

LEGISLATIVE FINANCE - HOUSE / SENATE FINANCE COMM. FILES 8879

HB 141 cont. - HB 146 468

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with smoking are among the costliest of diseases to treat, there are additional costs -- not easily quantified -- attributable to the fact that the health care professionals who devote their time and talent to dealing with the treatment of smoking related illness can not direct themselves to other pressing health problems.

In Alaska, the State Office of Epidemiology has published an analysis of the health costs associated with smoking that is also quite sobering.

For just one year -- 1985:

- there were 261 smoking-attributable deaths in Alaskans over age 20;
- for all deaths of Alaskans over age 20 during 1985, 14% were attributable to smoking;

This represents:

- 1,363 person-years of potential life lost...
- direct costs of \$52.8 million (hospital care, physician services, medication, etc.)...
- indirect morbidity and mortality costs of \$47.7 million due to lost income and productivity of individuals who died or were disabled from smoking related illness...
- for just one year, total costs in excess of \$100 million.

Moreover, this is a conservative estimate of costs because perinatal (occurring during the time close to birth) complications due to smoking, childhood diseases related to parental smoking, and diseases due to passive smoke are not reflected in these figures.

CS HB 141 (Fin)

Preventing young children -- the youth most susceptible to subtle and sophisticated advertising campaigns -- from becoming addicted to tobacco products at an early age is the fundamental purpose of CS HB 141 (Fin).

Briefly, CS HB 141 (Fin) would:

- provide the Department of Revenue authority to suspend or revoke a wholesaler-distributor license for a violation of AS 11.76.100 (selling tobacco to a minor) or negligent sales to a retailer whose license endorsement has been suspended;

- establish a license "endorsement" requirement for the retail sales of cigarettes, cigars, tobacco, or products containing tobacco;
- provide the Department of Commerce and Economic Development the authority to suspend a license endorsement upon a violation of AS 11.76.100 (selling tobacco to a minor) and prohibit the retail sale of tobacco products during a period of license endorsement suspension; and
- require retailers to make application and pay a fee of \$25 to the Department of Commerce and Economic Development for a license endorsement.

There is a clear need for an enforcement mechanism to reduce the flow of tobacco product sales to minors. CS HB 141 (Fin) will provide such a mechanism and help to curb the needless illness and premature death attributable to addictive tobacco products.

* * * * *

I appreciate your interest in CS HB 141 (Fin). If you have any questions concerning this legislation, please let me know or contact Mary Core of my staff at 465-4998.

attachments

Kay Brown

Alaska State Legislature House of Representatives

February 5, 1990

To: Senator John Binkley
Senator Rick Uehling
Co-Chairmen, Senate Finance Committee

From: Representative Kay Brown

Re: CS HB 141 (Finance) *Kay*

I would appreciate a hearing on CS HB 141 (Finance) in the Senate Finance Committee as soon as your schedule permits.

Tobacco use by Alaskan youth is a major, statewide problem. We need to take action to reduce the flow of tobacco products to minors. During the 1988 session the Alaska Legislature took an important step toward addressing this serious health and addiction issue by passing SB 339. This session, we need to target one additional aspect of the problem -- the absence of a tobacco retail licensing requirement.

Briefly, CS HB 141 (Finance) would:

- o require a business license endorsement for retail sales of cigarettes, cigars, tobacco or products containing tobacco, and designate the Department of Commerce and Economic Development as the licensing authority for tobacco retailers;
 - o require a separate fee of \$25 to be issued a license endorsement or to renew the endorsement, which expires at the same time the business license expires;
 - o require the Court to notify the Department of Commerce and Economic Development of all convictions of violations of AS 11.76.100, selling tobacco to a minor, by persons holding a business license endorsement;
 - o provide the Department of Commerce and Economic Development authority to suspend or revoke license endorsements if distributors, wholesalers or manufacturers negligently sell tobacco or tobacco products to non-licensed or suspended retailers;
 - o prohibit the sale of tobacco products during the period of the suspension or revocation of the license endorsement;
- and

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During Session:
P. O. Box V
Juneau, AK 99811
(907) 465-4998

- SPONSOR'S BACKGROUND INFO -

o provide the Department of Commerce and Economic Development authority to suspend the license endorsement of a period of:

o 45 days for a first conviction of a violation;
or

o 90 days, if within the past 24 months the person has been previously convicted of a violation.

I would appreciate the scheduling of CS HB 141 (Finance) at the earliest opportunity. Please call me or Mary Core of my staff if you have any questions about the Legislation.

Thank you.

Local Address: P.O. Box 1285, Kotzebue, Alaska 99752

AMERICAN  LUNG ASSOCIATION of ALASKA

Dedicated to the prevention and control of lung disease

27 February 1990

Senator Rick Uehling, Co-Chair
Senate Finance Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

MAR 6 1990

Dear Senator Uehling:

We have a serious drug problem in Kotzebue that your committee can help us fix. As you may know, tobacco products kill more Americans than all the other recreational drugs combined—nearly 400,000 people die a year from tobacco-related illnesses.

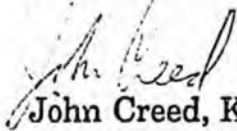
Most Alaskans addicted to nicotine get hooked at an early age, and that is how you can help with your support of HB 141, which would license the sale of tobacco products.

We have a problem in Kotzebue with one store in particular that routinely sells tobacco products to children. While most local store owners are responsible people who do not sell tobacco to children, this one store may be helping to addict a whole new generation of children to nicotine. If that store needed a license to sell tobacco products, the police would have a license to revoke if it broke the law.

We also support HB 466, which deals with the distribution of tobacco products, as well as SB 222 (and its counterpoint in the House), which would further restrict smoking in public places.

Attitudes have changed dramatically about tobacco use in our society in the past few years. Alaska has always been on the forefront of this movement, and your support of this legislation would demonstrate your commitment to the anti-drug campaign in America. Thank you.

Sincerely yours,


John Creed, Kotzebue Facilitator
American Lung Association of Alaska


Phyllis Short, Board Member, Kotzebue
American Lung Association of Alaska

cc: Walter Hays
Senator Al Adams
Representative Eileen MacLean



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service
Centers for Disease Control**Memorandum**

Date September 14, 1989

From Director, Office on Smoking and Health

Subject Congressional Testimony by Dr. Koop

To Interested Parties

On September 13, Dr. Koop made his last appearance before Congress as Surgeon General. He presented the attached statement on tobacco to the Subcommittee on Transportation and Hazardous Substances, Committee on Energy and Commerce, U.S. House of Representatives. The cigarette advertisements attached to the original statement were reproduced in color, although your copy is likely to be a black-and-white photocopy.

I want to draw your attention to Dr. Koop's comments on pages 3-5 where he responded to statements made by the advertising industry taking excerpts from the 1989 Surgeon General's report out of context. Because the advertising and tobacco industries are making these statements repeatedly, both in the U.S. and abroad, it is important that people in the smoking-and-health community be aware of, and use, Dr. Koop's rebuttal.

To help disseminate this statement widely, I have submitted it for publication to a major medical journal. I would appreciate it if you could help disseminate it through your channels. If you would like to publish this in a journal or newsletter to which you have access, please call me beforehand to discuss this, so that we might avoid jeopardizing publication in the journal to which I have already submitted the statement.

Thank you for your assistance.

Ronald M. Davis, M.D.

Attachment



The Surgeon General of the
Public Health Service
Washington DC 20201

STATEMENT OF

C. EVERETT KOOP, M.D., Sc.D.

SURGEON GENERAL

PUBLIC HEALTH SERVICE

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

SUBCOMMITTEE ON TRANSPORTATION, AND HAZARDOUS SUBSTANCES

COMMITTEE ON ENERGY AND COMMERCE

U.S. HOUSE OF REPRESENTATIVES

SEPTEMBER 13, 1989

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to appear at today's hearing to discuss issues related to tobacco use. The views presented in this testimony are my own and do not represent those of the Administration. I will focus my remarks on two topics which this Subcommittee has considered in current legislative proposals and in previous hearings: tobacco advertising and children's access to tobacco products.

Tobacco Advertising

The bill that you have introduced, Mr. Chairman, H.R. 1250, would eliminate all image-based tobacco advertising (allowing only so-called "tombstone advertising"). On several occasions during my tenure as Surgeon General, I endorsed proposals that would ban all tobacco advertising and promotion. I certainly support your proposal to restrict tobacco advertising as a reasonable compromise, although I would continue to endorse a total advertising ban as a long-term goal.

It is a curious public policy that we, as a society, allow the most important preventable cause of death to be one of the most heavily advertised consumer products. I know that First Amendment concerns have been expressed about tobacco advertising restrictions. Opponents of these restrictions argue that if a

product is legal to sell, it should be legal to advertise. That argument, expressed in a different way, says that if Congress wants to ban the advertising of a product, it first has to ban the sale of that product.

I don't believe our Founding Fathers would have endorsed such a narrow and inflexible range of options for Congress to consider. An advertising ban seems to me to be a reasonable middle ground between the status quo and a total prohibition of tobacco use, which no one seriously proposes.

While I am not a legal scholar, I understand that Congress has the clear authority to prohibit deceptive advertising. In my opinion, much of today's advertising for tobacco products is deceptive. Many ads portray smoking as a safe, if not healthful, activity, and no ads disclose many of the serious and extensive health effects of smoking, such as stroke and nicotine addiction.

One of the more outrageous cigarette ads has used, for at least a decade, the slogan "Alive with Pleasure." This is clearly a message designed to undermine the Surgeon General's warning. If you consider smokers who suffer from lung cancer, emphysema, or stroke caused by smoking, truth in advertising would demand use of the slogan, "Dying in Agony" instead of "Alive with Pleasure."

-3-

Two examples of ads which I find highly objectionable are the Kool ads that clearly target young people, and the recent Camel ad that suggests violence against women (see attached ads). It is interesting that Philip Morris associates Virginia Slims with women's liberation ("You've Come a Long Way, Baby"), whereas R.J. Reynolds, in the Camel ad, treats women as if it were still the Age of Dinosaurs.

I also object to the promotional placement of cigarettes in movies, to which, Mr. Chairman, you have appropriately drawn attention. As you have pointed out, cigarette promotions placed in movies such as Superman II expose large numbers of children and adolescents to these messages. When these movies are shown on television, the ban on broadcast cigarette advertising is circumvented.

At this point, Mr. Chairman, I would like to comment on the misleading statements made by the advertising industry on this issue to this Subcommittee and elsewhere concerning the 1989 Surgeon General's report, Reducing the Health Consequences of Smoking: 25 Years of Progress. Repeatedly, advertising industry trade associations and publications have taken quotes from the report grossly out of context. Mr. Chairman, I would like to give you three examples and then set the record straight.

In a written statement to the Subcommittee for its July 25, 1989 hearing, the president of the Point-of-Purchase Advertising Institute (POPAI) argued against tobacco advertising restrictions by quoting from the report:

"In the Surgeon General's 1989 Report, it states that 'THE MOST DIRECT APPROACH TO ASSESSING THE RELATIONSHIP BETWEEN ADVERTISING AND CIGARETTE CONSUMPTION HAS BEEN TO ASK CHILDREN OR ADULTS ABOUT FACTORS THAT INFLUENCED THEM TO SMOKE. THESE STUDIES TYPICALLY FIND THAT ADVERTISING IS RANKED QUITE LOW ON THE LIST OF RELEVANT FACTORS.'" (capitalization added by POPAI)

The witness conveniently omitted the next three sentences, which are as follows:

"Marketing experts have questioned the validity of this approach because conscious response to advertising is deemed to be a poor index of actual response (Bergler 1981; Chapman 1986). As such, studies with a similar method and opposite findings also offer little insight into the actual effects of advertising. An example is a study by Fisher and Magnus (1981), which found that most children believe that cigarette ads encourage children to smoke."

Also in written testimony submitted to the Subcommittee for the July hearing, the American Advertising Federation stated:

"Even the Surgeon General's 1989 report, 'Reducing the Health Consequences of Smoking' admits, 'There is no scientifically rigorous study available to the public that provides a definitive answer to the basic question of whether advertising and promotion increase the level of tobacco consumption.'"

Similarly, an article in Advertising Age (January 16, 1989) quoted the report as follows:

"The extent of influence of advertising and promotion on the level of consumption is unknown and possibly unknowable," the report said."

The entire excerpt, including these statements taken out of context, is as follows (omitted portions underlined):

"There is no scientifically rigorous study available to the public that provides a definitive answer to the basic question of whether advertising and promotion increase the level of tobacco consumption. Given the complexity of the issue, none is likely to be forthcoming in the foreseeable future. The most comprehensive review of both the direct and indirect mechanisms [whereby advertising may affect consumption] concluded that the collective empirical, experiential, and logical evidence makes it more likely than not that advertising and promotional activities do stimulate cigarette consumption. However, that analysis also concluded that the extent of influence of advertising and promotion on the level of consumption is unknown and possibly unknowable (Warner 1986b)."

The major point being made in this paragraph of the report is that a perfectly designed study to prove that cigarette advertising increases cigarette consumption will probably never be performed because of the complexity of this issue. I must emphasize that absolute scientific proof is rarely available when studying human behavior. Humans do not behave like the laws of physics. In medicine and in public health, we rarely await, and we would be foolish to await, definitive proof before taking appropriate action.

In the 1850s, John Snow ended an epidemic of cholera in London by removing the handle of the Broad Street pump, 30 years before the bacterium that causes cholera was first identified. Fortunately, there was no Cholera Institute that lobbied against removal of the pump handle until it could be proved that the water from that pump was causing cholera.

In my opinion, the burden of proof should be on the tobacco and advertising industries to show that advertising does not increase cigarette consumption. In the absence of such evidence, advertising should not be allowed. This shifting of the burden of proof would represent prudent public health policy for a product that kills 390,000 Americans each year, when used exactly as intended.

Children's Access to Tobacco Products

Let me now turn to the topic of children's access to tobacco products. In May 1988, I released the Surgeon General's report, The Health Consequences of Smoking: Nicotine Addiction. In the preface to that report, I raised a number of important policy

questions concerning the sale and distribution of tobacco products:

"We as citizens, in concert with our elected officials, civic leaders, and public health officers, should establish appropriate public policies for how tobacco products are sold and distributed in our society. With the evidence that tobacco is addicting, is it appropriate for tobacco products to be sold through vending machines, which are easily accessible to children? Is it appropriate for free samples of tobacco products to be sent through the mail or distributed on public property, where verification of age is difficult if not impossible? Should the sale of tobacco be treated less seriously than the sale of alcoholic beverages, for which a specific license is required (and revoked for repeated sales to minors)?"

My answer to each of these three questions is "no." There is no logical reason why we should have a double standard for controlling the sale of tobacco and alcohol, the two major legal addicting drugs used in our society. Would we tolerate the sale of alcoholic beverages through vending machines? Would we allow free samples of alcoholic beverages to be sent through the mail or passed out on public property? Of course not. Why, then, should we be so permissive with the sale of tobacco, when 43 States have laws that prohibit the sale of tobacco to minors?

