

LEG. FINANCE - BILLS 1983 - 1984 1798

SSHB/hb/cbht/ HB 8 cont., SSHB 10

1798

cc: Representative Robert Bettisworth, Vice Chairman
Representative Vernon Hurlbert
Representative Sam Pestinger
Representative Ben Grussendorf
Representative Terry Martin
Representative Jerry Ward
Representative Joe Flood
Representative John Lindauer
Representative Jim Duncan
Representative Fred Zharoff
Chief Justice Edmond W. Burke
Arthur H. Snowden, II

Alaska State Legislature



REPRESENTATIVE
BEN GRUSSENDORF
P.O. BOX 928
SITKA, ALASKA 99835
(907) 747-8458

HOUSE FINANCE COMMITTEE
SPECIAL COMMITTEE ON FISHERIES

DISTRICT 3
ELFIN COVE
PELICAN
PORT ALEXANDER
SITKA
HOONAH
TENAKEE

WHILE IN JUNEAU
FOUCHY
J. JUNEAU, ALASKA
99811
(907) 465-3824
(907) 465-4965

House of Representatives

April 22, 1983

MEMORANDUM

TO: Rep. Albert Adams
FROM: Rep. Ben Grussendorf
RE: HB 8- Judicial Retention Elections- analysis

Section 1

Adds a chapter to Title 22. This section re-enacts existing language now found in separate chapters relating to approval or rejection of judges (AS 22.10.151, Supreme Court Judges, AS 22.07.060, Court of Appeal Judges, AS 22.10.150, Superior Court Judges and AS 22.15.195, District Court Judges).

Sec. 22.18.050 addresses the retention election districts.

(a) states that the judge shall be voted on in the district in which he lives, except in the cases of (c) and (d) below;

(b) changes the retention election districts to the way they existed on March 19, 1959;

(c) allow voters outside of the district in which a judge lives to vote on the retention of that judge if he routinely and frequently hears cases in that district;

(d) allows that if most cases heard by a judge are outside of the district in which he lives, only those voters in those districts in which he routinely and frequently hears cases shall vote on his retention.

Section 2

Amends AS 15.35.090 to allow Superior Court Judges to be on the ballot in more than one district if he hears cases in more than one district.

Section 3

Amends AS 15.35.130, same as Section 2, for District Court Judges.

Rep.A. Adams- HB 8
April 26, 1983
Page Two

Section 4

Repeals sections now dealing with approval or rejection of judges. (This same language now appears in Section 1 of this legis .ation).

Section 5

Effective date clause. Immediate effective date.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907.465.3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 18, 1982

SUBJECT: Judicial retention elections -- HB 624.

TO: Representative Ramona L. Barnes
Chairman, House Judiciary Committee

FROM: Richard A. Bradley
Legislative Counsel *RB*

You have asked that I explain the provision of HB 624 that ties judicial retention election districts to the legislative election districts as they existed in 1959: Sec. 22.18.050(b) (as enacted in Sec. 1 of HB 624) provides:

(b) For purposes of the section, the judicial retention election districts of the state are the election districts as they are described in art. XIV of the state constitution as it existed on March 19, 1959.

March 19, 1959 has no particular significance in itself; it is merely the effective date of Chapter 50, SLA 1959, the Act that established the Alaska court system and became the basis for AS 22.

The source of the date is AS 22.10.010, the section providing for the "establishment of the superior court" and establishing the borders of the four judicial districts of the superior court. The language of the section establishes each judicial district with reference to identified election districts, "as said districts are described in art. XIV of the state constitution on March 19, 1959".

Ever since the Alaska court system was established, the jurisdiction of the superior court has been tied to the 1959 election district borders. While the districts for the election of members of the legislature have varied since then, no alteration of the borders of the four judicial districts has occurred.

Representative Rona L. Barnes

Page 2

February 18, 1982

I have no idea whether the judicial districts are obsolete in their borders or would benefit from revision. I am aware that there was some interest in that question several years ago but I believe the difficulties that caused the proposals may have been resolved otherwise. But I suggest that this bill should not seek to establish retention districts for judges in terms of the recent reapportionment, for example, without simultaneously altering the judicial districts of the superior court. Since the judicial districts establish lines in which cases may be brought and heard by particular judges, they should also establish the districts in which the judges seek retention.

If I may assist further, please advise. If you wish me to attend your hearing tomorrow, give me a call and I will come over.

RAB:ljb

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST
 Bill/Resolution No.: HB 8 No. 1
 Title: Judicial Retention Elections
 Sponsor: Grussendorf and Barnes
 Requestor: _____

II. FISCAL DETAIL
 Agency Affected: AK Judicial Council
 Program Category Affected: Justice
 BRU, Program of Subprogram(s) Affected: Judicial Council

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|-------------------------|-------|------------|------------|------------|------------|------------|
| OPERATING | | | | | | |
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | 8.8 | -0- | 3.0 | -0- | 3.5 |
| 400 COMMODITIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC | | | | | | |
| TOTAL OPERATING | | 8.8 | -0- | 3.0 | -0- | 3.5 |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|------------------------|-------|-------|-------|-------|-------|-------|
| GENERAL FUND | | 8.8 | -0- | 3.0 | -0- | 3.5 |
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify Source) | | | | | | |

POSITIONS:

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|-----------|-------|-------|-------|-------|-------|-------|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Francis L. Bremson, Executive Director Phone: 279-2526
 Division: Judicial Council Date: April 27, 1983

Approved by Commissioner: _____ Date: _____
 Department: _____

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)
 Copy to Department (for Governor introduced bills)

STATE OF ALASKA
FISCAL NOTE

Revision Date 4-25, 1983

Page 1 of 2

I. REQUEST

Bill/Resolution No.: HB 8 No. 2
 Title: Judicial Retention Elections
 Sponsor: Crussendorf & Barnes
 Requestor: House Finance

II. FISCAL DETAIL

Agency Affected: Office of the Governor
 Program Category Affected: Exec. Operations
 BRU, Program of Subprogram(s) Affected:
Division of Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|-------------------------|-------|-------|-------|-------|-------|-------|
| OPERATING | | | | | | |
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | | 91.8 | | 101.4 | |
| 400 COMMODITIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC | | | | | | |
| TOTAL OPERATING | -0- | -0- | 91.8 | -0- | 101.4 | -0- |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|------------------------|-----|-----|------|-----|-------|-----|
| GENERAL FUND | -0- | -0- | 91.8 | -0- | 101.4 | -0- |
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify Source) | | | | | | |

POSITIONS:

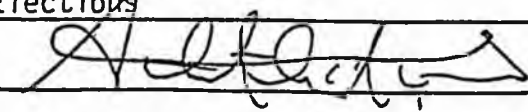
| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Dana C. Coffman, Deputy Director
 Division: Division of Elections

Phone: 586-6181
 Date: April 26, 1983

Approved by Commissioner: 
 Department: _____

Date: 4-26-83

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)
 Copy to Department (for Governor introduced bills)

"An Act relating to judicial retention elections"

ASSUMPTIONS:

1. The passage of this legislation will initially affect the 1984 General Election ballots.
2. There will be 24 election districts as were designated in 1959.
3. Necessity of printing 24 separate ballots - one for each of the judicial retention districts.
4. Additional 12% inflation for each of the subsequent election years.

No additional funds are required beyond the Contractual Services area. Additional postage, printing and advertising costs will be required for the printing of 24 separate ballots. There will also be costs associated with printing additional pages in the Official Election Pamphlet, and postage associated with the heavier weight of the pamphlet.

Programming costs related to ballot counting will be substantial.

A Professional Services Agreement will be required in FY 85 (\$10,000) to contract for the production of a cross-reference listing of communities using the 1959 and 1981 reapportionments.

STATE OF ALASKA
THE LEGISLATURE

POUCH - STATE CAPRO.
JUNE 20 ALASKA 99E 11
907-465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

November 20, 1981

SUBJECT: Judicial retention election districts
(Work Order No. 12-1852)

TO: Representative Ben F. Grussendorf

FROM: Richard A. Bradley **B**
Legislative Counsel

Enclosed is a bill responsive to your request.

I consider the bill constitutional.

Article IV, sec. 6 explicitly permits the legislature to require that a superior court judge be subject to approval or rejection on a nonpartisan ballot "in the manner provided by law". In my opinion, the present formulas regarding the retention elections for judges of the superior court are not of a constitutional dimension.

Regarding the district court, the procedures for their retention elections (or not) are entirely committed to legislative discretion, assuming only general principles of fairness, since that court is a legislative creation.

As the bill evolved during the drafting and review process, I had initially dealt with southeastern Alaska separately as I had suggested to you that I might. I established separate election retention districts for each of the six election districts that existed in southeastern Alaska as of 1959. Note that the "jurisdiction of the superior court" is cast in terms of the election districts as they existed in 1959. See AS 22.10.010. It makes sense, therefore, to have the retention elections conform to the same districts.

But as I considered the question, it seemed that the logic of the application to this judicial district presented no special or unique questions and that therefore the appli-

Page 2
November 20, 1981

cation of the bill should be made statewide. That resolves the problem of "special and local legislation". This has been done and I think that the result is not awkward and is probably reasonable.

It is simply a drafting technique to move the four provisions dealing with "approval or rejection" of judges into one new chapter. Thus you will recognize that new AS 22.18.010 is essentially identical to present sec. 22.05.100; similarly AS 22.18.020, 22.18.030, and 22.18.040 are AS 22.07.060, 22.10.150 and 22.15.195, respectively.

Sec. 22.18.050 states the basic goals of your request. The concepts of sec. 50(b) are derived from AS 22.10.010, the section establishing the jurisdiction of the superior court.

The six districts in southeastern Alaska from which judges will be elected are:

1. Prince of Wales;
2. Ketchikan;
3. Wrangell - Petersburg;
4. Sitka;
5. Juneau; and
6. Lynn Canal - Icy Straits.

This results in a general shrinking of the areas in which a judge is voted on, unless he routinely hears cases in another 1959 election district.

The only problem in implementation of the section lies in the responsibility given to the judicial council to determine whether the judge "routinely and frequently" hears cases outside his division of residence. I have intentionally not sought to define the phrase; I consider that it gives an adequate guide to the council and a more precise tool may be undesirable.

As suggested, I have provided that the judge will also be voted on in a district outside the district in which he was a resident if the judicial council certifies to the director of elections that the judge "heard cases routinely and frequently" outside of the district in which the judge was a resident. I consider this provision necessary to deal with those residents of the state who may be outside the district

where judges are resident. If they are excluded from voting on judges where the judge "routinely and frequently" travels to hear cases affecting them, I think problems are created.

You should recognize also that the amendments to AS 15.35.090 and 15.35.130 appear to constitute a reversal of the present law (at present the judge "designates" the judicial district in which he seeks election) and the establishment of a more objective standard than the one stated in existing law to determine where a judge should be voted on. At the same time, recognize that it will have the result of changing the present situation on retention elections in westward Alaska (as in southeastern). I have not sought to anticipate its implications there.

If I may answer any other questions on this matter, please advise.

RAB:ljb

Enclosure



Alaska Judicial Council

NON-ATTORNEY MEMBERS
MARY JANE FATI
JOHN E. LONGWORTH
ROBERT M. MOSS

1031 W. Fourth Avenue, Suite 301
ANCHORAGE, ALASKA
99501
(907) 279-2526

EXECUTIVE DIRECTOR
FRANCIS L. BRIMSON

ATTORNEY MEMBERS
JAMES B. BRADLEY
JOSEPH L. YOUNG
BARBARA L. SCHUMMANN

CHAIRMAN, EX OFFICIO
EDMOND W. BURKE
CHIEF JUSTICE
SUPREME COURT

March 16, 1983

Representative Charlie Bussell
Chairman, House Judiciary Committee
State Capitol
Pouch 5
Juneau, AK 99811

RE: House Bill 8 and Senate Bill 84

Dear Representative Bussell:

The Alaska Judicial Council wishes to go on record in opposition to House Bill 8 and Senate Bill 84, both of which are currently under consideration by the Alaska State Legislature. Both bills would alter the number and size of election districts for judicial retention purposes and, thereby, the roles and responsibilities of the Judicial Council.

At the Council's meeting in Anchorage on February 15-16, 1983, Council members specified the following statutory, administrative and constitutional bases for its objections to the legislation:

Statutory Reasons:

- The difficulty of the Judicial Council determining, on the basis of vague language ("routinely and frequently"), whether a judge should be subject to election in districts other than the one in which he/she resides;
- The possible conflict created by requiring the Council to determine where a judge must run, while at the same time evaluating the judge for retention purposes.

Representative Charlie Bussell
March 16, 1983
Page two

Administrative Reasons

- The possibility that some voters, while within the jurisdiction of one Judicial District, would actually vote for retention purposes for the judge of another Judicial District;
- The confusion occasioned by using different election districts for retention elections than are used for general elections.

Constitutional Reasons

- The possibility that voters in whose election districts no Superior and/or District Court exists may be disenfranchised, either because the election district does not include a court, or because the district is served by one or more judges, none of whom hear matters "routinely or frequently" in such districts.

Should you or any member of your Committee wish to discuss the Council's position with regard to this legislation in further detail, please let me know. I would be pleased to appear before the committee to testify in opposition to this legislation at such time and place as may be convenient.

Thank you for the opportunity to present the Council's position on this matter.

Sincerely,



Francis L. Bremson
Executive Director

FLB/pjd

cc: Alaska Judicial Council



Alaska Court System
State of Alaska

KARLA L. FORSYTHE
General Counsel

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K Street
Anchorage, AK 99501

April 26, 1983

Representative Albert P. Adams
Chairman, House Finance Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Adams:

It is my understanding that the House Finance Committee is hearing House Bill 8 on Wednesday, April 27. I have been advised by a committee aide that although testimony from the Alaska Court System will not be necessary, the court system is welcome to submit its comments. This letter is therefore intended to convey to the committee the position of the Alaska Court System regarding House Bill 8.

Proposed sections 22.18.101, .020, .030 and .040 make minor changes to the current statutes dealing with approval and rejection of judges, and consolidate these statutes within one chapter of AS 22. These revisions would have no impact upon the court system.

Proposed section 22.18.050 changes the geographical area for judicial retention elections from judicial districts to the 1959 state election districts. Judges would stand for election in districts where they reside. If the Judicial Council certifies to the director of elections that a judge "routinely and frequently" hears cases that arise outside the district of residence, the judge shall stand for election in that district or districts as well. If "most" of the cases heard by a judge do not arise in a district in which the judge resides, then the judge shall be voted on only by voters in districts where he or she routinely and frequently hears cases.

This provision substantially changes current procedures for retention elections. Under current law, judges face retention election in the judicial districts to which they were originally appointed. If a judge has been assigned or transferred, the

judge seeks approval in the district where the judge has served the major portion of his or her term. The judge designates the appropriate district and the director of elections then places the name of the judge on the ballot in the judicial district designated by the judge. This is a simple and clearcut procedure for determining where a judge will stand for retention election.

In contrast, the proposed legislation provides that the Judicial Council must decide whether a judge has "routinely and frequently" heard cases arising outside the district of residence. This process is confusing, difficult to administer, and legally troublesome.

1. **Constitutional Ramifications.** Article IV, Section 6 of the Alaska Constitution provides that judges shall in the manner provided by law be subject to approval or rejection. Under current procedures, the legislature by law has provided that judges shall seek approval in the districts of their original appointment, or the district in which they have served a major portion of their terms (AS 15.35.080 and .100).

Rather than providing by law for a retention election procedure, the proposed bill delegates to the Judicial Council the task of certifying whether a judge has routinely and frequently heard cases arising outside the district of his or her residence. The phrase "routinely and frequently" is not defined, leaving its interpretation to the Judicial Council.

This approach raises constitutional questions, because it delegates a legislative duty to the judicial branch. Additionally, the manner in which this duty shall be exercised is left to the Judicial Council, and is not "provided by law" as required by the constitution.

