer or seller for injury or death allegedly caused by failure to warn regarding danger in use of vaccine or prescription drug, 94 ALR3d 748.

Promotional efforts directed towards prescribing physician as affecting pre-

scription drug manufacturer's liability for product-caused injury, 94 ALR3d 1080.

What constitutes "false advertising" of food products or cosmetics within §§ 5 and 12 of the Federal Trade Commission Act (15 USCS §§ 45, 52), 50 ALR Fed. 16.

**Sec. 17.20.310. Penalties.** A person who violates the provisions of AS 17.20.290, upon conviction, is punishable by imprisonment for not more than six months, or by a fine of not more than \$500, or by both. If the violation is committed after a conviction under this section has become final, the person is punishable by imprisonment for not more than one year, or by a fine of not more than \$500, or by both. (§ 5(a) ch 129 SLA 1949)

**Sec. 17.20.320. Effect of written guaranty.** A person is not subject to the penalties of AS 17.20.310 for having violated AS 17.20.290(1) or (3) if that person establishes a guaranty or undertaking signed by and containing the name and address of the person residing in the state from whom the article was received in good faith, to the effect that it is not adulterated or misbranded within the meaning of this chapter. (§ 5(b) ch 129 SLA 1949)

**Sec. 17.20.330. Liability for dissemination of false advertising.** No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, is liable under AS 17.20.310 for the dissemination of the false advertisement, unless the publisher, licensee, agency or medium has refused the request of the commissioner of health and social services to furnish the name and post office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the state who caused dissemination of the advertisement. (§ 5(c) ch 129 SLA 1949; am Executive Order No. 51, § 31 (1981))



of weight, measure, or numerical count; however, under (B) of this paragraph reasonable variations shall be permitted and exemptions for small packages shall be established by regulations adopted by the department;

(3) if a word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed with conspicuousness as compared with other words, statements, designs, or devices, in the labeling and in terms which render it likely to be read and understood by the ordinary individual under customary conditions of the purchase and use;

(4) if it is for use by man and contains a quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphonmethane, or a chemical derivative of any of them, which has been by the commissioner after investigation found to be and by regulations under this chapter designated as habit forming; unless its label bears the name, and quantity or proportion of the substance or derivative and in juxtaposition with it the statement "Warning—May be habit forming";

(5) if it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears (A) the common or usual name of the drug; and (B) in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of alcohol, and including, whether active or not, the name and quantity or proportion of bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis glucosines, mercury, quabain, strophanthin, strychnine, thyroid, or derivative or preparation of any of these substances contained in them; however, to the extent that compliance with the requirements of (B) of this paragraph is impracticable, exemptions shall be established by regulations adopted by the department;

(6) unless its labeling bears (A) adequate directions for use; and (B) adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in the manner and form necessary for the protection of users; however, where a requirement of (A) of this paragraph as applied to a drug or device is not necessary for the protection of the public health, the department shall adopt regulations exempting the drug or device from these requirements;

(7) if it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed in the compendium; however, the method of packing may be modified with the consent of the commissioner, and when a drug is recognized

in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it is subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States; and not to those of the United States Pharmacopoeia;

(8) if it has been found by the commissioner to be a drug liable to deterioration, unless it is packaged in the form and manner and its label bears a statement of the precautions the department by regulation requires as necessary for the protection of public health; and no regulation shall be established for a drug recognized in an official compendium until the commissioner has informed the appropriate body charged with the revision of the compendium of the need for packaging or labeling requirements and that body has failed within a reasonable time to prescribe the requirements;

(9) if it is a drug and its container is made, formed, or filled so as to be misleading or if it is an imitation of another drug; or if it is offered for sale under the name of another drug;

(10) if it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in its labeling;

(11) if (A) it is a drug sold at retail and contains any quantity of aminopyrine, barbituric acid, cinchophen, pituitary, thyroid, or their derivatives, or (B) it is a drug or device sold at retail and its label as originally packed bears a statement that it is to be dispensed or sold only by or on the prescription of a physician, dentist or veterinarian, unless it is sold on a written prescription signed by a member of the medical, dental, or veterinary profession licensed by law to administer the drug or device, and its label as dispensed bears the name and place of business of the seller, the serial number and date of the prescription, and the name of the member of the medical, dental or veterinary profession, and the prescription shall not be refilled except on the written authorization of the prescribing physician, dentist or veterinarian. (§ 15 ch 129 SLA 1949)

**Collateral references.** — Failure to warn as basis of liability under doctrine of strict liability in tort, 53 ALR3d 239.

