922

the warranties made to the monopoly States may be more onerous than that required for the affirmations under § 9, since the warranties generally cover prices in other States at the very time of sale to the monopoly State, whereas the affirmations filed under § 9 cover prices charged elsewhere during the preceding month.

[6] We therefore conclude that the provisions of § 9 on their face place no unconstitutional burden on interstate commerce.

The appellants' contention that § 9 violates the command of the Supremacy Clause needs no extended discussion. The argument is based upon a claimed inconsistency between § 9 and the federal antitrust laws, specifically the Sherman Act, 26 Stat 209, as amended, 15 USC §§ 1–[illegible]964 ed.) and § 2 of the Clayton [illegible]38 Stat 730, as amended by the Robinson-Patman Act, 49 Stat 1526, 15 USC § 13 (1964 ed.).

[7–10] In this as in other areas of coincident federal and state regulation, the "teaching of this Court's decisions . . . enjoin[s] seeking out conflicts between state and federal regulation where none clearly exists." Huron Cement Co. v Detroit, 362 US 440, 446, 4 L ed 2d 852, 858, 80 S Ct 813, 78 ALR2d 1294. We find no such clear conflict in the present case. The bare compilation, without more, of price information on sales to wholesalers and retailers to support the affirmations filed with the State Liquor Authority would not of itself violate the Sherman Act. Maple Flooring Assn. v United States, 268 US 563, 582–586, 69 L ed 1093, 1102–1104, 45 S Ct 578; cf. American Column Co. v United States, 257 US 377, 66 L ed 284, 42 S Ct 114, 21 ALR 1093. Section 9 imposes no irresistible economic pressure on the appellants to violate the Sherman Act in order to comply with the requirements of § 9. On the contrary, § 9 appears firmly anchored to the assumption that the Sherman Act will deter any attempts by the appellants to preserve their New York price level by conspiring to raise the prices at

*[384 US 46]

which liquor is sold elsewhere *in the country. Nothing in the Twenty-first Amendment, of course, would prevent enforcement of the Sherman Act against such a conspiracy. United States v Frankfort Distilleries, 324 US 293, 299, 89 L ed 951, 956, 65 S Ct 661.

[11, 12] Although it is possible to envision circumstances under which price discriminations proscribed by the Robinson-Patman Act might be compelled by § 9, the existence of such potential conflicts is entirely too speculative in the present posture of this case to support the conclusion that New York is foreclosed from regulating liquor prices in the manner it has chosen.[15] Moreover, § 7 of Chapter 531 has amended the ABC Law by granting to the State

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on the lowest price that the distiller offers anywhere in the country. . . . [T]he State of Pennsylvania has a contract which permits them to send accountants into any supplier's office—and they do. They send corps of accountants into suppliers' offices to determine whether or not they're getting the best price. And in fact, if they were not, they would have a violation of contract . . . ."

In the monopoly States, of course, no sales to retailers by private wholesalers take place. Thus, brand owners dealing with those States are not placed in the position of vouching for sales to retailers by wholesalers occupying a "related person" status.

15. Cf. Wisconsin v Texaco, 14 Wis 2d 625, 630–631, 111 NW2d 918, 921; Safeway Stores v Oklahoma Retail Grocers Assn. 360 US 334, 342, note 7, 3 L ed 2d 1280, 1286, 79 S Ct 1196.

Liquor Authority ample discretion to modify the schedule requirements.[16] We cannot presume that the Authority will not exercise that discretion to alleviate any friction that might result should the ABC Law chafe against the Robinson-Patman Act or any other federal statute.

There remain for consideration the appellants' Fourteenth Amendment claims. Section 9, they say, violates the Due Process Clause in two respects, first because it imposes an "unreasonable, arbitrary, and capricious" burden upon them, and second because the statutory definition of "related person" is so vague as to be constitutionally intolerable. And § 9 violates the Equal Protection Clause, they say, because it arbitrarily discriminates among various segments of the liquor industry.

[13–16] The first contention amounts to a claim of a deprivation of due process of law, based on the

*[384 US 47]

argument that *§ 9 is not designed to promote temperance and that it is an unwise, impractical, and oppressive law. But it is not "the province of courts to draw on their own views as to the morality, legitimacy, and usefulness of a particular business in order to decide whether a statute bears too heavily upon that business and by so doing violates due process. Under the system of government created by our Constitution, it is up to legislatures, not courts, to decide on the wisdom and utility of legislation. There was a time when the Due Process Clause was used by this Court to strike down laws which were thought unreasonable, that is, unwise or incompatible with some particular economic or social philosophy. . . . The doctrine . . . that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely . . . has long since been discarded. We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws. . . ." Ferguson v Skrupa, 372 US 726, 728–730, 10 L ed 2d 93, 96, 97, 83 S Ct 1028, 95 ALR2d 1347.

[17, 18] Moreover, nothing in the Twenty-first Amendment or any other part of the Constitution requires that state laws regulating the liquor business be motivated exclusively by a desire to promote temperance.[17] The announced purpose of the legislature was to eliminate "discrimination against and disadvantage of consumers" in the State.[18] Frustrated by years of un-

16. Sections 101-b-3(a) and (b) of the ABC Law, as amended by § 7 of Chapter 531, provide: ". . . Such brand of liquor . . . shall not be sold to wholesalers ["retailers" in § 101-b-3(b)] except at the price and discounts then in effect unless prior written permission of the authority is granted for good cause shown and for reasons not inconsistent with the purpose of this chapter. . . ."

17. See State Board of Equalization v Young's Market Co. 299 US 59, 81 L ed 38, 57 S Ct 77; Mahoney v Joseph Triner Corp. 304 US 401, 82 L ed 1424, 58 S Ct 952; Indianapolis Brewing Co. v Liquor Comm'n. 305 US 391, 83 L ed 243, 59 S Ct 254; Joseph S. Finch & Co. v McKittrick, 305 US 395, 83 L ed 246, 59 S Ct 256; Ziffrin, Inc. v Reeves, 308 US 132, 84 L ed 128, 60 S Ct 163; California v Washington, 358 US 64, 3 L ed 2d 106, 79 S Ct 116.

18. The intent of the legislature in enacting § 9 is expressed in § 8 of Chapter 531:

". . . In order to forestall possible monopolistic and anti-competitive practices designed to frustrate the elimination of . . . discrimination and disadvantage [to consumers], it is hereby further declared that the sale of liquor should be subjected to certain further restrictions, prohibitions and regulations, and the necessity for the enactment of the provisions of section nine of this act is, therefore,

*[384 US 48]
happy experience *with a state-enforced mandatory resale price maintenance system that placed exclusive price-fixing power in the hands of the distillers, the legislature adopted § 9 as the core of the liquor price reform contemplated by Chapter 531. We cannot say that the legislature acted unconstitutionally when it determined that only by imposing the relatively drastic "no higher than the lowest price" requirement of § 9 could the grip of the liquor distillers on New York liquor prices be loosened.[19] In a variety of cases in areas no more sensitive than that of liquor control, this Court has upheld state maximum price legislation. See Nebbia v New York, 291 US 502, 78 L ed 940, 54 S Ct 505, 89 ALR 1469; Townsend v Yeomans, 301 US 441, 81 L ed 1210, 57 S Ct 842; O'Gorman & Young v Hartford Fire Ins. Co., 282 US 251, 75 L ed 324, 51 S Ct 130, 72 ALR 1163; Gold v DiCarlo, 380 US 520, 14 L ed 2d 266, 85 S Ct 1332.

[19, 20] The statutory definition of "related person," which the appellants attack as unconstitutionally vague, includes any person "the exclusive, principal or substantial business of which is the sale of a brand or brands of liquor purchased from such brand owner or wholesaler designated as agent . . . ." The claim
*[384 US 49]
of vagueness is centered *upon the term "principal or substantial." We cannot agree that that language is so vague as to be constitutionally invalid. The Deputy Commissioner of the State Liquor Authority testified in these proceedings that where the determination of "related persons" is unclear, the appellants will have access to the Authority for a ruling to clarify the issue.[20] As the Court said in Board of Governors v Agnew, 329 US 441, 449, 91 L ed 408, 414, 67 S Ct 411, ". . . we think it plain under our decisions that if substantiality is the statutory guide, the limits of administrative action are sufficiently definite or ascertainable so as to survive challenge on the grounds of unconstitutionality." Cf. Opp Cotton Mills v Administrator, 312 US 126, 142–146, 85 L ed 624, 634–636, 61 S Ct 524; Bowles v Willingham, 321 US 503, 512–516, 88 L ed 892, 901–904, 64 S Ct 641.

[21] Further, as the record indicates, the structure of the liquor industry is such that even the largest national distillers deal through a relatively limited number of wholesalers.[21] Frequently, a wholesaler

declared as a matter of legislative determination."

The preceding portion of § 8 states the intent of the legislature in enacting § 11 of Chapter 531, which repealed § 101-c, the mandatory resale price maintenance provision. See Appendix, infra, p. 349.

19. We also find without merit the appellants' objection that the price computation provision, § 101-b-3(i), sweeps too broadly. That provision was intended to circumvent the established industry practice of interpreting "price" as "invoice price" rather than the amount actually realized by the seller on the transaction. There is no indication in the record that § 101-b-3(i) as applied will require the reflection in New York of every idiosyncratic price fluctuation elsewhere in the United States that happens to produce a "lowest price."

20. Section 101-b-4 of the ABC Law authorizes the State Liquor Authority to promulgate rules to carry out the purpose of § 101-b.

21. The vice-president of Joseph E. Seagram & Sons, Inc., one of the largest national distillers, testified that "Of the 330 wholesalers selling Seagram throughout the country, sixteen do 75 per cent or more of their business in the sale of our brands. Sixty-one do approximately 60 to 75 per cent in the sale of these brands; seventy-three do 40 to 60 per cent; seventy-nine, 20 to 40 per cent; sixty-four, 5 to 20 per cent; thirty-seven, 1 to 5 per cent."

agrees with a distiller not to sell brands of competing distillers in the same price range, and the prices charged by these wholesalers are potentially subject to the influence of the distillers.[22] We cannot say, therefore, that § 9 on its face imposes an unconstitutional burden on distillers or wholesalers in ascertaining the wholesalers who satisfy the

*[384 US 50]

*"related person" criterion or in obtaining information on prices charged by such wholesalers.

We come, then, to the appellants' argument that § 9 violates the Equal Protection Clause. That argument is based upon the claim that it was arbitrary for the legislature to except consumer sales and private label brands of liquor from the "no higher than the lowest price" requirement of § 9, and to reduce the scope of the price affirmation required with respect to sales made to wholesalers and retailers by those who are not "related persons."

[22, 23] We do not find that these differentiations constitute invidious discrimination. The legislature could reasonably have believed that, once the prices on sales by distillers and "related persons" were reduced, the prices of private label brands and brands sold by non-"related persons" would follow suit. Nor was it necessary for the legislature to impose the "no higher than the lowest price" requirement on sales by retailers to consumers. The legislature might reasonably have concluded that consumer prices would adequately reflect the reductions in prices to wholesalers and retailers accomplished by § 9, even though the state fair trade statute, which permits private resale price maintenance agreements on sales to consumers, appears to have emerged unscathed by the enactment of Chapter 531.[23] "A statute is not invalid under the Constitution because it might have gone farther than it did, or because it may not succeed in bringing about the result that it

*[384 US 51]

tends to produce." Roschen v *Ward 279 US 337, 339, 73 L ed 722, 729, 49 S Ct 336. "[T]he reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind." Williamson v Lee Optical Co., 348 US 483, 489, 99 L ed 563, 573, 75 S Ct 461.

[24, 25] Although the appellants' primary attack is upon the constitutionality of § 9, they also challenge two minor provisions added by § 7 of Chapter 531 to the schedule requirements of the ABC Law. The first provision, which requires the price schedules to cover sales to wholesalers "irrespective of the place of sale or delivery," is designed to bring wholesalers within the price-publicity requirement of the law, even though they take delivery of the liquor outside New York for distribution within the State. The second provision, which requires the price schedules on sales to both wholesalers and retailers to include "the net bottle and case price paid by the seller," tends to promote pub-

22. See Borregard & Glusker, The Distilled Spirits Industry: A Marketing Survey 65–104, 133–163 (Yale Law School 1950); Oxenfeldt, "Whisky Prices," Industrial Pricing and Market Practices 445, 477, 483–486 (1951).

23. The New York fair trade statute is the Feld-Crawford Act, Laws 1940, c. 195, § 3, as amended, General Business Law, §§ 369-a–e. See National Distillers Corp. v Seyopp Corp. 17 NY2d 12, 214 NE2d 361, 267 NYS2d 193; National Distillers Corp. v R. H. Macy & Co. 23 App Div 2d 51, 258 NYS2d 298; Fleischmann Distilling Corp. v R. H. Macy & Co. 24 App Div 2d 977, 265 NYS2d 384; Victor Fischel & Co. v R. H. Macy & Co. NY Sup Ct, 154 NYLJ No. 95, p. 17 (Nov. 17, 1965).

licity of the seller's profit margins.[24] There is no indication in the present record that the State Liquor Authority will require the appellants to file schedules of prices on sales unrelated to the distribution of liquor in New York. As the Court of Appeals observed with regard to these provisions, "The statute is concerned with New York practices and, if the sales in other States have no relevancy to New York enforcement, the statute permits the Liquor Authority for good cause to waive the general prohibition against sales to wholesalers in the absence of such schedules. It would be reasonable to expect that the statute would be administered consistently with its sole purpose to regulate the intrastate sale of liquor." 16 NY 2d 47, 59, 209 NE2d 701, 706. We accept this construction of the statute by New York's highest court.