It can be argued that the Judicial Council is authorized by the constitution to perform this legislative duty. Article IV, section 9 provides that the council "shall perform other duties assigned by law." However, given the importance of elections and election procedures, it can also be argued that the two sections should not be read together. Thus, the legislature by statute can assign duties to the Judicial Council beyond those listed in the constitution, but the legislature must by statute provide for retention election procedures.

2. **Disenfranchisement of Voters.** A judge will face election in the district of his or her residence, as well as in any district in which he or she routinely and frequently hears cases. However, there are no resident judges in 16 of the 24 districts.

For some of the proposed districts, the lack of a resident judge does not create a problem. As an example, proposed District 11 (Seward) is normally served by the superior judge from Kenai.

However, several districts have neither a resident judge nor one particular judge who "routinely and frequently" hears cases from that district. These districts include District 6 (Haines and Skagway, served by judges from throughout the first judicial district), District 14 (Aleutian chain, served by judges from Anchorage on a rotating basis), and District 15 (Dillingham and Naknek, also served by Anchorage). Additionally, although Judge VanHoomissen provides superior court services to District 18 and 20, district court judges from Fairbanks hear cases in these proposed districts on a rotating basis.

As a result, although cases from these districts are routinely and frequently heard by judges from another district, there is no one judge who routinely and frequently hears cases arising in the district.

If a district is served by more than one judge, none of whom hears matters "routinely and frequently" in the district, there is the possibility that voters in the district would be disenfranchised under the current wording of the legislation.

3. Implementation.

- a. The phrase "routinely and frequently" is not defined. Since judicial retention elections are constitutionally required, this phrase may be too vague to survive a constitutional challenge.
- b. The bills provide that a judge may not be appointed for four years "if a majority of those voting on the question rejects the candidacy of the judge." This provision can be interpreted in two different ways. The first thwarts the goal of judicial accountability to the voters. A majority of the voters in District 12 (Kenai and Homer) might reject a judge, while a majority of the voters in another district in which the judge routinely and frequently hears cases might vote for retention (for example, District 11 - Seward). The statute could be interpreted to require the ouster of the judge based on "a majority of those voting" despite the fact that one district wanted to retain the judge. Although current provisions lead to the same result (for example, the Anchorage vote will outweigh votes from outlying third district locations), this outcome is inconsistent with the aim of the bill.

The statute could also be interpreted to require ouster only in those districts in which a majority voted against retention. This interpretation would lead to substantial administrative problems. The judge would be retained in the less frequently served district, and another judge would have to be appointed for the resident district. This interpretation would affect the court system budget for compensation and retirement, and adversely impact caseload efficiency.

- c. It is confusing to use one set of election districts for election purposes, another set of election districts for judicial retention purposes, and the four judicial districts for administrative purposes.

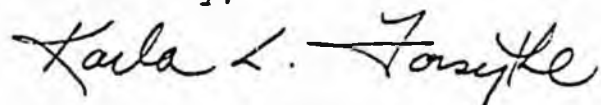
The goal of this legislation as articulated by its proponents is to increase judges' accountability to district residents. The approach outlined in the bill assumes that residents of a circumscribed geographic area will be more familiar with a judge than voters in outlying areas.

There are two difficulties with this assumption. First, voters throughout the state frequently voice concerns about their lack of knowledge regarding even judges in their local courts. Decreasing the size of the voting area will not necessarily increase voters' ability to cast a knowledgeable vote. Second, the decreased voting area has the effect of politicizing retention elections, because issues of the moment rather than overall judicial ability may become the basis for retention or rejection. If the purpose of judicial retention elections is for the electorate to vote based upon a judge's adjudicatory abilities rather than upon the outcome of a sensational case, creating smaller districts increases the risk that politics rather than merit will determine the outcome.

The fundamental principle of accountability to the voters is well served by efficient, workable and constitutionally adequate judicial retention election procedures. The proposed bill falls short of this standard.

The court system will be glad to answer any questions from the committee or to provide additional information.

Sincerely,



Karla L. Forsythe
General Counsel

cc: Representative Robert Bettisworth, Vice Chairman
Representative Vernon Hurlbert
Representative Sam Pestinger
Representative Ben Grussendorf
Representative Terry Martin
Representative Jerry Ward
Representative Joe Flood
Representative John Lindauer
Representative Jim Duncan
Representative Fred Zharoff
Chief Justice Edmond W. Burke
Arthur H. Snowden, II

Alaska State Legislature

REPRESENTATIVE
BEN GRUSSENDORF
P.O. BOX 928
SITKA, ALASKA 99835
907/747-8458

HOUSE FINANCE COMMITTEE
SPECIAL COMMITTEE ON FISHERIES

DISTRICT 3
ELFIN COVE
PELICAN
PORT ALEXANDER
SITKA
HOONAH
TENAKEE



WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA
99811
907/465-3824
907/465-4965

House of Representatives

April 22, 1983

MEMORANDUM

TO: Rep. Albert Adams
FROM: Rep. Ben Grussendorf
RE: HB 8- Judicial Retention Elections- analysis

Section 1

Adds a chapter to Title 22. This section re-enacts existing language now found in separate chapters relating to approval or rejection of judges (AS 22.10.151, Supreme Court Judges, AS 22.07.060, Court of Appeal Judges, AS 22.10.150, Superior Court Judges and AS 22.15.195, District Court Judges).

Sec. 22.18.050 addresses the retention election districts.

(a) states that the judge shall be voted on in the district in which he lives, except in the cases of (c) and (d) below;

(b) changes the retention election districts to the way they existed on March 19, 1959;

(c) allow voters outside of the district in which a judge lives to vote on the retention of that judge if he routinely and frequently hears cases in that district;

(d) allows that if most cases heard by a judge are outside of the district in which he lives, only those voters in those districts in which he routinely and frequently hears cases shall vote on his retention.

Section 2

Amends AS 15.35.090 to allow Superior Court Judges to be on the ballot in more than one district if he hears cases in more than one district.

Section 3

Amends AS 15.35.130, same as Section 2, for District Court Judges.

Rep.A. Adams- HB 8
April 26, 1983
Page Two

Section 4

Repeals sections now dealing with approval or rejection of judges. (This same language now appears in Section 1 of this legislation).

Section 5

Effective date clause. Immediate effective date.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

November 20, 1981

SUBJECT: Judicial retention election districts
(Work Order No. 12-1852)

TO: Representative Ben F. Grussendorf

FROM: Richard A. Bradley **B**
Legislative Counsel

Enclosed is a bill responsive to your request.

I consider the bill constitutional.

Article IV, sec. 6 explicitly permits the legislature to require that a superior court judge be subject to approval or rejection on a nonpartisan ballot "in the manner provided by law". In my opinion, the present formulas regarding the retention elections for judges of the superior court are not of a constitutional dimension.

Regarding the district court, the procedures for their retention elections (or not) are entirely committed to legislative discretion, assuming only general principles of fairness, since that court is a legislative creation.

As the bill evolved during the drafting and review process, I had initially dealt with southeastern Alaska separately as I had suggested to you that I might. I established separate election retention districts for each of the six election districts that existed in southeastern Alaska as of 1959. Note that the "jurisdiction of the superior court" is cast in terms of the election districts as they existed in 1959. See AS 22.10.010. It makes sense, therefore, to have the retention elections conform to the same districts.

But as I considered the question, it seemed that the logic of the application to this judicial district presented no special or unique questions and that therefore the appli-

page 2
November 20, 1981

cation of the bill should be made statewide. That resolves the problem of "special and local legislation". This has been done and I think that the result is not awkward and is probably reasonable.

It is simply a drafting technique to move the four provisions dealing with "approval or rejection" of judges into one new chapter. Thus you will recognize that new AS 22.-18.010 is essentially identical to present sec. 22.05.100; similarly AS 22.18.020, 22.18.030, and 22.18.040 are AS 22.-07.060, 22.10.150 and 22.15.195, respectively.

Sec. 22.18.050 states the basic goals of your request. The concepts of sec. 50(b) are derived from AS 22.10.010, the section establishing the jurisdiction of the superior court.

The six districts in southeastern Alaska from which judges will be elected are:

1. Prince of Wales;
2. Ketchikan;
3. Wrangell - Petersburg;
4. Sitka;
5. Juneau; and
6. Lynn Canal - Icy Straits.

This results in a general shrinking of the areas in which a judge is voted on, unless he routinely hears cases in another 1959 election district.

The only problem in implementation of the section lies in the responsibility given to the judicial council to determine whether the judge "routinely and frequently" hears cases outside his division of residence. I have intentionally not sought to define the phrase; I consider that it gives an adequate guide to the council and a more precise tool may be undesirable.

As suggested, I have provided that the judge will also be voted on in a district outside the district in which he was a resident if the judicial council certifies to the director of elections that the judge "heard cases routinely and frequently" outside of the district in which the judge was a resident. I consider this provision necessary to deal with those residents of the state who may be outside the district

where judges are resident. If they are excluded from voting on judges where the judge "routinely and frequently" travels to hear cases affecting them, I think problems are created.

You should recognize also that the amendments to AS 15.35.090 and 15.35.130 appear to constitute a reversal of the present law (at present the judge "designates" the judicial district in which he seeks election) and the establishment of a more objective standard than the one stated in existing law to determine where a judge should be voted on. At the same time, recognize that it will have the result of changing the present situation on retention elections in westward Alaska (as in southeastern). I have not sought to anticipate its implications there.

If I may answer any other questions on this matter, please advise.

RAB:ljb

Enclosure

STATE OF ALASKA
THE LEGISLATURE

POUCHY - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 18, 1982

SUBJECT: Judicial retention elections -- HB 624.
TO: Representative Ramona L. Barnes
Chairman, House Judiciary Committee
FROM: Richard A. Bradley
Legislative Counsel *B*

You have asked that I explain the provision of HB 624 that ties judicial retention election districts to the legislative election districts as they existed in 1959: Sec. 22.18.050(b) (as enacted in Sec. 1 of HB 624) provides:

(b) For purposes of the section, the judicial retention election districts of the state are the election districts as they are described in art. XIV of the state constitution as it existed on March 19, 1959.

March 19, 1959 has no particular significance in itself; it is merely the effective date of Chapter 50, SLA 1959, the Act that established the Alaska court system and became the basis for AS 22.

The source of the date is AS 22.10.010, the section providing for the "establishment of the superior court" and establishing the borders of the four judicial districts of the superior court. The language of the section establishes each judicial district with reference to identified election districts, "as said districts are described in art. XIV of the state constitution on March 19, 1959".

Ever since the Alaska court system was established, the jurisdiction of the superior court has been tied to the 1959 election district borders. While the districts for the election of members of the legislature have varied since then, no alteration of the borders of the four judicial districts has occurred.

Representative Rona L. Barnes

Page 2

February 18, 1982

I have no idea whether the judicial districts are obsolete in their borders or would benefit from revision. I am aware that there was some interest in that question several years ago but I believe the difficulties that caused the proposals may have been resolved otherwise. But I suggest that this bill should not seek to establish retention districts for judges in terms of the recent reapportionment, for example, without simultaneously altering the judicial districts of the superior court. Since the judicial districts establish lines in which cases may be brought and heard by particular judges, they should also establish the districts in which the judges seek retention.

If I may assist further, please advise. If you wish me to attend your hearing tomorrow, give me a call and I will come over.

RAB:ljb



Alaska Judicial Council

NON-ATTORNEY MEMBERS
MARY JANE FATE
JOHN E. LUNDWORTH
ROBERT H. MOSS

1031 W. Fourth Avenue, Suite 301
ANCHORAGE, ALASKA
99501
(907) 278-2526

EXECUTIVE DIRECTOR
FRANCIS L. BREMBON

ATTORNEY MEMBERS
JAMES B. BRADLEY
JOSEPH L. YOUNG
BARBARA L. SCHUMMANN

CHAIRMAN, EX OFFICIO
EDWARD W. BURKE
CHIEF JUSTICE
SUPREME COURT

March 16, 1983

Representative Charlie Bussell
Chairman, House Judiciary Committee
State Capitol
Pouch 5
Juneau, AK 99811

RE: House Bill 8 and Senate Bill 84

Dear Representative Bussell:

The Alaska Judicial Council wishes to go on record in opposition to House Bill 8 and Senate Bill 84, both of which are currently under consideration by the Alaska State Legislature. Both bills would alter the number and size of election districts for judicial retention purposes and, thereby, the roles and responsibilities of the Judicial Council.

At the Council's meeting in Anchorage on February 15-16, 1983, Council members specified the following statutory, administrative and constitutional bases for its objections to the legislation:

Statutory Reasons:

- The difficulty of the Judicial Council determining, on the basis of vague language ("routinely and frequently"), whether a judge should be subject to election in districts other than the one in which he/she resides;
- The possible conflict created by requiring the Council to determine where a judge must run, while at the same time evaluating the judge for retention purposes.

Representative Charlie Bussell
March 16, 1983
Page two

Administrative Reasons

- The possibility that some voters, while within the jurisdiction of one Judicial District, would actually vote for retention purposes for the judge of another Judicial District;
- The confusion occasioned by using different election districts for retention elections than are used for general elections.

Constitutional Reasons

- The possibility that voters in whose election districts no Superior and/or District Court exists may be disenfranchised, either because the election district does not include a court, or because the district is served by one or more judges, none of whom hear matters "routinely or frequently" in such districts.

Should you or any member of your Committee wish to discuss the Council's position with regard to this legislation in further detail, please let me know. I would be pleased to appear before the committee to testify in opposition to this legislation at such time and place as may be convenient.

Thank you for the opportunity to present the Council's position on this matter.

Sincerely,



Francis L. Bremson
Executive Director

FLB/pjd

cc: Alaska Judicial Council

COMMITTEE REPORT HOUSE

FURTHER:

2/23/83

Date: 3/11/83

Mr. Speaker:

The Committee on FINANCE has had SSIB 10

An Act relating to controlled imitation controlled substances.

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for SSIB 10 (Amended) same title
 new title
- and recommends DO PASS
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

Offered: 2/23/83
Referred: Finance

Original sponsors: Abood, Wendte,
Lindauer, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 10 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to imitation controlled substances."
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 11 is amended by adding a new chapter to read:

9 CHAPTER 73. IMITATION CONTROLLED SUBSTANCES ACT.

10 Sec. 11.73.010. MANUFACTURE OR DELIVERY OF AN IMITATION CON-
11 TROLLED SUBSTANCE. (a) Except as provided in AS 11.73.050, a person
12 may not manufacture, deliver, or possess with intent to deliver, an
13 imitation controlled substance.

14 (b) Except as provided in AS 11.73.030, a person who violates
15 this section commits a class C felony.

16 Sec. 11.73.020. POSSESSION OF SUBSTANCE WITH INTENT TO MANUFAC-
17 TURE. (a) Except as provided in AS 11.73.050, a person may not
18 possess the following substances or their salts with the intent to
19 manufacture an imitation controlled substance:

- 20 (1) ephedrine;
- 21 (2) ephedrine sulfate;
- 22 (3) pseudoephedrine;
- 23 (4) pseudoephedrine hydrochloride;
- 24 (5) phenylpropanolamine;
- 25 (6) caffeine;
- 26 (7) theophylline;
- 27 (8) lidocaine;
- 28 (9) procaine;
- 29 (10) tetracaine;

- 1 (11) dyclonine;
- 2 (12) acetaminophen;
- 3 (13) salicylamide;
- 4 (14) doxylamine;
- 5 (15) diphenhydramine;
- 6 (16) pheniramine;
- 7 (17) chlorpheniramine; or
- 8 (18) pyrilamine.

9 (b) A person who violates this section commits a class C felony.

10 Sec. 11.73.030. DELIVERY OF AN IMITATION CONTROLLED SUBSTANCE TO
11 A MINOR. (a) Except as provided in AS 11.73.050, a person 19 years
12 of age or older may not deliver an imitation controlled substance to a
13 person under 19 years of age, who is at least three years younger than
14 the person delivering the substance.