Liability of manufacturer or seller for

injury or death allegedly caused by failure to warn regarding danger in use of vaccine or prescription drug, 94 ALR3d 748.

**Sec. 17.20.100. Exemptions in case of drugs and devices.** A drug sold on a written prescription signed by a member of the medical, dental, or veterinary profession, except a drug sold in the course of the conduct of a business of selling drugs pursuant to diagnosis by mail in

law to administer the drug, and (c) the name and place of business of the prescriber, the name of the prescriber, and the name of the prescriber or the name of the prescriber or veterinary profession. (§ 16 ch 129 SLA 1971)

**Sec. 17.20.105. Preparation of drug prescription.** (a) In preparing a drug prescription on the drug container the name of the prescriber, unless specifically directed otherwise by the prescriber, shall be indicated on the container. (b) In preparing a prescription for a drug for a registered brand or trade name, the pharmacist obtains permission from the prescriber if the prescriber is temporarily unavailable to supply the drug requested, shall be indicated on the container. (c) The prescriber shall notify the author of the prescription. (§ 16 ch 129 SLA 1971)

(b) In preparing a prescription for a drug for a registered brand or trade name, the pharmacist obtains permission from the prescriber if the prescriber is temporarily unavailable to supply the drug requested, shall be indicated on the container. (c) The prescriber shall notify the author of the prescription. (§ 16 ch 129 SLA 1971)

**Sec. 17.20.110. Sale of new drug.** (a) A new drug shall not be offered for sale, hold for sale or given for sale unless (1) an application for it has been approved by the commissioner or (2) when not subject to the fee for testing and has not been found to be safe and effective for the purposes prescribed, recommended, or suggested in the labeling for its sale therefor. (b) An application setting out (A) full reports of investigation whether or not the drug is safe for use, (B) a full list of the articles used in the investigation, (C) a full statement of the controls used for, the manufacture of the drug, (D) a full description of the manufacturing process, (E) samples of the drug and articles used in the investigation, and (F) specimens of the labeling for the drug. (§ 17(a) ch 129 SLA 1949)

(1) an application for it has been approved by the commissioner or

(2) when not subject to the fee for testing and has not been found to be safe and effective for the purposes prescribed, recommended, or suggested in the labeling for its sale therefor. (b) An application setting out

(A) full reports of investigation whether or not the drug is safe for use,

(B) a full list of the articles used in the investigation,

(C) a full statement of the controls used for, the manufacture of the drug,

(D) a full description of the manufacturing process, (E) samples of the drug and articles used in the investigation, and

(F) specimens of the labeling for the drug. (§ 17(a) ch 129 SLA 1949)

(F) specimens of the labeling for the drug. (§ 17(a) ch 129 SLA 1949)

**Collateral references.** — Right of medical patient to obtain, or physician to

Alaska State Legislature

REP. MAE TISCHER  
CHAIRMAN



POUCH V  
STATE CAPITAL  
JUNEAU, ALASKA 99811  
(907) 465-3777

House of Representatives  
HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

MEMORANDUM

TO: Representative Mae Tischer  
FROM: Bill Lovell  
DATE: February 8, 1984  
  
RE: Analysis of Proposed CSHB 496 (HESS)

For your convenience I have analyzed the proposed House HESS Committee Substitute for House Bill 496, "[a]n Act relating to food banks."

The proposed Committee Substitute amends AS 17.20 (Alaska Food, Drug and Cosmetic Act) by adding new sections, the effects of which are described below.