*[384 US 52]

N.A.A.C.P. v Button, 371 *US 415, 432, 9 L ed 2d 405, 417, 83 S Ct 328. As so construed, these provisions serve a clear and legitimate interest of New York in the exercise of its constitutional power to regulate the sale of liquor within its borders.

For the reasons that we have stated, we find no constitutional infirmity in any of the 1964 amendments to the New York ABC Law challenged on this appeal. Although it is possible that specific future applications of Chapter 531 may engender concrete problems of constitutional dimension, it will be time enough to consider any such problems when they arise. We deal here only with the statute on its face. And we hold that, so considered, the legislation is constitutionally valid. Accordingly, the judgment of the New York Court of Appeals is

Affirmed.

APPENDIX TO OPINION OF THE COURT

Chapter 531, 1964 Session Laws of New York.

. . . . . .

§ 7. Section one hundred one-b of such law, as added by chapter eight hundred ninety-nine of the laws of nineteen hundred forty-two, subdivision four thereof having been amended by chapter five hundred fifty-one of the laws of nineteen hundred forty-eight, is hereby amended to read as follows:

§ 101-b. *Unlawful discriminations prohibited; filing of schedules; schedule listing fund*

. . . . . .

3. (a) No brand of liquor or wine shall be sold to or purchased by a wholesaler, irrespective of the place of sale or delivery, unless a schedule, as provided by this section, is filed with the liquor authority, and is then in effect. Such schedule shall be in writing duly verified, and filed in the number of copies and form as required by the authority, and shall contain, with respect to each

*[384 US 53]

item, *the exact brand or trade name, capacity of package, nature of contents, age and proof where stated on the label, the number of bottles contained in each case, the bottle and case price to wholesalers, the net bottle and case price paid by the seller, which prices, in each instance, shall be individual for each item and not in "combination" with any other item, the discounts for

24. Where the manufacturer is also the seller, this provision is inapplicable. See Alcoholic Beverage Control Law, Appendix, Rule 16 of the State Liquor Authority, § 65.6(b)(3) (1965 Supp.), 9 NYCRR 65.6(b)(3).

quantity, if any, and the discounts for time of payment, if any. Such brand of liquor or wine shall not be sold to wholesalers except at the price and discounts then in effect unless prior written permission of the authority is granted for good cause shown and for reasons not inconsistent with the purpose of this chapter. Such schedule shall be filed by (1) the owner of such brand, or (2) a wholesaler selling such brand and who is designated as agent for the purpose of filing such schedule if the owner of the brand is not licensed by the authority, or (3) with the approval of the authority, by a wholesaler, in the event that the owner of the brand is unable to file a schedule or designate an agent for such purpose.

(b) No brand of liquor or wine shall be sold to or purchased by a retailer unless a schedule, as provided by this section, is filed with the liquor authority, and is then in effect. Such schedule shall be in writing duly verified, and filed in the number of copies and form as required by the authority, and shall contain, with respect to each item, the exact brand or trade name, capacity of package, nature of contents, age and proof where stated on the label, the number of bottles contained in each case, the bottle and case price to retailers, the net bottle and case price paid by the seller, which prices, in each instance, shall be individual for each item and not in "combination" with any other item, the discounts for quantity, if any, and the discounts for time of payment, if any. Such brand of liquor or wine shall not be sold to retailers except at the price and discounts then in effect unless prior

*[384 US 54]

*written permission of the authority is granted for good cause shown and for reasons not inconsistent with the purpose of this chapter. Such schedule shall be filed by each manufacturer selling such brand to retailers and by each wholesaler selling such brand to retailers.

(c) Provided however, nothing contained in this section shall require any manufacturer or wholesaler to list in any schedule to be filed pursuant to this section any item offered for sale to a retailer under a brand which is owned exclusively by one retailer and sold at retail within the state exclusively by such retailer.

. . . . . .

§ 8. In enacting section eleven of this act, it is the firm intention of the legislature (a) that fundamental principles of price competition should prevail in the manufacture, sale and distribution of liquor in this state, (b) that consumers of alcoholic beverages in this state should not be discriminated against or disadvantaged by paying unjustifiably higher prices for brands of liquor than are paid by consumers in other states, and that price discrimination and favoritism are contrary to the best interests and welfare of the people of this state, and (c) that enactment of section eleven of this act will provide a basis for eliminating such discrimination against and disadvantage of consumers in this state. In order to forestall possible monopolistic and anti-competitive practices designed to frustrate the elimination of such discrimination and disadvantage, it is hereby further declared that the sale of liquor should be subjected to certain further restrictions, prohibitions and regulations, and the necessity for the enactment of the provisions of section nine of this act is, therefore, declared as a matter of legislative determination.

§ 9. Subdivision three of section one hundred one-b of such law, as amended by section seven of this
*[384 US 55]
act, is *hereby amended to add eight new paragraphs, to be paragraphs (d), (e), (f), (g), (h), (i), (j) and (k), to read as follows:

(d) There shall be filed in connection with and when filed shall be deemed part of the schedule filed for a brand of liquor pursuant to paragraph (a) of this subdivision an affirmation duly verified by the owner of such brand of liquor, or by the wholesaler designated as agent for the purpose of filing such schedule if the owner of the brand of liquor is not licensed by the authority, that the bottle and case price of liquor to wholesalers set forth in such schedule is no higher than the lowest price at which such item of liquor was sold by such brand owner or such wholesaler designated as agent, or any related person, to any wholesaler anywhere in any other state of the United States or in the District of Columbia, or to any state (or state agency) which owns and operates retail liquor stores, at any time during the calendar month immediately preceding the month in which such schedule is filed. As used in this paragraph (d), the term "related person" shall mean any person (1) in the business of which such brand owner or wholesaler designated as agent has an interest, direct or indirect, by stock or other security ownership, as lender or lienor, or by interlocking directors or officers, or (2) the exclusive, principal or substantial business of which is the sale of a brand or brands of liquor purchased from such brand owner or wholesaler designated as agent, or (3) which has an exclusive franchise or contract to sell such brand or brands.

(e) There shall be filed in connection with and when filed shall be deemed part of any other schedule filed for a brand of liquor pursuant to paragraph (a) of this subdivision an affirmation duly verified by the person filing such schedule that the bottle and case price of liquor to wholesalers set forth in such sched-
*[384 US 56]
ule is no higher than *the lowest price at which such item of liquor was sold by such person to any wholesaler anywhere in any other state of the United States or in the District of Columbia, or to any state (or state agency) which owns and operates retail liquor stores, at any time during the calendar month immediately preceding the month in which such schedule is filed.

(f) There shall be filed in connection with and when filed shall be deemed part of any schedule filed for a brand of liquor pursuant to paragraph (b) of this subdivision by the owner of such brand of liquor, or by the whoesaler designated as agent for the purpose of filing such schedule if the owner of the brand of liquor is not licensed by the authority, or by a related person, an affirmation duly verified by such brand owner or such wholesaler designated as agent that the bottle and case price of liquor to retailers set forth in such schedule is no higher than the lowest price at which such item of liquor was sold by such brand owner of [sic] such wholesaler designated as agent, or any related person, to any retailer anywhere in any other state of the United States or in the District of Columbia, other than to any state (or state agency) which owns and operates retail liquor stores, at any time during the calendar month immediately preceding the month in which such schedule is filed. As used in this paragraph (f), the term

"related person" shall mean any person (1) in the business of which such brand owner or wholesaler designated as agent has an interest, direct or indirect, by stock or other security ownership, as lender or lienor, or by interlocking directors or officers, or (2) the exclusive, principal or substantial business of which is the sale of a brand or brands of liquor purchased from such brand owner or wholesaler designated as agent, or (3) who has an exclusive franchise or contract to sell such brand or brands.

*[384 US 57]

*(g) There shall be filed in connection with and when filed shall be deemed part of any other schedule filed for a brand of liquor pursuant to paragraph (b) of this subdivision an affirmation duly verified by the person filing such schedule that the bottle and case price of liquor to retailers set forth in such schedule is no higher than the lowest price at which such item of liquor was sold by such person to any retailer anywhere in any other state of the United States or in the District of Columbia, other than to any state (or state agency) which owns and operates retail liquor stores, at any time during the calendar month preceding the month in which such schedule is filed.

(h) In the event an affirmation with respect to any item of liquor is not filed within the time provided by this section, any schedule for which such affirmation is required shall be deemed invalid with respect to such item of liquor, and no such item may be sold to or purchased by any wholesaler or retailer during the period covered by any such schedule.

(i) In determining the lowest price for which any item of liquor was sold in any other state or in the District of Columbia, or to any state (or state agency) which owns and operates retail liquor stores, appropriate reductions shall be made to reflect all discounts in excess of those to be in effect under such schedule, and all rebates, free goods, allowances and other inducements of any kind whatsoever offered or given to any such wholesaler, state (or state agency) or retailer, as the case may be, purchasing such item in such other state or in the District of Columbia; provided that nothing contained in paragraphs (d), (e), (f) and (g) of this subdivision shall prevent differentials in price which make only due allowance for differences in state taxes and fees, and in the actual cost of delivery. As used in this paragraph, the term "state taxes or fees" shall mean the excise

*[384 US 58]

taxes *imposed or the fees required by any state or the District of Columbia upon or based upon the gallon of liquor, and the term "gallon" shall mean one hundred twenty-eight fluid ounces.

(j) Notwithstanding and in lieu of any other penalty provided in any other provisions of this chapter, any person who makes a false statement in any affirmation made and filed pursuant to paragraph (d), (e), (f) or (g) of this subdivision shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than ten thousand dollars or by imprisonment in a county jail or penitentiary for a term of not more than six months or by both such fine and imprisonment. Every affirmation made and filed pursuant to paragraph (d), (e), (f) or (g) of this subdivision shall be deemed to have been made in every county in this state in which the brand of liquor is offered for sale under the terms of said schedule. The attorney general or any district attorney may prosecute any person

charged with the commission of a violation of this paragraph. In any such prosecution by the attorney general, he may appear in person or by his deputy or assistant before any court or any grand jury and exercise all the powers and perform all the duties in respect of any such proceeding which the district attorney would otherwise be authorized or required to exercise or perform, and in such prosecution the district attorney shall only exercise such powers and perform such duties as are required of him by the attorney general or his deputy or assistant so attending.

(k) Upon final judgment of conviction of any person after appeal, or in the event no appeal is taken, upon the expiration of the time during which an appeal could have been taken, the liquor authority may refuse to accept for any period of months not exceeding three calendar months any affirmation required to be filed by such person.

LETTER OF INTENT

It is the intent of the House Judiciary Committee in passing out HB 572 that no additional personnel be authorized. Therefore, the Committee does not concur in the personal services section of the attached fiscal note.

took to L.A. 9:30
Tues. April 15 - 8:30 am

CS

Introduced: 4/11/79
Referred: Judiciary

BY HAYES, BETTISWORTH, FREEMAN, MONTGOMERY AND MUNSON

IN THE HOUSE

HOUSE BILL NO. 454

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the regulation of pricing of alcoholic beverages."

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

* Section 1. AS 04.15 is amended by adding new sections to read:

Sec. 04.15.120. FILING OF SCHEDULES OF PRICES REQUIRED. (a) A distiller or related person may not sell spiritous liquor to a holder of a general wholesale license unless the distiller or related person has filed with the Department of Revenue a schedule listing the information required under (b) of this section and an affidavit supporting that schedule as required by AS 04.15.130(b).

(b) The schedule required to be filed under (a) of this section shall include the following information:

(1) the brand name of each spiritous liquor sold;

(2) the capacity of each package of spiritous liquor sold;

(3) the nature of the contents of each package of spiritous liquor sold;

(4) the age and alcoholic content by volume of the contents of each package of spiritous liquor sold;

(5) the number of bottles of spiritous liquor contained in each case;

(6) the bottle and case price of spiritous liquor to wholesalers; and

(7) the net bottle and case price paid ~~by~~ to a distiller or related person for the spiritous liquor.

(c) The information on prices in the schedule required to be filed under (a) of this section shall be separately stated for each item of information required and may not be combined with another item of information, or stated in terms of a discount for quantity or for time of payment.

(d) The schedule required under (a) of this section shall be in writing, verified, and filed in the form and according to the deadlines required by the commissioner of revenue.

Sec. 04.15.130. PARITY WITH PRICES IMPOSED ELSEWHERE REQUIRED. (a) A price may not be filed under AS 04.15.120 for a bottle or a case of a brand of spiritous liquor which is higher than the lowest price at which the bottle or case of spiritous liquor was sold by the distiller or related person to a wholesaler in another state, the District of Columbia, or to a state which owns and operates retail liquor stores, at any time during the calendar month immediately preceding the month in which the schedule is filed.