15 (b) A person who violates this section commits a class B felony.

16 Sec. 11.73.040. ADVERTISEMENT TO PROMOTE THE DELIVERY OF AN
17 IMITATION CONTROLLED SUBSTANCE. (a) Except as provided in AS 11.73.-
18 050, a person may not knowingly place in a newspaper, magazine, hand-
19 bill, or other publication, or post or distribute in a public place,
20 an advertisement or solicitation knowing that the purpose of the
21 advertisement or solicitation is to promote the delivery of an imita-
22 tion controlled substance in the state.

23 (b) A person who violates this section commits a class C felony.

24 Sec. 11.73.050. IMITATION CONTROLLED SUBSTANCE AS PLACEBO. No
25 civil or criminal liability may be imposed under this chapter on a
26 person who manufactures, delivers, possesses or advertises or solicits
27 to promote delivery of an imitation controlled substance solely for
28 use as a placebo prescribed by a registered practitioner, as defined
29 in AS 11.71.900(19), in the course of professional practice or

1 research.

2 Sec. 11.73.060. FORFEITURES. (a) Property used during or in
3 aid of a violation of this chapter may be forfeited to the state to
4 the extent permitted under and in accordance with the provisions of
5 AS 17.30.110.

6 (b) For purposes of this section the terms "controlled sub-
7 stance" and "this chapter", as used in AS 17.30.110, shall be con-
8 strued as "imitation controlled substance" and "AS 11.73" respective-
9 ly.

10 Sec. 11.73.099. DEFINITIONS. In this chapter

11 (1) "controlled substance" means a substance as defined in
12 AS 11.71.900(4);

13 (2) "deliver" or "delivery" means the actual, constructive,
14 or attempted transfer from one person to another of an imitation
15 controlled substance, whether or not there is an agency relationship;

16 (3) "imitation controlled substance" means a substance con-
17 taining ephedrine, ephedrine sulfate, pseudoephedrine, pseudoephedrine
18 hydrochloride, phenylpropanolamine, caffeine, theophylline, lidocaine,
19 procaine, tetracaine, dyclonine, acetaminophen, salicylamide,
20 doxylamine, diphenhydramine, pheniramine, chlorpheniramine, or
21 pyrilamine, or their salts, that is not a controlled substance, and
22 that by dosage unit appearance (including color, shape, size, and
23 markings) or by representations would lead a reasonable person to
24 believe that the substance is a controlled substance; the term "repre-
25 sentations", as used in this paragraph, includes

26 (A) statements made by an owner or by anyone else in
27 control of the substance concerning the nature of the substance,
28 or its use or effect;

29 (B) statements made to the recipient that the

1 substance may be resold for inordinate profit;

2 (C) whether the substance is packaged in a manner
3 normally used for controlled substances;

4 (D) evasive tactics or actions used by the owner or
5 person in control of the substance to avoid detection by law en-
6 forcement authorities;

7 (E) the storage, packaging, presentation, display of
8 or reference to a controlled substance with, near, or in con-
9 nection with the activity involving the imitation controlled
10 substance.

11 (4) "manufacture" means the production, preparation, com-
12 pounding, processing, encapsulating, packaging or repackaging, label-
13 ing or relabeling, of an imitation controlled substance.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: CSSS HB 10 Date on Bill: 2-23-83
 Title: "An Act relating to imitation controlled substances"
 Sponsor: Representative Abood
 Requestor: House Finance Committee

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 |
|-----------|-------|-------|-------|-------|
| Capital | | | | |
| Operating | | 34.6 | 38.8 | 41.1 |
| Total | | 34.6 | 38.8 | 41.1 |

b. Revenues:

| Revenue | FY 83 | FY 84 | FY 85 | FY 86 |
|---------|-------|-------|-------|-------|
| | | | | |

2. Source of funds to offset fiscal impact of bill:

No information provided.

3. Assumptions: It is estimated that enactment of this bill will result in 50 to 60 new criminal prosecutions throughout the state each year. This estimate is based upon a survey taken by the department of local police agencies and the state troopers. These new prosecutions and the handling of forfeiture actions allowed under the bill represent additional workload which will require the allocation of additional prosecutor resources.

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Daniel W. Hickey, Chief Prosecutor Phone: 465-3428
 Division: Department of Law, Criminal Division Date: 3-9-83

Approved by Commissioner: Norman C. Gorsuch, Attorney General Date: 3-9-83
 Department: Law

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

2/15/83

Fiscal Analysis

The impact of CSSS HB 10 is expected to result in the addition of prosecutor time equivalent to one-half of an Attorney III (SR22), statewide. For purposes of the analysis, salary schedule A has been used. Actual placement of a position cannot be determined until after the Legislature has acted and we know what bills have been approved.

The first year of the analysis will be for FY 84 and costs have been calculated on a 10 month basis to account for the time required to establish a new position and the time it takes to get a new program underway. The costs beyond FY 84 are on a 12 month basis and include a 6% annual inflation factor.

1st Year (10 months)

| | <u>AIII (PPT)</u> | <u>TOTAL</u> |
|---------------------------|-------------------|--------------|
| Personal Services | 23.8 | 23.8 |
| Travel | 2.5 | 2.5 |
| Contractual | 4.0 | 4.0 |
| Commodities - ongoing | .8 | .8 |
| Commodities - single time | 2.0 | 2.0 |
| Equipment - single time | 1.5 | 1.5 |
| | | <hr/> |
| | | 34.6 |

2nd Year (12 months + 6% annual inflation)

| | | |
|-------------------|------|-------|
| Personal Services | 30.0 | 30.0 |
| Travel | 3.2 | 3.2 |
| Contractual | 4.6 | 4.6 |
| Commodities | 1.0 | 1.0 |
| | | <hr/> |
| | | 38.8 |

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: CS SS HB 10 (JUD) Date on Bill: 2-23-83
 Title: "An Act Relating to imitation controlled substances"
 Sponsor: Abood, etc.
 Requestor: _____

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 |
|-----------|-------|-------|-------|-------|
| Capital | | | | |
| Operating | | | | |
| Total | -0- | -0- | -0- | -0- |

b. Revenues:

| | | | | |
|---------|--|--|--|--|
| Revenue | | | | |
|---------|--|--|--|--|

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

No Fiscal Impact

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Francis C. Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 3-2-83

Approved by Commissioner: *[Signature]* Date: 3/8/83
 Department: Public Safety

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

2/15/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: CS for SS for H.B. No. 10 Date on Bill: February 23, 1983
 Title: "An Act relating to imitation controlled substances."
 Sponsor: Judiciary Committee
 Requestor: House Judiciary Committee

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|-----------|-------|-------|-------|-------|-------|-------|
| Capital | | 730.0 | -0- | -0- | | |
| Operating | | 13.9 | 122.4 | 129.8 | | |
| Total | -0- | 743.9 | 122.4 | 129.8 | | |

b. Revenues:

| | | | | | | |
|---------|-----|-----|-----|-----|--|--|
| Revenue | -0- | -0- | -0- | -0- | | |
|---------|-----|-----|-----|-----|--|--|

2. Source of funds to offset fiscal impact of bill:

The source of funds to implement this bill has not been identified by the sponsors.

3. Assumptions:

- A. Estimated arrest and conviction information was gathered from the Department of Law and the Alaska Judicial Council statistics. They estimate that there would annually be five convictions resulting in prison terms for Class B and Class C felonies. Class A misdemeanors have been omitted in the committee substitute.
- B. It is assumed that all convictions are of first time offenders.
- C. The following table displays data regarding additional bed needs with enactment of HB 10:

Prepared By: Roger C. Lange
 Division: Division of Adult Corrections

Phone: 465-3376
 Date: _____

Approved by Commissioner: Robert Gordon Smith, PhD
 Department: HEALTH & SOCIAL SERVICES

Date: 3/16/83

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

| Class of Offense | Expected # of Convictions | % & # to Jail | Avg. Sentence Length | Flat Years | Person Years |
|------------------|---------------------------|---------------|----------------------|------------|--------------|
| B. Felony | 1 | 50%/.5 | 2.5 Yr. | 1.9 | .95 |
| C. Felony | 23 | 20%/4.6 | 1.09 Yr. | .82 | 3.77 |
| | 24 | 5.1 | | | 4.72 |

Therefore, 4.72 beds would be needed. For purposes of this fiscal note, this was rounded to the nearest whole number resulting in 5 new beds identified as being required.

D. Cost Estimates:

1. Capital Expenditures

It is assumed that medium security beds would be the appropriate classification. It is estimated that construction costs for this type of bed will be approximately \$146,000 per bed. Therefore, capital expenditures would be:

$$5 \times \$146,000 = \$730,000$$

2. Personal Services

It is assumed that these 5 beds would be combined with other construction where staff will be identified. It is estimated two staff positions will be required to provide security and supervision for the additional inmates.

3. Other Costs

Other costs identified reflect only food, clothing, bedding, and medical services necessary to meet the physical care and medical needs of the projected inmate increase.

4. Inflation of 6% per year was used for projecting cost after FY 1985, the year in which the total bed impact would be experienced.

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

The following individuals are expected to testify on CS SS HB 10
(Judiciary):

Representative Mitch Abood, prime sponsor

Lieutenant Roger McCoy, Department of Public Safety

Roger Lange, Division of Corrections, Department of Health and
Social Services
(Mr. Lange will speak to the fiscal note from Corrections)

Due to a schedule conflict, Gail Huretsky, Office of the Chief
Prosecutor, Department of Law, is not able to testify. There is
a letter in your file, however, from the Chief Prosecutor to the
Chairman, describing the Department of Law's position on a
bill.

POSITION PAPER

HOUSE BILL 10

"An Act relating to imitation controlled substances."

The Department of Health and Social Services is supportive of this legislation.

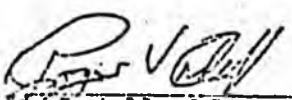
Data is not available on the use or distribution of imitation controlled substances also known as "look-alikes." Look-alikes are generally sold as purporting to be depressants or stimulants that normally would require prescriptions. These look-alikes are also sometimes advertised as diet aids or sleep aids.

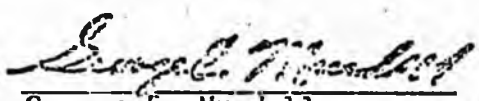
Products sold over the counter containing caffeine (No-Doz. etc.) are sometimes sold as amphetamines (uppers). This is one example of selling an imitation controlled substance.

To manufacture or sell a product by misrepresenting its contents should not be acceptable. The public health and safety risk related to misrepresented drugs can be numerous. Use of drugs (legal by prescription or over-the-counter) not in accordance with medically recommended dosage can lead to health problems. Overdose, unexpected reactions or actions and/or allergic reactions may be a few of the problems.

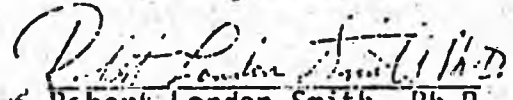
One possible major problem is the use of a look-alike may lead a person to take increased dosage to achieve an effect. To a careless, inexperienced or naive user the use of the "real" product after use of an imitation could result in unintentional overdose.

HB 10 could be one mechanism to help prevent such problems and to make persons aware of the dangers of such actions.


Roger Endell, Director
Division of Adult Corrections

Recommended by: 
George E. Mundell
Acting Coordinator
Office of Alcoholism/
Drug Abuse

Date: 4/24/83

Approved by: 
Robert London Smith, Ph.D.
Commissioner
Dept. of Health &
Social Services

Date: 11/27/83

H
8
10

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 10
 Title "An Act relating to imitation controlled substances."
 Requested by Representative Abood Date 1/19/83

II. FISCAL DETAIL

Agency Affected Department of Law
 Program Category Affected Administration of Justice
 BRU, Program, Or Subprogram(s) Affected Prosecution
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|--------------------------|-------|-------|-------|-------|-------|-------|
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | | | | | |
| 400 COMMODITIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC. | | | | | | |
| TOTAL | -0- | -0- | -0- | -0- | -0- | -0- |

FUNDING (Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|------------------------|-------|-------|-------|-------|-------|-------|
| GENERAL FUND | -0- | -0- | -0- | -0- | -0- | -0- |
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify Source) | | | | | | |

POSITIONS

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|-----------|-------|-------|-------|-------|-------|-------|
| FULL TIME | -0- | -0- | -0- | -0- | -0- | -0- |
| PART TIME | | | | | | |
| TEMPORARY | | | | | | |

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

It is estimated that enactment of this bill will result in 50 to 60 new criminal prosecutions throughout the state each year. This estimate is based upon a survey taken by the department, of local police agencies and the state troopers. Examined singly, no additional prosecution personnel will be required to implement the provisions of the bill. These new prosecutions, however, do represent additional workload which, when added to other crime bills, will have the effect of hampering the department's overall ability to prosecute criminal offenses. The forfeiture provisions in the bill will also require additional attorney time to handle the court hearings required if a forfeiture of specific property is contested by the owner, and may have the effect of diverting resources from other matters currently being addressed.

IV. DATE 1/19/83 PREPARED BY Daniel W. Hickey, Chief Prosecutor
 AGENCY Department of Law
 PHONE 465-3428
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

Office of Management and Budget
 Reviewed by: Mike Malin, Program Budget Analyst
 Division of Budget Review

Rec'd 1/31

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill No. 10
Title "An Act relating to imitation controlled substances."
Requested by House Judiciary Date Jan. 13, 1983

II. FISCAL DETAIL

Agency Affected Health & Social Services
Program Category Affected Offender Confinement, Reformation & Supervision
BRU, Program or Subprogram(s) Affected Adult Confinement
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|-------------------------|-------|--------|-------|-------|-------|-------|
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | | | | | |
| 400 COMMODITIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS ETC. | | | | | | |
| TOTAL | -0- | 1184.8 | 33.4 | 35.4 | | |

FUNDING (Thousands of Dollars)

| | | | | | | |
|-----------------------------|-----|--------|------|------|--|--|
| GENERAL FUND | -0- | 1184.8 | 33.4 | 35.4 | | |
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify Fund Source) | | | | | | |

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL TIME | | | | | | |
| PART TIME | | | | | | |
| TEMPORARY | | | | | | |

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This bill makes it unlawful to manufacture, distribute, or possess with intent to distribute, an imitation controlled substance. The bill also classifies levels of offenses as class B and class C felonies, as well as specifies forfeitures applicable when provisions of the statute are violated.

IV. DATE January 21, 1983 PREPARED BY Roger C. Lange
Original: Legislative Finance AGENCY Division of Adult Corrections
cc: Budget and Management PHONE 465-3376
Prime Sponsor (First Legislator Named)

OMB review: *RD*

BILL NUMBER House Bill No. 10

EXPENDITURES (Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|-------------------------|------------|---------------|-------------|-------------|-------|-------|
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | .8 | .8 | .9 | | |
| 300 CONTRACTUAL | | 7.2 | 14.7 | 15.6 | | |
| 400 COMMODITIES | | 8.8 | 17.9 | 18.9 | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | 1168.0 | | | | |
| 700 GRANTS, CLAIMS ETC. | | | | | | |
| TOTAL | -0- | 1184.8 | 33.4 | 35.4 | | |

FINDING (Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|-----------------------------|-------|--------|-------|-------|-------|-------|
| GENERAL FUND | -0- | 1184.8 | 33.4 | 35.4 | | |
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify Fund Source) | | | | | | |

POSITIONS

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|-----------|-------|-------|-------|-------|-------|-------|
| FULL TIME | -0- | -0- | -0- | -0- | -0- | -0- |
| PART TIME | | | | | | |
| TEMPORARY | | | | | | |

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

A. Assumptions

1. Estimated conviction information was furnished by the Department of Law. They estimate that there would annually be three convictions for a Class B felony and 30 convictions for Class C felonies. Class A misdemeanors have been omitted in the committee substitute.
2. It is assumed that all convictions are of first time offenders.
3. The following table displays data regarding additional bed needs with enactment of HB 10:

| <u>Class of Offense</u> | <u>Expected # of Convictions</u> | <u>% & # to Jail</u> | <u>Avg. Sentence Length</u> | <u>Flat Years</u> | <u>Person Years</u> |
|-------------------------|----------------------------------|--------------------------|-----------------------------|-------------------|---------------------|
| B Felony | 3 | 50%/1.5 | 2.5 Yr. | 1.9 | 2.85 |
| C Felony | 30 | 20%/6.0 | 1.09 Yr. | .82 | 4.92 |
| | 33 | 7.5 | | | 7.77 |

Therefore, 7.77 beds would be needed. For purposes of this fiscal note, this was rounded to the nearest whole number resulting in 8 new beds identified as being required.