Sec. 17.20.345 provides that donors to food banks are not liable for damages resulting from the consumption of goods they donate unless such damages are the result of extreme negligence or misconduct by the donor. This provision subjects food bank donors to a more stringent test than food bank operators when determining negligence or misconduct. In other words, gross negligence or misconduct must be proven before a food bank donor is held liable for damages.

The bill specifically states that nothing in the section prohibits the donation of apparently suitable goods solely because of missing labels; or lower grade or marketability.

Sec. 17.20.346 provides that food banks are not liable for damages resulting from the consumption of goods received from individual donors if such damages are not the result of negligence or misconduct by the operators of the food bank. This provision subjects food bank operators to a less stringent test than donors when determining negligence. In other words, simple negligence must be proven before a food bank operator is held liable for damages.

The bill specifically states that nothing in this section prohibits a food bank from distributing apparently suitable goods solely because of missing labels; or lower grade or marketability.

Sec. 17.20.347 defines "donor," as used in AS 17.20.345 or 17.20.346, as including "a person, farmer, retailer, slaughter-house under state supervision, freight company, distributor, wholesaler, or similar entity." This provision specifically permits operators of state supervised slaughter-houses to donate suitable meats to food banks.

House Bill 496  
February 8, 1984  
Page 2

The section specifically excludes from the definition of "donor" a "person who acts in a commercial capacity as a manufacturer, packer, processor, bottler, or similar entity, if that activity is the persons primary activity."

This section further provides that "food bank" means "an organization recognized by the state or federal government as a nonprofit organization and that operates principally to collect, inspect, and salvage donated food for free distribution to needy persons."

/wtl

HOUSE HESS COMM: NEPS FISCHER, M.W. MILLER, MARTIN, UENLING, GOLL KOPONEN  
DAVIS. ALSO NEPS BETTISWORTH & KINGSTAD  
& SENE BENNETT FAHRENKAMP & MOSS

\*\*\*\*\*THE FOLLOWING MESSAGES ALL GO TO THE ABOVELEGISLATORS\*\*\*\*\*

FROM: BRUCE ENGERRETSON, 1005 KELLUM, FKS, AK, 99701 452-2329-H  
RE: HB 496, FOOD BANKS  
MSG: I ENCOURAGE THE PASSAGE OF THIS BILL.

=====EOM

X

FROM: WILLIAM R. TRUAX, P.O. BOX 56337, NORTH POLE 99705-0337  
HOME 488-0540

RE: HB 496 FOOD BANK  
REGISTER STRONGEST SUPPORT POSSIBLE FOR THIS MEASURE.

\*\*\*\*\*EOM

FROM: CAROL MILLER, 223 SLATER STREET, FKS, 99701, 452-3993-H

RE: HB 496, FOOD BANK  
MSG: I AM ASKING YOU TO SUPPORT THIS BILL AS A GOOD WAY TO FEED  
HUNGRY PEOPLE AT LOW COST AND PROTECT THOSE DONATING THE FOOD.

=====EOM

FROM: FRED LANDES, 2601 CUSHMAN, FBKS, AK, 99701, 456-2161-W 479-6478-H

RE: HB 496, FOOD BANKS  
MSG: AS OWNER OF THE BOX BOY STORES IN FAIRBANKS I STRONGLY SUPPORT  
PASSAGE OF HB 496 WHICH RELIEVES DONATORS OF THE LIABILITY REGARDING  
DONATED PRODUCTS TO LOCAL CHARITIES AND FOOD BANKS.

=====EOM

END OF MESSAGES FOR HB496\*\*\*\*\*

SG 84-00005286 PRY 1 01/20/84 12:43:35 ORIG: LF00 IN# 0002 OUT# 0064  
FROM: PAULA/FKS TO: JND IPFU  
TARGET: LJKK SUBJ: POB

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TO: REPS, BETTISWORTH, RINGSTAD,  
& SENS BENNETT, FARENKAMP & MOSS

ALSO: HOUSE HESS COMM: REPS TISCHER, M.W. MILLER, MARTIN, UEHLING,  
GOLL, KOPONEN, DAVIS

FROM: MAJOR J.C. DOWEN, P.O. BOX 405, FKS, 99707, 452-3113-W 452-4976-H

RE: HB 496 FOOD BANKS

MSG: SALVATION ARMY GOES ON RECORD AS FAVORING THE GOOD SAMARITAN BILL  
AND URGES THE PASSING OF THIS BILL.