The issue of whether it is appropriate to sell tobacco products through vending machines is important for two reasons.

First, vending machines are a powerful symbol that we don't take seriously the problem of cigarette sales to minors. Second, they

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allow children to have easy access to cigarettes. At the Subcommittee's July 1989 hearing, a representative of the National Automatic Merchandising Association (NAMA) testified that "About 8 out of 10 cigarette vending machines are located where teenagers are not allowed or rarely frequent." Even if true -- and I'm not convinced it is -- it's a poor argument against banning vending machine sales of cigarettes. Even 20 percent of the 374,000 vending machines in the United States (NAMA estimate) represents a huge number of sites (75,000) from which teenagers can readily obtain cigarettes ... illegally.

I agree with past statements by the Department of Health and Human Services that controlling the sale of tobacco to minors is a potentially effective strategy to prevent the initiation of tobacco use among young people. It is disappointing that States have made so little effort to enforce existing laws banning the sale of tobacco to minors. As long as States take no action to enforce these laws, I support Federal efforts to prevent the sale of tobacco to minors.

Mr. Chairman, I would be happy to answer any questions that you or other members of the Subcommittee might have.

3/2/90
Kay Brown

AMERICAN LUNG ASSOCIATION of ALASKA

Dedicated to the prevention and control of lung disease

DATE: FEBRUARY 27, 1990

TO: MEMBERS OF THE SENATE FINANCE COMMITTEE
ALASKA STATE LEGISLATUREFROM: WALTER L. HAYS, EXECUTIVE DIRECTOR
AMERICAN LUNG ASSOCIATION OF ALASKA 

RE: HB141

I am writing in support of the amended version CS HB141 that is currently under review.

Licensing of retail outlets that sell tobacco products is definitely in the public interest. Our society has finally recognized the significant health hazards represented by tobacco as witnessed by the recent Federal ban on smoking on 99% of all domestic airline flights and the numerous statements on the addictive properties of nicotine by the Office of the Surgeon General and the Secretary of Health and Welfare.

Currently twenty-six (26) states and the District of Columbia have laws that require that vendors be licensed to sell tobacco. Many have provisions to revoke such licenses as a penalty for selling to minors.

The simple fact is that access does impact consumption. The recent Adolescent Health Survey conducted throughout the State would indicate that regular use of tobacco products among High School Upper Classmen in rural Alaska is twice the National average--22% in Alaska as contrasted to 11% Nationally. In some rural communities usage rates are as high as 60-70%.

Our office has received numerous reports regarding the flagrant violation of tobacco sales to minors in several rural communities.

Alaska needs to join the ranks of the progressive states requiring licenses for the sale of tobacco products. Proper licensing and enforcement of such regulations will be another positive step forward for the general welfare of our people and the protection of our children.

3/2/90
Kay Brown



ALASKA DIVISION, INC.

February 28, 1990

Members of the Senate Finance Committee
Alaska State Legislature

RE: HB141

Tobacco is the nation's leading preventable cause of death and disease, responsible for roughly 30% of all cancer deaths, including 90% of lung cancers, 75% of cancers of the mouth, larynx and esophagus, and 50% of bladder and pancreas cancer.

Smoking is only superficially a matter of individual choice; it is more fundamentally, the product of social and economic forces, especially the advertising, marketing, and public relations practices of the tobacco industry.

There are appropriate, achievable, and effective public health policies that can significantly reduce the toll taken by tobacco. The primary obstacle to implementing these policies is the propaganda and political opposition of the tobacco industry.

Tobacco use is not a simple matter of free individual choice. Tobacco use is drug addiction comparable to cocaine and heroin addiction. Tobacco use is a major health issue that must be addressed by appropriate public health policies.

Last year tobacco killed more Americans than heroin, cocaine, alcohol, AIDS, fires, homicide, suicide and automobile accidents combined. Alaskans have the opportunity to lead the way in tobacco control legislation. Unfortunately, we already lead the U.S. in male lung cancer death.

This is not the time for the tobacco industry to be telling us that we're discriminating against smokers. Nor is it time to let up in our efforts to control a substance that, if it were an artificial sweetener, would never have made it to market.

Sincerely,

A. H. Koenig
Director of Public Issues
Alaska Division, American Cancer Society

Reducing the Illegal Sale of Cigarettes to Minors

David G. Altman, PhD; Valodi Foster, MPH; Lolly Resenick-Douss; Joe B. Tye, MBA

This study reports on an effort to stop the illegal sale of cigarettes to minors. In Santa Clara County, Calif, 412 stores and 30 vending machines were visited by 18 minors aged 14 through 16 years with the intent to purchase cigarettes; they were successful at 74% of the stores and 100% of the vending machines. After an aggressive six-month campaign using communitywide media, direct merchant education, contact with the chief executive officers of chain stores and franchise operations owned by major companies, and grassroots work with community organizations, the percentage of stores with illegal over-the-counter sale of cigarettes to minors was reduced to 38%. Sales from vending machines were not reduced. While much remains to be accomplished in stopping the illegal sale of tobacco to minors, data from this study illustrate that a well-designed community and merchant education campaign can significantly reduce such sales.

(JAMA 1989;261:90-93)

THE SALE of tobacco products to minors is a major public health problem. Although most states have laws regulating the access of minors to tobacco, they are rarely enforced.^{1,2} In California it is against the law to sell tobacco products to anyone under age 18 years. By all accounts, tobacco is readily accessible to minors. In field trials, minors

For editorial comment see p 99.

have successfully purchased tobacco from stores and vending machines 70% to 100% of the time.^{3,4} It is alarming that minors have little difficulty obtaining tobacco, since most smokers begin smoking regularly as teenagers. National survey data indicate that 57% of high school seniors who report daily smoking began by the age of 14 years (ie, the ninth grade).⁵ Stopping the sale

of tobacco to minors is, therefore, a critical step in any effort to prevent tobacco use.⁶

Easy access to tobacco is obviously a prerequisite to maintaining a tobacco addiction. The earlier a young person begins using tobacco, the less likely it is that he or she will be able to quit later. Over half of high school seniors (53%) who smoke at least half a pack per day have made at least one serious but unsuccessful attempt to quit smoking, 47% say they would like to quit at the current time, and almost three fourths of daily smokers in high school still smoke seven to nine years later, even though in high school only 5% thought they would be daily smokers five years later.⁶

Peer pressure to smoke coupled with societal influences such as tobacco company advertising that glamorizes smoking⁷ influence young people to perceive smoking in a positive light. Unfortunately, our society has done very little to counteract this by decreasing the availability of tobacco through enforcement of existing laws and the enactment of meaningful penalties for violation of these laws. If minors have a difficult time obtaining tobacco, they may be prevented from experimenting with and later becoming addicted to it.

There have been a few attempts to

stop the illegal sale of tobacco to minors. In Avon, England, four minors under the age of 16 years were able to purchase tobacco from 91 of 100 tobacco-nists. One year later, after a press conference was held and a letter was sent to merchants clarifying the law, minors returned to 50 of the stores and were able to purchase tobacco in only 44% of them.⁸ Similarly, the Decatur, Ill, chapter of Doctors Ought to Care found that a 14-year-old girl and an 11-year-old boy were able to purchase cigarettes in 78% and 68% of stores, respectively. Letters were then written to all of the store managers giving them feedback about their performance, a copy of the state law, and a letter from the chamber of commerce urging them to adhere to the law. This intervention reduced the sale of illegal cigarettes by 18%.⁹ An unpublished Canadian project called "Business for Kids" has also been conducted to stop the sale of tobacco to minors (Bill Howard, written communication, June 22, 1988).

The purpose of the current study was to determine whether a voluntary merchant education program combined with a media campaign and grassroots community organization would be effective in reducing the sale of cigarettes to minors in a wide range of stores and communities.

METHODS

In January 1988, 412 stores in Santa Clara County, Calif, that sold cigarettes over the counter and 30 outlets that had cigarette vending machines were visited by 18 minors aged 14 (N=9), 15 (N=6), and 16 (N=4) years. Half of the minors were girls. No attempt was made to recruit minors who looked older than their chronological age. Stores were located in the socioeconomically diverse towns of Cupertino, Milpitas, Mountain View, Palo Alto, San Jose, Santa Clara, and Sunnyvale.

The stores visited included grocery stores (N=89), liquor stores (N=108),

From the Center for Research in Disease Prevention, Stanford University School of Medicine (Dr Altman), and the Center for the Study of Families, Children and Youth, Stanford University (Ms Resenick-Douss), Palo Alto, Calif; HealthWorks Associates, Pleasant Hill, Calif (Ms Foster); and the Baystate Medical Center, Springfield, Mass (Mr Tye).

Reprint requests to Center for Research in Disease Prevention, Stanford University School of Medicine, 1000 Welch Rd, Palo Alto, CA 94304-1883 (Dr Altman).

Table 1.—Variables Measured During Interaction With Store Merchants

Variable	Response
Sale made	Yes or no
Merchant asks age of minor	Yes or no
Merchant asks who the cigarettes are for	Yes or no
Warning sign posted about tobacco sales to minors as required by state law	Yes or no
Sex of merchant	M or F
Age of merchant as estimated by the minor	<30 y or >30 y

convenience stores (N=103), pharmacies (N=67), gas stations (N=50), and businesses that had vending machines (N=80). Stores that sold cigarettes over the counter included company-owned chain operations (48%), franchise operations (27%), and independent stores (80%). Chain and franchise operations were preselected from local phone books, while independent stores were selected by the minor and an adult escort when the chain and franchise operations were visited (with the exception of 24 chain stores and one franchise store that were selected by the minor and adult). Most of the independent stores selected were in proximity to the chain and franchise operations (eg, in a shopping center). Industry data (1985) on cigarette sales by retail outlets show the following distribution: supermarkets (80%), convenience stores (18%), grocery stores (13%), gas stations (10%), drug stores (9%), vending machines (8%), discount stores (7%), and other (5%).³

Procedures and Measures

Minors attempted to purchase cigarettes from stores in January 1988 (before intervention) and six months later in July 1988 (after intervention). A period of six months between tests was selected to allow businesses sufficient time to implement new tobacco sales policies and to ensure that the community education campaign had been fully implemented. At the second test, an effort was made to send minors back to the same stores they visited at the first test, recognizing that the store merchant at the second visit might be different from the store merchant at the first visit. Four of 18 minors were unable to participate in the second test; two were out of town, one was unavailable, and one parent did not want her daughter to participate. Four stores went out of business between tests.

Minors were driven to the stores by adults who remained in the cars and out of view of merchants. The minor walked into the store, determined whether there was a visible warning sign about

Table 2.—Cigarette Sales to Minors by Type of Store

Store Type	No. of Stores	% of Stores Where Minors Bought Cigarettes*		P [†]	% Change [‡]
		First Test	Second Test		
Vending machine	30	100	100	NS	0
Gas station	50	84	53	.001	-38
Liquor store	103	83	46	<.0001	-46
Convenience store	103	81	48	<.0001	-41
Pharmacy	67	80	28	.001	-53
Grocery store	80	80	22	<.0001	-63
Total (excluding vending machines)	412	74	36	<.0001	-47

*NS indicates not significant.
[†]P (% in first test - % in second test) / % in first test; the percentage changes between the first and second tests did not differ significantly among store types.

tobacco sales posted on the front door or window or at the cash register, and asked for a package of Marlboro cigarettes. The minors were instructed to be honest if the merchant asked them any questions. For example, if the merchant asked the minor's age, the minor was instructed to respond truthfully (eg, 14, 15, or 16 years old). If the merchant asked who the cigarettes were for the minor was told to respond "For me." If a sale was made, the minor left the store with the package of cigarettes and returned to the car. Data were collected on six characteristics of the interaction with merchants (Table 1).

Intervention Components

From January through July 1988, combinations of three interventions were implemented: (1) community education, (2) direct education with merchants who sold tobacco, and (3) contact with the chief executive officers of the companies that owned the major chain and franchise operations visited.

Community Education.—Santa Clara County communities were made aware of the problem of tobacco availability through mass media, small media, and presentations to community groups. A press conference announcing the results of the test before intervention initiated the community education campaign. A 60 s television public service announcement was taped for the project by US Surgeon General C. Everett Koop, MD, and distributed to 18 television stations. Two 60 s radio advertisements produced by media expert Tony Schwartz (New York) were distributed to 28 radio stations. The project was covered by five television stations on local news segments, by five special segment news-life-style television programs, by four local newspapers, and by numerous radio stations, including a one-hour feature story by a local affiliate of the Public Broadcasting System. The project was also covered

by small media, such as service club and chamber of commerce newsletters.

The community education campaign included distribution of materials describing the project as well as numerous presentations to local community groups. As a result of these contacts, many community leaders wrote letters of support, and the Kiwanis club, parent-teacher association, and county board of supervisors passed formal resolutions in support of the project. Community organizations seemed to be attracted to the project because of its focus on youth, on the enforcement of existing laws, and on the use of educational approaches to merchant contact.

Direct Merchant Education.—Using a table of random numbers, all stores were allocated randomly to one of three interventions: (1) no personal contact (eg, only community education), (2) mailed information, or (3) personal visit from project staff. The personal visit (five to ten minutes) consisted of project staff telling store managers about the project and giving feedback as to whether they had sold cigarettes to minors. They were given a merchant education kit that included background facts and figures on tobacco and youth, tips for training employees not to sell tobacco to minors, a copy of the state law that was required to be posted, warning labels for cash registers and store windows (the labels stated "State Law. It is illegal to sell cigarettes or chewing tobacco to anyone under the age of 18."), a list of 84 project supporters, and a copy of the resolution of commendation given to the project by the county board of supervisors. Stores in the mailed information group received the same merchant education kit but did not receive a personal visit. Stores in the no personal contact group received only community education.

Contact With Chief Executive Officers.—Certified letters were sent to the chief executive officers of 24 compa-

Table 3.—Cigarette Sales to Minors by Chain, Franchise, and Independent Stores

Store Category	No. of Stores	% of Stores Where Minors Bought Cigarettes		P*	% Change†
		First Test	Second Test		
Chain	174	62	27	<.0001	-66
Franchise	110	81	50	<.0001	-38
Independent	121	66	47	<.0001	-45

*Chain stores also had significantly lower percentages of sales to minors than franchise and independent stores in both the first and second tests ($P < .001$).

†(% in first test - % in second test)/% in first test; the percentage changes between the first and second tests did not differ significantly among store categories.

Table 4.—Changes in Merchant Behavior

Variable	% (No. of Stores)		P*	% Change†
	First Test	Second Test		
Was warning sign posted as required by law?	3 (13)	23 (92)	<.0001	+667
Was minor asked age?	24 (100)	48 (196)	<.0001	+100
Was minor asked who cigarettes were for?	8 (22)	8 (23)	NS	+20
Sex of merchant who sold tobacco to minors				
M	78 (188)	48 (98)	<.0001	-41
F	87 (115)	33 (64)	<.0001	-81

*NS indicates not significant.