(b) A distiller or related person must make an affidavit affirming that the schedule of prices filed by him under AS 04.15.120 complies with (a) of this section.

(c) In determining the lowest price for which a bottle or case of spiritous liquor was sold to a wholesaler in another state, in the District of Columbia, or to a state which owns and operates retail liquor stores, the commissioner of revenue shall make appropriate reductions (1) to reflect discounts in excess of those to be in effect under the schedule filed under AS 04.15.120, and (2) for rebates, free goods, allowances and other inducements offered or given to a wholesaler, state, or retailer purchasing the bottles or cases in the other state or the District of Columbia. However, nothing in this section prevents differences in price which result from differences in state taxes and

fees, or from the actual cost of delivery.

(d) If the affidavit required under AS 04.15.130(b) is not filed with respect to an item of spiritous liquor within the time prescribed by the commissioner of revenue, the schedule for which the affidavit is support is invalid with respect to that item of spiritous liquor, and the item may not be sold to or purchased by a wholesaler during the period covered by the schedule.

(e) As used in this section

(1) "state taxes and fees" means the excise taxes imposed or the fees required by a state or by the District of Columbia upon, or based upon, a gallon of spiritous liquor; and

(2) "gallon" means 231 cubic ounces.

Sec. 04.15.140. PRICING IN ACCORDANCE WITH SCHEDULES REQUIRED. A distiller or related person may not sell spiritous liquor to a wholesaler at a price or discount other than that stated in a schedule filed under AS 04.15.120, unless the commissioner of revenue consents in writing upon a showing of good cause.

Sec. 04.15.150. PENALTY FOR VIOLATION. A distiller or related person who knowingly takes a false statement in an affidavit filed in accordance with AS 04.15.130(b) may be prohibited by the Commissioner from selling ~~or permitting~~ the purchase of any item of spiritous liquor by a wholesaler within the state. A wholesaler is prohibited

Sec. 04.15.160. DEFINITIONS. As used in AS 04.15.120 - 04.15.160:

(1) "related person" means a person

(A) engaged in a business of which a distiller has an interest, direct or indirect, by stock or other security ownership, as lendor or lienor, or by interlocking directors or officers; or

(B) engaged in the exclusive, principal or substantial business of selling spiritous liquor purchased from a distiller; or

(C) who has an exclusive franchise or contract to sell a brand or brands of spiritous liquor;

(2) "spiritous liquor" means intoxicating liquor, except for wine, ale, porter, beer or malt liquor or malt beverages and all other vinous, malt, and other fermented liquors intended for human consumption and containing more than one per cent alcohol by volume.

* Sec. 2. AS 04.15.100(a) is amended to read:

Sec. 04.15.100. PENALTIES FOR VIOLATION OF TITLE OR MUNICIPAL ORDINANCE. (a) A person who violates any provision of this title other than AS 04.15.080 and AS 04.15.120 - 04.15.160 is guilty of a misdemeanor, and upon conviction is punishable by imprisonment of not more than one year, or by a fine of not more than $500. Each violation is a separate offense.

* Sec. 3. AS 04.20.010 is amended to read:

Sec. 04.20.010. INTOXICATING LIQUOR DEFINED. As used in this title,

(1) "intoxicating liquor" includes whiskey, brandy, rum, gin, wine, ale, porter, beer and all other spirituous, vinous, malt and other fermented or distilled liquors intended for human consumption and containing more than one per cent alcohol by volume;

(2) "board" means the Alcoholic Beverage Control Board.

(3) "Commissioner" means the Commissioner of Revenue

TABULATION OF LICENSE STATES BY CLASS OF THREE TIER SYSTEMS BY THEIR SUPPORTIVE LAWS, 1979

State	Class	At Rest	Primary Source	Price Affirmation	Franchise Protection	
Alaska	III	No	No	No	No	
Arizona	III	Yes	Yes	Yes	Yes	See Comment
Arkansas	I	Yes	Yes	No	Yes	
California	I	Yes	Yes	Yes	No	See Comments
Colorado	I	No	Yes	No	No	
Connecticut	I	Yes	Yes	Yes	Yes	See Comments
Delaware	I	Yes*	No	Yes	Yes	
District of Columbia	III	Yes*	Yes	No	No	
Florida	I	Yes*	Yes	Yes	Yes	See Comments
Georgia	I	Yes	No	Yes	Yes	
Hawaii	III	No	No	No	No	
Illinois	I	Yes	No	No	No	
Indiana	I	Yes*	No	No	No	
Kansas	I	Yes	Yes	Yes	Yes	See Comments
Kentucky	I	Yes*	No	Yes	No	See Comments
Louisiana	III	Yes	Yes	Yes*	No	See Comments
Maryland	III	No	Yes	Yes*	Yes*	See Comments
Massachusetts	I	Yes	No	Yes	Yes	
Minnesota	III	Yes*	No	Yes	No	See Comments
Missouri	II	No	Yes	No	Yes	See Comments
Nebraska	I	Yes	Yes	Yes	No	See Comments
Nevada	I	Yes	No	No	Yes	See Comments
New Jersey	III	Yes	Yes	Yes	Yes	See Comments
New Mexico	I	Yes	No	Yes	Yes	See Comments
New York	III	No	No	Yes	No	
North Dakota	I	Yes	No	No	No	
Ohio	III	Yes*	Yes*	No	Yes	See Comments
Oklahoma	I	No	No	Yes	No	
Rhode Island	I	Yes	Yes	Yes	No	See Comments
South Carolina	I	Yes	No	Yes	No	
South Dakota	I	Yes	No	No	No	
Tennessee	II	Yes	No	Yes	Yes	See Comments
Texas	I	Yes	Yes	No	No	
Wisconsin	I	Yes*	Yes	No	Yes	
Class I & II (1979)	24	27	17	20	9	
Status in 1975	23	26	11	14	13	
Increase	1	1	6	6	3	

Underlining indicates a change from status as reported in the Three Tier Book published in 1975.

The numbers indicate the number of states having the various types of supportive laws.

* Asterisk indicates a qualified provision.

STATE OF ALASKA

Interdepartmental Route Slip

TO: Mail Station	Department
3100	LEGISLATURE HOUSE JUDICIARY
Attention: REP. CHARLES PARR	

- ☐ Approval
- ☐ Signature
- ☐ Comment
- ☐ Contact Me
- ☐ Prepare Reply
- ☐ For Your File
- ☐ Note & Return
- ☐ Initial & Return
- ☐ Return as Requested
- ☐ Return for Approval
- ☐ Necessary Action
- ☐ For Your Information

Remarks:

FROM: Mail Station	Department	
0600	BLMS	
By		Date 5/22

02-002(Rev. 2/80)

CS FOR HB 454

"An Act relating to the regulation of pricing of alcoholic beverages"

Passage of HB 454 would require distillers to file a schedule of their prices and other pertinent information regarding their product with the Department of Revenue. Additionally HB 454 ensures that the net price distillers charge wholesalers doing business in Alaska is no greater than the price distillers charge wholesalers doing business in other states.

Since passage of HB 454 apparently will not alter the retail price of spiritous liquor sold in Alaska nor substantialy increase its consumption the Office of Alcoholism and Drug Abuse neither opposes or favors HB 454.

Recommended by: Robert L. Cole 04/09/80

Robert L. Cole, Coordinator Date

Approved by: Helen D. Beirne by JMcG

Helen D. Beirne, Commissioner Date
Dept. of Health & Social Services

ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CS for House Bill No. 454
Title "An Act Relating to the Regulation of Pricing of Alcoholic Beverages"
Requested by Judiciary Committee Date 5/2/80

II. FISCAL DETAIL
Agency Affected Department of Health and Social Sevices
Program Category Affected ALCOHOLISM & DRUG ABUSE
BRU, Program, or Subprogram(s) Affected Administration
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100	PERSONAL SERVICES		-0-				
200	TRAVEL		-0-				
300	CONTRACTUAL		-0-				
400	COMMODITIES		-0-				
500	EQUIPMENT		-0-				
600	LAND & STRUCTURES		-0-				
700	GRANTS, CLAIMS, ETC.		-0-				
	TOTAL		-0-				

FUNDING (Thousands of Dollars)

GENERAL FUND		-0-				
FEDERAL FUNDS		-0-				
OTHER (Specify Fund Source)		-0-				

POSITIONS

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

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

Robert L. Cole

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

Prepared by: Robert L. Cole Date: 5/14/80
Division/Office: Alcoholism/Drug Abuse Ph: 586-6201
Department of Health & Social Services

33-001 (Rev. 12/79)
Mfg. by DHSS (11-28-79)

Approval DHSS Mgt. & Bdgt.: [signature] Date: 5/28/80

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB 293 am
Title An Act Relating to Presumptive Death
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Department of Health and Social Sevices
Program Category Affected Vital Statistics
BRU, Program, or Subprogram(s) Affected _____
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

No fiscal impact

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

Prepared by: Adam P. Brad Date: 2/13/80
Division/Office: Vital Statistic PH: 465-3373
Department of Health & Social Services

Approval DHSS Mgt. & Bdgt: Bob Dilon Date: 2/27/80

33-001 (Rev. 12/79)
Modify by DHSS (11-28-79)

HB 454

"An Act relating to the regulation of pricing of alcoholic beverages"

Passage of HB 454 would require distiller to file a schedule of their prices and other pertinent information regarding their product with the Department of Revenue. Additionally HB 454 ensures that the net price distillers charge wholesalers doing business in Alaska is no greater than the price distillers charge wholesalers doing business in other states.

Since passage of HB 454 apparently will not alter the retail price of spiritous liquor sold in Alaska nor substantialy increase its consumption the Office of Alcoholism and Drug Abuse neither opposes or favors HB 454.

Recommended by: Robert L. Cole 04/09/80

Robert L. Cole, Coordinator Date

Approved by: Helen D. Beirne by JMcG

Helen D. Beirne, Commissioner Date
Dept. of Health & Social Services

I. REQUEST
Bill/Resolution No. House Bill 454
Title "An Act relating to the regulation of pricing of alcoholic beverages"
Requested by Hayes, Bettisworth, Freeman, Montgomery, Munson Date 4/11/79

II. FISCAL DETAIL
Agency Affected Department of Health and Social Sevices
Program Category Affected ALCOHOLISM & DRUG ABUSE
BRU, Program, or Subprogram(s) Affected Administration
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100	PERSONAL SERVICES		-0-				
200	TRAVEL		-0-				
300	CONTRACTUAL		-0-				
400	COMMODITIES		-0-				
500	EQUIPMENT		-0-				
600	LAND & STRUCTURES		-0-				
700	GRANTS, CLAIMS, ETC.		-0-				
	TOTAL		-0-				

FUNDING (Thousands of Dollars)

GENERAL FUND		-0-				
FEDERAL FUNDS		-0-				
OTHER (Specify Fund Source)		-0-				

POSITIONS

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

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

Robert L. Cole

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

Prepared by: Robert L. Cole Date: 4/9/80
Division/Office: Alcoholism/Drug Abuse Ph: 586-6201
Department of Health & Social Services

33-001 (Rev. 12/79)
Modify by DHSS (11-28-79)

Approval DHSS Mgt. & Bdgt: _____ Date: _____

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / POUCH S – JUNEAU 99811

April 7, 1980

The Honorable Charles Parr
Chairman
House Judiciary Committee
Room 12b - Capitol Building
Juneau, Alaska 99811

Dear Mr. Parr:

Re: House Bill No. 454

House Bill No. 454, an Act relating to the regulation of pricing of alcoholic beverages, was introduced in the House on April 11, 1979 and was referred to the House Judiciary Committee.

For the consideration of the House Judiciary Committee, I am enclosing a copy of a Fiscal Note prepared by Patrick Sharrock, Director, Alcoholic Beverage Control Board, Department of Revenue, Anchorage.

Sincerely,

R. D. Stevenson

R. D. Stevenson
Special Assistant

cc: Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Patrick Sharrock, Director
Alcoholic Beverage Control Board
Department of Revenue

04-D2LH

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 454
Title Pricing of Alcoholic beverages
Requested by Hayes, Bettisworth, Freeman, Montgomery Date April 11,1979

II. FISCAL DETAIL
Agency Affected Department of Revenue
Program Category Affected Consumer Protection
BRU, Program, or Subprogram(s) Affected ABC Board
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES		71.2				
200 TRAVEL		4.0				
300 CONTRACTUAL		15.2				
400 COMMODITIES		1.2				
500 EQUIPMENT		3.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	94.6	98.0	104.9	112.2	120.1

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	94.6	98.0	104.9	112.2	120.1
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

1) monthly reports are required from reporting parties
2) information reported is public
3) several hundred reports will potentially be filed monthly
4) some means of audit verification will be necessary
5) Alaskan licensed wholesalers are not required to file reports
6) new staff positions will be required. Form 13's are attached.
7) 7% inflation rate for fiscal years following FY 81 less equipment costs.