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=====  
=====EOM

FILE 84-00005622 PRTY 1 01/20/84 17:23:08 ORIG: LF02 IN= 0007 OUT= 0152  
FROM: PAULA/FRS  
TARGET: LNHK SUBJ: PGM  
13  
TO: JNU INFO

TO: HOUSE HESS COMM: REPS TISCHER, M.W. MILLER, MARTIN, UERLING, GOLL  
KOPONEN, DAVIS

ALSO: REPS BETTISWORTH, RINGSTAD & SENS BENNETT, FAHRENKAMP, & MOSS

FROM: PETE STEPOVICH, DIVIRSIIFIED FREIGHT HANDLERS, 1003 ASPEN

RE: HB 496, FOOD BANKS

MSG: I STRONGLY URGE PASSAGE OF HB 496 RELEASING SOCIALLY MINDED  
CONTRIBUTORS OF FOOD PRODUCTS FOR THE NEEDY FROM LEGAL LIABILITIES  
ASSOCIATED WITH THEIR GENEROUS ACT. BY DOING SO I BELIEVE IT WILL  
INCREASE THE NUMBER OF CONTRIBUTORS OF FOOD AND GREATLY HELP THOSE  
THAT NEED PRODUCTS OF THIS NATURE.

====EOM

756 84-00095330 PRT 1 01/20/84 13:24:48 BRIS: LF00 IN= 0004 OUT= 0073  
FROM: BARTHE/FBX TO: JUD INFO  
TARGET: LNR SUBJ: PUB

TO: HOUSE H.E.S.S. CHTE., CHAIRPERSON REP. TISCHER  
REP. MW MILLER, REP. MARTIN, REP. UEHLING, REP. COLL, REP. KOPONEN  
REP. DAVIS  
FR: MICHAEL DRESSER, 301 15TH AVE., FBX 99701 PH. H)456-8433 W) 456-5327  
RE: HB 496 FOOD BANKS

MSG: I TOTALLY SUPPORT THE BILL. IT WOULD LET AN AWFUL LOT OF FOOD GO TO  
PEOPLE WHO NEED IT.

9  
MSG 84-00005400. PRTY 1 01/20/84 14:21:39 ORIG: LA02 IN= 0019 OUT= 0092  
FROM: MARCIE, ANC INFO TO: POM, JUNEAU INFO  
TARGET: LJHK SUBJ: P O M

---

TO: REPRESENTATIVES TISCHER, MW MILLER, MARTIN, UEHLING, GOLL,  
KOPONEN, DAVIS

FROM: LAURIE FIELDS, 310 EAST 45TH RD, ANCHORAGE 99503 H 563-1771  
W 274-5525

I SUPPORT HOUSE BILL 496. (RE: FOOD BANK)

EOM

MSG 84-00005419 PRTY 1 01/20/84 14:39:23 ORIG: LF00 IN= 0006 OUT= 0096  
FROM: PAULA/FKS TO: JNU INFO  
TARGET: LJHK SUBJ: POM

---

TO: HOUSE HESS COMM: REPS TISCHER, M.W. MILLER, MARTIN, UEHLING, GOLL,  
KOPONEN, DAVIS

ALSO: REPS BETTISWORTH, RINGSTAD  
& SENS BENNETT, FAHRENKAMP, MOSS

FROM: REV. RICHARD HEACOCK, 915 2ND AVE., FBKS, 99701, 452-2956-W

RE: HB 496, FOOD BANKS

MSG: URGE SUPPORT FOR HB 496.