†(% in first test - % in second test)/% in first test.

‡Male merchants were more likely to sell tobacco to minors than female merchants at both the first ($P < .02$) and second ($P < .01$) tests.

Table 5.—Cigarette Sales to Minors by Age and Sex of Minor

Characteristic of Minor	% (No. of Stores Where Minors Bought Cigarettes)		P	% Change*
	First Test	Second Test		
Age, yr				
14	69 (134)	32 (62)	<.0001	-64
15	80 (92)	47 (63)	<.0001	-41
16	75 (78)	45 (45)	<.0001	-40
Sex‡				
M	71 (180)	36 (87)	<.0001	-81
F	77 (122)	47 (73)	<.0001	-39

*% in first test - % in second test/% in first test; the percentage changes between the first and second tests did not differ significantly among the three age groups or between boys and girls.

†Significantly fewer 14-year-olds than 15-year-olds ($P = .01$) and 16-year-olds ($P = .06$) were able to purchase cigarettes at the second test.

‡Significantly more girls than boys were able to purchase cigarettes at the second test ($P = .02$).

Table 6.—Changes in Warning Signs Posted by Type of Contact With Merchants

Type of Merchant Contact	% of Stores With Warning Signs Posted		P*	% Change†
	First Test	Second Test‡		
No personal contact	8	7	NS	+40
Mail	2	33	<.0001	+1558
Personal visit	3	24	<.0001	+730

*At the second test, significantly fewer merchants with whom we made no personal contact posted warning signs than merchants contacted by mail ($P < .0001$) or by personal visit ($P = .0002$).

†NS indicates not significant.

‡(% in first test - % in second test)/% in first test.

ny-owned chain and franchise operations with stores in Santa Clara County. The letter requested that the company take four actions to address the problem of illegal tobacco sales: (1) issue a companywide directive alerting store managers and employees that the company will not tolerate illegal tobacco sales to minors; (2) require all company outlets

to post notices informing the public of this policy, as required by state law; (3) implement employee training programs to ensure that employees have the knowledge and skills to comply with the law; and (4) develop a monitoring mechanism to ensure compliance with corporate policy and state law. Chief executive officers who did not respond to this

letter within a month were phoned. By July 1988, 23 of 24 chief executive officers or their designees had responded to the letter, and all promised to take action.

Statistical Analysis

The McNemar nonparametric test for the significance of changes was used to analyze nominal data for two related samples (eg, differences from first test to second test in same type of store). Analysis of variance was used to examine differences across variables (eg, differences from first test to second test between store types).

RESULTS

Cigarette sales to minors by type of store before and after intervention are shown in Table 2. Sales to minors dropped in all categories except for vending machines. The overall rate for over-the-counter tobacco sales dropped from 74% at baseline to 89% at the second test. Vending machine sales were not reduced from the preintervention level of 100%.

Stores were also categorized as company-owned chains, franchises, or independent stores. As noted in Table 3, all showed decreases in sales to minors. Although chain stores had significantly lower sales than either franchises or independent stores at baseline and at the second test ($P < .001$), the percentage differences between store categories were not significant. Franchises and independent stores did not differ from each other in the percentage of sales at baseline or at the second test.

There was an increase in the posting of warning signs, as required by California state law, and an increase in the frequency minors were asked their age (Table 4). Compared with stores that did not post warning signs, stores that did were less likely to sell cigarettes to minors at both the first (1% vs 89%, $P < .0001$) and second (15% vs 85%, $P < .005$) tests. Although both male and female merchants decreased their sales of cigarettes to minors, male merchants were more likely to sell to minors than female merchants (Table 4).

As noted in Table 5, 14-, 15-, and 16-year-olds were all less successful in purchasing cigarettes after the intervention. Furthermore, at the second test, 14-year-olds were less successful in purchasing cigarettes than either 15- or 16-year-olds, although the percentage differences between age groups were not statistically significant. Table 5 also illustrates that female minors had a significantly higher percentage of purchases than male minors at the second test, but the percentage differences be-

tween male and female minors were not significant.

Stores that received an education kit in the mail or a personal visit from project staff increased the posting of warning signs significantly more than did stores that did not receive a kit (Table 6). There was no differential effect on sales as a function of the type of contact project staff had with merchants (ie, no personal contact, mail contact, personal visit).

COMMENT

Data from this study corroborate data from other trials showing that minors around the country can readily purchase cigarettes over the counter and from vending machines. The present study illustrates that an aggressive merchant education program combined with community organizations applying pressure on merchants to change their practices and a broad-based media campaign can reduce illegal over-the-counter cigarette sales to minors in all types of stores. Indeed, our data showed that, overall, over-the-counter sales were reduced by almost 50%. The fact that minors were six months older at the second visit strengthens our findings. These encouraging findings must be balanced by what remains to be accomplished.

The best methods for working with merchants remain unclear. We expected but did not find that mail or personal visits to merchants combined with community education would be more effective in reducing sales than community education alone. One explanation for why we did not realize effects of our direct contact with merchants is that we may not have given stores, especially large chains and franchises, enough time to implement the wide-ranging changes we were promoting. In the case of personal visits, it may also be that five to ten minutes with store managers is not sufficient. Alternatively, our contact with chief executive officers of chains and franchises and the actions they subsequently took may have washed out the effects of our direct contact with store managers.

Our inability to reduce vending machine sales suggests that elimination is the only effective way to prevent minors from purchasing cigarettes through this medium. As noted in this and other studies, however, vending machines are not the only source of tobacco for minors, since cigarettes can be purchased illegally over the counter in all types of stores.

Even after a massive community and merchant education program, almost four of ten stores continued to sell cig-

rettes illegally to minors. Clearly, the norms in our communities about minors' access to and use of tobacco must change. Society appears to accept early tobacco use more easily than it accepts early alcohol use. To decrease youth smoking rates, people need to better understand that tobacco use among minors is illegal, existing laws regulating tobacco sales must be strengthened, laws must be enforced, and, in states without laws regulating access, laws must be passed. These measures combined with effective community and merchant education will do much to reduce the availability of tobacco to youth.

No single strategy will be completely effective in stopping tobacco sales to minors. As described below, several complementary actions could be taken. The model law proposed by DiFranza et al¹ would do much to reduce sales to minors. A law in unincorporated King County, Wash (effective February 1989), should also serve as a model for other communities (Michael Lippman, MD, oral communication, Oct 28, 1988). This law will have the following provisions: (1) Vending machines must be electronically disabled until a store clerk is certain the purchaser is of age. (2) All tobacco merchants must have a license (at a cost of \$210), and the license fee will be used to pay for four blind inspections every year in which a supervised minor will attempt to buy tobacco. (3) The sale of individual cigarettes will be banned. (4) The penalties for selling tobacco to minors will be \$100 for the first offense, \$500 and a 90-day suspension of the tobacco license for the second offense, and \$1000 and suspension of the license for nine to 18 months for the third offense. (5) Minors caught buying cigarettes can be subjected to community service and participation in a smoking cessation program.

Other steps that could be taken to stop the sale of tobacco to minors are as follows: (1) We could encourage federal legislation giving states strong incentives to establish a single minimum age of 21 years for the sale of both alcohol and tobacco. This would allow for a uniform enforcement mechanism to regulate the sale of these products to minors. (2) Businesses that sell tobacco, like businesses that sell alcohol, should be licensed, as will soon be required in unincorporated King County, Wash. (3) Fines for selling tobacco to minors must be increased substantially. (4) Stronger enforcement of tobacco access laws is critical. Income generated from the licensing process and from fines for illegal tobacco sales could pay for the costs of enforcement. (5) Merchants should be required to post visible warn-

ing signs alerting customers (and store employees) that tobacco sales will not be made to minors. (6) Cigarette vending machines should be eliminated. If this is not politically feasible, alternatives such as that recently adopted by King County should be implemented. (7) A national campaign should be mounted to inform parents, health professionals, community organizations, and the business community about the problem and to provide them with resources to reduce it.

If we are ever to achieve a tobacco-free generation we must eliminate the sale of tobacco to minors. While much remains to be accomplished in achieving this goal, the findings of this study illustrate that an aggressive community and merchant education program can be effective.

This project was cosponsored by Stop Teenage Addiction to Tobacco (STAT) and by the Santa Clara County Chapters of the American Cancer Society, American Heart Association, and American Lung Association. It was supported by grants to STAT from the Henry J. Kaiser Family Foundation, Menlo Park, Calif; from the Cancer Research Foundation of America, Alexandria, Va; from El Camino Hospital, Mountain View, Calif; from the Kiwanis and Rotary clubs of Northern California; and from members of STAT.

We thank the 18 minors and their parents, Thomas J. Curran, MBA, and the numerous community organizations that provided volunteers and support for their contributions to the project. We also thank Irwin Altman, PhD, Nathan Maceoby, PhD, and Todd Rogers, PhD, for their comments on the manuscript.

Stop Teenage Addiction to Tobacco is developing a nationwide campaign to eliminate the illegal sale of tobacco to minors. For further information about this campaign and to receive the *Tobacco and Youth Reporter*, contact: STAT, PO Box 60658, Longmeadow, MA 01116.

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N E W S

Warnings Don't Deter Merchants From Selling Smokes to Minors

"It's TERRIBLE THAT YOU ARE BUYING cigarettes! It is wrong—but I guess you could be doing worse things!"

This is what a Buffalo, NY, store clerk told a 14-year-old teenage girl as he sold her a pack of Marlboro Light Cigarettes, in violation of the New York State Law that plainly says:

"Sale of cigarettes or other tobacco products to persons under 18 years of age is prohibited by law."

The sales clerk's comment is quoted in a new report by epidemiologist K. Michael Cummings, Ph.D., of the Roswell Park Cancer Institute, in Buffalo, in the most recent of his several studies on whether state laws banning sales to minors are being observed or enforced to reduce teenagers' access to cigarettes. In Buffalo, at least, they are neither being observed nor enforced, he and his associates have found:

They conducted a preliminary study, two years ago, and discovered that 40% of owners or managers of convenience, chain or drugstores whom they contacted either were unaware of the law banning cigarette sales to minors, or did not know the cut-off age of 18. Only three of every 10 stores had posted the legally-required notice of the ban.

"Educating tobacco vendors about the law prohibiting the sale of tobacco products to minors is an obvious first step needed in gaining

their compliance with the law," epidemiologist Cummings said then.

His more-recent study shows that this education does not suffice:

In it, he and his associates mailed an informational packet to 62 Buffalo-area stores, requesting their help in stopping illegal sale of cigarettes to minors. The letter, on letterhead of the Roswell Park Institute—which identifies it explicitly as an agency of the New York State Department of Public Health—cited the law and included a supply of warning signs and tip-sheets that managers could use in telling their employees how to enforce it.

Two weeks later, Cummings or an associate drove a teenager to each of the stores, and sent him or her inside to buy a pack of cigarettes. If challenged, the teens were told, they should tell their age, and tell the clerk the cigarettes were for their own use. These teen decoys ranged in age from 14 to 16.

The decoy teams also visited 60 control stores that had not received the informational packet.

The managers of 25 of the 62 informed stores, or 40%, had posted the warnings. None of the control stores had similar warnings, albeit they are mandated by law.

But, Cummings says, the informational packets and warnings were of no practical value—the decoys were able to purchase cigarettes in 82% of the stores that had received the

packets. By comparison they successfully purchased cigarettes in 86% of the control stores, whose owners/managers had not received the packet. The two responses did not differ significantly between the two types of stores ($p = 0.55$).

"Sales did not differ by type of store, the sex of the merchant, or by the age and sex of the prospective purchaser," Cummings and his co-authors add. "Merely informing merchants about the law is not effective in reducing such sales." What might be more effective, they add, is to license tobacco dealers, like alcohol dealers, and revoke their licenses if they are caught selling to minors. This threat would put teeth into the law.

Higher Taxes Are Healthy
THE NEW YORK STATE tax on cigarettes has been raised from 21 cents to 33 cents a pack, Roswell Park epidemiologist Cummings writes, in a study prepared for the *New York State Medical Journal*. Using standard tables, he and his colleagues calculate that 118,000 New Yorkers either will quit or not start smoking as the result of the hike in cost. This, in turn, will prevent 29,000 premature smoking-induced deaths. [X]

RESOURCES

K. Michael Cummings, Ph.D.,
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Special Communications

Legislative Efforts to Protect Children From Tobacco

Joseph R. DiFranza, MD; Billy D. Norwood; Donald W. Garner, JD; Joe B. Tye, MBA

Public health laws intended to prevent children from smoking have been enacted in many states. We surveyed the relevant laws in all states and the District of Columbia. The efficacy of one such law prohibiting the sale of tobacco to individuals under the age of 18 years was assessed with the cooperation of an 11-year-old girl. She was successful in 75 of 100 attempts to purchase cigarettes. On the basis of this experience and a review of existing laws, we have made recommendations for a model law. These include a prohibition of the possession of tobacco by minors, a prohibition of the sale of tobacco to minors, a requirement for a warning sign at the point of sale, a ban on cigarette vending machines, and a reward for individuals reporting violators of vending laws.

(JAMA 1987;257:3387-3389)

THE USE of tobacco is the most common form of drug addiction and is responsible for one of every four deaths in the United States.^{1,2} Nicotine is the psychoactive and addictive pharmacologic component of tobacco. When measured by the percentage of users who lose control of their substance intake, nicotine is six to eight times more addictive than alcohol.³ The addictive power of nicotine is further manifest in the fact that 90% of current smokers want to quit and have failed to do so.³

Nicotine addiction typically begins during childhood, when the average age for the first use of cigarettes is 13 years, and for snuff, 10 years.⁴ In a survey of 15-year-old children smoking five or more cigarettes per day, 51% had failed to stop smoking when they tried, and 27% thought they could not stop no matter how hard they tried.⁴ Nicotine addiction is resistant to treatment. Long-term abstinence rates achieved by smoking cessation programs rarely exceed 25%, similar to abstinence rates for the treatment of alcoholism.^{4,5}

Many individuals become hooked on tobacco as children and, despite repeated attempts to stop, continue to smoke throughout their lifetime. Among those unwilling or unable to

quit, more than half die of the sequelae of smoking.⁶ Since approximately 4000 American children become smokers daily, nicotine addiction is the most common lethal condition of childhood.⁷

Preventing children from becoming addicted to nicotine is such a logical step in combating the epidemic of tobacco-induced disease that it seems surprising that there has never been a coordinated national effort to prevent children from obtaining tobacco.

Most states have enacted laws intended to prevent children from using tobacco. As these interventions are intended to reduce the incidence of a particular disease, ie, nicotine addiction in the pediatric population, it is appropriate for the medical community to monitor the results, compare the efficacy of various methods, and make recommendations as to how more effective prevention might be achieved.