B. Cost Estimates:

1. Capital Expenditures

It is assumed that medium security beds would be the appropriate classification. It is estimated that construction costs for this type of bed will be approximately \$146,000 per bed. Therefore, capital expenditures would be:

$$8 \times \$146,000 = \$1,168,000$$

2. Personal Services

It is assumed that these 8 beds would be combined with other construction where staff will be identified. Therefore, no costs are specifically identified in this fiscal note for staff costs, although staff will be required to provide security and supervision for the additional inmates.

3. Other Costs

Other costs identified reflect only food, clothing, bedding, and medical services necessary to meet the physical care and medical needs of the projected inmate increase.

4. Inflation of 6% per year was used for projecting cost after FY 1985, the year in which the total bed impact would be experienced.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: Sponsor Substitute HB 10 Date on Bill: 2-11-83

Title: An Act relating to imitation controlled substances

Sponsor: Aboud, etc

Requestor: House JUDICIARY

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 |
|-----------|-------|-------|-------|-------|
| Capital | | | | |
| Operating | | | | |
| Total | -0- | -0- | -0- | -0- |

b. Revenues:

| Revenue | FY 83 | FY 84 | FY 85 | FY 86 |
|---------|-------|-------|-------|-------|
| | | | | |

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

No Fiscal Impact

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Francis C. Allan

Division: Alaska State Troopers

Phone: 269-5691

Date: 2-16-83

Approved by Commissioner: 

Department: Public Safety

Date: 2/25/83

5. Distribution:

Original to Legislative Finance

Copy to OMB

Copy to Sponsor

Copy to Requestor

2/15/83

FREEDOM COUNCIL

Post Office Box 381
Douglas, Alaska 99824

TO: Representative Al Adams, Chairman
House Finance Committee

FROM: *Chris Botts*
Chris Botts, Capital City Coordinator
Freedom Council

DATE: March 11, 1983

RE: CSHSB 10 "An Act relating to imitation controlled
substances."

We, the friends and members of the Freedom Council in Alaska, are in support of Representative Abood's House Bill No. 10, "An Act relating to imitation controlled substances."

We feel there is a real need to bring the unlawful manufacture of the look-alike substances under control through legal process.

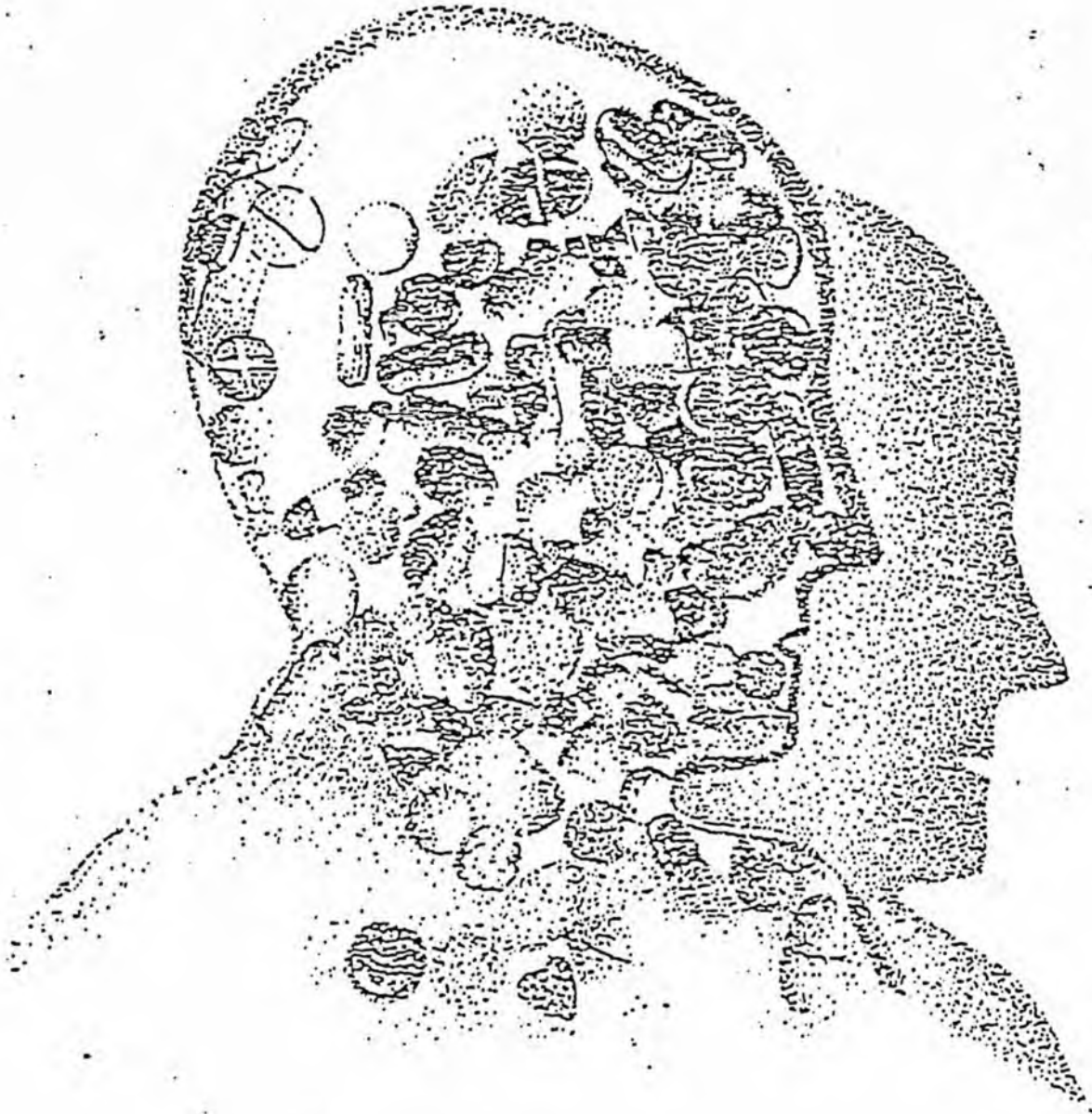
A number of the substances noted in HB 10, in particular, Theophylline, have been found to impair driving ability and to contribute to fatalities on our nation's highways. As these substances have been known to be used in an increasing amount by our youth, it is imperative that we eliminate easy access and the very damaging consequences, particularly in relation to highway fatalities in Alaska.

cc: Ted Panteleo
Executive Director
Freedom Council

CPP

Z

Trafficking in Look-Alikes ; an Update



Trafficking in Look-Alikes; an Update

Recent federal and state actions have seriously affected the rampant trafficking in look-alikes that has been sweeping the country. Look-alike distributors, who began assaulting the nation with a blizzard of capsules and tablets early in 1980, and the manufacturers who supply them have been dealt a series of regulatory setbacks that may portend an end to this multi-million dollar industry.

Look-alikes are carefully designed to resemble or duplicate the appearance of brand name amphetamines, barbiturates, tranquilizers, and narcotic pain killers in both capsule and tablet form. On the street, they are known by the same names as their dangerous drugs counterparts: Black Beauties, Dexies, Yellows, Christmas Trees, and Rainbows. But look-alikes contain only non-controlled substances such as caffeine, ephedrine, phenylpropylamine, acetaminophen, and other over-the-counter non-prescription drugs.

As the number of mail order and store front wholesale distributors grew from a mere handful in early 1980 to more than 150 outlets by November of 1981, the production of look-alikes was reported to have soared to 30 million dosage units per week. During the past year and a half, the look-alike industry has flooded the nation's campuses and schoolyards with hundreds of millions of these pills. Intelligence derived from local police agencies, hospital emergency rooms, and medical examiners reveals widespread abuse, especially among teen-agers and college age youths.

In marked contrast to the methods used by illicit drug traffickers, look-alike distributors have conducted extensive advertising campaigns claiming their products to be both safe and legal. They have utilized full color brochures, magazine ads, highway billboards, and even television spots designed to appeal to teen-agers and young adults. Using commercial mailing lists, distributors have mailed colorful business cards directly to young recipients.

The easy availability of look-alikes has encouraged a climate of acceptance among many teen-agers and has conditioned them to the daily trafficking, handling, and consumption of these "pharmaceutical stimulants." In many places, look-alikes have become as much a part of the drug culture as the shopping center head shop and the paraphernalia vendor.

As the abuse of look-alikes grew, the public health dangers of these substances quickly became apparent. It is obvious that the young consumer who thinks that he has been purchasing "speed" or "ludes" and has become used to taking several look-alike

capsules or tablets at a time in order to "get the full effect" runs the risk of serious overdose or death if one day he ingests the same number of real controlled substances. In addition to this danger, the look-alikes, themselves, can have serious damaging effects. The number of emergency room incidents attributable to these drugs has risen dramatically in the past year. More than a dozen deaths caused by look-alikes have been reported from around the country. More deaths from caffeine overdose and emergency room hypertensive incidents from severe reactions to phenylpropanolamine may have occurred but, have gone unreported.

Although trafficking in look-alikes is not prohibited by the federal Controlled Substances Act, the Drug Enforcement Administration considers that the distribution and sale of look-alikes, as of drug paraphernalia, encourages and contributes to drug abuse and drug profiteering. The look-alike problem is one more facet of the nation-wide drug abuse problem. For these reasons, the DEA has undertaken a six-point program against look-alikes. Briefly stated, the six points are:

1. Drafting of a Model Imitation Controlled Substances Act¹ for concerned states to adopt.
2. Preparation of documentation describing the problem, distribution patterns and practices, and other information to be used in support of the Model Act.
3. Fostering intergovernmental agency cooperation and providing active support to other agency efforts.
4. Enlisting the support and voluntary cooperation of the legitimate pharmaceutical industry.
5. Publicizing the DEA initiative and encouraging the support of parent and community groups.
6. Targetting of states heavily involved in look-alike distribution and manufacture to encourage legislative action.

More than a dozen states have enacted or are considering legislation targetted against the manufacture and distribution of look-alikes. States with legislation now on the books include Arkansas, Colorado, Connecticut, Delaware, Florida, Indiana, Kansas, Louisiana, Maryland, North Carolina, Oklahoma, Oregon, and South Dakota. Some cities, such as Independence, Missouri, have passed local ordinances prohibiting storefront look-alike sales. In other state action, the Attorney General of Illinois has filed complaints against 39 look-alike distributors. To date, he has obtained verbal agreements from 15 distributors to cease and desist selling in the State of Illinois and he has obtained temporary restraining orders against three others.

¹Copies are available upon request from the Dangerous Drugs Section, Office of Intelligence, Headquarters, DEA.

(202) 233-1763

The legitimate pharmaceutical industry also has been cooperating in efforts to eliminate the look-alike problem. The Eli Lilly Company, one of the largest manufacturers of gelatin capsules, has, since July 1981, refused to sell capsules to look-alike manufacturers. Other capsule manufacturers also have indicated a willingness to cooperate in this effort. The resulting lack of capsules already has begun to affect the look-alike distribution chain and some distributors say they can no longer obtain "Yellows" and "Black Beauties."

Recent actions by federal government agencies are having salutary effects on the problem too. During the past several months, the U. S. Postal Service has filed complaints against 39 look-alike distributors. To date, the Postal Service has concluded consent agreements with nine distributors and has obtained False Representation Orders against nine others. The False Representation Orders require postmasters to stop the delivery of all mail to the subject distributors.

The most significant federal action yet taken occurred on September 30, 1981, when the Food and Drug Administration filed counterfeiting and mis-labeling complaints against nine manufacturers of look-alike drugs. With the assistance of U. S. Marshalls in five states, seizures of equipment, materials, and finished products were effected at the following locations:

BT Pharmaceuticals, Inc.
Tampa, Florida

Pharmadose, Inc.
Bohemia, New York

Frye Pharmaceuticals, Inc.
Birmingham, Alabama

Standard Pharmacal Corp.
Elgin, Illinois

Jerome Stevens Pharmaceuticals, Inc.
Central Islip, New York

LNK International, Inc.
Hauppauge, New York

Valley Run Pharmaceutical
Milroy, Pennsylvania

VIP Pharmaceuticals, Inc.
Pearl River, New York

Newtron, Pharmaceuticals, Inc.
Coram, New York

An inventory of seized items includes: 15 million filled capsules, 800,000 tablets, 20 million empty capsules, and over one million dollars worth of equipment including offset rollers, capsule printers, tablet punches and dies, and tablet presses. The FDA felt that its case against a tenth manufacturer, Ketchum Laboratories of Amityville, New York, was inadequate to support any enforcement action at that time.

As a result of the FDA actions, one of the manufacturers has already signed a consent agreement to cease and desist production of look-alikes, and two more companies are also negotiating consent agreements. Information on responses by the other manufacturers was unavailable as of the date of this report.

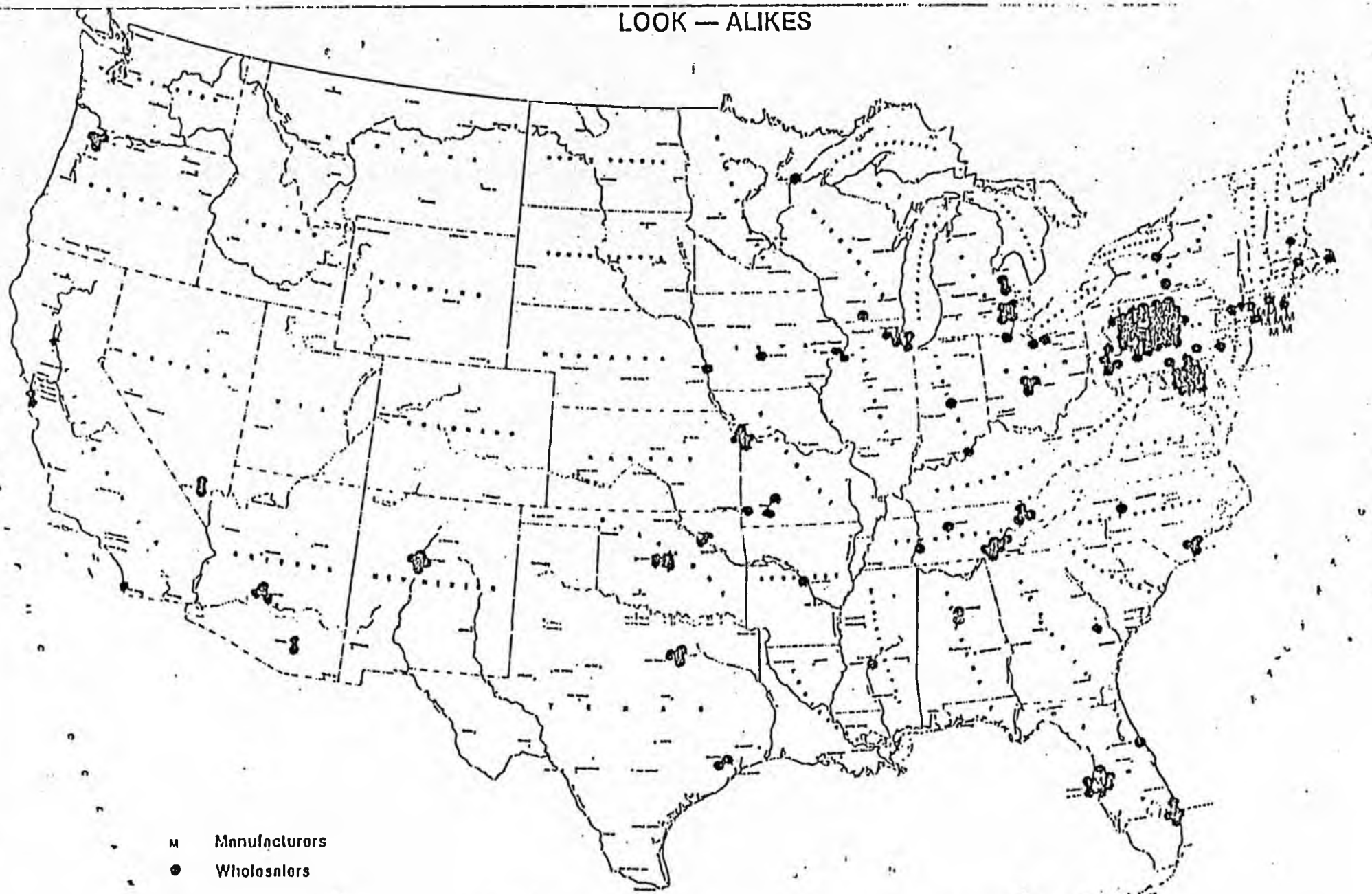
The actions described above comprise a promising start toward ending the nation-wide trafficking in look-alikes. It is too early to make an accurate evaluation of the overall damage suffered by look-alike traffickers, but there is room for some optimism. Continuing action by federal agencies, state and local governing bodies, the pharmaceutical industry, and the public will be required to eliminate the look-alike problem from this country.