=====EOM

MSG 84-00005391 PRTY 1 01/20/84 14:06:06 ORIG: LA02 IN= 0018 OUT= 0083  
FROM: MARCIE, ANC INFO TO: POM, JUNEAU INFO  
TARGET: LJHK SUBJ: P O M

---

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: MARIAN REDWOOD, 4110 TERRACE DR., ANC 99502 H 248-2042 W 276-4776

I SUPPORT HB 496. (RE: FOOD BANKS)

EOM

CATHY ROBERT

MSG 84-00005323 PRTY 1 01/20/84 13:14:26 ORIG: LA02 IN= 0013 OUT= 0070  
FROM: MARCIE, ANC INFO TO: POM, JUNEAU INFO  
TARGET: LJHK SUBJ: P O M

---

TO: ALL MEMBERS OF THE HOUSE OF REPRESENTATIVES

FROM: WILLIAM PRESLER, 604 EAST 3RD AVENUE, ANC 99501 W 272-5646  
BEANS CAFE

I AM FOR HOUSE BILL 496 IN SUCH THAT DISTRIBUTORS CANNOT BE HELD  
RESPONSIBLE FOR FOOD DONATED.

EOM

TE 04 00005309 PNY 1 01/20/84 13:57:53. PRIO: L002 IN= 0017 OUT= 0001  
FROM: MARCIE, AND INFO TO: PUB. BUREAU INFO  
TARGET: LHK SUBJ: P U R

TO: REPRESENTATIVES FISCHER, MW HILLER, MARTIN, UEHLING, GOLL,  
KOPONEN, DAVIS

FROM: SCHAIRER, ROSEMARY, 516 EAST 10TH #1, ANCHORAGE 99501  
H 277-4005

PLEASE SUPPORT IN FAVOR OF HOUSE BILL 496. (RE: FOOD BANKS)

EOM

SG 84-00005340 PRTY 1 01/20/84 13:31:50 ORIG: LA02 IN= 0014 OUT= 0074  
FROM: GARCIE, AND INFO TO: POM, JUNEAU INFO  
TARGET: LJHK SUBJ: P O M

TO: REPRESENTATIVES TISCHER, H.W. MILLER, MARTIN, UENLING,  
GOLL, KUPONEN, DAVIS

FROM: ALBERT KOENIG, 831 D STREET, APO 99501  
MESSAGE: 272-1641

I SUPPORT HOUSE BILL 496 BECAUSE I WORK ONLY PART TIME AND THE FOOD  
FROM THE FOOD BANK HAS HELPED ME.

COM

ING 04-00005389 PRY 1 01/20/84 13:48:24 ORIG: LA02 IN= 0015 OUT= 6078  
FROM: MARCIE, AND INFO TO: Pcn. JUNEAU INFO  
TARGET: LJK SUBJ: P U M

TO: REPRESENTATIVES TISCHER, H.W. MILLER, MARTIN, UEHLING, COLL,  
KOPONEN, DAVIS

FROM: VICKI HEINZ, WASILLA RESIDENT  
MAIL: BOX 872271, WASILLA 99687 H 376-7723 W 274-5525

I SUPPORT HOUSE BILL 496. (RE: FOOD BANKS)

EOM

MSG 84-00005305 PRTY 1 01/20/84 13:02:12 ORIG: LA04 IN 0004 OUT= 0066  
FROM: KAREN, ANC LIO TO: POM - JUNEAU INFO  
TARGET: LJKH SUBJ: POM

TO: REP. TISCHER, H.W. MILLER, MARTIN, UEHLING, GULL, DAVIS, KAPONEN

FROM: CARL LARSON, 9625 INDEPENDENCE DR., #201, ANCHORAGE 99507  
H. 349-4877; W. 276-4776

I SUPPORT HR 496, ALLOWING DISTRIBUTORS TO GIVE FOOD TO FOOD  
BANKS WITH NO FEAR OF LAW SUITS.