IV. DATE April 11, 1980 PREPARED BY Pat Sharrock
AGENCY ABC Board
PHONE 277-8638

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/79)

Attachments - Comments
Fiscal Note
HB 454 - Pricing of Alcoholic Beverages

It is assumed that the only intent of the legislation is to provide for formal posting of prices charged by distillers to licensed Alaskan wholesalers. Price reporting of alcoholic beverages by wholesalers selling to licensed retailers who sell to consumers is apparently not intended to be included. However, the definition of "related person" at 04.15.160(b) appears to include wholesale licensees as purchasers from distillers who are required to file affidavits along with "related persons" who may sell to general wholesale licensees at 04.15.120.

The bill at 10.15.150 implies that a new class of liquor license is intended. This section provides for suspension by the Alcoholic Beverage Control Board when a "licensee" makes a false statement in an affidavit filed with the Board. At the present time distillers or related persons (unless related persons include licensed Alaska wholesalers) are not licensed by the State of Alaska. However, there is provision in Title 4 for a distillery license where a licensee operates a distillery in the State.

Other comments are:

1. Section 04.15.120(b) (7) mentions a "price paid by a distiller or related person for the spirituous liquor." Changing the word "paid" to "charged" may more appropriately express the intent of the legislation.

2. Other than for affirmation of prices, are reports to be utilized for other purposes? Confidentiality of information should be clarified.

3. Some Alaskan wholesalers publish prices monthly in the "Beverage Analyst" magazine. A sample of the pricing section is attached.

	POSITION TITLE			RANGE/STEP	BARG. UNIT.	LOCATION		APPROV.	DISAPP.
1	Revenue Auditor I			14A	G	Anchorage	GOV.		
	TYPE OF POSITION	STAFF MONTHS	RP No.	PCN No.	PRIORITY	FORM 12 PAGE/LINE			
2	PFP	12					LEG.		

	TYPE OF EXPENDITURE	1	2	AMOUNT 3
4	PERSONAL SERVICES: SALARY $1850/mo		21,780	
5	BENEFITS		6,752	
6	FICA 31%			
7	HEALTH INS.			
8	TOTAL PERSONAL SERVICES		28,532	
9	TRAVEL			3,000
10	CONTRACTUAL			5,050
11	COMMODITIES			400
12	EQUIPMENT			1,000
13	OTHER			
14	TOTAL COST			37,982

	CODE	FUNDING SOURCE	
15		FED RCPTS.	
16		GF MATCH.	
17		GEN. FUND	37,982
18		I-A RCPTS.	
19		PGM RCPTS	
20		OTHER	
21	CONTINUATION		
22	ADDITION		

FOR B&M USE ONLY

4A KEY NUMBER _____ COLUMN NO. _____

JUSTIFICATION:

Attachment to:

Fiscal Note HB 454 -- Pricing of alcoholic beverages.

AGENCY Department of Revenue PROGRAM AREA Consumer Protection

BRU ABC Board

COMPONENT _____

13 REQUEST FOR NEW POSITION.

FY 81

REVISED DATE _____

	POSITION TITLE			RANGE/STEP	BARG. UNIT	LOCATION		APPROV.	DISAPP.
1	Documents Processing Clerk II			8A	G	Anchorage	GOV.		
2	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP No.	PCN No.	PRIORITY	FORM 12 PAGE/LINE	LEG.		

	TYPE OF EXPENDITURE	1	2	AMOUNT 3
4	PERSONAL SERVICES: SALARY $1277/mo		15,324	
5	BENEFITS			
6	FICA 31%		4,750	
7	HEALTH INS.			
8	TOTAL PERSONAL SERVICES		20,074	
9	TRAVEL			500
10	CONTRACTUAL			5,050
11	COMMODITIES			400
12	EQUIPMENT (one time expenditure)			1,000
13	OTHER			
14	TOTAL COST			27,024

	CODE	FUNDING SOURCE	
15		FED RCPTS.	
16		GF MATCH.	
17		GEN. FUND	27,024
18		I-A RCPTS	
19		PGM RCPTS	
20		OTHER	
21	CONTINUATION		
22	ADDITION		

FOR B&M USE ONLY

4A KEY NUMBER _____ COLUMN NO. _____

JUSTIFICATION:

Attachment to:

Fiscal Note HB 4[illegible]-- Pricing of alcoholic beverages.

AGENCY Department of Revenue PROGRAM AREA Consumer Protection

BRU ABC Board

COMPONENT _____

13 REQUEST FOR NEW POSITION.

REVISED DATE _____

FY 81

	POSITION TITLE				RANGE/STEP	BARG. UNIT	LOCATION	GOV.	APPROV.	DISAPP.
1	Documents Processing Clerk II				10A	C	Anchorage			
	TYPE OF POSITION	STAFF MONTHS	RP No.	PCN No.	PRIORITY		FORM 12 PAGE/LINE	LEG.		
2										

3	TYPE OF EXPENDITURE	1	2	AMOUNT 3
4	PERSONAL SERVICES: SALARY	$1440/mo	$17,280	
5	BENEFITS			
6	FICA	31%	5,357	
7	HEALTH INS.			
8	TOTAL PERSONAL SERVICES		22,637	
9	TRAVEL			500
10	CONTRACTUAL			5,050
11	COMMODITIES			400
12	EQUIPMENT (one time expenditure)			1,000
13	OTHER			
14	TOTAL COST			29,578

	CODE	FUNDING SOURCE	
15		FED RCPTS.	
16		GF MATCH.	
17		GEN. FUND	29,578
18		I-A RCPTS.	
19		PGM RCPTS	
20		OTHER	
21	CONTINUATION		
22	ADDITION		

FOR B&M USE ONLY

4A KEY NUMBER _____ COLUMN NO. _____

JUSTIFICATION:

Attachment to:

Fiscal Note HB 454-- Pricing of alcoholic beverages.

AGENCY Department of Revenue PROGRAM AREA Consumer Protection

BRU ABC Board

COMPONENT _____

13 REQUEST FOR NEW POSITION.

REVISED DATE _____

FY 81

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

May 9, 1980

The Honorable Sam Cotten
Chairman
House Rules Committee
Room 208 - Capitol Building
Juneau, Alaska 99811

Dear Mr. Cotten:

Re: CS for House Bill No. 454

CS for House Bill No. 454, an Act relating to the regulation of pricing of alcoholic beverages, was referred in the House on May 2, 1980 by the House Judiciary Committee to the House Rules Committee.

For the consideration of the House Rules Committee, I am enclosing a copy of a Fiscal Note prepared by Patrick Sharrock, Director, Alcoholic Beverage Control Board, Department of Revenue, Anchorage concerning the proposed legislation.

Sincerely,

R. D. Stevenson
Special Assistant

cc: The Honorable Charles Parr
Chairman
House Judiciary Committee

Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Patrick Sharrock, Director
Alcoholic Beverage Control Board
Department of Revenue

04-02LH

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CS HB#454
Title Pricing of alcoholic beverages
Requested by Representative Hayes, et al Date May 2, 1980

II. FISCAL DETAIL
Agency Affected Department of Revenue
Program Category Affected Consumer Protection
BRU, Program, or Subprogram(s) Affected Alcoholic Beverage Control Board
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)
EXPENDITURES (Thousands of Dollars)

		FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100	PERSONAL SERVICES		20.0				
200	TRAVEL		.5				
300	CONTRACTUAL		5.1				
400	COMMODITIES		.4				
500	EQUIPMENT		1.0				
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	-0-	27.0	27.8	29.7	31.8	34.0

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	27.0	27.8	29.7	31.8	34.0
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

ASSUMPTIONS:

1. Monthly reports are required from reporting parties.
2. Information reported is public information.
3. 7% inflation rate for fiscal years following FY 81 less equipment costs.
4. Additional clerical position may be required to administer the reporting program. (Form 13 is attached)

IV. DATE May 9, 1980 PREPARED BY Patrick L. Sharrock
AGENCY Alcoholic Beverage Control Board
PHONE 277-8638

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/79)

	POSITION TITLE				RANGE/STEP	BARG. UNIT	LOCATION		APPROV.	DISAPP.
1	Documents Processing Clerk II				8A	G	Anchorage	GOV		
2	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP No.	PCN No.	PRIORITY		FORM 12 PAGE/LINE	LEG		

	TYPE OF EXPENDITURE	1	2	AMOUNT 3
4	PERSONAL SERVICES: SALARY $1277/mo		$15,324	
5	BENEFITS	)		
6	FICA	31%)	4,750	
7	HEALTH INS.	)		
8	TOTAL PERSONAL SERVICES			$20,074
9	TRAVEL			500
10	CONTRACTUAL			5,050
11	COMMODITIES			400
12	EQUIPMENT			1,000
13	OTHER			
14	TOTAL COST			$27,024

	CODE	FUNDING SOURCE	
15		FED RCPTS.	
16		GF MATCH.	
17		GEN. FUND	$27,024
18		I-A RCPTS.	
19		PGM RCPTS	
20		OTHER	
21	CONTINUATION		
22	ADDITION		

FOR B&M USE ONLY

4A KEY NUMBER _____ COLUMN NO. _____

JUSTIFICATION: Attachment to: CS
Fiscal Note HB#454, relating to pricing of alcoholic beverages.

AGENCY Department of Revenue PROGRAM AREA Consumer Protection

BRU ABC Board

COMPONENT _____

13 REQUEST FOR NEW POSITION.

Page 1 of 1

REVISED DATE _____

FY 81

Introduced: 4/11/79
Referred: Judiciary

BY HAYES,BETTISWORTH,FREEMAN,
MONTGOMERY AND MUNSON

IN THE HOUSE

HOUSE BILL NO. 454

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the regulation of pricing of alcoholic beverages."

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

* Section 1. AS 04.15 is amended by adding new sections to read:

Sec. 04.15.120. FILING OF SCHEDULES OF PRICES REQUIRED. (a) A distiller or related person may not sell spiritous liquor to a holder of a general wholesale license unless the distiller or related person has filed with the Department of Revenue a schedule listing the information required under (b) of this section and an affidavit supporting that schedule as required by AS 04.15.130(b).

(b) The schedule required to be filed under (a) of this section shall include the following information:

(1) the brand name of each spiritous liquor sold;

(2) the capacity of each package of spiritous liquor sold;

(3) the nature of the contents of each package of spiritous liquor sold;

(4) the age and alcoholic content by volume of the contents of each package of spiritous liquor sold;

(5) the number of bottles of spiritous liquor contained in each case;

(6) the bottle and case price of spiritous liquor to wholesalers; and

(7) the net bottle and case price paid to a distiller or related person for the spiritous liquor.

(c) The information on prices in the schedule required to be filed under (a) of this section shall be separately stated for each item of information required and may not be combined with another item of information, or stated in terms of a discount for quantity or for time of payment.

(d) The schedule required under (a) of this section shall be in writing, verified, and filed in the form and according to the deadlines required by the commissioner of revenue.

Sec. 04.15.130. PARITY WITH PRICES IMPOSED ELSEWHERE REQUIRED. (a) A price may not be filed under AS 04.15.120 for a bottle or a case of a brand of spiritous liquor which is higher than the lowest price at which the bottle or case of spiritous liquor was sold by the distiller or related person to a wholesaler in another state, the District of Columbia, or to a state which owns and operates retail liquor stores, at any time during the calendar month immediately preceding the month in which the schedule is filed.

(b) A distiller or related person must make an affidavit affirming that the schedule of prices filed by him under AS 04.15.120 complies with (a) of this section.

(c) In determining the lowest price for which a bottle or case of spiritous liquor was sold to a wholesaler in another state, in the District of Columbia, or to a state which owns and operates retail liquor stores, the commissioner of revenue shall make appropriate reductions (1) to reflect discounts in excess of those to be in effect under the schedule filed under AS 04.15.120, and (2) for rebates, free goods, allowances and other inducements offered or given to a wholesaler, state, or retailer purchasing the bottles or cases in the other state or the District of Columbia. However, nothing in this section prevents differences in price which result from differences in state taxes and

fees, or from the actual cost of delivery.

(d) If the affidavit required under AS 04.15.130(b) is not filed with respect to an item of spiritous liquor within the time prescribed by the commissioner of revenue, the schedule for which the affidavit is support is invalid with respect to that item of spiritous liquor, and the item may not be sold to or purchased by a wholesaler during the period covered by the schedule.

(e) As used in this section

(1) "state taxes and fees" means the excise taxes imposed or the fees required by a state or by the District of Columbia upon, or based upon, a gallon of spiritous liquor; and

(2) "gallon" means 231 cubic ounces.

Sec. 04.15.140. PRICING IN ACCORDANCE WITH SCHEDULES REQUIRED. A distiller or related person may not sell spiritous liquor to a wholesaler at a price or discount other than that stated in a schedule filed under AS 04.15.120, unless the commissioner of revenue consents in writing upon a showing of good cause.

Sec. 04.15.150. PENALTY FOR VIOLATION. The board may suspend the license of a ~~licensee~~ who knowingly makes a false statement in an affidavit filed in accordance with AS 04.15.130. The suspension may be for a period not to exceed five days for the first offense and not to exceed thirty days for each subsequent offense.