Laurence B. Golden
Office of Intelligence
November 2, 1981

(202) 633-1263

UNITED STATES

LOOK — ALIKES



M Manufacturers
● Wholesalers

More Work for Police

X When a drug is sold as speed, the authorities have to assume that it is speed. "Once this stuff gets on the street, it's dope," says Mr. Golden. "It's dealt with the same way." So the upsurge in look-alike traffic means more work for the police. It also means more work for drug companies fighting misuse of their products. It is bad enough when your product finds its way into the street-drug trade. It is even more infuriating when it's something *disguised* as your product. Despite efforts by local, state and federal officials, the look-alikes keep coming. One federal official estimates that as many as 100 million may be sold this year. That compares with 70 million of the actual amphetamines. The number of wholesalers pushing the bogus speed, Mr. Golden says, has jumped from a dozen a few years ago to about 120 now.

"It is like dealing with a greased pig," says Richard J. McMahon of the attorney general's office in Delaware. In June 1960, that state became the first to pass an anti-fraud law aimed at halting the flow of look-alikes. So far, only two cases have reached the courts; the state won one of them, "and even then the penalty was probation," Mr. McMahon says. More recently, nine other states have passed such laws: Arkansas, Colorado, Connecticut, Indiana, Kansas, Louisiana, Maryland, Oklahoma and South Dakota.

It may seem strange to charge someone with fraud for selling something legal instead of illegally selling something that is more dangerous anyway. But the federal drug authorities seem powerless to halt the look-alike traffic, so the states, with federal encouragement, are doing whatever they can.

There is no federal law protecting people who think they are buying speed but get look-alikes instead, and the ingredients in the look-alikes aren't controlled substances under federal regulations. So federal offi-

Please Turn to Page 21, Column 2

Fake 'Speed' Causes Almost as Much Fear As the Real Thing

Look-Alikes, Mainly Caffeine,
Used by Many Youngsters;
Some Deaths Are Reported

By STEVE R. MASSEY

Staff Reporter of THE WALL STREET JOURNAL

CLEVELAND—"Pink footballs," "black beauties" and "yellow jackets" were confiscated here during the recent arrest of a street dealer who sells drugs to kids. But the dealer had to be released.

It turned out that the capsules were misnamed. They weren't what many of the dealer's customers thought they were: forms of "speed," the drug-world term for potent amphetamines that make a user's heart race and his nervous system tingle. Doctors prescribe amphetamines mainly for losing weight. Without a prescription, it is illegal to sell them.

But the capsules that the dealer was nabbed with are perfectly legal to sell in most places. Though disguised as pink footballs and the like, they are no stronger than three cups of coffee. In fact, caffeine is the main ingredient in most of them. Yet they, too, can be dangerous.

These stimulants are called "look-alikes" by narcotics agents. Once found almost exclusively in truck drivers' pockets, they have been cropping up all around the country. College and high-school students are gulping them for pick-me-ups. So are junior-high pupils and even younger children. The trend worries many adults.

Reports of Overdoses

The fake speed is causing almost as much alarm as genuine speed. Lawrence B. Golden, a staff assistant with the intelligence office of the federal Drug Enforcement Administration, says his office receives daily reports of overdoses—and occasionally of deaths.

The dangers of look-alikes, however, are certainly less than the dangers of speed. "The real problem is that the young people are getting in on the drug scene and taking these things," says James Tudor of the Ohio State Board of Pharmacy. "It's a very natural step up into the real thing."

On the other hand, the buyer of a look-alike may already be a speed user who thinks he is getting speed again this time. If so, he almost certainly won't get the buzz he expected to get, so he may take more and more of the look-alike. That could lead to an overdose. Or it could lead him to think that he needs more speed than he used to. Then, the next time he gets real speed, he may overdose on that.

A look-alike pill typically is two-thirds caffeine. The remaining one-third usually is composed of two anti-diabetic agents: ephedrine sulfate and phenylpropanolamine. These constrict blood vessels, and if taken in excessive quantities can collapse them.

Almost as Much Fear as Real Ones

Continued From First Page

cialists are forced to pass the buck.

Not the postal service, though. Ned Fricce of the U.S. Postal Inspector's Office says the agency has filed 39 complaints with an administrative-law judge, all charging distributors of the capsules with falsely representing them as safe. (Distributors may be developing a damned-if-I-do, damned-if-I-don't complex. If they say they are selling speed, the anti-fraud laws may get them. If they truthfully say they are selling the caffeine pills, and state or imply that they are safe, the post office may get them.)

Mostly, however, federal authorities simply urge states to enact stiffer anti-fraud penalties, and they give vocal support to state and local enforcement efforts.

Death in Michigan

Ohio is considering legislation requiring packages of look-alikes to disclose that the contents aren't speed. Michigan, operating under an existing deceptive-trade law, has shut down one look-alike wholesaler and banned three others from selling the pills in the state. According to the Michigan attorney general's office, two young women in Flint, Mich., died last year from overdoses of 50 or more look-alikes each. The deaths may have been suicides.

Douglas Vivian, a pharmacist for the poison-control center and drug-information service at Hurley Medical Center in Flint, says a dose of 10 grams can be fatal. The average look-alike, experts say, contains 200 milligrams, so a 10-gram dose would be 50 pills.

But Jerry O'Donnell, the director of the police-department laboratory in Albuquerque, N.M., says there is "no way to tell" what constitutes an overdose because "it varies from person to person." Mr. O'Donnell says that three young men aged 15 to 20 died in Albuquerque during the last year after taking look-alikes. While the victims had been doing some drinking, Mr. O'Donnell says, all had been "in excellent physical condition; they all died of brain hemorrhaging, which is symptomatic of ephedrine (sulfate) and PPA (phenylpropanolamine)."

Firms Take Steps

Some established drug companies are trying to dissociate themselves from look-alikes. SmithKline Corp. in Philadelphia discontinued its green-and-clear diet-capsule line, DexAmyl, after it discovered that capsules disguised as DexAmyl were being sold as speed. Pennwalt Corp.'s Philadelphia division has successfully barred four companies from pushing imitations of its popular Biphedamine 20—the real "black beauties."

The founder of the look-alike industry, William Saye, 35, of Fairburn, Ga., applauds the prohibitive measures. "Today, it is being abused," he says. "Kids don't know how to handle business. There are too many bathtub operations in existence now and not enough quality controls."

Mr. Saye started selling caffeine pills wholesale out of his truck cab in Georgia in 1975. The next year, as business expanded, he set up Saye Drug Co. there. In 1977, he

moved the company to a Tampa warehouse and changed its name to O.W. Distributors Inc. By the end of that year, he had almost 50 employes selling the pills at truck stops in almost every state. The salesmen were called "peashooters," and drivers would contact them over citizens-band radio. Mr. Saye says that his salesmen, when asked, were supposed to tell a customer that the pills weren't speed—or risk being fired. By 1980, when he retired from the drug trade, Mr. Saye's business was bringing in about \$8 million annually in sales. The pills were obtained from a Long Island manufacturer. Evidently it was all perfectly legal.

Despite "hassles with the police and the press," Mr. Saye says, "I'm proud of what I've done. I ran the business right. Now I just want to lead a normal life, raise some beef cattle, and enjoy my two girls and two boys."

Small Operations

Today, most wholesale distributors are small operations, often a husband-and-wife team working out of their home. "About all they have to do is file a one-page registration form," says an official of the Food and Drug Administration. Sales are handled mainly by mail or phone except for a few storefront concerns in Albuquerque and Los Angeles with such names as the Source and the Pick-Me-Ups.

The distributors don't advertise much, though some ads run occasionally in local and college newspapers and a few national magazines. Instead, they leave calling cards in such places as truck-stop restrooms and college dormitories—a practice started by

them. Suppliers come from larger wholesalers such as Clifton Pharmacal Inc. in Millroy, Pa., which has its own pharmaceutical factory, or from one of an estimated 10 to 12 big manufacturers in Pennsylvania and on Long Island. They are sold in high volumes, in lots of 100 or 1,000, at prices ranging from about two-cents to 10 cents a pill. On the street, says Mr. Tudor of the Ohio pharmacy board, they fetch anywhere from 50 cents to \$5 a pill.

Most distributors won't divulge earnings, but estimates are that average sales for a medium-sized company can range between \$500,000 and \$1 million a year. Jerry Hecht, the founder of the Pick-Me-Ups in Albuquerque, says that his six stores average \$1,000 a week each in profits.

P: 60 RKY. NEWS 4/2/82

At least 12 deaths attributed to use of 'look-alike' drugs

CHICAGO (UPI) — Counterfeit pills sold increasingly on the streets as "look-alike" hard drugs have killed at least a dozen users, the American Medical Association reported Thursday.

Authorities are essentially powerless to prosecute the sale by pushers of such drugs, which contain a combination of easily obtainable ingredients found in appetite suppressants and decongestants, the AMA report said.

"They're called look-alikes because they mimic the size, shape and color of controlled substances — usually amphetamine or tranquilizers," said the AMA report.

Counterfeit "black beauties," "speeds," "dexies" and other drug culture terms for speed have caused 12 deaths, federal Food and Drug Administration investigations have confirmed.

They include a 17-year-old Belvidere, Ill., girl who died after taking what police presumed to be "black beauties," and a 17-year-old Albuquerque boy who consumed two counterfeit bipheta-mines (a type of amphetamine), lapsed into a coma and died. Several other victims have suffered paralysis after suffering strokes because of the drugs.

In addition, at least nine suicides are linked to counterfeit drugs, most of them attributed to caffeine overdose.

A typical "look-alike," manufactured for a few pennies and sold to unwitting purchasers at huge profits, contains up to 200 milligrams caffeine, 50-75 milligrams phenylpropanolamine and 30 milligrams ephedrine. Their combined effect on a user "is unpredictable," the FDA said.

MAIN LABORATORY PRESENTS

The Hottest Product Line In The Nation

Items Not Intended For Illegal Use

*Denotes Prepaid Only

EXACTA-CAINE (Our Best Seller)
"THE BEST"-ALL ROCK

SAMPLE *2gm-\$12.00
5gm-\$30.00
1oz-\$130.00

PSUEDO-CAINE (Hot On The Market)
PASSES ALL TESTS
WITH FLYING COLORS

SAMPLE *1.5gm-\$10.00
5gm-\$30.00
1oz-\$150.00

SUPERIOR-CAINE (The Name Says It All)
NEW, NEW, NEW! TRY IT!

SAMPLE *2gm-\$12.00
5gm-\$30.00
1oz-\$150.00

TOOT
"IT'S A BLAST-IT LASTS"

SAMPLE *2.75gm-\$12.00
Available in 1/2 oz. only -\$75.00

SUMMA-CAINE (Quality-Economy)

6gm-\$25.00
1oz-\$130.00

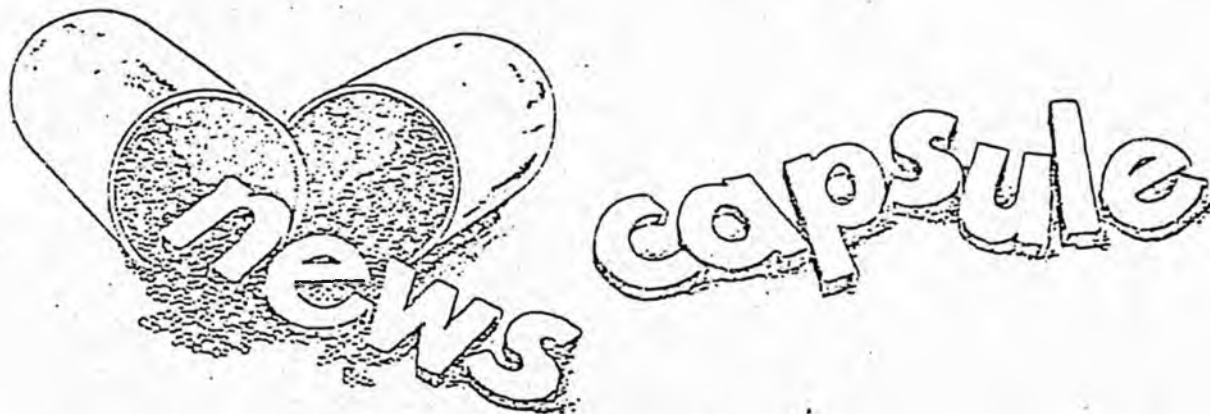
WE SHIP C.O.D.

All Samples Must Be Prepaid With Certified Check Or Money Order Only.

For More Information About Ordering, Please Call,

MAIN LABS (419)475-6621 Or Write P.O. Box 6776 Toledo, Ohio 43613

OFFER VOID WHERE PROHIBITED



Having recently purchased a large quantity of CAPSULES from a distributor who was forced out of business by the government, we are offering these capsules for sale at a great savings to you.

When ordering be sure to say that you are ordering from our sale flier:

| | | |
|------------------|------------------|-------------------------------|
| While They Last: | Bottles of 1,000 | \$80.00 + shipping & handling |
| | Bottles of 100 | \$15.00 + shipping & handling |

| | |
|--|---|
| Large Black Capsule/DEX (Double Strength) | 250 mg. Caffeine 50 mg. Phenylpropanolamine HCL 25 mg. Ephedrine Sulphate |
|--|---|

| | |
|--|---|
| Large Black Capsule/335 (Double Strength) | 250 mg. Caffeine 50 mg. Phenylpropanolamine HCL 25 mg. Ephedrine Sulphate |
|--|---|

| | |
|-----------------------------|---|
| Small Yellow Capsule/18-906 | 125 mg. Caffeine 50 mg. Phenylpropanolamine HCL 25 mg. Ephedrine Sulphate |
|-----------------------------|---|

| | |
|-----------------------------|---|
| Small Yellow Capsule/18-985 | 125 mg. Caffeine 50 mg. Phenylpropanolamine HCL 25 mg. Ephedrine Sulphate |
|-----------------------------|---|

| | |
|---|---|
| Small Yellow Capsule/RJS (not available in bottles of (100)) | 125 mg. Caffeine 50 mg. Phenylpropanolamine HCL 25 mg. Ephedrine Sulphate |
|---|---|

LIMITED QUANTITY OF SLEEP AIDS ALSO AVAILABLE
ROROR - 714 BOTTLES OF 1,000 — \$100.00

WHEN ORDERING
Be sure to say you found it on the sale flier.