HSC 84-00005470 PRTY 1 01/20/84 15:52:31 ORIG: LA09 IN= 0903 OUT= 0134  
FROM: SHIRLEE AND LIO TO: POMS JUNEAU INFO  
TARGET: LHK SPSU: FUR

TO: REPRESENTATIVES FISCHER, M. W. MILLER, MARTIN, UEHLING,  
GULL, KOPONEN AND DAVIS

FROM: BARBARA FOREHLICH-SHUPE  
5215 EAST 26TH. NO. 11  
ANCHORAGE, AK 99508 (H) 333-7179 (W) 276-8511

MARY ANN RODGERS  
801 AIRPORT HEIGHTS, SPACE 405  
ANCHORAGE, AK 99508 (H) 344-3104 (W) 276-8511

DEBBIE BEAR  
7351 CHRISTOPHER CIRCLE  
ANCHORAGE, AK 99507 (H) 344-3104(W) 276-8511

IRENE NOLAN  
1019 MILA STREET  
ANCHORAGE, AK 99504 (H) 337-4630 (W) 276-8511

I SUPPORT HOUSE BILL 496.

\*\*\*\*\*  
1/20/84, SHIRLEE AND LIO, 5470

TO: REPRESENTATIVES FISCHER, M. W. MILLER, MARTIN, UEHLING,  
GULL, KOPONEN, AND DAVIS

FROM: WALT SCHMIDT  
2210 SENTRY DRIVE, NO. 19-B  
ANCHORAGE, AK 99507 (H) 344-0793 (W) 274-5525

I SUPPORT HB 496. AS A JOB COUNSELOR, I USE THE SERVICES OF THE  
FOOD BANK AND FAVOR LEGISLATION UNDER WHICH DISTRIBUTER CAN GIVE  
FOOD STUFFS WITHOUT FEAR OF LAWSUIT.

\*\*\*\*\*

SG 84-00005561 PRTY 1 01/20/84 16:27:27 ORIG: LA09 IN= 0094 OUT= 0140  
FROM: SHIRLEE AND LIO TO: FORS/BUREAU INFO  
TARGET: LHR SUBJ: POM

TO: REPRESENTATIVES TISCHER, M. W. MILLER, MARTIN,  
WEILING, GOLL, KOPONEN AND DAVIS

FROM: DORTHEA WILLIAMS  
4818 MALIBU  
ANCHORAGE, AK 99503 (H/W) 243-6381

I AM IN SUPPORT OF HOUSE BILL 496.

/S/ DORTHEA WILLIAMS  
F. I. S. H. ORGANIZATION

\*\*\*\*\*

GARY C. NEWMAN  
S.R. # X 51233  
FAIRBANKS ALASKA 99701

January 23, 1984

House HESS Committee

I am in support of House Bill 496, relating to food banks.

This bill would remove the impediment of liability from the donation by food vendors of surplus or waste food. By doing so, it would allow the use of tons of food for human or animal consumption that is presently being destroyed by the vendors.

For one who has had animals such as pigs, chickens and cows, this bill would allow them to have the waste that is presently thrown away by food vendors. At present, the vendors won't give away food which is waste by their standards even for animal use because there is the chance that the food would really be used for human consumption and they are concerned about the liability question, as I stated earlier.

While this issue may affect only a small proportion of our state's population, it would allow the use of tons of resources that are expensively imported into our state for use for something other than landfill.

I urge your support of this bill.

*Gary C. Newman*

TO: HOUSE HESS COMMITTEE  
FROM: REPRESENTATIVE NIILLO KOPONEN  
DATE: January 27, 1984

## Waste not, want not

How are America's poor to eat when their unemployment pay runs out, or when they can no longer make do on food stamps and welfare? The recession has provided an answer: a jerry-built, but enviably efficient, system of emergency food centres. This network stretches across the nation, using food that would otherwise go to waste, and shunts it quickly and in large quantities from grower or manufacturer to the various centres that feed the hungry. It is a charitable operation which employs only a few hundred people and is completely decentralised. It has grown with such speed that it has already left the agriculture department's much criticised surplus commodity programme, ensnared in red tape, far behind.

The emergency food system has its origins in the soup kitchens of the depression and before, but its growth in the past few years has been startling. Although all involved would like to consider it a temporary institution, there is a growing belief that it is here to stay and, if anything, will grow much larger.