In 1985, Massachusetts enacted Gen Law chap 270, §§ 6 and 7, under the title "Crimes Against the Public Health." This law increased the minimum age of persons to whom tobacco may be legally sold to 18 years, required a copy of the law to be posted conspicuously on the premises, and deleted a previous requirement that the Department of Public Health distribute copies of the law to towns. Violation of the law is punishable by fines of \$100, \$200, and \$300 for first, second, and third offenses, respectively.

The purpose of this study was to test the efficacy of this law in preventing children from purchasing cigarettes, to review relevant laws in all 50 states and the District of Columbia, and, on this basis, to suggest model law provisions that could focus a national effort to

enact legislation that could effectively prevent children from using tobacco.

METHODS

Testing the Efficacy of Massachusetts Gen Law Chap 270, §§ 6 and 7

One hundred business establishments in nine communities in central Massachusetts were identified where cigarettes were sold. These included variety stores, pharmacies, gas stations, restaurants, and supermarkets. In some locations, cigarettes were sold over the counter, and at others, they were available from a vending machine.

The study was conducted with the assistance of an 11-year-old girl who was told to enter each establishment unaccompanied, look for a posting of the law, and either request cigarettes from the cashier or attempt to purchase cigarettes from a vending machine. If asked whom the cigarettes were for, she was instructed to say they were for an older relative. The child looked her age, and no attempt was made to make her look older. Before this study, she had never attempted to purchase cigarettes.

We recorded the name and address of each establishment and whether the tobacco law was posted, cigarettes were available over the counter or from a machine, our subject was asked for proof of her age, and whether she was able to purchase cigarettes.

All 100 establishments were studied during a one-week period in July 1986. During the next two weeks, an attempt was made to contact a representative of each establishment by telephone. The caller identified herself as a representative of the American Lung Association doing a survey. The person answering the telephone was asked the following: (1) Do you have a policy about how old someone has to be to buy cigarettes in your store? (2) Are you aware of any laws about selling cigarettes to children? (3) Do you have a sign about this law in your store? Those who claimed to be aware of the law were asked to identify the legal age for purchasing cigarettes. Only individuals who could correctly identify the legal age were considered to be informed about the law.

We did not conduct the interview in person because many of the stores sam-

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The opinions expressed herein are those of the authors and do not necessarily represent the positions of the American Lung Association.

Reprint requests to Family Practice Residency Program, University of Massachusetts Coordinated Program 2, 47 Ashby State Rd, Fitchburg, MA 01420 (Dr DiFranza).

Table 1.—Results of 100 Attempts to Illegally Purchase Cigarettes

	Total No. of Attempts	No. (%) of Successful Attempts	P*
Overall	100	75 (75)	...
Sign posted	36	21 (58)	<.005
No sign posted	41	38 (92)	
Informed of law	49	36 (73)	NS
Not informed of law	28	24 (86)	
Available from a clerk	93	59 (63)	NS
Available from a machine	7	8 (86)	

*Computed by χ^2 .

pled were part of convenience store chains and we were concerned that managers of other area stores might be warned of our activities, thus biasing the results.

National Survey of Laws Concerning the Access of Minors to Tobacco

From November 1986 through February 1986, questionnaires requesting information on laws concerning tobacco and minors were sent to legislative libraries, departments of education, and law enforcement agencies in each state and the District of Columbia.

RESULTS

Efficacy of Chap 270

Of the 100 establishments sampled, 76 sold cigarettes to an 11-year-old girl (Table 1). She purchased cigarettes from a clerk in 69 (68%) of 93 attempts and bought from a machine in six (86%) of seven attempts. Whenever she was refused cigarettes, she was told she was too young. She was never asked her age. Only four of the 100 stores had a copy of the law posted where it was visible to customers.

We contacted 80 representatives of the establishments by telephone; 77 agreed to answer the three questions. Many businesses had unlisted telephone numbers. Forty-nine (64%) knew of the law, while 28 (36%) either were unaware of the law or could not correctly identify the legal age for purchasing cigarettes. Of the 49 establishments where the respondent was informed about the law, 36 (73%) had sold cigarettes to the child. Of the 28 who did not know the law, 24 (86%) had sold cigarettes.

In addition to the four establishments where copies of the law were visible, another 32 representatives of the stores contacted by telephone claimed to have a copy of the law posted where it was visible to employees. (The law states the sign must be posted in a conspicuous location, but does not specify to whom it should be conspicuous.) Of these 86 establishments with posted signs, 21 (68%) sold cigarettes to the child. Of the 41 representatives of establishments in-

terviewed where no signs were posted, 38 (83%) sold the child cigarettes ($P < .005$). Of the 36 stores with posted signs, only one respondent was unfamiliar with the law.

National Survey Results

All 50 states and the District of Columbia responded to the survey. A summary of the laws restricting the access of children to tobacco as of January 1986 is presented in Table 2. Since then, at least three changes have occurred. New Hampshire has outlawed the sale of tobacco to children under the age of 18 years; Virginia has enacted a law that prohibits sales to children under the age of 16 years; and South Dakota has outlawed the sale of smokeless tobacco to children under the age of 18 years.

COMMENT

In a state where the law prohibits the sale of tobacco to persons under the age of 18 years, it was shockingly easy for an 11-year-old child to purchase cigarettes. More effective laws are clearly needed.

Several reasons for the failure of this particular law can be identified. One third of the individuals selling cigarettes did not know about the law.

Educating vendors about tobacco laws is crucial to obtaining their coopera-

tion and compliance. A posting of the law is an effective method of informing vendors of the law, serving as a reminder for employees and demonstrating that management is concerned about complying with the law. In this study, compliance was greatest among those establishments where the law was posted.

Even among those who were informed about the law, compliance was poor. This suggests that either there was little fear of prosecution, or, if prosecution was a likely possibility, the penalties provided by the law were not stringent enough to act as a deterrent. Enforcement of this law has been almost nonexistent, and this lack of enforcement is likely responsible, in large part, for the failure of this law to achieve its purpose.

Comparisons of the efficacy of various laws and enforcement procedures would be facilitated by the availability of up-to-date data on smoking prevalence among children of various ages on a state-by-state basis. However, as the availability of tobacco is only one of many factors contributing to such prevalence rates, a more direct measure of the efficacy of these laws would be preferable. An effort to collect such data is under way through two nonprofit health organizations, Stop Teenage Addiction to Tobacco and Doctors Ought to Care.

Table 2.—Summary of State Laws on Tobacco Access by Minors as of January 1986

	No. of States	States
Age (y) below which distribution of tobacco to minors is illegal		
15	1	Hawaii
16	9	Alabama, Connecticut, District of Columbia, Indiana, Maryland, New Jersey, Pennsylvania, Rhode Island, Texas
17	3	Delaware, North Carolina, Vermont
18	24	Arizona, Arkansas, California, Florida, Idaho, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New York, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, Tennessee, Washington, West Virginia
19	2	Alabama, Utah
Legal to sell at any age	12	Colorado, Georgia, Kentucky, Louisiana, Missouri, Montana, New Hampshire, New Mexico, South Dakota, Virginia, Wisconsin, Wyoming
Use, purchase, or possession of tobacco by a minor is illegal	12	Arizona, Idaho, Illinois, Kansas, Michigan, Minnesota, Nebraska, North Dakota, Rhode Island, Tennessee, Utah, West Virginia
Warning required at point of sale		
Copy of law	2	California, Vermont
Warning sign	6	Illinois, Indiana, Massachusetts, New York, Ohio, Tennessee
On vending machine	6	Indiana, Maryland, Minnesota, New York, Tennessee, Utah
Penalties		
Loss of license	4	Hawaii, Nebraska, Nevada, Tennessee (loss of license to do any business)
Monetary fine	26	Alabama, Connecticut, District of Columbia, Florida, Hawaii, Idaho, Illinois, Indiana, Kansas, Maine, Maryland, Massachusetts, Michigan, Mississippi, Nevada, New Jersey, North Carolina, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, West Virginia
Imprisonment	15	Alabama, District of Columbia, Florida, Idaho, Kansas, Maine, Maryland, Massachusetts, Michigan, Mississippi, Nevada, New Jersey, North Carolina, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, West Virginia
Not specified	9	Arkansas, Alaska, California, Delaware, Iowa, Minnesota, Nebraska, Oregon, Washington
Vending machines must be inaccessible to minors	2	Idaho, Utah
Portion of fine goes to informer	2	Oklahoma, South Carolina

Unfortunately, from a public health viewpoint, these laws must be enacted on a state-by-state basis. However, this does not prevent a coordinated national effort by the medical community to promote effective legislation.

Proposed Model Law Characteristics

1. Possession of tobacco by children should be prohibited. This is now the case in only 12 states. When teaching about smoking in grade schools, one of us (J.R.D.) has been asked repeatedly: "If smoking is so bad for you, why aren't cigarettes illegal?" The fact that children can legally smoke reinforces the message of tobacco advertisements: "Smoking can't be as bad as they say." Children violating this law might be required to attend a smoking cessation program for children and their parents.

2. Possession or use of tobacco by students should be specifically prohibited on school property. Such bans are in effect in five states. Smoking by school personnel should also be banned because they serve as role models.

3. The sale of all tobacco products to individuals under the age of 21 years should be prohibited. Nine states now allow the sale of tobacco to children of any age. Standard identification should be required for proof of age, and laws should not provide that a child may buy tobacco with a parental note, as notes are easily forged.

With the threat of withholding highway funds, the federal government is encouraging establishment of a uniform legal drinking age of 21 years. The morbidity and mortality due to tobacco dwarfs that due to alcohol. It seems reasonable to apply a similar standard to tobacco.

4. Signs warning that it is illegal for minors to buy tobacco, or for stores to sell it to them, should be conspicuously visible to both employees and customers wherever tobacco products are sold, including vending machines. Ten states now require signs stating that it is illegal to sell tobacco to minors. This study demonstrates the effectiveness of such signs in increasing compliance with the law.

5. State law should require public schools to provide education about the health effects of tobacco use. Such a requirement is already in effect in 11 states. Public health departments or other appropriate governmental agencies should be required to make significant efforts to educate the public and business community about the law and its underlying rationale.

6. Cigarette vending machines should be prohibited as are alcohol vending machines. Poorly supervised

vending machines provide easy access for minors. The logic for the elimination of cigarette vending machines was described by the Seventh Circuit Court of Appeals in 1937 in upholding such a ban enacted by the City of Chicago:

The evil sought to be reached by forbidding the sale of cigarettes in automatic vending machines was the purchase of cigarettes by immature minors. Automatic vending machines in order to achieve their purpose, namely, dispensing with salesman and making facile the purchase of goods without the intervention of human service, are placed in localities easily accessible to the public, are inanimate and automatic, and respond equally efficiently to coins placed therein by a boy or a girl as to coins inserted by an adult.⁸

Our experience confirms the wisdom of this statement.

7. All free distributions of tobacco should be prohibited. Tobacco company employees distributing free samples to children recalls the image of the drug pusher giving out samples in the schoolyard to get the children hooked and generate future business. Of the 39 states banning the sale of cigarettes to minors (as of January 1986), all but three (Indiana, New York, and Oregon) also prohibit providing free tobacco to minors. However, children frequently obtain free samples in violation of such laws and the tobacco industry's voluntary code. Legislation was introduced in 1986 in Maine, Michigan, Minnesota, Ohio, and Pennsylvania to ban all free sampling or to ban sampling where children might be present.

8. All vendors of tobacco products should be licensed annually. Annual licensing will provide an opportunity to educate vendors about current laws regarding tobacco sales, and allow public officials to prevent repeated offenders from selling tobacco.

9. Penalties for the sale of tobacco to minors must be stringent enough to deter would-be offenders in light of the profit that can be made by selling tobacco to children.

Pressed to decide between condoning smoking by children and enacting laws considered by some to be unenforceable, state legislatures have decided in 40 states and the District of Columbia to outlaw tobacco sales to minors. Effective enforcement of these laws is critical, however, if they are to achieve their purpose. Enforcement is occurring in some communities, but in the absence of community concern, law enforcement officials are unlikely to expend significant resources on the enforcement of these laws.

Several tactics can be used to improve enforcement. Oklahoma and South Carolina provide a bounty; a portion of any

fine against a merchant caught selling tobacco to a minor will go to the informer who notified authorities. Tennessee provides that it is not entrapment for law enforcement authorities to use a minor to purchase tobacco for purposes of monitoring compliance with the law. A hybrid of these two approaches would allow civic organizations to monitor compliance with the law by utilizing our study technique. Volunteer health organizations, parent teacher associations, and youth groups (eg, the Boy Scouts and Girl Scouts of America) could earn money while helping to enforce the law. This money could be used to support other community health projects such as smoking cessation programs or school health education.

There is no excuse, given all we know today about the addictive and dangerous properties of tobacco, for states to fail to enforce their laws against the sale of tobacco to children, and for nine states to have no law whatsoever that prohibits the sale of tobacco to minors.

The wisdom of enforcing these laws is also compelling. If the decision about smoking can be delayed until adulthood, choosing to become a smoker is unusual. Given that only 10% of current smokers began as an adult, enforcement of minors' tobacco access laws presents a unique opportunity to deal a mortal blow to this fatal addiction. Efforts to enact comprehensive and enforceable laws, such as those outlined herein, should receive the full and enthusiastic support of the health care community.

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We thank our 11-year-old assistant, Rachel Dussault, who is in the sixth grade at St Patrick School, Jeffrey, NH.

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7. Adesso VJ: Some correlates between cigarette smoking and alcohol use. *Addict Behav* 1979;4:269-278.
8. *Illinois Cigarette Service Co v City of Chicago*, 89 F2d 610 (7th Cir 1937).

BACK PAGE

WAR ON DRUGS

Now who is the enemy?

In 1988 the National Institute on Drug Abuse published a research monograph entitled *Learning Factors in Substance Abuse*. On page 105 of this work are found the following figures on annual deaths in the United States from substance abuse:

Tobacco—346,000

Alcohol—125,000

Alcohol & Drugs—4,000

Heroin/Morphine—4,000

Cocaine—2,000

Marijuana—75



Excerpted from the article "Learning and Unlearning Drug Abuse in the Real World" in Research 84 (1988), a monograph from the National Institute on Drug Abuse (Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857). Statistics are estimates from Surgeon General's office, the National Institute on Alcoholism and Alcohol Abuse, and the Drug Abuse Warning Network.

PHOTO BY SCOTT WILTON/UT MAGAZINE



EPIDEMIOLOGY BULLETIN

SECTION OF EPIDEMIOLOGY
DIVISION OF PUBLIC HEALTH
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
STATE OF ALASKA
3601 C Street, Suite 340
P. O. Box 240249
Anchorage, Alaska 99524-0249

Mvra M. Munson, Commissioner
Department of Health
and Social Services

Editor: John Middaugh, M.D.

Elizabeth Ward, M.N., Director
Division of Public Health

Bulletin Number 13

Week Ending June 17, 1988

TOBACCO TAKES HEAVY TOLL ON ALASKANS

Cigarette smoking is the single largest preventable cause of premature death and disability in the U. S.. The Surgeon General has estimated that over 350,000 Americans die annually as a consequence of cigarette smoking. These deaths (representing approximately 15% of the nation's mortality) and the untold suffering of people with tobacco caused diseases are preventable.