GOOD VIBERATIONS!

FREE PHOTO BOOK

THE SEXUAL POSITIONS

CONDOMSBARAIN

SAVE! Get Both Books For Only \$5.98!

CONDOMSBARAIN

Your choice of the best men's contraceptives, including Trojans, ribbed Texture Plus, the imported "ZERO-O", plus Nuts and Stimula. For men who prefer a snugger fit, we offer Slims — the condom that is 5% smaller. Choose from 26 brands of condoms, including natural membrane, textured and coated. Plain attractive package assures privacy. Sample pack: \$3.

Send your name and address along with your check or money-order to:

Adam & Eve PO Box 900, Dept. H-34
Carroll, NC 27510

Please rush under your money-back guarantee:

| | |
|---------------------------------|---------|
| #7A Multi-Speed Vibrator | \$ 9.95 |
| #FB2 Free Photo Book (P&H Only) | \$ 2.00 |
| #SL 101 Sexual Positions | \$ 4.98 |
| #KK7 Both Books | \$ 5.98 |
| #C5 Condom Sampler | \$ 3.00 |
| #120 All 4 Products | \$13.95 |

ROCK CRYSTAL INCENSE The Ultimate Incense!

\$4.95/2.5 gr.

Contains Phosgene-POL WARNING: If inhaled or ingested may cause stimulation, excitement, or other toxic reaction. Not intended for drug use. Use When Prohibited By Law.

ULTRACAINÉ The Complete Growing Guide

\$9.95/1 gr.

OPPIUM POPPY CULTIVATION The Complete Growing Guide

Plus S&H postage & handling

\$4.50

FREE SEEDS! Fertile Seed Sample with each book order

MORNING GLORY SEEDS Unretreated Heavenly Blue.

\$4/oz. \$14/4 oz.

BABY HAWAIIAN YUCCADROSE

\$3/20 seeds

Send your order to: **REAL CONCEPTS**, P.O. Box 30554, Seattle, WA 98103

- Price list of many hard-to-find exotic products sent with first order.
- Minimum \$8.00 money order for fastest delivery.
- Dealer inquiries welcome.

CLEARANCE PRICES

THIS MONTH'S SPECIAL

ORANGE-AID Fatigue Fighter

REGULAR \$65.00
Now Only \$12.00

FREE FLYER ON OUR COMPLETE PRODUCT LINE

- CAPSULES
- TABLETS
- INCENSE
- AROMAS
- DIET-AIDS

CALL TO ORDER (919) 762-1531

M-F

ISLAND BRAND DIST., INC.
Box 2189, Wilmington, NC 28402

• MASTERCARD • VISA • C.O.D.

Now you can purchase rolling paper, pipes, clips, snuff supplies, bong, and much, much more through our mail order catalog.

Send \$3.00 for our catalog and receive 4 FREE packs of rolling papers.

FANTASY HIGHLAND
P.O. Box 1271 Dept. H
Northbrook, Ill. 60062

or Credit Card Orders Call: 312/966-7878

THE SOCIETY FOR THE PRESERVATION OF LEMMINGS (LEMMING AID)

A concentration of concerned citizens concentrating on concerning concerns! (WINK) What can the lemmings do for you? A lot! With your membership you will receive a high quality shirt with unusual lemming logo, membership card, poster, bumper sticker, button and a 6-month subscription to the LEMMING JOURNAL. Which includes humorous, exciting satirical cartoons, editorials, letters to Ann Lemming & updates on lemming projects. **ORDER NOW!** Start your own local chapter. Send only 99¢ plus a\$\$ for postage & handling to:

THE LEMMING SOCIETY
P.O. BOX 1905
FAYETTEVILLE, ARK.

Please include name, address, shirt size (S, M, L, XL) Ark. residents add 3% sales tax (4 mos. weeks for delivery)

YOU TOO CAN BE A LEMMING!

ROBERTS
GROWERS SUPPLY
Our 5th Year

AMERICA'S LEADING SUPPLIER OF INDUSTRIAL INDOOR/OUTDOOR GROWING EQUIPMENT

BEER & ICE CATALOG

| | |
|--|---|
| OUTDOOR SUPPLIES | INDOOR SUPPLIES |
| High Pressure (30 & 100 psi) 1/2 HP D.C. Water Pumps | Hydroponic Nutrients, Pumps, Liquid Level Controls |
| Colony 2000 Eco Pack Systems and Pumps | pH Soluble Salts, Light and Temp. Recording Instruments |
| 17 HP Gas Engine (Kawasaki) Water Pump... 135' head | CO ₂ Greenhouse Carbon Dioxide Generator "Fertilize the air for higher yields" |
| Colony 2000 Hydro Water Tanks... 575 to 1,340 Gallons | Electric Soil Sensors - Humidity Sers |
| Electric Drip and Water Valve Systems... Automatically | Continuous Duty (1000 RPM) Wind Power Plants |
| Drip Irrigation Supplies... Various Manufacturers | 4,000 to 50,000 Water 20' or Water Cooled |
| 4 24 1/2 15 Gallon Poly Co. Bags Containers | |
| 12 Gal. 18 1/2" x 11 1/2" ... for one year | |

View our catalog orders by phone: (503) 592-3615
Free with Shipped U.P.S. Parcel Post, Box or Air

44 Page Catalog... \$1.00 (50.00 First Class)
Send to: DCS Box 206-81, Cave Junction, OR 97523

MARIJUANA GROWER'S GUIDE

Marijuana Grower's Guide by Meri Fiant and Ed Rosenthal is the most advanced, most complete guide to growing for the smallest of spaces to a grower. Sections on indoor and outdoor cultivation, breeding, growing, sinsemilla, drying, curing and Cannabis botany, and of course, everything you need to know to grow from after crop of primo soil to pots or out. Contains 250 pages, introduction by Keith Stroup, a dramatic 16-page color section, and over 150 b/w photos. Discloses secrets of master grower farmers. Detailed instructions for sowing and caring & constant flow of superior quality smoke. \$14.95

Also Available

Sinsemilla by Richardson and Woods. Beautiful photographic study of the changing rhythms of the marijuana plant. Tells how to grow your own. 120 full-color photographs. 96 pages. \$12.95

100 Ways to Earn a Living Without Working for Someone Else by Richard and Lenny. If your job is a drag, you need this book. Shows everything you need to become independent. 300 pages. \$5.95

Marijuana Botany by Robert Connell Clark. Information from government researchers and master California growers. Details on propagation & breeding, hybridizing & hybridizing, seeding & sinsemilla techniques. The newest book on cultivation. 220 pages. \$7.95

The Sinsemilla Technique by Kaye. Insightful discussion of the method and evolution of Sinsemilla. Detailed descriptions of effects of stress, microclimates, hybridizing to improve quality and yields, propagation techniques to increase yield and profit. Presents inside information from cultivators and law enforcement officials on concealment and security. Beautiful b/w and color photos of sinsemilla plants, farms and green houses from throughout the US. 134. \$9.95

Marijuana Grower's Guide T-shirts & jerseys - Limited edition 4 color "Grow American" design, hand silk screened on 100% cotton USA made shirts. Beautiful - you'll love 'em! S, M, L, XL T-shirt \$7.95 Jersey \$11.95. Add \$1.00 postage and handling. Calif. residents add 6% sales tax. SAVE! Order 2 or more items and we pay the postage. Order 3 or more items and deduct \$2.00 from your order. QUICK TRADING CO., Dept. H-12, PO Box 477, San Francisco, CA 94101. Wholesale inquiries invited. Send \$1.00 (refundable with 1st order) for catalog.



CALL TOLL FREE NATIONWIDE
(800) 227-1617, ext. 232
California Only (800) 772-3545, ext. 232
to charge by phone (\$20 minimum phone order)
VISA & MasterCard Only or send check
or money order. No C.O.D.

Quick Trading Co.



Serving you since 1976.

MIDWEST PHARMACEUTICAL

You've Seen Them!
You've Bought Them!!
You've Paid Too Much!!!

The Highest
Quality Available
LET'S MAKE A DEAL!!!

Please inquire for all the new lines:
MIDWEST PHARMACEUTICAL, INC.

P.O. BOX 3544
OMAHA, NE 68103-0544
PHONE: 1-402-346-4929

HT 7151

Run with your innards, my friend, and your outerwards ain't very pretty either. Hoo, Sembo, lemme stick that one up."

Maclehearn gently pinched the top end of a marvelous crimson wound that grew around the left quarter of Connie's broad basket, and ran a suture through it with a drawing a speck of extra blood. "Now you don't want to know how fucked up you are, Connie," he said conversationally. "Your job now is, you just lay back and let us carry you home. Don't think about nothing unless it's pussy and air-conditioning okay?" He looked up from his amazingly precise stitch work and rattled off a string of rhyming at a couple gooks chopping up the bamboo with machetes. "We're gonna make you a nice poncho stretcher and carry you straight on home, all the way home like an Abyssinian prince on his imperial penguin. You just think about that, my man."

Abyssinia was a pleasant thing to think about, to take a person's mind off his miserable injuries. It was high up in Africa, Connie had heard somewhere; they called it Abyssinia because the mountains were so high. High and cool and dry. Abyssinia was a fine, cool place to think about, instead of being all crushed and bunged up and bloody in this jungle sumphole. He would like to visit Abyssinia. In fact, he could dream himself there, with no effort at all.

Every time Connie started to come down out of it, over the day and a half it took them to get him to a Medevac unit, the sprout Maclehearn fixed him up with another dose of Doc Dai's Number Four. "Once that night, he realized that they were under fire, because of the fascinating musical, non-musical, exquisitely meaningful in their regional idiosyncrasy, created by the incoming and outgoing. "It's another kind of singing together," he told Maclehearn. "That's another way people have of singing with each other. Can you understand that, Maclehearn?"

"Sure, Connie. It's a big old jamboree." Maclehearn slung off another rocket into the jungle, and some of the screaming. "That fucker just terrifies the soprano, Connie. Give us E over high slope!" And he slung another rocket into a different place.

The Medevac orderly tried to fix him up with Demerol, but Maclehearn wouldn't hear of it. "This boy's on a special prescription from Doctor Dai in Saigon, my man. He got so fucked up on the Trail, he's got nothing but the best."

"But he's got no special—"
"Shut your hole, friend," Maclehearn said in an easy voice that would have stunned up Lyndon Baines Johnson himself. It was the last thing Connie ever heard him say and remembered. Once they got him to the marine base, they started giving him something different, something that took his memory clean away, and filled his head with weird animals and ghostly noises.

continued on page 69

NEED NEW ID?... CREDIT?

START LIFE OVER! HERE'S HOW:

- Create new name, change age
- Cover negative records
- Get diplomas, degrees
- Find better-paying jobs
- Change citizenship
- Disappear perfectly — Reappear undetected
- Return from "exile"
- Secrets of fingerprinting
- Create new identity with Govt.-issued ID: Birth certificates, SSN, Drivers licenses, Passports, State ID
- PLUS much, much more in
- Get "AAA" credit in 30 days, even if New In area, Divorced, Bankrupt, or Have No Credit
- Loans up to \$3,000 — with no questions asked
- Clear present bad credit
- Get all kinds of credit cards
- Beat debts without bankruptcy
- Increasing credit limits
- Your rights under all the recent "Credit Acts"
- Inside credit bureaus
- Clever credit maneuvers
- Inside "pro" secrets in

THE PAPER TRIP 1 \$12.95 CREDIT! \$7.95

Don't Miss: "100 Ways to Disappear and Live Free" \$2.00
 "How to Beat the Bill Collector" \$5.00

SPECIAL OFFER—ALL FOUR BOOKS..... only \$19.95

Total amount of items checked \$ _____
 Calif. residents add 6% Sales Tax: \$ _____
 Your Choice: Regular Postage and Shipping 2.00
 First Class Mailing 5.00
 TOTAL OF ORDER \$ _____

Complete Book Catalog FREE with every order



Enclosed is my cash, check, money order for total ordered.
 Send book catalog only. Here's \$1.00 (refundable).
 Please send to:
 NAME _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP _____

Mail to: EDEN PRESS • P.O. Box 641D-HT • Fountain Valley, CA 92708
 All orders paid by check are held 2-3 weeks for bank clearing



HEALTH AIDS

(Containing Caffeine)

Call For Information


Midwest Pharmaceutical

P.O. 623
 Flint, MI 48501

\$3.00 to \$5.00 per 100
 \$18.00 to \$25.00 per 1000

Several Different Kinds

404-396-5396

roof. No more propitious opportunity would ever offer itself for killing Price, that was all he could think of.

The V.C. snipers—if they were V.C., and not Kuomintang, which was more likely—had been scared off by the shelling, it seemed, knock wind. Unholstering his Luger and snapping a round in the chamber, Connie plastered himself by the door of the blockhouse and waited for Price to dash out.

But no dash. "Goddamn sunbitch clumsy marine!" the major was yammering. "You pick up all Doc Dai's fucking money here, man. You no take off with Duc Dai's dope and leave his money all over the floor, marine. I kill you here fucking dead forever, cheat marine!"

Connie edged his cheek around the concrete corner, laying the barrel of the Luger across his nose. Inside, in the kerosene-lamp flicker, Lieutenant Price was on his knees, his bald spot toward the door, scooping loose clusters of dollars and francs from the clay floor into his briefcase while the snarling ARVN major held an M 14 on him. They both looked up as the faraway 155s rumbled again, but Connie ducked out of view in time.

Again, two blasts simultaneously at some distance. Then the breath went out of Connie's chest as though a fist had hooked into it to rip his lungs out, and an enormous hardbound book slammed together around his temples. In the singing silence afterward, he found himself sitting against the concrete blockhouse, which was still there. Connie was still there, too, as it turned out, with his arms and legs apparently still working. And he could see well enough, though everything was cherry red, to do the job.

Hustling to his knees, Connie swung around into the doorway with his pistol gripped straight-armed before him, couched and steady in his left hand. Child's play. Price's bald spot was right in front of him, since the man was doubled over on his knees holding his ears. Connie didn't even watch as he fragged the fucker with two rounds; his eyes were locked with the major's beady, shell-shocked glare. The major had set his rifle aside to cover his own ears, and watched in shell-shocked resentment as the pistol barrel retrained on him. He belched audibly as a round took him through the heart, and turned half around, then fell down with a crash as another round fetched him in the spine. Connie noticed with curiosity that he could clearly hear these incidental sounds, but not the pistol fire, which seemed too loud to be audible, somehow.

He heard the artillery mumble again, miles away, clear enough. The murderer was dead, everything was on fire and Connie was suddenly possessed with an overwhelming yearning for deep jungle. He was halfway to the perimeter wire by the time the rush-and-yodel tore overhead, and the blast waves actually aided him in body-



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

[Handwritten signature]

Fourth Fl., State Capitol
Juneau, Alaska 99811
(907) 465-3991

November 3, 1982

MEMORANDUM

TO: Representative Mitch Abood
Attention: Carol Horos

FROM: Christine Johnson, Research Staff

RE: Look-alike Drug Laws
Research Request 82-186

Carol Horos of your staff has asked us for the number of states which have passed look-alike drug laws and the number of states in which such legislation has been proposed. We received the following information from the National Conference of State Legislatures (NCSL):

- As of August 1982, thirty-six states had adopted legislation restricting the sale of look-alike drugs.
- Fourteen states* did not have look-alike drug laws in August of this year; however, legislation was pending in four of these states (Michigan, Nebraska, New Mexico, and Tennessee). Legislation has also been considered in one other state (Texas), although no law was ever passed.