Sixty-one regional food banks are the system's backbone. Each consists of a large warehouse equipped with freezers and usually manned by a small, paid staff supplemented by volunteers. These food banks are connected through Second Harvest, a non-profit-seeking organisation, which acts as a food broker. From its base in Phoenix, Arizona, Second Harvest approaches farmers and food manufacturers for donations and then shunts this food through three regional offices out to its members. The member food banks, either individually or through pools, pay the cost of transport, which is also sometimes donated. Once the food reaches a food bank, it is then given out to hundreds of the bank's members: churches, day centres for infants and the elderly, soup kitchens and various other organisations.

The member groups, which would previously have bought food on the open market, now support their food bank by paying a tax of between five and 12.5 cents a pound for the food they take. In this way the budget of the food bank,

usually running anywhere from \$100,000-250,000 a year, is covered. In some instances food banks are paid for by small donations. In Oklahoma, 600 people send in cheques of from \$5 to \$25 a month to keep the major local food banks going.

The entire system is private and non-profit seeking. To make sure it stays that way for tax purposes, Second Harvest certifies its member banks, inspects their operations, ensures that they charge no



No shortage of takers

more than 12.5 cents a pound in taxes, and satisfies itself that the bank members in turn are charitable organisations as defined under the tax laws.

Second Harvest began as an experimental arm of the now defunct Community Services Administration in the Carter era. Last year it handled 60m lb of food. This year the volume is expected to exceed 100m lb. Much of the food consists of products that would otherwise be thrown out by the manufacturer, not because they are bad, but because they cannot be sold for other reasons:

for example, discolouration or misspelled labels. When a Middle Eastern food broker went out of business, a trailer of macaroni with Arabic labelling was given to a food bank in New Jersey. Second Harvest dispensed 32 train carloads of a cereal which its manufacturer thought too oddly-flavoured to sell. The companies can deduct cost and half the unrealised profit from their taxes when they make such donations.

Some food banks rely heavily on farm surpluses. In northern California, where there are five large food banks, the banks collaborate to find out what crops are in surplus and to carry out exchanges between different areas. The bank in Watsonville, for example, supplies tons of artichokes and lettuce and gets, in exchange, peaches from the bank in Santa Clara and tomatoes from the bank in Sacramento. Farmers give food that would otherwise go to waste. What is left in the fields after harvest is also, in many cases, gathered in by teams of volunteer gleaners who take their pickings to the banks for sorting, cleaning and packing.

A report by a research group in Washington noted a dramatic increase in people coming to programmes served by the food banks. More than half the 181 programmes surveyed said that provision of free meals or food baskets had increased by more than half between February, 1982, and February, 1983. The Community Food Bank of New Jersey in Newark provides a good indication of the trend. Last autumn the bank was handling 10,000 lb of food a month. Now it distributes 200,000 lb a month across the state to 300 different groups which provide food to 30,000 people every day.

Some food banks in the Second Harvest system also distribute federal surplus foods under the government's programme. For the most part these consist of butter, cheese and non-fat dry milk from the government's huge surplus. But some food banks refuse to handle federal foods on the ground that it involves too much paper work. In certain states food banks say they have been deliberately denied federal food shipments, which instead have been handed out through local politicians as patronage.

# Alaska State Legislature

Representative Niilo Koponen

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## MEMORANDUM

TO: Representative Niilo Koponen

FROM: Deborah Niedermeyer, Legislative Aide *DNN*

DATE: 6 February, 1984

RE: Foodstamp Program

The foodstamp program does not adequately cover the needs of Alaska's poor. An income low enough to meet foodstamp eligibility standards only barely meets other basic monthly costs. Applicants with no income at all must wait at least 5 days before receiving assistance. This memorandum details foodstamp waiting periods and eligibility requirements which force many Alaskans to turn to foodbanks for help.

### Eligibility

In December, 1983 5% of Alaskans (22,000 people) were using the foodstamp program.

To be eligible for benefits, a person who lives alone must make less than \$659.00 per month. At that income level, a person receives \$10.00 per month in foodstamps. A single person with no income receives the maximum assistance level of \$112.00 in foodstamps per month.

A household of four must make no more than \$1,342 per month to receive receive the minimum of \$30.00 in foodstamp assistance. At zero monthly income, the four person household receives \$374 per month in foodstamps.