In 1986 the Minnesota Department of Health developed a computer software package to assist other states in estimating smoking attributable mortality and economic cost. The Section of Epidemiology used the Minnesota software to enter Alaska specific data for 1985 on the total number of deaths by age and sex, smoking prevalence by age and sex, and estimates of total personal health care expenditures for Alaskans. The computer program takes the Alaska data and applies advanced epidemiologic and health economics methodologies to estimate smoking attributable mortality, years of potential life lost, direct health care cost, direct mortality cost, and indirect morbidity costs.

Smoking Attributable Mortality—In 1985, there were estimated to be 261 smoking attributable deaths in Alaskans over age 20 (Figure 1). The leading smoking attributable causes of death were: Lung cancer (73 deaths), ischemic heart disease (68), respiratory diseases (52), other cardiovascular diseases (40), other neoplasms (24), and ulcers (4). For these diagnostic categories, smoking attributable deaths comprised 36% of the total 721 deaths in Alaskans over age 20 (40% for male deaths; 29% for females). For all deaths in Alaskans over age 20 during 1985, 14% were attributed to cigarette smoking.

Smoking Attributable Years of Potential Life Lost (YPLL)—Smoking attributable YPLL was calculated by adding the years of life remaining until the age of 65 for each person dying of a smoking attributable death. For 1985, smoking deaths lead to 1,363 person years of potential life lost. This represents an average of 10.9 years of life lost for each person who dies prematurely from a smoking related death (11.5 years for males; 8.8 years for females).

Smoking Attributable Direct Costs—Direct cost are the expenses for health care due to smoking in Alaska. These include the cost of hospital care, physician services, medications, and nursing home care. The estimated total for direct costs in 1985 was \$52.8 million (Figure 2). This is equivalent to \$149 per Alaskan over age 20 or approximately \$408 per current smoker in Alaska over age 20.

Figure 1: Smoking-Attributable Mortality
Mortality by Gender

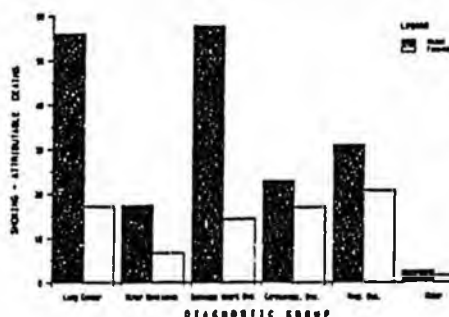
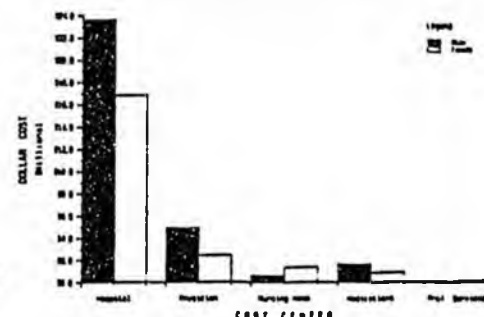


Figure 2: Smoking-Attributable Direct Costs
Health Care Costs by Gender



Smoking Attributable Indirect Mortality Costs—These costs include the value of earnings and productivity lost by persons dying due to smoking. An estimated \$28.8 million was lost due to the indirect costs caused by smoking deaths.

Smoking Attributable Indirect Morbidity Costs—These costs include the lost income and productivity of the individuals disabled by smoking related diseases. It is estimated that \$18.9 million was the cost for indirect morbidity due to smoking.

The total estimated smoking attributable cost for Alaska in 1985 was \$100.5 million. This is a conservative estimate since perinatal complications of smoking, childhood diseases related to parental smoking, and diseases caused by passive smoking have not been included.

In summary, cigarette smoking continues to exact a heavy toll of death and suffering in Alaskans. We have estimated that 261 Alaskans died of smoking related diseases during 1985 and that 1,363 years of productive life were lost. The economic impact was enormous. The need for all health care providers to encourage and assist their patients to stop smoking is obvious. The Surgeon General has called for a smoke-free society by year 2000—Our report highlights the deleterious effects of cigarette smoking in Alaska and reinforces the importance of vigorous efforts to reduce this destructive addiction.

Anchorage Daily News

Gerald E. Grilly
Publisher



Howard Weaver
Managing Editor

Michael Carey, Editorial Page Editor

Katherine Fanning, Editor and Publisher 1971 to 1983
Lawrence Fanning, Editor and Publisher 1967 to 1971

Founded in 1944 by Norman C. Brown

Smoking's ills

Tobacco is taking a huge financial toll

There's more to the cost of smoking than the price of a pack of cigarettes. A new government study reports that while less than one-third of the American population is still smoking, smokers cost the nation more than \$52 billion a year.



Predictably, most of the costs are for health care. The cancers and respiratory ills linked to smoking are among the costliest diseases known. On top of the price tag documented in the Department of Health and Human Services study, treating smoking's victims also has a more subtle effect: It monopolizes health-care professionals' time and equipment.

One of the worst aspects of the cost of smoking is that non-smokers bear such a huge part of it. Smokers' illnesses boost health-care costs and insurance for everybody, smoker and non-smoker. And illnesses resulting from second-hand smoke have been well-documented.

The Health and Human Services study noted that the \$52 billion averages out to \$221 per capita, every dime of which, when borne by a non-smoker, is unfair and unjustified. Ideally, the new study — added to the weight of dozens of others on the societal damage of tobacco — will help forge a change in cigarette advertising. Regretably, it probably won't. Cigarette manufacturers, in fact, have initiated a series of new ad campaigns, which try to lure specific groups — women, minorities and young people — into the smoking fold.

Anti-smoking efforts have picked up in recent years. And the new study demonstrates that these campaigns are justified. The cost of smoking has reached intolerable levels and must be curbed.

(\$1,000,000.00). Approximately one-sixth of those sales were of cigarettes. (Deposition, 45-49.) Thus, a typical Store 24 sells roughly three thousand dollars (\$3,000.00) worth of cigarettes weekly. At \$1.50 per pack, approximately two thousand packs of cigarettes are sold at each Store 24 outlet weekly at each Store 24.

Since about 5% of smokers are minors,¹ this would mean that -- assuming that Store 24 customers are statistically representative of the general population -- that about 100 packs are sold to minors weekly. But since part of these sales are by cartons, a conservative estimate is therefore that between 50 and 100 teenagers are sold cigarettes weekly.

B. Philip Morris, Inc.

Mariboros constitute 23.9% of all cigarette sales,² which are concentrated among youth. About 56% of minors who smoke cigarettes choose Mariboros.³

Since about five percent of all smokers are minors,⁴ this means that approximately 12% (or one-eighth) of all

¹Advertising of Tobacco Products: Hearings before the Subcommittee on Health and the Environment of the House of Representatives Committee on Energy and Commerce, 99th Cong., 2d Sess., 510 (1986).

²115 Tobacco Reporter 37 (January, 1988).

³Hearings, supra, 169.

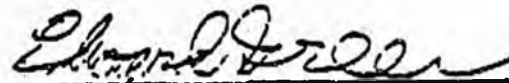
⁴Id., 510.

000176

Marlboros are illegally sold to minors.

And "Marlboros last year netted a nice round \$2 billion in operating profits,"⁵ so an eighth of its profits -- or a quarter billion dollars (\$250,000,000.00) -- comes from illegal Marlboros sold to teenagers.

DATED: February 27, 1988



EDWARD GREER
Attorney for Plaintiffs
133 Mt. Auburn St.
Box 263
Cambridge, MA 02238

(617) 876-3735

⁵Forbes (February 9, 1987), 108.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSHB 141 (HESS)
PUBLISH DATE: HOUSE 3/3/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An act relating to tobacco
and products containing tobacco
Sponsor: Brown
Requestor: H. E & S

Agency Affected: Revenue
BRU: Income & Excise Audit
Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Steven E. Kettel
Division: Income and Excise Audit

Phone: (907) 465-2320
Date: February 27, 1989

Approved by Commissioner: Hugh Malone
Agency: Department of Revenue

Date: February 27, 1989

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

**STATE OF ALASKA 1989 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: Bill Version: CS HB 141 (HESS)
Publish Date: 3/3/89

Revision Date: Agency Affected: Alaska Court System
Title: An act relating to tobacco and BRU: Trial Courts
products containing tobacco
Sponsor: Brown, Menard, Hudson... Components:
Requestor: Judiciary

EXPENDITURES/REVENUES:	(Thousands of Dollars)					
OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services
Travel
Contractual
Supplies
Equipment
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL

REVENUE

FUNDING:	(Thousands of Dollars)					
General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	.	.	.	.	.	.
Other	.	.	.	.	.	.
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:						
Full-time	.	.	.	.	.	.
Part-time	.	.	.	.	.	.
Temporary	.	.	.	.	.	.

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: *Jan Strandberg* Jan Strandberg, General Counsel Phone: 264-8228
Division: Alaska Court System Date: 03/16/89

Approved by: *Arthur H. Snowden, II* Arthur H. Snowden, II, Administrative Director Date: 03/16/89
Agency: Alaska Court System

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management & Budget
Impacted Agency(ies)

RECEIVED
MAR 20 1989

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HOUSE COMMITTEE REPORT

(11) -

Date Referred: March 22, 1989

FURTHER REFERRALS:

Date of Committee Action: 4/4/89

The FINANCE Committee considered:

HB 144

HOUSE BILL NO. 144

[EXTEND BD OF BARBERS & HAIRDRESSERS]

"An Act continuing the Board of Barbers and Hairdressers; and providing for an effective date."

RECOMMENDATIONS:

- [] be replaced with _____ [] the same title
- [] _____ [] a new title
- [] have attached amendment(s)
- do pass
- [] do not pass
- [] no recommendation
- [] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- [] fiscal impact _____
- [] zero fiscal note _____
- [] zero with analysis _____

- [] fiscal note(s) _____
- [] zero fiscal note(s) _____
- zero fn/analysis 2/3/89 Commerce

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not
Pass No Rec Amend

<u>[Signature]</u> HOFFMAN				
<u>[Signature]</u> LARSON				
<u>[Signature]</u> SWACKHAMMER				
<u>[Signature]</u> BROWN				
<u>[Signature]</u> KOPONEN				
<u>[Signature]</u> ULMER				
<u>[Signature]</u> SHULTZ				
<u>[Signature]</u> PHILLIPS				
<u>[Signature]</u> RIEBER				
<u>[Signature]</u> WALLIS				

[Signature]
Co-Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Economic Dev.
 Title: An Act continuing the Board of BRU: Occupational Licensing
Barbers and Hairdressers; and providing for an effective date.
 Sponsor: Rules Committee Components: Administration
 Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Funding for the board is included in the department's FY 90 operating budget request.

see attached breakdown of FY 88 actuals which were used as basis for FY 90 request.

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144
 Division: Occupational Licensing Date: December 27, 1988

Approved by Commissioner: Larry Merculieff Date: 1/11/89
 Agency: Commerce and Economic Development

Distribution (by preparer):

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

Adopted

ACTUAL88

Printed 10/07/88
Time 05:42 PM

CATEGORY	TOTAL	BARBER/HD
NUMBER OF LICENSEED	26,765	2,686
PERCENT OF LICENSEES	100%	10.04%
PERSONAL SERVICES		
Administrative	620,399	62,259
Executive Secretary	167,495	
% of Licensing Examiner	1000%	70%
Examiner Pay/Benifits	488,022	34,162
% of Investigator	600%	15%
Investigator Pay/Benifits	296,694	7,417
SUB TOTAL	1,572,409	103,837
TRAVEL/PER DIEM		
Administrative	13,216	1,326
Board Meetings	194,503	12,582
SUB TOTAL	207,719	13,908
CONTRACTUAL SERVICES -ADMINISTRATIVE		
Professional Services	73,096	7,335
Communications	50,603	5,078
Transportation	17,094	1,715
Advertising/Printing	5,652	567
Repairs/Maintenance	21,320	2,129
Rental	5,948	597
Other (Memberships)	6,830	685
SUB TOTAL	180,444	18,108
CONTRACTUAL SERVICES - DESIGNATED		
Professional Services	86,398	2,246
Communications	36,042	2,859
Transportation	6,981	59
Advertising/Printing	44,807	2,956
Repairs/Maintenance	3,374	
Rental	9,946	590
Other (Memberships)	15,577	200
SUB TOTAL	203,126	3,818
CONTRACTUAL TOTAL	383,570	26,926
SUPPLIES		
Administrative	27,658	2,776
Designated	4,438	
SUB TOTAL	32,096	2,776
EQUIPMENT		
Administrative	35,134	3,526
Designated	11,089	
SUB TOTAL	46,222	3,526
TOTAL BUDGET - COLUMNS 2,242,216 150,972		

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 144

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act continuing the Board of Barbers and

7

Hairdressers; and providing for an effective date."

8

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

9

* Section 1. AS 08.03.010(c)(16) is amended to read:

10

(16) Board of Barbers and Hairdressers (AS 08.13.010) --

11

June 30, 1993 [1989].

12

* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 3, 1989

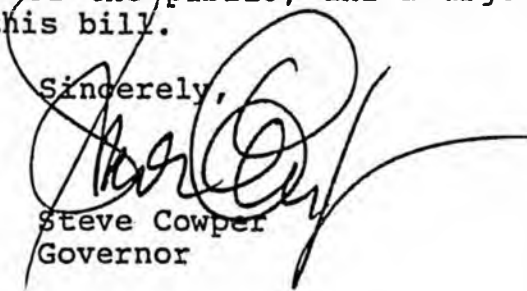
The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to continue the Board of Barbers and Hairdressers for the customary four years (AS 08.03.020(c)). Under current law, this board is scheduled to "sunset" June 30, 1989, and go into its "wind down" year (AS 08.03.020(a)).

The board has worked hard over the past year and a half to improve. It has substantially amended its regulations and, in doing so, has established new licensing criteria, set school curriculum that recognizes the real differences between barbers and hairdressers, and assisted students seeking entry into the profession by offering more frequent examinations. I believe that this board performs an essential function on behalf of the public, and I urge your favorable consideration of this bill.

Sincerely,



Steve Cowper
Governor

THE FOLLOWING DOCUMENT HAS
NOT BEEN FILMED BUT IS
AVAILABLE IN THE ORIGINAL
FILE

A PERFORMANCE REPORT
ON THE
BOARD OF BARBERS AND HAIRDRESSERS

July 1, 1984 - June 30, 1988

Audit Control Number

08-1340-89-R

Acting Commissioner, Department of
Commerce and Economic Development

Larry Mercurieff

Deputy Commissioner, Department of
Commerce and Economic Development

Vacant

Members of the Board
of Barbers and Hairdressers

Chairperson
Member
Member
Member
Member

Elaina M. Sadlier
Neva Black
Ellen M. Hall
Wende S. Irick
Marse Kueber

STATE OF ALASKA

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
P.O. BOX W
JUNEAU, ALASKA 99811-3300


October 25, 1988

Members of the Legislative Budget
and Audit Committee:

According to the provisions of Titles 24 and 44 of the Alaska Statutes, the Division of Legislative Audit is required to conduct a "sunset" review of the Board of Barbers and Hairdressers.