The federal Drug Enforcement Administration has drafted a model look-alike drug law for states; we have requested a copy of this legislation and will forward it to you when it arrives. We have also enclosed two articles on look-alike drugs which may be of interest to you.

If we can provide any further information, please don't hesitate to contact us.

*States without look-alike drug laws include: Alaska, Hawaii, Massachusetts, Michigan, Montana, Nebraska, New Hampshire, Nevada, New Mexico, North Dakota, Tennessee, Texas, West Virginia, Wyoming.

FDA Seeking to Bottle Up Fake Narcotics



By Pam Earty

In 1960, as Albuquerque was one of the cities where there is a mixture of a Communist party and a mixture of the Communists he had been the very organization. From the Communist that the Communists were not Communists, but non-Communist drug made to look like them.

Since then, imitation opiates and barbiturates have been listed in 11 other laws on drugs, according to the Food and Drug Administration.

The federal government faces an unusual jurisdictional problem in trying to control the so-called look-alike drugs. Because their ingredients can be obtained without a prescription, the Drug Enforcement Administration said it doesn't have jurisdiction. The FDA maintains it can play only a limited role because it has certified the ingredients as safe.

While the agencies say they are taking what steps they can, they are cooperative in taking on new information, said in terms of tight budgets.

Fake combinations contain large amounts of caffeine, phenylpropionamide (a nasal decongestant and appetite suppressant) and the barbiturate, phenobarbital. Imitation barbiturates contain acetaminophen, salicylic acid, chlorpheniramine or other sedatives and hypnotic agents.

When the ingredients are taken separately and in small doses, they are considered safe, an FDA spokesman said. But they can cause nervousness, insomnia, temporary psychotic episodes, cerebral hemorrhage, convulsions or death if mixed together in large amounts or taken with alcohol.

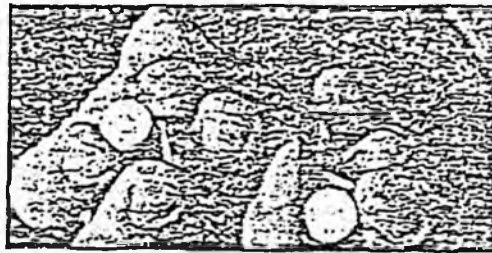
Many young people take them that way, a DEA spokesman said, because they believe that will help eliminate the "high" caused by controlled substances. In mid-1961, DEA estimated that 30 million doses of fake barbiturates were being manufactured each week and distributed through a network of 200 dealers.

Since 1960, FDA has filed 1000+ known complaints against 46 companies that it claims violated certain provisions of the Food, Drug and Cosmetic Act by making imitation drugs. Over the same period, the U.S. Postal Service has filed 20 complaints that accused drug makers of false advertising because they did not disclose that their products could cause illness or death.

Last week, FDA revealed what it believes is its toughest tactic to date. It informed 15 small companies that they must submit any products that contain combinations of caffeine, phenobarbital and phenylpropionamide for certification as new drugs. "We have researched this extensively and our food is precedent for the three-drug combination. It would be hard to believe that anyone can show a medical purpose or need for these drugs," said Bill Grier, an FDA spokesman. In effect, Grier said, FDA's action will force many of the manufacturers off the market.

Last year, DEA drafted a model law for states to ban look-alike drugs. So far, 30 states have enacted legislation. DEA also convinced three companies that make drug capsules to voluntarily refuse orders from suspected imitation drug makers.

While federal officials are confident that their tactics have driven



An example of look-alike imitation drugs left and the real controlled substances.

Sen. Gordon J. Humphrey (R-N.H.) said such maneuvering has convinced him that the only way to eliminate the imitation drugs is by giving the DEA, FDA and the Postal

Service jurisdiction. He has introduced legislation that would prohibit the manufacture of drugs that "look like or are represented to be controlled substances." Products that

promote drug abuse would be barred from the mails and FDA controlled law would be expanded.

But at a recent hearing, Humphrey urged Congress to delay passing new legislation. "We are trying to solve the problem through legislation. If we can't solve the problem through state laws that we might need to do it at a federal level, but that's not our aim," he said.

Justice Attorney General Tyrone Feltner disagreed with Humphrey. Feltner told Congress that although his state has moved against dealers, it still has problems. "Some companies we have sued and closed have popped up again under a new name and location. Just because we stop a look-alike distributor in Illinois doesn't mean we have solved the national problem."

Washington Post Staff Aug. 23, 1970

mits" which allow a convicted drunk driver to drive only a specified route at a specified time without unauthorized stops.

Several states, Utah, Idaho and Maryland among them, have set the blood alcohol concentration (BAC) level, which determines intoxication, at 0.08 percent, closer to the more stringent laws in Europe where the Netherlands and Norway have the level at 0.05 percent. The new Maryland law adds that state to at least 16 others that allow police officers to administer a breath test at the scene without first arresting the driver. Refusal to take the test then subjects the driver to a six-month license suspension.



Photo courtesy of *The Denver Post*

The new solutions, however, are not expected to be panaceas, the experts admit. Stiff mandatory sentences can irk some judges who find ingenious ways to avoid applying them. Mandatory sentences may result in long lists of offenders waiting to get into crowded jails. Experts also recognize that tougher laws do not always reduce the number of alcohol-related driving deaths. For instance, the British Road Safety Act of 1967 set a BAC level of 0.08 percent as *prima facie* evidence of drunk driving and made punishment upon conviction a mandatory one-year license suspension. Weekend alcohol-related driving deaths declined immediately following implementation of the law but rose to previous levels within a year.

In general, though, the result of the new state laws has been increased media attention and more public awareness, two phenomena welcomed by traffic safety professionals at the National Highway Traffic Safety Administration (NHTSA) where millions of dollars have been spent on public information campaigns in the past. One NHTSA official, Clayton Hall, who specializes in the drunk-driving issue, called the new attention "a squeaky wheel thing." "People are getting interested at the community level and there is an awakening of a feeling that something must be done," Hall said.

Richard W. Foster

The 'look-alike' game: Deception in street drugs

In the shadowy world of abuse of illegal and legal drugs, a new issue that is drawing the attention of state legislatures has surfaced: the sale and use of over-the-counter drugs—called "look-alikes"—that imitate prescription stimulants. Eleven states have banned the distribution of these drugs, and seven more have considered such legislation.

The federal Food and Drug Administration (FDA) has received numerous inquiries and complaints about look-alikes, which are generally similar in size, shape, color, and markings to amphetamine-type products such as bipheteramines and Dexedrine, but which have slight deviations in markings that often go undetected by the buyer.

Illicit drug dealers have recognized that more money could be made selling counterfeits than actual prescription drugs and, in addition, they would be immune to prosecution for selling look-alikes.

The fact that these drugs are frequently mistaken for prescription drugs has caused serious problems. Many young users have overdosed by confusing the strong prescription drug with its imitation. Also, confusion of counterfeits with prescription drugs interferes with the ability of doctors to treat an overdose victim. Although the FDA has received four reports of deaths associated with the use of these drugs, the causes of death could not be directly attributed to look-alikes.

Look-alikes typically contain two-thirds caffeine and one-third cough-cold ingredients such as phenylpropanolamine (an appetite suppressant and nasal decongestant) and ephedrine sulfate (a decongestant). They are labeled in compliance with current FDA labeling requirements for use as stimulants for mental alertness and as decongestants and bronchodilators for managing bronchial asthma. Since these drugs are legitimately manufactured and properly labeled, they are considered legally marketable. By the time they filter down to the user level, however, they are almost always unlabeled and misrepresented.

The drugs produce constriction of

*Arkansas, Colorado, Connecticut, Delaware, Florida, Indiana, Kansas, Louisiana, Maryland, Oklahoma, and South Dakota have passed legislation banning the distribution of these drugs, and Illinois, Minnesota, New Mexico, Ohio, Pennsylvania, Tennessee, and Texas have considered similar bills.

blood vessels which in turn elevates blood pressure and, if taken in large quantities, can cause blood vessels to collapse. Reported abuse syndromes—very similar to the amphetamine abuse syndrome—include over-excitement, insomnia and hallucinations, all of which can lead to toxic psychosis.

The FDA is encouraging and supporting state attempts to formulate and develop regulatory laws to deal with this problem. Delaware took the lead by passing anti-fraud legislation in 1980. When the Maryland General Assembly learned of increasing use of look-alike drugs in schools, the Anne Arundel County delegation sponsored a bill that expanded on Delaware's statute.

The Maryland law prohibits "distribution, attempted distribution, or possession with intent to distribute non-controlled substances intended for use or distribution as controlled dangerous substances." The law is aimed at mass volume distributors, not just street dealers. Since the law became effective in June 1981, 12 major distributors have closed or moved their business out of the state, and there are now no known distributors in Maryland. The counterfeit problem still exists, however, because of mail order businesses. Many of the complaints the FDA has received have been from the parents of children who ordered fake "pep pills" after receiving unsolicited mail-order literature.

Despite state and federal attempts to prohibit the distribution of these drugs, sales are on the rise. It is estimated that as many as 150 million look-alikes may be sold this year, compared to 70 million pills of amphetamines.

The FDA had not fully articulated its position on counterfeit drugs until September 25, 1981, when the agency raided nine factories in Alabama, Florida, Illinois, New York, and Pennsylvania. Equipment and over 10 million drugs were seized under a section of the Food, Drug and Cosmetic Act that defines a counterfeit drug and states that such drugs are liable to seizure.

Jane Germano

Kaye Bache-Snyder is a free lance writer in the Denver area. Michele R. Magri is editorial assistant for NCSL's Publication Department. Richard W. Foster, a former Associated Press reporter, is a free-lance writer based in Denver. Jane Germano is a support staff member with NCSL's Natural Resource Information Systems.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE:

March 8, 1983

Representative Al Adams
Pouch V
Juneau, Alaska 99811

Dear Representative Adams:

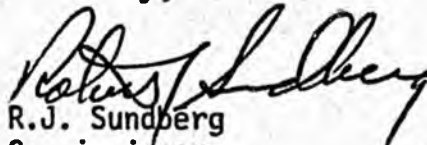
I have been asked to forward this letter to you expanding on our explanation of the need for CSSHB 10 (Jud). In brief, this proposed legislation would prohibit the sale of "lookalike" imitation drugs in the state. While this may seem to be a trivial matter at first glance, let me assure you that passage of this measure will have a substantial impact upon the violent crimes that are associated with the drug culture.

Imitation drugs are designed to resemble or duplicate the appearance of brand name amphetamines, barbiturates, tranquilizers and narcotic pain killers. On the street, they are known and sold under the same names as their dangerous drug counterparts: Black Beauties, Dexies, Yellows, Christmas Trees and Rainbows. The imitations, however, contain non-controlled substances such as caffeine, ephedrine and other over-the-counter drugs. Violence often occurs when a buyer discovers that the drugs he has purchased are fake and simply, revenge is sought. Other problems involve the use of imitations to initiate juveniles into the drug culture. Another related problem involves a user who has become accustomed to ingesting imitation drugs and then receives the same dosage of the real drug. Such cases often result in fatalities.

In all of these cases the pushers are immune from the efforts of the law enforcement community from having an impact because these imitation drugs are not "controlled substances" under present statutes. If this bill is passed, we will be able to remove these individuals and their tools from having such a negative impact upon the citizens of our state.

Please do not hesitate to contact me again if you have any questions or comments concerning this topic.

Sincerely,



R.J. Sundberg
Commissioner

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

BILL SHEFFIELD, GOVERNOR

POUCH KC - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3428

March 9, 1983

The Honorable Al Adams
Chairman, House Finance Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: CSSS HB 10

Dear Representative Adams:

Thank you for your request for our comment on CSSS HB 10, an act relating to imitation controlled substances. As you may be aware, Assistant Attorney General Rhonda Butterfield from the Anchorage Office of Special Prosecutions and Appeals worked extensively with the sponsor in revising the original bill to the current version. We believe that CSSS HB 10's language is comprehensive and comprehensible, and are satisfied with the bill in its present form.

Under the bill as drafted, it is a "C felony" for a person to possess, with intent to deliver, an imitation controlled substance. An imitation controlled substance is a substance which is not listed in the controlled substances act which was passed during the last legislative term, but which appears to be a controlled substance. It is also a class C felony offense for a person to possess the raw materials listed in Sec. 11.73.020 with intent to manufacture an imitation controlled substance. Class C felonies are punishable by up to five years in prison. Under section 11.73.030 of the bill, if delivery of an imitation controlled substance is made to a person under 19 who is at least three years younger than the deliveror, the offense is increased from a class C to a class B felony, punishable by up to 10 years in prison. This language is patterned upon similar language in the controlled substances act passed last term.

According to police officers who work in drug enforcement, a high percentage of the substances sold on the streets in Alaskan cities are imitation controlled substances. These items look the same as controlled substances, and the purchaser pays the same price for them. The purchaser has no

March 9, 1983

way of knowing, without actually testing the substances, whether he or she is purchasing is a real drug or an imitation drug. Since imitation controlled substances (such as caffeine and ephedrine) are much easier for a seller to obtain than controlled substances (such as cocaine, heroin or amphetamines), the sale of imitation controlled substances increases the apparent illicit drug traffic, exposing more young people to a criminal or drug lifestyle. Additionally, a person (especially a young person), who has been purchasing and ingesting imitation controlled substances under the mistaken belief that they are the real thing, may eventually purchase real cocaine or amphetamines, and ingest too much of the drug. This can lead to drug overdose and possibly death.

The bill contains provisions allowing the forfeiture of property used in violation of the imitation controlled substances law. The forfeiture provisions track those used in AS 17.30.110, which deal with the forfeiture of items used in violation of the controlled substances act. This would allow the confiscation of money, manufacturer paraphenelia and vehicles used in the violation of the law.

Attached to this letter is a revised statement of fiscal impact which conforms to the governor's format for the submission of these statements, and which reflects the Department of Law's estimate of the impact of this bill. Thank you again for the opportunity to state the Department of Law's position on CSSS HB 10. Please contact my office if you have any questions.

Very truly yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 

Daniel W. Hickey
Chief Prosecutor

DWH/GAH/gb-07

Enclosure

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: CSSS HB 10 Date on Bill: 2-23-83
 Title: "An Act relating to imitation controlled substances "
 Sponsor: Representative Abood
 Requestor: House Finance Committee

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

| | | | FY 83 | FY 84 | FY 85 | FY 86 | | |
|-----------|--|--|-------|-------|-------|-------|--|--|
| Capital | | | | | | | | |
| Operating | | | | 34.6 | 38.8 | 41.1 | | |
| Total | | | | 34.6 | 38.8 | 41.1 | | |

b. Revenues:

| | | | | | | | | |
|---------|--|--|--|--|--|--|--|--|
| Revenue | | | | | | | | |
|---------|--|--|--|--|--|--|--|--|

2. Source of funds to offset fiscal impact of bill:

No information provided.

3. Assumptions: It is estimated that enactment of this bill will result in 50 to 60 new criminal prosecutions throughout the state each year. This estimate is based upon a survey taken by the department of local police agencies and the state troopers. These new prosecutions and the handling of forfeiture actions allowed under the bill represent additional workload which will require the allocation of additional prosecutor resources.

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Daniel W. Hickey, Chief Prosecutor Phone: 465-3428
 Division: Department of Law, Criminal Division Date: 3-9-83

Approved by Commissioner: Norman C. Gorsuch, Attorney General Date: 3-9-83
 Department: Law

5. Distribution:
 Original to Legislative Finance
 Copy to OMB
 Copy to Sponsor
 Copy to Requestor

2/15/83

Fiscal Analysis

The impact of CSSS HB 10 is expected to result in the addition of prosecutor time equivalent to one-half of an Attorney III (SR22), statewide. For purposes of the analysis, salary schedule A has been used. Actual placement of a position cannot be determined until after the Legislature has acted and we know what bills have been approved.