Sec. 04.15.160. DEFINITIONS. As used in AS 04.15.120 - 04.15.160:

(1) "related person" means a person

(A) engaged in a business of which a distiller has an interest, direct or indirect, by stock or other security ownership, as lendor or lienor, or by interlocking directors or officers; or

(B) engaged in the exclusive, principal or substantial business of selling spiritous liquor purchased from a distiller; or

(C) who has an exclusive franchise or contract to sell a brand or brands of spiritous liquor;

(2) "spiritous liquor" means intoxicating liquor, except for wine, ale, porter, beer or malt liquor or malt beverages and all other vinous, malt, and other fermented liquors intended for human consumption and containing more than one per cent alcohol by volume.

* Sec. 2. AS 04.15.100(a) is amended to read:

Sec. 04.15.100. PENALTIES FOR VIOLATION OF TITLE OR MUNICIPAL ORDINANCE. (a) A person who violates any provision of this title other than AS 04.15.080 and AS 04.15.120 - 04.15.160 is guilty of a misdemeanor, and upon conviction is punishable by imprisonment of not more than one year, or by a fine of not more than $500. Each violation is a separate offense.

* Sec. 3. AS 04.20.010 is amended to read:

Sec. 04.20.010. INTOXICATING LIQUOR DEFINED. As used in this title,

(1) "intoxicating liquor" includes whiskey, brandy, rum, gin, wine, ale, porter, beer and all other spirituous, vinous, malt and other fermented or distilled liquors intended for human consumption and containing more than one per cent alcohol by volume;

(2) "board" means the Alcoholic Beverage Control Board.

(2) commissioner means the commissioner of Revenue

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CS for House Bill No. 454
Title Relating to the regulation of pricing of alcoholic beverages
Requested by House Judiciary Committee Date May 12, 1980

II. FISCAL DETAIL
Agency Affected Department of Revenue
Program Category Affected Consumer Protection
BRU, Program, or Subprogram(s) Affected Alcoholic Beverage Control Board
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200 TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400 COMMODITIES	-0-	-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS, ETC.	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-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 (Specify Fund Source)	-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-

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

IV. DATE May 12, 1980 PREPARED BY Rep. Charles H. Parr, Chairman
AGENCY House Judiciary Committee
PHONE 465-3718

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/79)

Alaska State Legislature

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

TO: Legislative Affairs Agency
FROM: Margaret W. Berck, Staff
DATE: April 25, 1980

Please provide the Committee with a CS in final version form for HB 454 that incorporates the following changes:

1. Page 3, lines 18-22. Change to read:

Sec. 04.15.150 PENALTY FOR VIOLATION. If the affidavit filed in accordance with AS 04.15.130(b) contains a false statement knowingly made by a distiller or related person, the Commissioner shall prohibit the sale to or purchase by a wholesaler of any item of spiritous liquor from such distiller or related person.

2. Page 4, line 16-18. Delete all of section #3..

§4-233 Affirmation; filing; violation; penalty.

A. There shall be filed in connection with, and when filed shall be deemed part of, the schedule filed for a brand of spirituous liquor, an affirmation duly verified by the supplier that the bottle and case price of spirituous liquor to wholesalers set forth in the schedule is no higher than the lowest price at which such item of liquor was sold by the supplier or any related person to any wholesaler anywhere in any other state of the United States or in the District of Columbia, or to any state or state agency which owns and operates retail liquor stores. As used in this section "related person" means any person:

1. In the business of which the supplier has an intereste direct or indirect, by stock or other security ownership, as lendor or lienor, or by interlocking directors or officers;
2. In the exclusive, principal or substantial business of selling a brand or brands of spirituous liquor purchased from the supplier; or
3. Who has an exclusive franchise or contract to sell the brand or brands.

B. In the event an affirmation with respect to any item of spirituous liquor is not filed within the prescribed time, any schedule for which the affirmation is required shall be deemed invalid with respect to that item of spirituous liquor, and no such item may be sold to or purchased by any wholesaler during the period covered by any such schedule.

C. In determining the lowest price for which any item of spirituous liquor was sold in any other state or in the District of Columbia, or to any state or state agency which owns or operates retail liquor stores, appropriate reductions shall be made to reflect all discounts in excess of those to be in effect under such schedule, and all rebates, free goods, allowances and other inducements of any kind whatsoever offered or given to any such wholesaler, state or state agency or retailer, as the case may be, purchasing such item in the other state or in the District of Columbia; provided nothing contined in this article shall prevent differentials in price which make only due allowance for differences in state taxes and fees, and in the actual cost of delivery. As used in this section, "state taxes and fees" means the excise taxes imposed or the rees required by any state or the District of Columbia upon, or based upon, the gallon of liquor, and the term "gallon" means two hundred thirty-one cubic inches.

D. Notwithstanding any other penalty provided in this title, any person who knowingly makes a false statement in any affirmation made and filed pursuant to this article shall be liable for suspension of any license issued by the board for a period not to exceed five days for the first offense and thirty days for each offense thereafter.

E. Upon final judgement that any person has violated any provision of this article, the superintendent may refuse to accept for any period of months not exceeding three calendar months any affirmation required to be filed by such person.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K–STATE CAPITOL
JUNEAU, ALASKA 99811

(907) 465-3600

May 14, 1980

The Honorable Charles H. Parr
Chairman, House Judiciary
Committee
Eleventh Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: SB 548
Our file J-66-628-80

Dear Chairman Parr:

Attached is a proposed House Judiciary Committee Substitute for Senate Bill No. 548, "an Act relating to the processing of permits by state agencies; and providing for an effective date." It is the result of several days of negotiation between representatives of industries most affected by state permitting procedures and the administration. The proposed committee substitute is a compromise which everyone finds acceptable although not ideal.

Section 1 of the proposed committee substitute contains certain legislative findings demonstrating the need for such a bill. Basically, the findings indicate that the procedural process which must be followed is too complicated and lengthy, and that orderly development of resources in the state is being delayed unnecessarily as a result.

The remainder of the bill is directed toward solving the procedural problems. In that sense, the bill is not intended to be a substitute for or to impliedly repeal the substantive provisions of law which currently govern permits; its thrust is to reduce the procedural delay in the permitting process as it currently exists, and to create a vehicle for reviewing and suggesting changes to the state's overall approach to permitting.

Section 2 would add a new article, Permit Processing, to AS 44.62, the Administrative Procedure Act. The new provisions require each state agency with permitting authority to classify its permits into one of three classes depending on the length of time it takes the agency to make a final pre-adjudicatory decision on an application for those permits. These time frames could be waived by agreement between the agency and the applicant, and the head of the permitting agency, upon making a specific finding (subject to judicial review) regarding the complexity of a particular project, could establish a different time period for rendering a final pre-adjudicatory decision. If a final pre-adjudicatory decision is not rendered within the time frame specified, the application would be deemed automatically approved. Such automatic approval, of course, would still be subject to judicial review for substantive compliance with applicable laws governing the permit even though it was granted as a result of agency inaction. Agencies also would be required to adopt uniform deadlines for public notice, public hearing and inter-agency consultation, and would be required to include certain items in any final decision on an application for one of the more substantive permits (Classes II and III).

After substantial discussion and consideration of a variety of judicial review provisions, all parties agreed that it was more appropriate not to create a new, separate judicial review provision. Accordingly, judicial review would be governed by the existing provisions of the Administrative Procedure Act, particularly AS 44.62.560-570, the current Rules of Court, particularly Alaska Rule of Appellate Procedure 45(a)(2), and the various judicial doctrines which have developed under those provisions. See, e.g., Jager v. State, 537 P.2d 1100, 1107 (Alaska 1975). Again, this is an area where this bill would not change existing substantive law.

Section 4 of the proposed committee substitute would create the Permit Reform Commission. Composed of representatives of industry, the Native community, environmental groups, the executive branch, and chaired by the lieutenant governor, it would have two distinct missions. First, it would oversee the classification of permits by agencies under the provisions added to the Administrative Procedure Act. Where the commission disagreed with a

classification made by an agency, the agency would be required to submit to the resource committees of both houses of the Twelfth Alaska State Legislature, First Session, a detailed explanation of its reasons for deviating from the commission's recommendation. The commission's second task would be to recommend changes in the Administrative Procedure Act to facilitate the permitting process. While addressing the time frame issue in the proposed committee substitute, all parties recognized that there are other problem areas with the permitting process which cannot be solved by merely mandating action within a specified time frame. A comprehensive review of the whole process is needed to recommend substantive changes to streamline the system while retaining the necessary substance; the commission would accomplish this.

We have spoken with Senator Bennett, and he believes the approach set out in the proposed committee substitute is worth trying for a year. We believe it has the potential to benefit all interested parties in that it addresses certain concrete problems -- the timing of agency action -- immediately while also establishing a framework for a comprehensive review of the permitting process to recommend fundamental changes where appropriate.

We hope you will give favorable consideration to calendaring the proposed committee substitute before the House Judiciary Committee at an early date. If we can provide any further information, we will be happy to do so at your convenience.

Yours very truly,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Wilson L. Condon
Wilson L. Condon
Deputy Attorney General

WLC/lm
Attachment

April 25, 1980

M E M O R A N D U M

TO: Rep. Charlie Parr, Chairman

FROM: Margaret W. Berck, Staff Counsel

SUBJECT: CS for HB 454

I have reviewed the United States Supreme Court decision in California Retail Liquor Dealers Association v. Midcal Aluminum, Inc., 48 LW 4328 (March 3, 1980), and do not find that case applicable to HB 454 as Midcal deals with the maintenance of resale prices.

The controlling case regarding HB 454 is Seagram v. Hostetter, 384 US 35 (1966). In that case a New York statute substantially similar to HB 454 was challenged on various constitutional, as well as anti-trust, grounds. In Seagram the United States Supreme Court upheld the New York statute.

The opinions in both Midcal and Seagram are attached hereto for your information.

MWB:vc
Att.

Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M June 5, 1980

TO: Rep. Charlie Parr, Chairman, House Judiciary
Rep. Nels Anderson, Vice-Chairman

FROM: Margaret W. Berck, Counsel

SUBJECT: Whether HB 454, which has now been inserted in the FCCS for SB 239, establishes a monopoly.

I. HB 454 requires distillers to file a schedule of their prices with the Department of Revenue. Furthermore, the bill ensures that the net price a distiller charges a wholesaler doing business in Alaska is no greater than the price the distiller charges a wholesaler doing business in any other state. Nothing in the bill prevents the distiller from selling to the Alaskan wholesaler at a price lower than the lowest price the distiller charges a wholesaler in another state.

II. This type of legislation clearly does not establish a monopoly. This question was resolved in Seagram v. Hostetter, 384 US 35 (1966). There the United States Supreme Court held that a New York statute, almost identical to HB 454, did not violate federal antitrust laws -- specifically the Sherman Act and the Clayton Act. The Court concluded that the New York statute imposed no irrestible economic pressure on the distillers to violate the Sherman Act in order to comply with the requirements of the statute. On the contrary, the Court pointed out that the statute appeared firmly anchored to the assumption that the Sherman Act would deter any attempts by the distillers to preserve their New York price levels by conspiring to raise the prices at which liquor is sold elsewhere in the country. Nothing in the Twenty-first Amendment, of course, would prevent enforcement of the Sherman Act against such a conspiracy.

MWB:vc

cc: Rep. Dick Eliason

HOUSE BILL 454 ENCOMPASSES A LAW WHICH EXISTS IN 23 STATES, WITH 17 OTHER MONOPOLY STATES COVERED BY THE "DES MOINES WARRANTY" PROTECTING CONSUMERS IN THOSE STATES.

HB 454 REQUIRES THAT ANY LIQUOR DISTILLER WISHING TO DO BUSINESS IN THE STATE FILE A SCHEDULE OF PRICES WITH THE DEPARTMENT OF REVENUE, AND CERTIFY THAT THOSE PRICES ARE NOT HIGHER (EXCEPT AS AFFECTED BY TAXES AND TRANSPORTATION) THAN THOSE CHARGED TO WHOLESALERS IN ANY OTHER STATE, OR THE DISTRICT OF COLUMBIA.

THE IDEA THAT SUCH A LAW WOULD CREATE A MONOPOLY IS ENTIRELY CONTRARY TO THE FACTS. IT WOULD PERMIT THE DISTILLER WILLING TO OFFER THE LOWEST PRICES TO COMPETE FOR BUSINESS ALONG WITH THOSE WHICH ALREADY HOLD MONOPOLIES. THE ONLY REMAINING TYPE OF MONOPOLY, WHICH THE LAW WOULD NOT AFFECT IN ANY FASHION, WOULD BE WITH RESPECT TO BRAND NAMES, WHICH ARE THE LEGITIMATE PROPERTY OF DISTILLERS.

6/5/80

Charlie -

This memo is from Joe Hoyes' office regarding HB 454 which we put in 515239.

Nels

Alaska State Legislature

House

JUNEAU ALASKA

TO: Will Condon
FROM: Peggy Berck, Counsel to House Judiciary
DATE: June 5, 1980

I understand from Dick Eliason that you were taking a look at HB 454 that was inserted in the FCC for SB 239.

Attached is a memo which I distributed this morning that may be of assistance to you. You may wish to also note that I took a look at California Retail Liquor Dealors Assn. v. Midcal Aluminum, 48 US Law Week 4238 (March 3, 1980), but did not find that case applicable to HB 454.

Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

June 5, 1980

TO: Rep. Charlie Parr, Chairman, House Judiciary
Rep. Nels Anderson, Vice-Chairman

FROM: Margaret W. Berck, Counsel

SUBJECT: Whether HB 454, which has now been inserted in the FCCS for SB 239, establishes a monopoly.

I. HB 454 requires distillers to file a schedule of their prices with the Department of Revenue. Furthermore, the bill ensures that the net price a distiller charges a wholesaler doing business in Alaska is no greater than the price the distiller charges a wholesaler doing business in any other state. Nothing in the bill prevents the distiller from selling to the Alaskan wholesaler at a price lower than the lowest price the distiller charges a wholesaler in another state.

II. This type of legislation clearly does not establish a monopoly. This question was resolved in Seagram v. Hostetter, 384 US 35 (1966). There the United States Supreme Court held that a New York statute, almost identical to HB 454, did not violate federal antitrust laws -- specifically the Sherman Act and the Clayton Act. The Court concluded that the New York statute imposed no irrestible economic pressure on the distillers to violate the Sherman Act in order to comply with the requirements of the statute. On the contrary, the Court pointed out that the statute appeared firmly anchored to the assumption that the Sherman Act would deter any attempts by the distillers to preserve their New York price levels by conspiring to raise the prices at which liquor is sold elsewhere in the country. Nothing in the Twenty-first Amendment, of course, would prevent enforcement of the Sherman Act against such a conspiracy.

MWB:vc

cc: Rep. Dick Eliason

The United States LAW WEEK

Supreme Court Opinions

March 4, 1980 • THE BUREAU OF NATIONAL AFFAIRS, INC., WASHINGTON, D.C. • Volume 48, No. 34

OPINIONS ANNOUNCED MARCH 3, 1980

The Supreme Court decided:

CRIMINAL LAW AND PROCEDURE—False Statements

Neither federal immunity statute, 18 U.S.C. §6002, nor Fifth Amendment's privilege against compelled self-incrimination prevents prosecution, at trial for giving false testimony before grand jury while under immunity grant, from introducing into evidence defendant's truthful immunized statements as well as those statements that constitute "corpus delicti" or "core" of false statement offense. (U.S. v. Apfelbaum, No. 78-972) ..... page 4217

FREEDOM OF INFORMATION—Agency Records

Freedom of Information Act does not require State Department to retrieve transcripts and notes that were made of former secretary of state's telephone conversations but that had been removed from State Department custody prior to filing of FOIA request for disclosure, since agency possession or control of material is prerequisite to FOIA disclosure, and since agency's failure to seek return of material, even if wrongfully removed from Government custody, is not "withholding" of records under FOIA; notes of former secretary of state's telephone conversations, made while he was national security advisor to President, are not "agency records" subject to FOIA; neither Federal Records Act, which establishes records management program for federal agencies, nor Federal Records Disposal Act, which provides exclusive means for records disposal, confers right of action on private parties. (Kissinger v. Reporters Committee for Freedom of the Press, Nos. 78-1088 & 78-1217) page 4223

Data that was generated by privately controlled organization receiving federal grant funds, but that was never obtained by funding agency, are not "agency records" subject to mandatory disclosure under Freedom of Information Act. (Forsham v. Harris, No. 78-1118) ..... page 4232

INTOXICATING LIQUORS—State Regulation

California wine pricing statute, which requires either wine producers or wholesalers to file schedule of resale prices and prohibits sale of wine below such prices, merely authorizes enforcement of prices established by private parties and, therefore, is not immune from Sherman Act liability under "state action" doctrine of Parker v. Brown, 317 U.S. 341 (1943); Twenty-First Amendment's reservation to states of power to regulate "transportation or importation" of liquor does not bar application of Sherman Act to California's wine resale price maintenance system. (California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc., No. 79-97) ..... page 4238

SHIPS AND SHIPPING—Longshoremen

Stevedore's lien on injured longshoreman's recovery from negligent shipowner, for amount of compensation payment paid to longshoreman under Longshoremen's and Harbor Workers' Compensation Act, need not be reduced by proportionate share of longshoreman's expenses in obtaining recovery from shipowner. (Bloomer v. Liberty Mutual Insurance Co., No. 78-1418) ..... page 4211

Full Text of Opinions

No. 78-1418

William E. Bloomer, Jr., Petitioner, *v.* Liberty Mutual Insurance Company, etc.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[March 3, 1980]

Syllabus

Held: A stevedore's lien for the amount of its compensation payment to an injured longshoreman under the Longshoremen's and Harbor Workers' Compensation Act against the longshoreman's recovery in a negligence action against the shipowner may not be reduced by an amount representing the stevedore's proportionate share of the longshoreman's legal expenses in obtaining recovery from the shipowner. The language, structure, and history of the Act support this conclusion, rather than the application of the equitable "common fund" doctrine that when a third person benefits from litigation instituted by another, that person may be required to bear a portion of the expenses of suit.

586 F. 2d 908, affirmed.

MARSHALL, J., delivered the opinion of the Court, in which BURGER, C. J., and BRENNAN, STEWART, WHITE, POWELL, REHNQUIST, and STEVENS, JJ., joined. BLACKMUN, J., filed a dissenting opinion.

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Under the Longshoremen's and Harbor Workers' Compensation Act, 33 U. S. C. § 901 *et seq.* (1976), a longshoreman is entitled to receive compensation payments from his stevedore for disability or death resulting from an injury occurring on the navigable waters of the United States. If the longshoreman believes that his injuries warrant a recovery in excess of the compensation provided under the Act, he may also bring a negligence action against the owner of the vessel on which the injury occurred. The longshoreman's recovery from the shipowner is subject to the stevedore's lien in the amount of the compensation payment. The question for decision is

NOTICE: These opinions are subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

NOTE: Where it is deemed desirable, a syllabus (headnote) will be released * * * at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337.

0148-8[illegible]/80/$00.50

3/10/80

Forsham v. *Califano*, *supra*. Finally, as the Court also acknowledges, there is no question that the Government has full access to the data under the terms of the grant and under federal regulations. Indeed, if it so chose, the Government could obtain permanent custody of the data merely by requesting it from UGDP. Thus, the data remain with the grantee only at the pleasure of the Government. In my view the record abundantly establishes that these data were developed with public funds and with Government assistance and, in large part, for governmental purposes. Therefore, I would hold that they are agency records, and I respectfully dissent.

III

I emphasize that the standards I suggest do not mean opening to the public the files of all grantees or of all who submit information to the Government. In many cases grantees' records should not be treated as agency records. But the Court's approach must inevitably undermine FOIA's great purpose of exposing Government to the people. It is unavoidable that as the work of federal agencies mushrooms both in quantity and complexity the agencies must look to outside organizations to assist in governmental tasks. Just as the explosion of federal agencies, which are not directly responsible to the electorate, worked to hide the workings of the Federal Government from voters before enactment of FOIA, S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965), the understandable tendency of agencies to rely on nongovernmental grantees to perform myriad projects distances the electorate from important information by one more step. If the records of such organizations, when drawn directly into the regulatory process, are immune from public inspection, then government by secrecy must surely return.

MICHAEL R. SONNENREICH, Washington, D.C. (NEIL L. CHAYET, HARVEY W. FREISHTAT, MICHAEL X. MORRELL, DANIEL F. SHAW, and CHAYET and SONNENREICH, with him on the brief) for petitioner; KENNETH S. GELLER, Office of Solicitor General (WADE H. McCREE, JR., Solicitor General, ALICE DANIEL, Acting Assistant Attorney General, WILLIAM ALSUP, Assistant to the Solicitor General, RICHARD M. COOPER, MICHAEL P. PESKOE, and JESS H. STRIBLING, JR., with him on the brief) for respondent.

No. 79-97

California Retail Liquor Dealers Association, Petitioner, v. Midcal Aluminum, Inc., et al. | On Writ of Certiorari to the Court of Appeal of California for the Third Appellate District.

[March 3, 1980]

Syllabus

A California statute requires all wine producers and wholesalers to file with the State fair trade contracts or price schedules. If a producer has not set prices through a fair trade contract, wholesalers must post a resale price schedule and are prohibited from selling wine to a retailer at other than the price set in a price schedule or fair trade contract. A wholesaler selling below the established prices faces fines or license suspension or revocation. After being charged with selling wine for less than the prices set by price schedules and also for selling wines for which no fair trade contract or schedule had been filed, respondent wholesaler filed suit in the California Court of Appeal asking for an injunction against the State's wine-pricing scheme. The Court of Appeal ruled that the scheme restrains trade in violation of the Sherman Act, and granted injunctive relief, rejecting claims that the scheme was immune from liability under that Act under the "state action" doctrine of *Parker* v. *Brown*, 317 U. S. 341, and was also protected by § 2 of the Twenty-first Amendment, which prohibits the transportation or importation of intoxicating liquors into any State for delivery or use therein in violation of the State's laws.

Held:

1. California's wine-pricing system constitutes resale price maintenance in violation of the Sherman Act, since the wine producer holds the power to prevent price competition by dictating the prices charged by wholesalers. And the State's involvement in the system is insufficient to establish antitrust immunity under *Parker* v. *Brown*, *supra*. While the system satisfies the first requirement for such immunity that the challenged restraint be "one clearly articulated and affirmatively expressed as state policy," it does not meet the other requirement that the policy be "actively supervised" by the State itself. Under the system the State simply authorizes price-setting and enforces the prices established by private parties, and it does not establish prices, review the reasonableness of price schedules, regulate the terms of fair trade contracts, monitor market conditions, or engage in any "pointed reexamination" of the program. The national policy in favor of competition cannot be thwarted by casting such a gauzy cloak of state involvement over what is essentially a private price-fixing arrangement.

2. The Twenty-first Amendment does not bar application of the Sherman Act to California's wine-pricing system.

(a) Although under that Amendment States retain substantial discretion to establish liquor regulations over and above those governing the importation or sale of liquor and the structure of the liquor distribution system, those controls may be subject to the federal commerce power in appropriate situations.

(b) There is no basis for disagreeing with the view of the California courts that the asserted state interests behind the resale price maintenance system of promoting temperance and protecting small retailers are less substantial than the national policy in favor of competition. Such view is reasonable and is supported by the evidence, there being nothing to indicate that the wine-pricing system helps sustain small retailers or inhibits the consumption of alcohol by Californians.

90 Cal. App. 3d 979, 153 Cal. Rptr. 757, affirmed.

POWELL, J., delivered the opinion of the Court, in which all other Members joined, except BRENNAN, J., who took no part in the consideration or decision of the case.

MR. JUSTICE POWELL delivered the opinion of the Court.

In a state-court action, respondent Midcal Aluminum, Inc., a wine distributor, presented a successful antitrust challenge to California's resale price maintenance and price posting statutes for the wholesale wine trade. The issue in this case is whether those state laws are shielded from the Sherman Act by either the "state action" doctrine of *Parker* v. *Brown*, 317 U. S. 341 (1943), or § 2 of the Twenty-first Amendment.

I

Under § 24866 (b) of the California Business and Professions Code, all wine producers, wholesalers, and rectifiers must file with the State fair trade contracts or price schedules.[1] If a wine producer has not set prices through a fair trade contract, wholesalers must post a resale price schedule for that producer's brands. *Id.*, § 24866 (a). No state-licensed wine merchant may sell wine to a retailer at other than the price set "either in an effective price schedule or in an effective fair trade contract. . . ." *Id.*, § 24862 (West Supp. 1979).

The State is divided into three trading areas for administration of the wine pricing program. A single fair trade contract or schedule for each brand sets the terms for all wholesale transactions in that brand within a given trading area. *Id.*, §§ 24862, 24864–24865 (West Supp. 1979). Similiarly, state regulations provide that the wine prices posted by a single wholesaler within a trading area bind all wholesalers in that area. *Midcal Aluminum, Inc.* v. *Rice*, 90 Cal. App. 3d 979, 983–984, 153 Cal. Rptr. 757, 762 (1979). A licensee

[1] The statute provides:

"Each wine grower, wholesaler licensed to sell wine, wine rectifier, and rectifier shall:

"(a) Post a schedule of selling prices of wine to retailers or consumers for which his resale price is not governed by a fair trade contract made by the person who owns or controls the brand.

"(b) Make and file a fair trade contract and file a schedule of resale prices, if he owns or controls a brand of wine resold to retailers or consumers." Cal. Bus. & Prof. Code § 24866 (West 1964).

seling below the established prices faces fines, license suspension, or outright license revocation. Cal. Bus. & Prof. Code § 24880.[2] The State has no direct control over wine prices, and it does not review the reasonableness of the prices set by wine dealers.

Midcal Aluminum, Inc. is a wholesale distributor of wine in Southern California. In July 1978, the Department of Alcoholic Beverage Control charged Midcal with selling 27 cases of wine for less than the prices set by the effective price schedule of the E & J Gallo Winery. The Department also alleged that Midcal sold wines for which no fair trade contract or schedule had been filed. Midcal stipulated that the allegations were true and that the State could fine it or suspend its license for those transgressions. App. 19–20. Midcal then filed a writ of mandate in the California Court of Appeal for the Third Appellate District asking for an injunction against the State's wine pricing system.