### Waiting Period

There is a maximum waiting period of 30 days between application for foodstamps and determination of eligibility. The Division of Public Assistance says, however, that due to the caseload, the thirty day legal maximum waiting period is also the minimum. Public Assistance admits that in some cases applicants wait even longer to find out if they will be eligible. Foodstamps must be in the mail to an applicant within 10 days of having been found eligible. Thus, the total waiting period is at least 40 days.

Foodstamp memorandum p.2

Households of any size which demonstrate that the household income for the previous month was less than \$150.00 and that the household has less than \$100.00 in liquid resources, qualify for "expedited determination". A quarter of Alaska's foodstamps applicants do qualify. In this case the foodstamps must be in the mail within 5 days of application. All those who are eligible for expedited determination are supposed to get the service automatically, however the Fairbanks office of the Alaska Legal Services Corporation routinely deals with cases where this has not happened.

Alaska State Legislature



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REP. MAE TISCHER  
CHAIRMAN

House of Representatives  
HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

January 24, 1984

The Honorable Norman Gorsuch  
Attorney General of the State of Alaska  
State Capitol Building  
Juneau, Alaska

Dear Mr. Attorney General:

I request that the Department of Law review House Bill 496, "An Act relating to food banks."

While a general overview is appropriate, I specifically request that the department concentrate on the legal questions raised in 1980 when Governor Hammond vetoed a similar bill because of serious legal questions regarding manufacturer liability for contaminated goods transferred directly to a food bank (See attached veto message).

The House Health, Education and Social Services Committee will be taking testimony on the bill on Saturday, January 28, 1984 in Anchorage. I ask that the completed review be available to my office by Friday, January 27, at 12:00.

Please contact me immediately if you need further clarification of my request or if you foresee some problem in meeting my requested deadline.

Thank you for your cooperation in this matter.

Cordially,

A handwritten signature in cursive script that reads "Mae Tischer".

Mae Tischer

MMT:wtl

Attachments

Alaska State Legislature

REP. MAE TISCHER  
CHAIRMAN



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House of Representatives

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

MEMORANDUM

TO: Representative Mae Tischer  
FROM: Bill Lovell  
DATE: February 8, 1984  
  
RE: Analysis of Proposed CSHB 496 (HESS)

For your convenience I have analyzed the proposed House HESS Committee Substitute for House Bill 496, "[a]n Act relating to food banks."

The proposed Committee Substitute amends AS 17.20 (Alaska Food, Drug and Cosmetic Act) by adding new sections, the effects of which are described below.

Sec. 17.20.345 provides that donors to food banks are not liable for damages resulting from the consumption of goods they donate unless such damages are the result of extreme negligence or misconduct by the donor. This provision subjects food bank donors to a more stringent test than food bank operators when determining negligence or misconduct. In other words, gross negligence or misconduct must be proven before a food bank donor is held liable for damages.

The bill specifically states that nothing in the section prohibits the donation of apparently suitable goods solely because of missing labels; or lower grade or marketability.

Sec. 17.20.346 provides that food banks are not liable for damages resulting from the consumption of goods received from individual donors if such damages are not the result of negligence or misconduct by the operators of the food bank. This provision subjects food bank operators to a less stringent test than donors when determining negligence. In other words, simple negligence must be proven before a food bank operator is held liable for damages.

The bill specifically states that nothing in this section prohibits a food bank from distributing apparently suitable goods solely because of missing labels; or lower grade or marketability.

Sec. 17.20.347 defines "donor," as used in AS 17.20.345 or 17.20.346, as including "a person, farmer, retailer, slaughter-house under state supervision, freight company, distributor, wholesaler, or similar entity." This provision specifically permits operators of state supervised slaughter-houses to donate suitable meats to food banks.

House Bill 496  
February 8, 1984  
Page 2

The section specifically excludes from the definition of "donor" a "person who acts in a commercial capacity as a manufacturer, packer, processor, bottler, or similar entity, if that activity is the persons primary activity."

This section further provides that "food bank" means "an organization recognized by the state or federal government as a nonprofit organization and that operates principally to collect, inspect, and salvage donated food for free distribution to needy persons."

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