At the request of the Chairman, during Fiscal Year 1988 budget deliberations, the Audit Division's budget was revised to reflect certain changes in the organization of the Committee's two divisions. The revised budget of the Audit Division reflected efficiencies that might be obtained by utilizing the staff of the Legislative Finance Division on selected audit assignments during the interim.

As a result, the audit of the Board of Barbers and Hairdressers was conducted and this report has been prepared by the Legislative Finance Division. We feel this report discharges our responsibility under Titles 24 and 44. The report is submitted for your review.


Randy S. Welker, CPA
Legislative Auditor
Division of Legislative Audit

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
P.O. BOX WF
JUNEAU, ALASKA 99811
PHONE: (907) 465-3795

October 20, 1988

Members of the
Legislative Budget and Audit Committee:

In accordance with the provisions of Titles 24 and 44 of the Alaska Statutes (sunset), the attached report is submitted for your review.

A PERFORMANCE REPORT
ON THE
BOARD OF BARBERS AND HAIRDRESSERS

July 1, 1984 - June 30, 1988

Audit Control Number

08-1340-89-R



Mike Greany, Director
Division of Legislative Finance

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PURPOSE AND SCOPE OF THE REPORT

PURPOSE

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Barbers and Hairdressers for the past four fiscal years. Our examination was conducted to determine if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during legislative oversight hearings to determine whether the Board of Barbers and Hairdressers should be reestablished. The law now specifies that the Board will terminate June 30, 1989, and have one year from that date to conclude its affairs.

SCOPE

The major areas of our examination were the licensing, examination, administration, complaint, and affirmative action functions of the Board. We reviewed and evaluated the following:

1. Applicable statutes and regulations.
2. Interviews with the licensing examiners.
3. Tests of files and documents of licensees.
4. Complaints filed with the Division of Occupational Licensing, Human Rights Commission, Equal Employment Opportunity Office, Attorney General's Office, and the Office of the Ombudsman.
5. Discussions with Board members.
6. Minutes of Board Meetings and Division correspondence files.
7. Attorney General Opinions applicable to professional boards.

(Intentionally left blank)

ORGANIZATION AND FUNCTION

The Board of Barbers and Hairdressers was created in 1980. This Board is the result of the Legislature combining the Board of Barbers and the Board of Hairdressing and Beauty Culture Examiners. The membership of the Board consists of two licensed barbers, two licensed hairdressers, and one public member. Each member is appointed by the Governor for a three year term, but can serve no more than two consecutive full terms. Effective June 18, 1987, members are appointed to four year terms; Sec. 3, Ch. 94, SLA 1987.

The Board regulates the vocations of barbering, hairdressing, and cosmetology. The Board has been given the authority to examine applicants, issue licenses and permits, suspend or revoke licenses and permits, and investigate complaints. The Board issues the following licenses: beauty or barber schools, school owners, shop owners, instructors, barbers, hairdressers, and cosmetologist practitioners. They also issue temporary and student permits. Effective February 2, 1988, the Board no longer licenses school owners.

The Board is organized under the Department of Commerce and Economic Development, Division of Occupational Licensing (DOL). DOL provides the Board with licensing and investigative support. The licensing section processes applications, maintains license files, answers inquires and provides other administrative help to the Board.

(Intentionally left blank)

REPORT CONCLUSION

Policy Issues

This report contains policy and/or procedural issues raised as a result of our evaluation of Board practices. The final decisions affecting these practices are not within the scope of this report but require legislative consideration. In debating these issues, the oversight committee should take into consideration the Findings and Recommendations presented in this report so the potential impact of changes can be evaluated.

Report Conclusion

The primary purpose of a regulatory board with a licensing function is to protect the public. The questions that have to be evaluated to determine if licensing is needed are:

1. Does the unlicensed practice pose a serious risk to the consumers' life, health, safety, or economic well being?
2. Can the potential users be expected to possess the knowledge needed to properly evaluate the qualifications of those offering services?
3. Do the benefits to the public clearly outweigh any potential harmful effects, such as a decrease in the availability of practitioners, higher costs of services, and restriction on optimum utilization of personnel?

During our review to determine if the Board's licensing function is required and meets the previously mentioned criteria, we examined existing statutes, complaints and various Board functions. We also reviewed the prior audit recommendation to terminate the Board and the public and legislative response to that recommendation. As a result of our examination we found that:

1. although unlicensed practitioners may not pose a "serious" risk to the public's life, health, safety or economic well-being the potential for injury as a result of chemicals or implements being improperly used does exist;
2. potential users certainly have expectations that practitioners of barbering, hairdressing and cosmetology possess the skills and qualifications necessary to offer quality services, and
3. the public and the profession benefit from licensing by maintaining a standard level of quality in the services being provided.

Therefore, we recommend that the Board of Barbers and Hairdressers be reestablished.

The Findings and Recommendation Section (see page 7) describes areas where weaknesses or conflicts exist. We have made recommendations which, if implemented, will improve the efficiency and effectiveness of the Board.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Board should comply with their regulation concerning public notice of examinations.

The Board has promulgated regulations, 12 AAC 09.010, requiring that public notice of the date and place of examination be given at least 45 days prior to the examination. In FY88, the Board held five examinations and failed to give 45 day public notice prior to three of those exams. Additionally, there was no notice of the locations where the examinations would be held in three of the public notices.

Lack of timely public notice and absence of the examination locations in the notice may preclude a potential applicant from participating in that examination. We recommend that the Board comply with their regulations and that appropriate notice be given prior to each examination.

Recommendation No. 2

The Board should comply with their regulation requiring an application fee from all applicants for licensure.

In November 1986, the Board instituted a \$20.00 application fee for all applicants for licensure, 12 AAC 02.140. In May 1988 that fee was increased to \$30.00. The regulation clearly requires an application fee in addition to the examination fee.

During our review, we found that the application fee was not being collected in all cases. In the instance of an individual applying for licensure by credentials, the application fee was collected. However, individuals applying for licensure by examination were not required to submit the application fee in addition to their \$25.00 examination fee.

Apparently, there was some confusion over the \$20.00 student/apprentice permit fee, the \$20.00 application fee and the \$25.00 examination fee. The Board is in the process of revising their applications to clearly detail all of the required fees. We recommend that the Board collect the required application fee from all applicants for licensure.

Recommendation No. 3

The Board should review existing statutes and regulations and seek appropriate revision where necessary.

During our examination, we reviewed the Board's statutes and regulations to determine if any were obsolete, unclear or unduly restrictive. Examples of what we found are as follows:

- A. AS 08.13.185(a)(2) provides that the Department of Commerce and Economic Development shall set fees for school owner licenses. 12 AAC 02.140(b)(5) sets that license fee at \$60.00 and 12 AAC 02.140(c)(5) sets the renewal fee at \$60.00. However, 12 AAC 09.120 requiring a school owner license was repealed in February 1988. It is unclear if the Board intends that school owners be licensed. In our discussion with Division staff, we learned that they do not intend to license school owners.

- B. AS 08.13.120 provides for shop licenses but refers to licensing of shop owners. 12 AAC 09.110 refers specifically to shop owner licenses. Again it is unclear if the shop or the shop owner, or both, are to be licensed.

The Board cannot work effectively in carrying out their statutory mandate without clear and concise statutes and regulations. Therefore, we recommend that the Board review their statutes and regulations and propose appropriate changes where necessary.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses of Board activities relate to the public need factors defined in the "sunset" law. These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

I. The extent to which the board, commission, or program has operated in the public interest.

The Board has operated in the public interest by fulfilling its statutory responsibility to license schools, shop owners, instructors, barbers, hairdressers and cosmetologists. They have increased the availability of the practical and written examinations by offering them at least four times a year during the audit period. The Board has recently adopted a policy to hold six examinations per year.

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

A. The Board failed, in some instances, to give public notice of the date and place of examination 45 days prior to the examination as required by 12 AAC 09.010 (see Recommendation No. 1).

B. The Board failed, in some instances, to collect the application fee as required by 12 AAC 02.140 (see Recommendation No. 2).

C. The Board has conflicting statutes and regulations concerning licensing of school owners and shops (see Recommendation No. 3).

III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.

The Board proposed various statutory changes regarding licensing of manicure, pedicure and nail application and renaming cosmetologist to esthetician. None of these changes have been submitted to the Legislature from the Executive Branch.

IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

Board meetings are announced to the public. Comments on regulation changes are solicited by public notices in newspapers. The Board does not actively solicit comments on its effectiveness.

- V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

The Board has published notices of meetings and proposed regulations in various newspapers to encourage public participation in their decision making process.

- VI. The efficiency with which public inquires or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

During our review we found that the majority of complaints filed with the Office of the Ombudsman involved delay or denial of a license. Depending upon the complexity of the case, resolution took from 1 day to 4 months. The investigations unit of Occupational Licensing deals almost exclusively with cases concerning unlicensed activity and resolution generally requires working with the individual to become licensed.

- VII. The extent to which a board or commission which regulated entry into an occupation or profession has presented qualified applicants to serve the public.

According to the Division of Occupational Licensing's records for Fiscal Year 1988, there were 373 new licenses issued. Of these new licenses, 161 were issued by credentials and 212 by examination (see Appendix D).

- VIII. The extent to which state personnel practice, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area or activity or interest.

We found no problems in this area.

- IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

APPENDIXES

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APPENDIX A

BOARD OF BARBERS AND HAIRDRESSERS
SCHEDULE OF REVENUES COMPARED WITH EXPENDITURES
 For the Fiscal Year Ended June 30, 1988

(UNAUDITED)
 (Note 1)

Average Revenues (Note 2)		\$171,247
Less: Expenditures (Note 3)		
Personal Services	\$103,837	
Travel	13,908	
Contractual Services	26,926	
Supplies	2,776	
Equipment	<u>3,526</u>	<u>150,973</u>
Excess of Revenues Over Expenditures (Note 5)		<u>\$ 20,274</u>

Schedule 1
Types of Revenues
 (Note 4)

<u>Revenue Type</u>	<u>Amount</u>	<u>Collection Time</u>
School	\$ 700	With license issuance
School Renewal	200	Biennially
School Owner	60	With license issuance
School Owner Renewal	60	Biennially
Instructor	30	With license issuance
Instructor Renewal	30	Biennially
Shop Owner	60	With license issuance
Shop Owner Renewal	60	Biennially
Barber Practitioner	100	With license issuance
Barber Practitioner Renewal	100	Biennially
Hairdresser Practitioner	100	With license issuance
Hairdresser Practitioner Renewal	100	Biennially
Cosmetology Practitioner	30	With license issuance
Cosmetology Practitioner Renewal	30	Biennially
Temporary Permit	20	With permit issuance
Student Permit	20	With permit issuance
Examination	25	With application
Delinquent Fee for Late Renewal	20	With application
Application Fee	30	With application

Note 1

The Schedule of Revenues Compared with Expenditures was prepared from available records and discussions with the Division of Occupational Licensing (DOL) personnel. The records were not audited by us and, accordingly, we do not express an opinion on the Board's Schedule of Revenues Compared with Expenditures.

Note 2

Revenues are primarily composed of license renewal fees which are collected on a biennial basis. Because of the two year renewal cycle, revenues will increase substantially every second year. To obtain an average of annual revenues collected, we combined actual receipts collected in FY88 with the division's estimate of revenues to be collected in FY89. For the current fee structure, see Schedule 1 on the previous page.

Note 3

Expenditures consist of direct cost resulting from Board members activities, (i.e. travel and per diem) and an allocation of direct and indirect costs of DOL. The expenditures do not include expenses incurred by other Departments or other divisions of the Department of Commerce and Economic Development in assisting the Board.

Note 4

The Schedule reflects changes in licensing fees since the previous audit. The regulation requiring a school owner license was repealed effective February 28, 1988.

Note 5

The amount of revenue generated by a board's activity depends upon the number of licensee's that are regulated by the board. A small number of licensed professionals, generally lead to an excess of expenditures over revenues. Conversely, a large number of licensees generally results in an excess of revenues over expenditures.

The comparison of revenues and expenditures for all licensing boards indicates, that collectively, the licensing boards are substantially self supporting. The following schedule represents revenues and expenditures for all boards combined:

Average Revenue	\$2,130,834
Expenditures	<u>2,242,216</u>
Excess Expenditures	< <u>\$ 111,382</u> >

APPENDIX B

BOARD OF BARBERS AND HAIRDRESSERS
SCHEDULE OF EXAMINATION STATISTICS

	<u>FY86</u>	<u>FY87</u>	<u>FY88</u>
No. of Exam Held:	4	4	5
No. Licensed By Exam:			
Barber	20	16	16
Cosmetology	13	3	13
Hairdresser	9	4	28
Hairdresser/Cosmetology	118	123	152
Instructor	<u>0</u>	<u>10</u>	<u>3</u>
Total Licensed by Exam	<u>160</u>	<u>156</u>	<u>212</u>

SOURCE: Board of Barbers and Hairdressers Annual Reports
FY86 - FY88 -- Division of Occupational Licensing

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APPENDIX C

BOARD OF BARBERS AND HAIRDRESSERS
SCHEDULE OF ADMINISTRATIVE STATISTICS
As of June 30, 1988

Number of Current Licenses by Category:

Barbers	275
Cosmetologists	53
Hairdressers	491
Hairdressers/Cosmetologists	1,270
Instructors	191
Schools	12
School Owners	8
Shop Owners	<u>386</u>

Total Number of Current Licenses	<u>2,686</u>
----------------------------------	--------------

SOURCE: Board of Barbers and Hairdressers FY88 Annual Report

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APPENDIX D

BOARD OF BARBERS AND HAIRDRESSERS
STATISTICAL SUMMARY FY86 - FY88

	<u>FY 86</u>	<u>FY 87</u>	<u>FY 88</u>
Current Licenses:	2,828	3,094	2,686
New Licenses:			
By Exam	160	156	212
By Credentials	<u>378</u>	<u>161</u>	<u>161</u>
Total New Licenses Issued	<u>538</u>	<u>317</u>	<u>373</u>
New Licenses By Category:			
Barber	37	33	25
Cosmetology	14	3	15
Hairdresser	56	36	38
Hairdresser/Cosmetology	197	181	196
Instructor	161	10	6
School	1	1	4
School Owner	1	1	0
Shop Owner	<u>71</u>	<u>52</u>	<u>89</u>
Total	<u>538</u>	<u>317</u>	<u>373</u>
Student Permits:	466	360	431
Exams:	4	4	5
Meetings:	1	1	2
Teleconferences:	2	2	2

SOURCE: Board of Barbers and Hairdressers Annual Reports
FY86 - FY88; Division of Occupational Licensing

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STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

P. O. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2500

OFFICE OF THE COMMISSIONER

December 20, 1988

Randy S. Welker
Legislative Auditor
Division of Legislative Audit
Budget and Audit Committee
P.O. Box W
Juneau, AK 99811-3300

DEC 22 1988

Dear Mr. Welker:

This is written in response to the Division of Legislative Audit's (hereinafter "Audit") preliminary audit report of its sunset performance review of the Board of Barbers and Hairdressers (hereinafter "Board"). Below is the Department of Commerce and Economic Development's (hereinafter "Department") comments on Audit's preliminary findings and recommendations.