The Court of Appeal ruled that the wine pricing scheme restrains trade in violation of the Sherman Act, 15 U. S. C. § 1 *et seq.* The court relied entirely on the reasoning in *Rice* v. *Alcoholic Beverage Control Appeals Bd.*, 21 Cal. 3d 431, 579 P. 2d 476 (1978), where the California Supreme Court struck down parallel restrictions on the sale of distilled liquors. In that case, the court held that because the State played only a passive part in liquor pricing, there was no *Parker* v. *Brown* immunity for the program.

> "In the price maintenance program before us, the state plays no role whatever in setting the retail prices. The prices are established by the producers according to their own economic interests, without regard to any actual or potential anticompetitive effect; the state's role is restricted to enforcing the prices specified by the producers. There is no control, or 'pointed re-examination,' by the state to insure that the policies of the Sherman Act are not 'unnecessarily subordinated' to state policy." 21 Cal. 3d, at 445, 579 P. 2d, at 486.

Rice also rejected the claim that California's liquor pricing policies were protected by § 2 of the Twenty-first Amendment, which insulates state regulation of intoxicating liquors from many federal restrictions. The court determined that the national policy in favor of competition should prevail over the state interests in liquor price maintenance—the promotion of temperance and the preservation of small retail establishments. The court emphasized that the California system not only permitted vertical control of prices by producers, but also frequently resulted in horizontal price fixing. Under the program, many comparable brands of liquor were marketed at identical prices.[3] Referring to congressional and state legislative studies, the court observed that resale price maintenance has little positive impact on either temperance or small retail stores. See pp. 14–15, *infra*.

In the instant case, the State Court of Appeal found the analysis in *Rice* squarely controlling. 90 Cal. App., at 984, 153 Cal. Rptr., at 760. The court ordered the Department of Alcoholic Beverage Control not to enforce the resale price maintenance and price posting statutes for the wine trade. The Department, which in *Rice* had not sought certiorari from this Court, did not appeal the ruling in this case.[4] An appeal was brought by the California Retail Liquor Dealers Association, an intervenor.[5] The California Supreme Court declined to hear the case, and the Dealers Association sought certiorari from this Court. We granted the writ, — U. S. — (1979), and now affirm the decision of the state court.

II

The threshold question is whether California's plan for wine pricing violates the Sherman Act. This Court has ruled consistently that resale price maintenance illegally restrains trade. In *Dr. Miles Medical Co.* v. *Park & Sons Co.*, 220 U. S. 373, 407 (1911), the Court observed that such arrangements are "designed to maintain prices . . . , and to prevent competition among those who trade in [competing goods]." See *Albrecht* v. *The Herald Co.*, 390 U. S. 145 (1968); *United States* v. *Parke, Davis & Co.*, 362 U. S. 29 (1960); *United States* v. *Schrader's Son, Inc.*, 252 U. S. 85 (1920). For many years, however, the Miller-Tydings Act of 1937 permitted the States to authorize resale price maintenance. 50 Stat. 693. The goal of that statute was to allow the States to protect small retail establishments that Congress thought might otherwise be driven from the marketplace by large-volume discounters. But in 1975 that congressional permission was rescinded. The Consumer Goods Pricing Act of 1975, 89 Stat. 801, repealed the Miller-Tydings Act and related legislation.[6] Consequently, the Sherman Act's ban on resale price maintenance now applies to fair trade contracts unless an industry or program enjoys a special antitrust immunity.

California's system for wine pricing plainly constitutes resale price maintenance in violation of the Sherman Act. *Schwegmann Bros.* v. *Calvert Corp.*, 341 U. S. 384 (1951); see *Albrecht* v. *The Herald Co.*, *supra*; *Kiefer-Stewart Co.* v. *Seagram & Sons*, 340 U. S. 211 (1951); *Dr. Miles Medical Co.* v. *Park & Sons Co.*, *supra*. The wine producer holds the power to prevent price competition by dictating the prices charged by wholesalers. As Mr. Justice Hughes pointed out in *Dr. Miles*, such vertical control destroys horizontal competition as effectively as if wholesalers "formed a combination and endeavored to establish the same restrictions . . . by agreement with each other." 220 U. S., at 408.[7] Moreover, there can be no claim that the California program is simply intrastate regulation beyond the reach of the Sherman Act. See *Schwegmann Bros.* v. *Calvert Corp.*, *supra*; *Burke* v. *Ford*, 389 U. S. 320 (1967) (*per curiam*).

Thus, we must consider whether the State's involvement in the price-setting program is sufficient to establish antitrust immunity under *Parker* v. *Brown*, 317 U. S. 341 (1943). That

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[2] Licensees that sell wine below the prices specified in fair trade contracts or schedules also may be subject to private damage suits for unfair competition. *Id.*, § 24752.

[3] The court cited record evidence that in July 1976, five leading brands of gin each sold in California for $4.89 for a fifth of a gallon, and that five leading brands of scotch whiskey sold for either $8.39 or $8.40 a fifth. *Rice* v. *Alcoholic Beverage Control Appeals Bd.*, 21 Cal. 3d 431, 454, and nn. 14, 16, 579 P. 2d [illegible], and nn. 14, 16 (1978).

[4] The State also did not appeal the decision in *Capiceau Corp.* v. *Alcoholic Beverage Control Appeals Bd.*, 87 Cal. App. 3d 906, 151 Cal. Rptr. 402 (1979), which used the analysis in *Rice* to invalidate California's resale price maintenance scheme for retail wine sales to consumers.

[5] The California Retail Liquor Dealers Association, a trade association of independent retail liquor dealers in California, claims over 3,000 members.

[6] The congressional reports accompanying the Consumer Goods Pricing Act of 1975, 89 Stat. 801, noted that repeal of fair trade authority would not alter whatever power the States hold under the Twenty-first Amendment to control liquor prices. S. Rep. No. 94–466, 94th Cong., 1st Sess., 2 (1975); H. R. Rep. No. 94–341, 94th Cong., 1st Sess., 3, n. 2 (1975). We consider the effect of the Twenty-first Amendment on this case in Part III, *infra*.

[7] In *Rice*, the California Supreme Court found direct evidence that resale price maintenance resulted in horizontal price fixing. See p. 3, *supra*, and n. 3. Although the Court of Appeal made no such specific finding in this case, the court noted that the wine pricing system "cannot be upheld for the same reasons the retail price maintenance provisions were declared invalid in *Rice*." *Midcal Aluminum, Inc.* v. *Rice*, 90 Cal. App. 3d 979, 983, 153 Cal. Rptr. 757, 760 (1979).

immunity for state regulatory programs is grounded in our federal structure. "In a dual system of government in which, under the Constitution, the states are sovereign, save only as Congress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress." *Id.*, at 351. In *Parker* v. *Brown*, this Court found in the Sherman Act no purpose to nullify state powers. Because the Act is directed against "individual and not state action," the Court concluded that state regulatory programs could not violate it. *Id.*, at 352.

Under the program challenged in *Parker*, the state Agricultural Prorate Advisory Commission authorized the organization of local cooperatives to develop marketing policies for the raisin crop. The Court emphasized that the Advisory Commission, which was appointed by the governor, had to approve cooperative policies following public hearings: "It is the state which has created the machinery for establishing the prorate program. . . . [I]t is the state, acting through the Commission, which adopts the program and enforces it. . . ." *Id.*, at 352. In view of this extensive official oversight, the Court wrote, the Sherman Act did not apply. Without such oversight, the result could have been different. The Court expressly noted, "a state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful. . . ." *Id.*, at 351.

Several recent decisions have applied *Parker*'s analysis. In *Goldfarb* v. *Virginia State Bar*, 421 U. S. 773 (1975), the Court concluded that fee schedules enforced by a state bar association were not mandated by ethical standards established by the State Supreme Court. The fee schedules therefore were not immune from antitrust attack. "It is not enough that . . . anticompetitive conduct is 'prompted' by state action; rather, anticompetitive conduct must be compelled by direction of the State acting as sovereign." *Id.*, at 791. Similarly, in *Cantor* v. *Detroit Edison Co.*, 428 U. S. 579 (1976), a majority of the Court found that no antitrust immunity was conferred when a state agency passively accepted a public utility's tariff. In contrast, Arizona rules against lawyer advertising were held immune from Sherman Act challenge because they "reflect[ed] a clear articulation of the State's policy with regard to professional behavior" and were "subject to pointed re-examination by the policymaker—the Arizona Supreme Court—in enforcement proceedings." *Bates* v. *State Bar of Arizona*, 433 U. S. 350, 362 (1977).

Only last Term, this Court found antitrust immunity for a California program requiring state approval of the location of new automobile dealerships. *New Motor Vehicle Bd. of Calif.* v. *Orrin W. Fox Co.*, 439 U. S. 96 (1978). That program provided that the State would hold a hearing if an automobile franchisee protested the establishment or relocation of a competing dealership. *Id.*, at 103. In view of the State's active role, the Court held, the program was not subject to the Sherman Act. The "clearly articulated and affirmatively expressed" goal of the state policy was to "displace unfettered business freedom in the matter of the establishment and relocation of automobile dealerships." *Id.*, at 109.

These decisions establish two standards for antitrust immunity under *Parker* v. *Brown*. First, the challenged restraint must be "one clearly articulated and affirmatively expressed as state policy"; second, the policy must be "actively supervised" by the State itself. *City of Lafayette* v. *Louisiana Power & Light Co.*, 435 U. S. 389, 410 (1978) (opinion of BRENNAN, J.).[8] The California system for wine pricing satisfies the first standard. The legislative policy is forthrightly stated and clear in its purpose to permit resale price maintenance. The program, however, does not meet the second requirement for *Parker* immunity. The State simply authorizes price-setting and enforces the prices established by private parties. The State neither establishes prices nor reviews the reasonableness of the price schedules; nor does it regulate the terms of fair trade contracts. The State does not monitor market conditions or engage in any "pointed reexamination" of the program.[9] The national policy in favor of competition cannot be thwarted by casting such a gauzy cloak of state involvement over what is essentially a private price fixing arrangement. As *Parker* teaches, "a state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful. . . ." 317 U. S., at 351.

III

Petitioner contends that even if California's system of wine pricing is not protected state action, the Twenty-first Amendment bars application of the Sherman Act in this case. Section 1 of that Amendment repealed the Eighteenth Amendment's prohibition on the manufacture, sale or transportation of liquor. The second section reserved to the States certain power to regulate traffic in liquor: "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited." The remaining question before us is whether § 2 permits California to countermand the congressional policy—adopted under the commerce power—in favor of competition.

A

In determining state powers under the Twenty-first Amendment, the Court has focused primarily on the language of the provision rather than the history behind it. *State Board* v. *Young's Market Co.*, 299 U. S. 59, 63-64 (1936).[10] In terms,

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[8] See *Norman's On the Waterfront, Inc.* v. *Wheatley*, 444 F. 2d 1011, 1018 (CA3 1971); *Asheville Tobacco Bd.* v. *FTC*, 263 F. 2d 502, 509-510 (CA4 1959); Note, *Parker* v. *Brown* Revisited: The State Action Doctrine After *Goldfarb*, *Cantor*, and *Bates*, 77 Colum. L. Rev. 898, 916 (1977).

[9] The California program contrasts with the approach of those States that completely control the distribution of liquor within their boundaries. *E. g.*, Va. Code §§ 4-15, 4-28 (Repl. Vol. 1979). Such comprehensive regulation would be immune from the Sherman Act under *Parker* v. *Brown*, 317 U. S. 341 (1943), since the State would "displace unfettered business freedom" with its own power. *New Motor Vehicle Bd.* v. *Orrin W. Fox Co.*, 439 U. S. 96, 109 (1978); see *State Board* v. *Young's Market Co.*, 299 U. S. 59, 63 (1936).

[10] The approach is supported by sound canons of constitutional interpretation and demonstrates a wise reluctance to wade into the complex currents beneath the congressional proposal of the Amendment and its ratification in the state conventions. The Senate sponsor of the Amendment resolution said the purpose of § 2 was "to restore to the States . . . absolute control in effect over interstate commerce affecting intoxicating liquors. . . ." 76 Cong. Rec. 4143 (1933) (remarks of Sen. Blaine). Yet he also made statements supporting Mideal's claim that § 2 was designed only to ensure that "dry" States could not be force by the Federal Government to permit the sale of liquor. See *id.*, at 4140-4141. The sketchy records of the state conventions reflect no consensus on the thrust of § 2, although delegates at several conventions expressed their hope that state regulation of liquor traffic would begin immediately. E. Brown, Ratification of the Twenty-first Amendment to the Constitution 104 (1938) (Wilson, President of the Idaho Convention); *id.*, at 191-192 (Darnall, President of Maryland Convention); *id.*, at 247 (Gaylord, Chairman of Missouri Convention); *id.*, at 469-473 (resolution adopted at Washington Convention calling for state action "to regulate the liquor traffic"). See generally Note, The Effect of the Twenty-first Amendment on State Authority to Control Intoxicating Liquors, 75 Colum. L. Rev. 1578, 1580 (1975); Note, Economic Localism in State Alcoholic Beverage Laws—Experience Under the Twenty-first Amendment, 72 Harv. L. Rev. 1145, 1147 (1959).

the Amendment gives the States control over the "transportation or importation" of liquor into their territories. Of course, such control logically entails considerable regulatory power not strictly limited to importing and transporting alcohol. *Ziffrin, Inc.* v. *Reeves*, 308 U. S. 132, 138 (1939). We should not, however, lose sight of the explicit grant of authority.