The first year of the analysis will be for FY 84 and costs have been calculated on a 10 month basis to account for the time required to establish a new position and the time it takes to get a new program underway. The costs beyond FY 84 are on a 12 month basis and include a 6% annual inflation factor.

1st Year (10 months)

| | <u>AIII (PPT)</u> | <u>TOTAL</u> |
|---------------------------|-------------------|--------------|
| Personal Services | 23.8 | 23.8 |
| Travel | 2.5 | 2.5 |
| Contractual | 4.0 | 4.0 |
| Commodities - ongoing | .8 | .8 |
| Commodities - single time | 2.0 | 2.0 |
| Equipment - single time | 1.5 | 1.5 |
| | | <hr/> |
| | | 34.6 |

2nd Year (12 months + 6% annual inflation)

| | | |
|-------------------|------|-------|
| Personal Services | 30.0 | 30.0 |
| Travel | 3.2 | 3.2 |
| Contractual | 4.6 | 4.6 |
| Commodities | 1.0 | 1.0 |
| | | <hr/> |
| | | 38.8 |

Alaska State Legislature

House of Representatives

Al Adams

Chairman
Committee on Finance



Official Business

March 11, 1983

WHILE IN SESSION
Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3706

OUT OF SESSION
P.O. Box 333
Kotzebue, Alaska 99752
(907) 442-3320

1024 W. 6th
Anchorage, Alaska 99501
(907) 274-0615

MEMORANDUM

TO: House Finance Committee Members

FROM: Al Adams, Chair *APA*
House Finance Committee

SUBJ: CS SS HB 10 (Judiciary)

CS SS HB 10 (Judiciary) would prohibit manufacture, delivery, possession with intent to manufacture or deliver, and advertisement to promote the delivery of imitation controlled substances. The bill attempts to crack down on manufacturers and sellers of imitation controlled substances as opposed to those who use an imitation controlled substance thinking that it is actually a controlled substance. It is thought that the best way to control the problem is to punish the manufacturers and sellers.

An example of an imitation controlled substance would be a caffeine pill passed off as an amphetamine.

Section-by-section analysis of CS SS HB 10 (Judiciary)

The legislation would add a new Chapter 73 to AS 11 entitled the "Imitation Controlled Substances Act".

Sec. 11.73.010 prohibits manufacture, delivery, or possession with intent to deliver imitation controlled substances. Violation of this section is a class C felony. A person convicted of a class C felony can receive up to 5 years in jail and a fine not to exceed \$50,000. The language of this section is the same as the language of the sponsor substitute.

Sec. 11.73.020 prohibits possession with intent to manufacture imitation controlled substances or their salts (derivatives). A list of 18 substances is included. Violation of this section is a class C

felony. The language of this section is the same as the language of the sponsor substitute.

Sec. 11.73.030 prohibits delivery of an imitation controlled substance to a minor. The language of this section was altered by the Judiciary Committee to reflect existing law regarding controlled substances. Under the new language, a person who delivers an imitation controlled substance to a minor who is at least three years younger is guilty of a class B felony. A person convicted of a class B felony can receive up to 10 years in jail and a fine not to exceed \$50,000. If the minor is less than three years younger than the seller, the provisions of AS 11.73.010 apply; i.e. the seller could be convicted of a class C felony. Thus, if three or more years difference in age exists between the seller and the minor, it is a more serious crime.

Sec. 11.73.040 prohibits advertisement to promote the delivery of an imitation controlled substance. Violation of this section is a class C felony. The language of this section is the same as the language of the sponsor substitute.

Sec. 11.73.050 would allow use of imitation controlled substances by registered practitioners (doctors, dentists, etc.) for professional practice or research. It would also allow for manufacture, delivery, and advertisement of imitation controlled substances for this purpose. The language of this section is the same as the language of the sponsor substitute.

Sec. 11.73.060 provides for forfeiture to the state of property used in violation of Chapter 11. The language of the forfeiture provisions are tied to the forfeiture provisions for controlled substances. The language of this section is the same as the language of the sponsor substitute.

Sec. 11.73.099 provides definitions for Chapter 11. The definition of "imitation controlled substance" was amended by the Judiciary Committee. An imitation controlled substance now includes salts of the substances, as well as the substances themselves. Also, the definition of "representations" was amended by the Judiciary Committee in section .099(3)(C) by removing the word "illicit" since the phrase "illicit controlled substance" was thought to be redundant.

Since there is no effective date in the body of the bill, the act would go into effect 90 days after passage.

Fiscal Notes

Department of Public Safety: DPS has submitted a zero fiscal note due to the fact that any additional costs can be absorbed in their existing budget.

Department of Law: DOL has submitted a fiscal note for the CS of \$34,600 for FY 84. The main reason for the difference between this fiscal note and the original one, according to DOL, is a change in OMB policy for fiscal notes. When the original fiscal note was submitted, DOL was not instructed to predict the fiscal impact of this bill whereas now it has been so instructed.

Division of Corrections: The original fiscal note requested \$1.2 million, most of which was capital costs to fund eight new beds to handle the increased prisoner load due to passage of this bill. The fiscal note prepared for the committee substitute has been lowered to \$743,900 which represents the cost of building five new beds. According to Corrections, the reduced bed space is caused by the change in age from 18 to 19 in proposed AS 11.73.030, and the fact that Corrections now expects that approximately 15% of those who deal in imitation controlled substances will be deterred from doing so if the practice becomes illegal. Corrections does not expect any position costs until FY 85. One staff position is generally needed for every 2½ inmates, therefore two Corrections Officer II positions are included in the FY 85 and FY 86 estimates.

For your information, Corrections' capital budget request for new prison facilities includes only the cost of housing the existing population and the increase expected from statute changes already made. Thus, any new crime legislation such as this bill that requires additional bed space will not be included in Corrections' capital budget request.

Offered: 2/23/83
Referred: Finance

Original sponsors: Abood, Wendte,
Lindauer, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 10 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to imitation controlled substances."

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

8 * Section 1. AS 11 is amended by adding a new chapter to read:

9 CHAPTER 73. IMITATION CONTROLLED SUBSTANCES ACT.

10 Sec. 11.73.010. MANUFACTURE OR DELIVERY OF AN IMITATION CON-
11 TROLLED SUBSTANCE. (a) Except as provided in AS 11.73.050, a person
12 may not manufacture, deliver, or possess with intent to deliver, an
13 imitation controlled substance.

14 (b) Except as provided in AS 11.73.030, a person who violates
15 this section commits a class C felony.

16 Sec. 11.73.020. POSSESSION OF SUBSTANCE WITH INTENT TO MANUFAC-
17 TURE. (a) Except as provided in AS 11.73.050, a person may not
18 possess the following substances or their salts with the intent to
19 manufacture an imitation controlled substance:

- 20 (1) ephedrine;
21 (2) ephedrine sulfate;
22 (3) pseudoephedrine;
23 (4) pseudoephedrine hydrochloride;
24 (5) phenylpropanolamine;
25 (6) caffeine;
26 (7) theophylline;
27 (8) lidocaine;
28 (9) procaine;
29 (10) tetracaine;

- 1 (11) dyclonine;
- 2 (12) acetaminophen;
- 3 (13) salicylamide;
- 4 (14) doxylamine;
- 5 (15) diphenhydramine;
- 6 (16) pheniramine;
- 7 (17) chlorpheniramine; or
- 8 (18) pyrilamine.

9 (b) A person who violates this section commits a class C felony.

10 Sec. 11.73.030. DELIVERY OF AN IMITATION CONTROLLED SUBSTANCE TO
11 A MINOR. (a) Except as provided in AS 11.73.050, a person 19 years
12 of age or older may not deliver an imitation controlled substance to a
13 person under 19 years of age, who is at least three years younger than
14 the person delivering the substance.

15 (b) A person who violates this section commits a class B felony.

16 Sec. 11.73.040. ADVERTISEMENT TO PROMOTE THE DELIVERY OF AN
17 IMITATION CONTROLLED SUBSTANCE. (a) Except as provided in A .73.-
18 050, a person may not knowingly place in a newspaper, magazine, hand-
19 bill, or other publication, or post or distribute in a public place,
20 an advertisement or solicitation knowing that the purpose of the
21 advertisement or solicitation is to promote the delivery of an imita-
22 tion controlled substance in the state.

23 (b) A person who violates this section commits a class C felony.

24 Sec. 11.73.050. IMITATION CONTROLLED SUBSTANCE AS PLACEBO. No
25 civil or criminal liability may be imposed under this chapter on a
26 person who manufactures, delivers, possesses or advertises or solicits
27 to promote delivery of an imitation controlled substance solely for
28 use as a placebo prescribed by a registered practitioner, as defined
29 in AS 11.71.900(19), in the course of professional practice or

1 research.

2 Sec. 11.73.060. FORFEITURES. (a) Property used during or in
3 aid of a violation of this chapter may be forfeited to the state to
4 the extent permitted under and in accordance with the provisions of
5 AS 17.30.110.

6 (b) For purposes of this section the terms "controlled sub-
7 stance" and "this chapter", as used in AS 17.30.110, shall be con-
8 strued as "imitation controlled substance" and "AS 11.73" respective-
9 ly.

10 Sec. 11.73.099. DEFINITIONS. In this chapter

11 (1) "controlled substance" means a substance as defined in
12 AS 11.71.900(4);

13 (2) "deliver" or "delivery" means the actual, constructive,
14 or attempted transfer from one person to another of an imitation
15 controlled substance, whether or not there is an agency relationship;

16 (3) "imitation controlled substance" means a substance con-
17 taining ephedrine, ephedrine sulfate, pseudoephedrine, pseudoephedrine
18 hydrochloride, phenylpropanolamine, caffeine, theophylline, lidocaine,
19 procaine, tetracaine, dyclonine, acetaminophen, salicylamide,
20 doxylamine, diphenhydramine, pheniramine, chlorpheniramine, or
21 pyrilamine, or their salts, that is not a controlled substance, and
22 that by dosage unit appearance (including color, shape, size, and
23 markings) or by representations would lead a reasonable person to
24 believe that the substance is a controlled substance; the term "repre-
25 sentations", as used in this paragraph, includes

26 (A) statements made by an owner or by anyone else in
27 control of the substance concerning the nature of the substance,
28 or its use or effect;

29 (B) statements made to the recipient that the

1 substance may be resold for inordinate profit;

2 (C) whether the substance is packaged in a manner
3 normally used for controlled substances;

4 (D) evasive tactics or actions used by the owner or
5 person in control of the substance to avoid detection by law en-
6 forcement authorities;

7 (E) the storage, packaging, presentation, display of
8 or reference to a controlled substance with, near, or in con-
9 nection with the activity involving the imitation controlled
10 substance.

11 (4) "manufacture" means the production, preparation, com-
12 pounding, processing, encapsulating, packaging or repackaging, label-
13 ing or relabeling, of an imitation controlled substance.

Introduced: 2/11/83
Referred: Judiciary and
Finance

BY ABOOD, WENDTE, LINDAUER,
PESTINGER AND LISKA

1 IN THE HOUSE

2

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 10

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to imitation controlled substances."

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

8 * Section 1. AS 11 is amended by adding a new chapter to read:

9

CHAPTER 73. IMITATION CONTROLLED SUBSTANCES ACT.

10

Sec. 11.73.010. MANUFACTURE OR DELIVERY OF AN IMITATION CON-

11

TROLLED SUBSTANCE. (a) Except as provided in AS 11.73.050, a person

12

may not manufacture, deliver, or possess with intent to deliver, an

13

imitation controlled substance.

14

(b) Except as provided in AS 11.73.030, a person who violates

15

this section commits a class C felony.

16

Sec. 11.73.020. POSSESSION OF SUBSTANCE WITH INTENT TO MANUFAC-

17

TURE. (a) Except as provided in AS 11.73.050, a person may not

18

possess the following substances or their salts with the intent to

19

manufacture an imitation controlled substance:

20

(1) ephedrine;

21

(2) ephedrine sulfate;

22

(3) pseudoephedrine;

23

(4) pseudoephedrine hydrochloride;

24

(5) phenylpropanolamine;

25

(6) caffeine;

26

(7) theophylline;

27

(8) lidocaine;

28

(9) procaine;

29

(10) tetracaine;

- 1 (11) dyclonine;
- 2 (12) acetaminophen;
- 3 (13) salicylamide;
- 4 (14) doxylamine;
- 5 (15) diphenhydramine;
- 6 (16) pheniramine;
- 7 (17) chlorpheniramine; or
- 8 (18) pyrillamine.

9 (b) A person who violates this section commits a class C felony.

10 Sec. 17.14.030. DELIVERY OF AN IMITATION CONTROLLED SUBSTANCE TO
11 A MINOR. (a) Except as provided in AS 11.73.050, a person 18 years
12 of age or older may not deliver an imitation controlled substance to a
13 person under 18 years of age.

14 (b) A person who violates this section commits a class B felony.

15 Sec. 11.73.040. ADVERTISEMENT TO PROMOTE THE DELIVERY OF AN
16 IMITATION CONTROLLED SUBSTANCE. (a) Except as provided in AS 11.73.-
17 050, a person may not knowingly place in a newspaper, magazine, hand-
18 bill, or other publication, or post or distribute in a public place,
19 an advertisement or solicitation knowing that the purpose of the
20 advertisement or solicitation is to promote the delivery of an imita-
21 tion controlled substance in the state.

22 (b) A person who violates this section commits a class C felony.

23 Sec. 11.73.050. IMITATION CONTROLLED SUBSTANCE AS PLACEBO. No
24 civil or criminal liability may be imposed under this chapter on a
25 person who manufactures, delivers, possesses or advertises or solicits
26 to promote delivery of an imitation controlled substance solely for
27 use as a placebo prescribed by a registered practitioner, as defined
28 in AS 11.71.900(19), in the course of professional practice or re-
29 search.

1 Sec. 11.73.060. FORFEITURES. (a) Property used during or in
2 aid of a violation of this chapter may be forfeited to the state to
3 the extent permitted under and in accordance with the provisions of
4 AS 17.30.110.

5 (b) For purposes of this section the terms "controlled sub-
6 stance" and "this chapter", as used in AS 17.30.110, shall be con-
7 strued as "imitation controlled substance" and "AS 11.73" respective-
8 ly.

9 Sec. 11.73.099. DEFINITIONS. In this chapter

10 (1) "controlled substance" means a substance as defined in
11 AS 11.71.900(4);

12 (2) "deliver" or "delivery" means the actual, constructive,
13 or attempted transfer from one person to another of an imitation
14 controlled substance, whether or not there is an agency relationship;

15 (3) "imitation controlled substance" means a substance con-
16 taining ephedrine, ephedrine sulfate, pseudoephedrine, pseudoephedrine
17 hydrochloride, phenylpropanolamine, caffeine, theophylline, lidocaine,
18 procaine; tetracaine; dyclonine; acetaminophen; salicyamide;
19 doxylamine; diphenhydramine; pheniramine; chlorpheniramine; or
20 pyrilamine, that is not a controlled substance, and that by dosage
21 unit appearance (including color, shape, size, and markings) or by
22 representations would lead a reasonable person to believe that the
23 substance is a controlled substance; the term "representations", as
24 used in this paragraph, includes

25 (A) statements made by an owner or by anyone else in
26 control of the substance concerning the nature of the substance,
27 or its use or effect;

28 (B) statements made to the recipient that the sub-
29 stance may be resold for inordinate profit;

1 (C) whether the substance is packaged in a manner
2 normally used for illicit controlled substances;

3 (D) evasive tactics or actions used by the owner or
4 person in control of the substance to avoid detection by law en-
5 forcement authorities;

6 (E) the storage, packaging, presentation, display of
7 or reference to a controlled substance with, near, or in con-
8 nection with the activity involving the imitation controlled
9 substance.

10 (4) "manufacture" means the production, preparation, com-
11 pounding, processing, encapsulating, packaging or repackaging, label-
12 ing or relabeling, of an imitation controlled substance.