Response to Recommendation No. 1

Audit has found that the Board failed to provide timely public notice of three of the five barber/hairdresser exams it administered in FY 88. The Division of Occupational Licensing (hereinafter "Division"), on behalf of the Board, is required by administrative regulation to give at least 45 days advance notice of an exam date and place.

In FY 88, in response to requests from cosmetology school owners and students, the Board began offering six exams per year, instead of the previous four. This makes each exam approximately 60 days apart, barely over the 45 day limit. It has taken us some time to adjust to this frequent exam schedule, hence the resultant notice delays.

However, notice of each exam is timely sent to all schools, from which ninety-five percent (95%) of all exam applicants come. It is therefore unlikely that the publication of an "untimely" notice in a newspaper ever precluded any qualified applicant from sitting for the exam. We, at least, are aware of no such complaint.

Further, because the practical exam requires the use of special facilities, arrangements must be made with a school to use its facilities prior to each exam, negotiations concerning which may, on occasion, not be finalized within the time deadline set by the current regulation.

Finally, the Division, which provides administrative support to the Board, assumes responsibility for the untimely notices and has taken steps to ensure notice compliance in the future.

Response to Recommendation No. 2

Audit found that the Board has been inconsistent in the application of the \$20.00 application fee for all applicants for licensure. This inconsistency resulted from treating persons who obtained a student/apprentice permit differently from regular applicants. Student/apprentice permits cost \$20.00 and the application fee for applicants with such permits was routinely waived.

While the reason for this administrative inconsistency is understandable (i.e., the Board already had, in a sense, received an application fee from a student or apprentice when he or she applied for the permit), there is no regulatory authority creating this distinction and, thus, the Division erred in not applying the application fee equally among applicants.

A letter clarifying all cosmetology fees was sent to school owners in September, 1988 (see copy enclosed). Also, recently rewritten information packets for shop (apprentice) and school (student) owners now clearly outline the Board's fee structure. Finally, all applications have been revised to provide a clearer explanation of the fees required and an application fee is currently collected from all applicants, regardless of status.

Response to Recommendation No. 3

Audit has focused on two rather confusing statutory references to school owner and shop owner licenses and suggests amendments clarifying these two matters.

We have one section (AS 08.13.110) which requires a school license, with no reference to a school owner license, but another section [AS 08.13.185(1) and (2)] which provides for licensing fees for both the school itself and the school owner; and, we have one section (AS 08.13.120) which requires a shop license, with reference to the fact that a shop owner should also be licensed, but another section [AS 08.13.183(4)] which provides a licensing fee for only the shop owner and not the shop itself. This is admittedly confusing.

Mr. Randy S. Welker

-3-

December 20, 1988

To partially remove the confusion, the Division has attempted to remove school owner fees from its fee regulations and license only the school. A number of barber and cosmetology schools are well established and have existed under a number of different owners. We believe the Board's role is to license a school that meets the Board's required curriculum standards, as well as appropriate building maintenance and cleanliness standards. We do not see a need to license the owner of the school. However, the Attorney General would not approve our deletion of school owner licensing fees, since the statute states that the Board shall assess a fee for the school owner license.

Vis-a-vis the shop/shop owner question, licenses are and have always been issued only to the shop owner and not the shop. The Board has determined that licensing a shop owner is sufficient to regulate the activity of a shop. Unlike the school, a shop itself is not highly regulated by the Board, and the Board believes it more appropriate to license the shop owner than the shop itself, since shops open and close with some regularity.

We would appreciate the Legislative Budget and Audit Committee's support of clarifying amendments to these two licensing/fee matters.

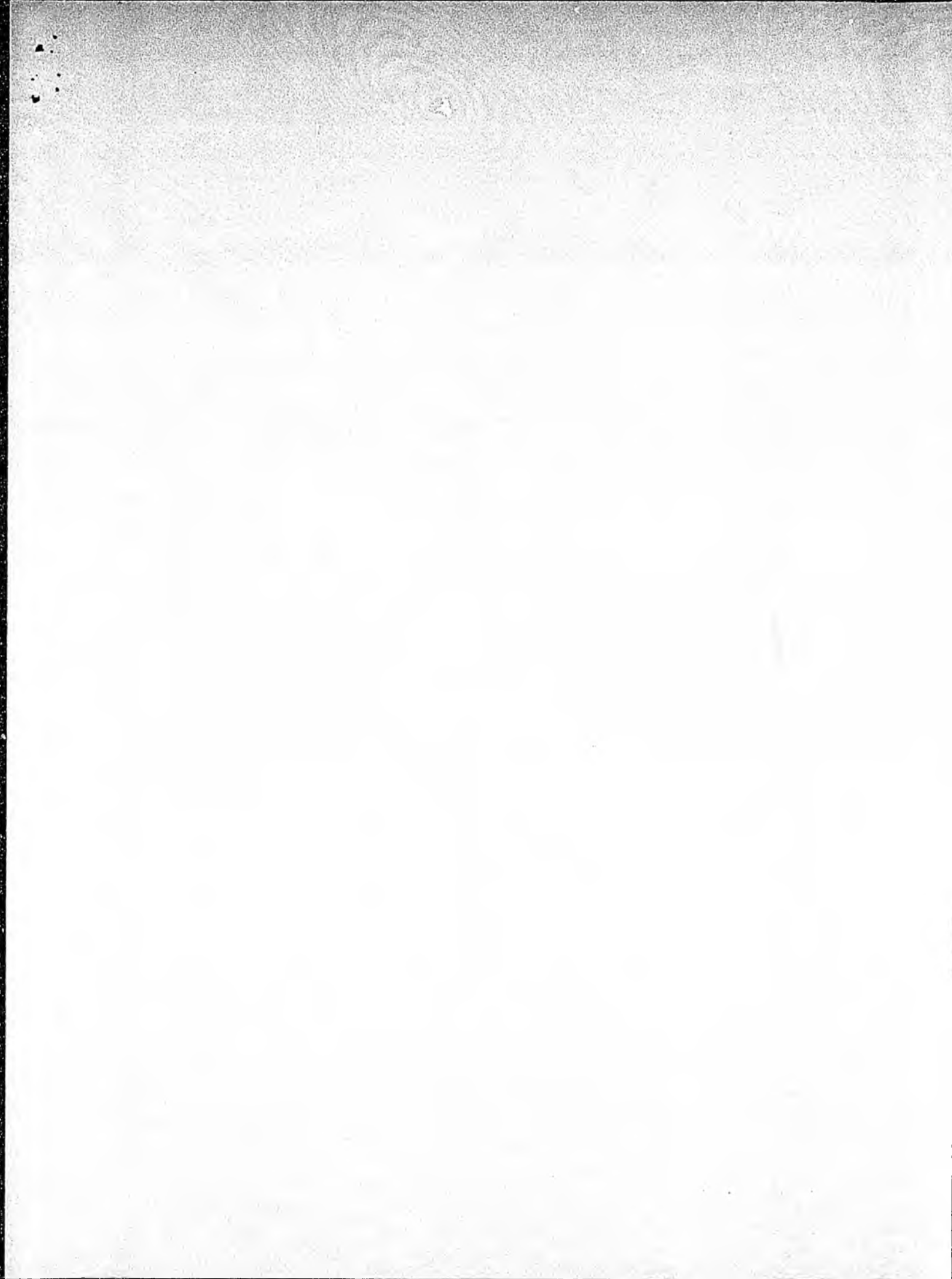
Should you have any additional questions, or if we can be of further assistance, please advise.

Sincerely,



Larry Mercurieff
Commissioner

LM/RB/mm0471t
122088b
Enclosure



1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 144

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act continuing the Board of Barbers and

7

Hairdressers; and providing for an effective date."

8

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

9

* Section 1. AS 08.03.010(c)(16) is amended to read:

10

(16) Board of Barbers and Hairdressers (AS 08.13.010) --

11

June 30, 1993 [1989].

12

* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

ИВ

146

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES




P.O. BOX V, JUNEAU 99811
(907) 465-3759

March 23, 1990

Letter of Intent to
CSHB 146 (HESS)

It is the intent of the Legislature that the Alaska State Medical Board shall increase the licensing fees for physicians to cover the costs associated with the Impaired Physician Program.


Rep. Johnny Ellis, Chair

Adopted

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to occupational
licensing; . . .
Sponsor: House Rules Committee/Governor
Requester: House Finance

Agency Affected: Commerce & Economic Dev.
BRU: Occupational Licensing
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact for FY 90.

SEE ATTACHED

Prepared by: Jennifer Strickler, Administrative Officer
Division: Occupational Licensing

Phone: 465-2144
Date: 4/17/90

Approved by Commissioner: Larry Mercurieff
Agency: Department of Commerce & Economic Development

Date: 4-17-90

Distribution (by preparer):

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

Adopted

go0779hR
Lauterbach
4/11/90

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 146 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act limiting civil liability for damages relating
7 to certain occupational licensing functions; au-
8 thorizing temporary courtesy licenses for certain
9 occupations; relating to powers and duties of the
10 State Medical Board; and providing for an effective
11 date."

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

13 * Section 1. AS 08.02.020 is amended to read:

14 Sec. 08.02.020. LIMITATION OF LIABILITY [FOR MEMBERS OF LICENS-
15 ING BOARDS AND PEER REVIEW COMMITTEES]. An action may not be brought
16 against a [A] person [IS NOT LIABLE] for damages resulting from

17 (1) [OR OTHER RELIEF IN AN ACTION BY REASON OF] the per-
18 son's good faith performance of a duty, function, or activity required
19 as

20 (A) a member of, or witness before, a licensing board
21 or peer review committee established to review a licensing mat-
22 ter; [,]

23 (B) a member of a committee appointed under AS 08.-
24 64.336(c);

25 (C) a contractor or agent of a contractor under
26 AS 08.64.101(6); or

27 (2) [BY REASON OF] a recommendation or action in accordance
28 with the prescribed duties of a licensing [THE] board, [OR] peer
29 review committee established to review a licensing matter, committee

1 appointed under AS 08.64.336(c), or contractor or agent of a contrac-
2 tor under AS 08.64.101(6) when the person acts in the reasonable
3 belief that the action or recommendation is warranted by facts known
4 to the person, [OR TO THE] board, [OR] peer review committee, commit-
5 tee appointed under AS 08.64.336(c), or contractor or agent of the
6 contractor under AS 08.64.101(6) after reasonable efforts to ascertain
7 the facts upon which the action or recommendation is made.

8 * Sec. 2. AS 08.02 is amended by adding a new section to read:

9 Sec. 08.02.030. COURTESY LICENSES. (a) A board established
10 under this title and the Department of Commerce and Economic Develop-
11 ment, with respect to an occupation that it regulates under this
12 title, may by regulation establish criteria for issuing a temporary
13 courtesy license to nonresidents who enter the state so that, on a
14 temporary basis, they may practice the occupation regulated by the
15 board or the department.

16 (b) The regulations adopted under (a) of this section may in-
17 clude limitations relating to the

18 (1) duration of the license's validity;

19 (2) scope of practice allowed under the license; and

20 (3) other matters considered important by the board or the
21 department.

22 * Sec. 3. AS 08.64.101 is amended to read:

23 Sec. 08.64.101. DUTIES. The board shall

24 (1) examine and issue licenses to applicants;

25 (2) develop written guidelines to ensure [INSURE] that
26 licensing requirements are not unreasonably burdensome and the issu-
27 ance of licenses is not unreasonably withheld or delayed;

28 (3) submit an annual report of its proceedings to the
29 governor, including a statement of money received and disbursed;

1 (4) after a hearing, impose disciplinary sanctions on
2 persons who violate this chapter [,] or the regulations or orders of
3 the board;

4 (5) adopt regulations ensuring [INSURING] that renewal of
5 licenses is contingent upon proof of continued competency on the part
6 of the licensee; and

7 (6) under regulations adopted by the board, contract [COOR-
8 DINATE] with private professional organizations to establish an im-
9 paired medical professionals program to identify, confront, evaluate,
10 and treat persons licensed under this chapter who abuse addictive
11 substances.

12 * Sec. 4. AS 08.64.130 is amended by adding new subsections to read:

13 (b) The board shall maintain records for each person licensed
14 under this chapter concerning malpractice actions and their outcomes
15 as reported under AS 08.64.200(a).

16 (c) The board shall make available to the public the information
17 maintained under (a) and (b) of this section for each person licensed
18 under this chapter.

19 * Sec. 5. AS 08.64.190 is amended to read:

20 Sec. 08.64.190. CONTENTS OF APPLICATION. The application must
21 [SHALL] state the name, age, residence, the duration of residence, the
22 time spent in medical or osteopathy study, the place, year, and school
23 in which degrees were granted, the applicant's medical work history,
24 and other information the board considers necessary. The application
25 shall be made under oath. The board may verify information in the
26 application through direct contact with the appropriate schools,
27 medical boards, or other agencies that can substantiate the
28 information.

29 * Sec. 6. AS 08.64.200 is amended to read:

1 Sec. 08.64.200. QUALIFICATIONS OF PHYSICIAN APPLICANTS. (a)
2 Except for foreign medical graduates as specified in AS 08.64.225,
3 each physician applicant shall

4 (1) [REPEALED

5 (2)] submit a certificate of graduation from a legally
6 chartered medical school accredited by the Association of American
7 Medical Colleges and the Council on Medical Education of the American
8 Medical Association;

9 (2) [(3)] submit a certificate from a recognized hospital
10 certifying that the applicant has satisfactorily performed the duties
11 of resident physician or intern for a period of one year;

12 (3) submit a list of negotiated settlements or judgments in
13 claims or civil actions alleging medical malpractice against the
14 applicant, including an explanation of the basis for each claim or
15 action;

16 (4) not have a license to practice medicine in another
17 state, province, or territory which is currently suspended or revoked
18 for disciplinary reasons; and

19 (5) be a citizen of the United States or be lawfully admit-
20 ted for permanent residence.

21 (b) The board shall determine whether each physician applicant
22 has any disciplinary or other actions recorded in the nationwide
23 disciplinary data bank of the Federation of State Medical Boards. If
24 the physician applicant was licensed or practiced in a jurisdiction
25 that does not record information with the data bank of the Federation
26 of State Medical Boards, the board shall contact the medical regula-
27 tory body of that jurisdiction to obtain comparable information about
28 the applicant.

29 * Sec. 7. AS 08.64.205 is amended to read:

1 Sec. 08.64.205. QUALIFICATIONS FOR OSTEOPATH APPLICANTS. Each
2 osteopath applicant shall meet the qualifications prescribed in
3 AS 08.64.200(a)(3) - (5) [AS 08.64.200(a)(4) AND (5)] and shall

4 (1) submit a certificate of graduation from the legally
5 chartered school of osteopathy approved by the board;

6 (2) submit a certificate from a hospital approved by the
7 American Medical Association or the American Osteopathic Association
8 which certifies that the osteopath has satisfactorily completed and
9 performed the duties of intern or resident physician for one year;

10 (3) take the examination required by AS 08.64.210 or be
11 certified to practice by the National Board of Examiners for Osteo-
12 pathic Physicians and Surgeons.

13 * Sec. 8. AS 08.64.209(a) is amended to read:

14 (a) Each applicant who desires to practice podiatry shall meet
15 the qualifications [QUALIFICATION] prescribed in AS 08.64.200(a)(3)
16 and (4) [AS 08.64.200(a)(4)] and shall

17 (1) submit a certificate of graduation from a legally
18 chartered school of podiatry approved by the board;

19 (2) take the examination required by AS 08.64.210; the
20 State Medical Board shall call to its aid a podiatrist of known abil-
21 ity who is licensed to practice podiatry to assist in the examination
22 and licensure of applicants for a license to practice podiatry;

23 (3) meet other qualifications of experience or education
24 which the board may require.

25 * Sec. 9. AS 08.64.225 is amended to read:

26 Sec. 08.64.225. FOREIGN MEDICAL GRADUATES. Applicants who are
27 graduates of medical colleges not accredited by the Association of
28 American Medical Colleges and the Council on Medical Education of the
29 American Medical Association must [OR ONE OF ITS AGENCIES SHALL] meet

1 the requirements of AS 08.64.200(a)(2) - (5) and 08.64.255, [AS 08.-
2 64.200(a)(3), (4) AND (5)] and must have passed examinations as spec-
3 ified by the board in regulations [AN EXAMINATION AND BE CERTIFIED BY
4 THE EDUCATION COUNCIL ON FOREIGN MEDICAL GRADUATES,] or be licensed by
5 examination in another state or territory of the United States or
6 province or territory of Canada.

7 * Sec. 10. AS 08.64.230(a) is amended to read:

8 (a) If the physician applicant passes the examination and meets
9 the requirements of AS 08.64.200 and 08.64.255, the board shall grant
10 a license to the applicant to practice medicine in the state.

11 * Sec. 11. AS 08.64.230(b) is amended to read:

12 (b) If the osteopath applicant passes the examination and meets
13 the requirements of AS 08.64.205 and 08.64.255, the board shall grant
14 a license to the applicant to practice osteopathy in the state.

15 * Sec. 12. AS 08.64.240(a) is amended to read:

16 (a) The board may not grant a license if

17 (1) the applicant fails or cheats during the examination;

18 (2) the applicant has surrendered a license in another
19 jurisdiction while under investigation and the license has not been
20 reinstated in that jurisdiction;

21 (3) the board determines that the applicant is profession-
22 ally unfit to practice medicine or osteopathy in the state; or

23 (4) [(3)] the applicant fails to comply with a requirement
24 of this chapter.

25 * Sec. 13. AS 08.64.250 is amended to read:

26 Sec. 08.64.250. LICENSE BY CREDENTIALS. The board may waive the
27 examination requirement and license by credentials if the physician or
28 podiatry applicant meets the requirements of AS 08.64.200 or 08.64.-
29 209, submits proof of continued competence as required by regulation,

1 pays the required fee and has

2 (1) an active license from a board of medical examiners
3 established under the laws of a state or territory of the United
4 States or a province or territory of Canada issued after thorough
5 examination; or

6 (2) passed an examination as specified [GIVEN] by the board
7 in regulations [NATIONAL BOARD OF MEDICAL EXAMINERS OR THE FEDERATION
8 OF STATE MEDICAL BOARDS OF THE UNITED STATES IF THE APPLICANT IS A
9 PHYSICIAN, OR PASSED AN EXAMINATION GIVEN BY THE NATIONAL BOARD OF
10 PODIATRY EXAMINERS IF THE APPLICANT IS A PODIATRIST].

11 * Sec. 14. AS 08.64.270 is amended to read:

12 Sec. 08.64.270. TEMPORARY PERMITS. (a) The board may issue a
13 temporary permit to a physician applicant, osteopath applicant, or
14 podiatry applicant who meets the requirements of AS 08.64.200, 08.64.-
15 205, [OR] 08.64.209, or 08.64.225 and pays the required fee.

16 (b) A temporary permit issued under this section is valid for
17 six [EIGHT] months and shall be reviewed by the board at the next
18 regularly scheduled board meeting that occurs after its issuance [OR
19 UNTIL THE BOARD MEETS TO CONSIDER THE APPLICATION, WHICHEVER OCCURS
20 FIRST].

21 (c) A temporary permit issued under this section may not be
22 renewed [AT THE BOARD'S DISCRETION ONE TIME ONLY].

23 * Sec. 15. AS 08.64.270 is amended by adding new subsections to read:

24 (d) The fee for a permit issued under this section is one-fourth
25 of the fee for a biennial license, plus the appropriate application
26 fee.

27 (e) Upon application by the permittee and approval of the board,
28 a permit issued under this section may be converted to a biennial
29 license upon payment of the biennial fee minus the six-month permit

1 fee paid under (d) of this section, plus the appropriate application
2 fee.

3 * Sec. 16. AS 08.64.272(b) is amended to read:

4 (b) For the limited purpose of residency or internship, the
5 board may issue a permit to an applicant without examination if the
6 applicant meets the requirements of AS 08.64.200(a)(1) [AS 08.64.-
7 200(a)(2)] and applicable regulations of the board, meets the require-
8 ments of AS 08.64.279, pays the required fee, and has been accepted by
9 an eligible institution in the state for the purpose of residency or
10 internship.

11 * Sec. 17. AS 08.64.275(a) is amended to read:

12 (a) A member of the board or its executive secretary may grant a
13 temporary permit to a physician or osteopath for the purpose of sub-
14 stituting for another physician or osteopath licensed in this state.
15 The permit is valid for 60 [120] consecutive days. If circumstances
16 warrant, an extension of the permit may be granted by the board.

17 * Sec. 18. AS 08.64.275(b) is amended to read:

18 (b) A physician applying under (a) of this section shall pay the
19 required fee and shall meet the requirements of AS 08.64.200 and
20 08.64.279. In addition, the physician shall submit evidence of hold-
21 ing a license to practice medicine in a state or territory of the
22 United States or in a territory or province of Canada.

23 * Sec. 19. AS 08.64.275(c) is amended to read:

24 (c) An osteopath applying under (a) of this section shall pay
25 the required fee and shall meet the requirements of AS 08.64.205 and
26 08.64.279. In addition, the osteopath shall submit evidence of hold-
27 ing a license to practice in a state or territory of the United States
28 or in a territory or province of Canada.

29 * Sec. 20. AS 08.64.275 is amended by adding a new subsection to read:

1 (e) Permits and extensions of permits issued under this section
2 to an individual are not valid for more than 240 days during any
3 consecutive 24 months.

4 * Sec. 21. AS 08.64 is amended by adding new sections to read:

5 Sec. 08.64.276. RETIRED STATUS LICENSE. (a) On retiring from
6 practice and payment of an appropriate one-time fee, a licensee in
7 good standing with the board may apply for the conversion of an active
8 or inactive license to a retired status license. A person holding a
9 retired status license may not practice medicine, osteopathy, or
10 podiatry in the state. A retired status license is valid for the life
11 of the license holder and does not require renewal. A person holding
12 a retired status license is exempt from AS 08.64.312.

13 (b) A person with a retired status license may apply for active
14 licensure. Before issuing an active license under this subsection,
15 the board may require the applicant to meet reasonable criteria as
16 determined under regulations of the board, that may include submission
17 of continuing medical education credits, reexamination requirements,
18 physical and psychiatric examination requirements, an interview with
19 the entire board, and review of information in the national data bank
20 of the National Federation of State Medical Boards.

21 Sec. 08.64.279. INTERVIEW REQUIRED FOR PERMITS. An applicant
22 for an intern permit, a resident permit, or a temporary permit for
23 locum tenens practice must be interviewed in person by at least one
24 member of the board, the executive secretary of the board, or a person
25 designated for that purpose by the board.

26 * Sec. 22. AS 08.64.326(a) is amended to read:

27 (a) The board may impose a sanction if the board finds after a
28 hearing that a licensee

29 (1) secured a license through deceit, fraud, or intentional

1 misrepresentation;

2 (2) engaged in deceit, fraud, or intentional misrepresenta-
3 tion while providing professional services or engaging in professional
4 activities;

5 (3) advertised professional services in a false or mislead-
6 ing manner;

7 (4) has been convicted, including conviction based on a
8 guilty plea or plea of nolo contendere, of

9 (A) a felony or other crime if the felony or other
10 crime is substantially related to the qualifications, functions,
11 or duties of the licensee; or

12 (B) a crime involving the unlawful procurement, sale,
13 prescription, or dispensing of drugs;

14 (5) has procured, sold, prescribed, or dispensed drugs in
15 violation of a law, regardless of whether there has been a criminal
16 action;

17 (6) intentionally or negligently permitted the performance
18 of patient care by persons under the licensee's supervision that does
19 not conform to minimum professional standards even if the patient was
20 not injured;

21 (7) failed to comply with this chapter, a regulation adopt-
22 ed under this chapter, or an order of the board;

23 (8) has demonstrated

24 (A) professional incompetence, gross negligence, or
25 repeated negligent conduct;

26 (B) addiction to, severe dependency on, or habitual
27 overuse of alcohol or other drugs that [WHICH] impairs the
28 licensee's ability to practice safely;

29 (C) unfitness because of physical or mental disabil-

1 ity;

2 (9) engaged in unprofessional conduct or in lewd or immoral
3 conduct in connection with the delivery of professional services to
4 patients;

5 (10) has violated AS 18.16.010;

6 (11) has violated any code of ethics adopted by regulation
7 by the board;

8 (12) has denied care or treatment to a patient or person
9 seeking assistance from the physician if the only reason for the
10 denial is the failure or refusal of the patient to agree to arbitrate
11 as provided in AS 09.55.535(a); or

12 (13) has had a license or certificate to practice medicine
13 in another state or [,] territory of the United States, or a province
14 or territory of Canada suspended or revoked unless the suspension or
15 revocation was caused by the failure of the licensee to pay fees to
16 that state, territory, or province.

17 * Sec. 23. AS 08.64.335 is amended to read:

18 Sec. 08.64.335. REPORTS OF DISCIPLINARY ACTION OR LICENSE SUS-
19 PENSION OR SURRENDER. The board shall promptly report to the Fed-
20 eration of State Medical Boards for inclusion in the nationwide disci-
21 plinary data bank license and permit refusals under AS 08.64.240,
22 actions taken by the board under AS 08.64.331, and license and permit
23 suspensions or surrenders under AS 08.64.332 or 08.64.334.

24 * Sec. 24. AS 08.64.336(e) is amended to read:

25 (e) A physician, hospital, [OR] hospital committee, or private
26 professional organization contracted with under AS 08.64.101(6) to
27 identify, confront, evaluate, and treat individuals licensed under
28 this chapter who abuse addictive substances that in good faith submits
29 a report under this section or participates in an investigation or

1 judicial proceeding related to a report submitted under this section.
2 is immune from civil liability for the submission or participation.

3 * Sec. 25. AS 08.64.380(7) is amended to read:

4 (7) "practice of medicine" or "practice of osteopathy"
5 means:

6 (A) for a fee, donation or other consideration, to
7 diagnose, treat, operate on, prescribe for, or administer to, any
8 human ailment, blemish, deformity, disease, disfigurement, dis-
9 order, injury, or other mental or physical condition; or to
10 attempt to perform or represent that a person is authorized to
11 perform any of the acts set out in this subparagraph;

12 (B) to use or publicly display a title in connection
13 with a person's name including "doctor of medicine," "physician,"
14 "M.D.," or "doctor of osteopathic medicine" or "D.O." or a spe-
15 cialist designation including "surgeon," "dermatologist," or a
16 similar title in such a manner as [, OR ANY TITLE WHICH TENDS] to
17 show that the person is willing or qualified to diagnose or treat
18 the sick or injured;

19 * Sec. 26. This Act takes effect immediately under AS 01.10.070(c).
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STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
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LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 2, 1990

SUBJECT: Sectional Analysis
(CSHB 146(HESS))

TO: Representative Ron Larson
Representative Lyman Hoffman
Co-Chairs, House Finance Committee

FROM: Terri Lauterbach 
Legislative Counsel

Following is the sectional analysis you requested for CSHB 146(HESS):

Sec. 1. The amendments to AS 08.02.020(1) expand the current liability limitations for licensing board members to include witnesses before a board, members of committees that provide substance abuse counseling for licensees, and contractors with the board that provide substance abuse counseling for licensees. It is less clear what the amendments to AS 08.02.020(2) accomplish. The restructuring of this section has resulted in confusing language in this paragraph, and I suggest the committee carefully consider it. It is not clear who "the person" is on page 2, line 7. A board member? Any person acting in accordance with a board recommendation?

Sec. 2. Authorizes courtesy licenses.

Sec. 3. Provides contracting authority for the State Medical Board with respect to private professional organizations for impaired medical professionals programs.

Sec. 4. Requires the medical board to keep information about malpractice actions.

Sec. 5. Authorizes verification of applications. Requires applicants to describe their medical work history.

Representative Ron Larson
Representative Lyman Hoffman
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Sec. 6. Requires physician applicants to submit information about medical malpractice civil actions. Directs the Board to use alternative sources of information when national data bank information is not available.

Secs. 7 - 8. Technical amendments.

Sec. 9. Changes requirements for graduates of foreign medical schools.

Secs. 10 - 11. Requires personal interviews for physician and osteopath applicants.

Sec. 12. Adds language relating to licenses surrendered in other jurisdictions.

Sec. 13. Changes the examination requirement for licensure by credentials.

Secs. 14 - 15. Amend temporary permit requirements.

Sec. 16. Adds a requirement for a personal interview for residents and interns.

Sec. 17. Changes the locum tenens permit statute.

Secs. 18 - 19. Adds a requirement for a personal interview for locum tenens permits.

Sec. 20. Adds language to the locum tenens permit statute to limit these permits in duration.

Sec. 21. Authorizes retired status licenses and describes certain interview requirements.

Sec. 22. Adds a restriction to Board determinations of professional incompetence when unconventional or experimental practices have been used by a licensee.

Sec. 23. Adds Board-requested language to "broaden" their reporting responsibility to include actions related to permits. I have included this section for the sake of discussion only. If it is retained in the draft, there are many other sections in AS 08.64 where "permits" should be added, including the disciplinary, refusal, suspension, and surrender statutes cited in AS 08.64.335. If the Board thinks "permits" needs to be added in AS 08.64.335, where