This Court's early decisions on the Twenty-first Amendment recognized that each State holds great powers over the importation of liquor from other jurisdictions. *Young's Market, supra*, concerned a license fee for interstate imports of alcohol; another case focused on a law restricting the types of liquor that could be imported from other States. *Mahoney* v. *Joseph Triner Corp.*, 304 U. S. 401 (1938); two others involved "retaliation" statutes barring imports from States that proscribed shipments of liquor from other States. *Finch & Co.* v. *McKittrick*, 305 U. S. 395 (1939); *Indianapolis Brewing Co.* v. *Liquor Control Comm'n*, 305 U. S. 391 (1939). The Court upheld the challenged state authority in each case, largely on the basis of the States' special power over the "importation and transportation" of intoxicating liquors. Yet even when the States had acted under the explicit terms of the Amendment, the Court resisted the contention that § 2 "freed the States from all restrictions upon the police power to be found in other provisions of the Constitution." *Young's Market, supra*, 229 U. S., at 64.

Subsequent decisions have given "wide latitude" to state liquor regulation. *Seagram & Sons* v. *Hostetter*, 384 U. S. 35, 42 (1966), but they also have stressed that important federal interests in liquor matters survived the ratification of the Twenty-first Amendment. The States cannot tax imported liquor in violation of the Export-Import Clause. *Department of Revenue* v. *James Beam Co.*, 377 U. S. 341 (1964). Nor can they insulate the liquor industry from the Fourteenth Amendment's requirements of equal protection, *Craig* v. *Boren*, 429 U. S. 190, 204–209 (1976), and due process, *Wisconsin* v. *Constantineau*, 400 U. S. 433, 436 (1970).

More difficult to define, however, is the extent to which Congress can regulate liquor under its interstate commerce power. Although that power is directly qualified by § 2, the Court has held that the Federal Government retains some Commerce Clause authority over liquor. In *Jameson & Co.* v. *Morgenthau*, 307 U. S. 171 (1939) (*per curiam*), this Court found no violation of the Twenty-first Amendment in a whiskey labeling requirement prescribed by the Federal Alcohol Administration Act, 49 Stat. 977 (1935). And in *Ziffrin, Inc.* v. *Reeves*, *supra*, the Court did not uphold Kentucky's system of licensing liquor haulers until it was satisfied that the state program was reasonable. 308 U. S., at 139.

The contours of Congress' commerce power over liquor were sharpened in *Hostetter* v. *Idlewild Liquor Corp.*, 377 U. S. 324, 331–332 (1964).

> "To draw a conclusion . . . that the Twenty-first Amendment has somehow operated to 'repeal' the Commerce Clause wherever regulation of intoxicating liquors is concerned would, however, be an absurd oversimplification. If the Commerce Clause had been *pro tanto* 'repealed,' then Congress would be left with no regulatory power over interstate or foreign commerce in intoxicating liquor. Such a conclusion would be patently bizarre and is demonstrably incorrect."

The Court added a significant, if elementary, observation: "Both the Twenty-first Amendment and the Commerce Clause are parts of the same Constitution. Like other provisions of the Constitution, each must be considered in the light of the other, and in the context of the issues and interests at stake in any concrete case." *Id.*, at 332. See *Craig* v. *Boren*, 429 U. S. 190, 206 (1976).[11]

This pragmatic effort to harmonize state and federal powers has been evident in several decisions where the Court held liquor companies liable for anticompetitive conduct not mandated by a State. See *Kiefer-Stewart Co.* v. *Seagram & Sons*, 340 U. S. 211 (1951); *United States* v. *Frankfort Distilleries, Inc.*, 324 U. S. 293 (1945). In *Schwegmann Bros.* v. *Calvert Corp.*, 341 U. S. 384 (1951), for example, a liquor manufacturer attempted to force a distributor to comply with Louisiana's resale price maintenance program, a program similar in many respects to the California system at issue here. The Court held that because the Louisiana statute violated the Sherman Act, it could not be enforced against the distributor. Fifteen years later, the Court rejected a Sherman Act challenge to a New York law requiring liquor dealers to attest that their prices were "no higher than the lowest price" charged anywhere in the United States. *Seagram & Sons* v. *Hostetter*, 384 U. S. 35 (1966). The Court concluded that the statute exerted "no irresistible economic pressure on the [dealers] to violate the Sherman Act in order to comply," but it also cautioned that "[n]othing in the Twenty-first Amendment, of course, would prevent the enforcement of the Sherman Act" against an interstate conspiracy to fix liquor prices. *Id.*, at 45–46. See *Burke* v. *Ford*, 389 U. S. 320 (1967) (*per curiam*).

These decisions demonstrate that there is no bright line between federal and state powers over liquor. The Twenty-first Amendment grants the States virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system. Although States retain substantial discretion to establish other liquor regulations, those controls may be subject to the federal commerce power in appropriate situations. The competing state and federal interests can be reconciled only after careful scrutiny of those concerns in a "concrete case." *Hostetter* v. *Idlewild Liquor Corp.*, 377 U. S., at 332.

B

The federal interest in enforcing the national policy in favor of competition is both familiar and substantial.

> "Antitrust laws in general, and the Sherman Act in particular, are the Magna Carta of free enterprise. They are as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms." *United States* v. *Topco Assoc.*, 405 U. S. 596, 610 (1972).

See *Northern Pacific Ry.* v. *United States*, 356 U. S. 1, 4 (1958). Although this federal interest is expressed through a statute rather than a constitutional provision, Congress "exercis[ed] all the power it possessed" under the Commerce Clause when it approved the Sherman Act. *Atlantic Cleaners & Dyers* v. *United States*, 286 U. S. 427, 435 (1932); see *City of Lafayette* v. *Louisiana Power & Light Co.*, 435 U. S., at 398. We must acknowledge the importance of the Act's procompetition policy.

The state interests protected by California's resale price maintenance system were identified by the state courts in this

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[11] In *Nippert* v. *City of Richmond*, 327 U. S. 416 (1946), the Court commented in a footnote:

"[E]ven the commerce in intoxicating liquors, over which the Twenty-first Amendment gives the States the highest degree of control, is not altogether beyond the reach of the federal commerce power, at any rate when the State's regulation squarely conflicts with regulation imposed by Congress. . . ." *Id.*, at 425, n. 15

case, 90 Cal. App. 3d, at 983, 153 Cal. Rptr., at 761 and in *Rice* v. *Alcoholic Beverage Control Appeals Bd.*, 21 Cal. 3d, at 451, 579 P. 2d, at 490.[12] Of course, the findings and conclusions of those courts are not binding on this Court to the extent that they undercut state rights guaranteed by the Twenty-first Amendment. See *Hooven & Allison Co.* v. *Evatt*, 324 U. S. 652, 659 (1945); *Creswill* v. *Knights of Pythias*, 225 U. S. 246, 261 (1912). Nevertheless, this Court accords "respectful consideration and great weight to the views of the state's highest court" on matters of state law, *Indiana ex rel. Anderson* v. *Brand*, 303 U. S. 95, 100 (1938), and we customarily accept the factual findings of state courts in the absence of "exceptional circumstances." *Fry Roofing Co.* v. *Wood*, 344 U. S. 157, 160 (1952).

The California Court of Appeal stated that its review of the State's system of wine pricing was "controlled by the reasoning of the [California] Supreme Court in *Rice* [*supra*]." 90 Cal. App. 3d, at 983, 153 Cal. Rptr., at 761. Therefore, we turn to that opinion's treatment of the state interests in resale price maintenance for distilled liquors.

In *Rice*, the State Supreme Court found two purposes behind liquor resale price maintenance: "to promote temperance and orderly market conditions." 21 Cal. 3d, at 451, 579 P. 2d, at 490.[13] The court found little correlation between resale price maintenance and temperance. It cited a state study showing a 42% increase in per capita liquor consumption in California from 1950 to 1972, while resale price maintenance was in effect. *Id.*, at 457–458, 579 P. 2d, at 494, citing California Dept. of Finance, Alcohol and the State: A Reappraisal of California's Alcohol Control Program, xi. 15 (1974). Such studies, the court wrote, "at the very least raise a doubt regarding the justification for such laws on the ground that they promote temperance." *Ibid.*[14]

The *Rice* opinion identified the primary state interest in orderly market conditions as "protect[ing] small licensees from predatory pricing policies of large retailers." *Id.*, at 456, 579 P. 2d, at 493.[15] In gauging this interest, the court adopted the views of the Appeals Board of the Alcoholic Beverages Control Department, which first ruled on the claim in *Rice*. The state agency "rejected the argument that fair trade laws were necessary to the economic survival of small retailers. . . ." *Ibid.* The agency relied on a congressional study of the impact on small retailers of fair trade laws enacted under the Miller-Tydings Act. The study revealed that "states with fair trade laws had a 55 per cent higher rate of firm failures than free trade states, and the rate of growth of small retail stores in free trade states between 1956 and 1972 was 32 per cent higher than in states with fair trade laws." *Ibid.*, citing S. Rep. No. 94–466, 94th Cong., 1st Sess., 3 (1975). Pointing to the congressional abandonment of fair trade in the 1975 Consumer Goods Pricing Act, see p. 5, *supra*, the State Supreme Court found no persuasive justification to continue "fair trade laws which eliminate price competition among retailers." 21 Cal. 3d, at 457, 579 P. 2d, at 494. The Court of Appeal came to the same conclusion with respect to the wholesale wine trade. 90 Cal. App. 3d, at 983.

We have no basis for disagreeing with the view of the California courts that the asserted state interests are less substantial than the national policy in favor of competition. That evaluation of the resale price maintenance system for wine is reasonable, and is supported by the evidence cited by the State Supreme Court in *Rice*. Nothing in the record in this case suggests that the wine pricing system helps sustain small retail establishments. Neither the petitioner nor the State Attorney General in his *amicus* brief has demonstrated that the program inhibits the consumption of alcohol by Californians. We need not consider whether the legitimate state interests in temperance and the protection of small retailers ever could prevail against the undoubted federal interest in a competitive economy. The unsubstantiated state concerns put forward in this case simply are not of the same stature as the goals of the Sherman Act.

We conclude that the California Court of Appeal correctly decided that the Twenty-first Amendment provides no shelter for the violation of the Sherman Act caused by the State's wine pricing program.[16] The judgment of the California Court of Appeal, Third Appellate District, is

Affirmed.

MR. JUSTICE BRENNAN did not take part in the consideration or decision of this case.

WILLIAM T. CHIDLAW, Sacramento, Calif., for petitioner; GEORGE J. ROTH, Deputy Attorney General, State of California (GEORGE DEUKMEJIAN, Attorney General, with him on the brief) for California, as amicus curiae; JACK B. OWENS, San Francisco, Calif. (ROBERT E. FREITAS, ORRICK, HERRINGTON, ROWLEY & SUTCLIFFE, ELLIOT S. KAPLAN, ROBINS, DAVIS & LYONS, FRANK C. DAMRELL, JR., and DAMRELL, DAMRELL & NELSON, with him on the brief) for respondents.

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[12] As the unusual posture of this case reflects, the State of California has shown less than an enthusiastic interest in its wine pricing system. As we noted, the state agency responsible for administering the program did not appeal the decision of the California Court of Appeal. See p. 4, *supra*; Tr. of Oral Arg. 20. Instead, this action has been maintained by the California Retail Liquor Dealers Association, a private intervenor. But neither the intervenor nor the State Attorney General, who filed a brief *amicus curiae* in support of the legislative scheme, has specified any state interests protected by the resale price maintenance system other than those noted in the state court opinions cited in text.

[13] The California Court of Appeal found no additional state interests in the instant case. 90 Cal. App. 3d, at 984, 153 Cal. Rptr., at 760–761. That court rejected the suggestion that the wine price program was designed to protect the State's wine industry, pointing out that the statutes "do not distinguish between California wines and imported wines." *Ibid.*

[14] See *Seagram & Sons* v. *Hostetter*, 384 U. S. 35, 39 (1966) (citing study concluding that resale price maintenance in New York State had "no significant effect upon the consumption of alcoholic beverages").

[15] The California Supreme Court also stated that orderly market conditions might "reduce excessive competition, thereby encouraging temperance." 21 Cal. 3d, at 456, 579 P. 2d, at 493. The concern for temperance, however, was considered by the court as an independent state interest in resale price maintenance for liquor.

[16] Since Mideal requested only injunctive relief from the state court, there is no question before us involving liability for damages under 15 U. S. C. § 15.

HB

466

additional back-up material removed from this file & placed in file of HB 576 with which this bill was incorporated

Sandra Stringer

3/8/80

(9)

COMMITTEE REPORT

HOUSE

FURTHER:

April 17, 1979 Date: _____

Mr. Speaker:

The Committee on JUDICIARY has had HB 466

"An Act relating to the rate of prejudgment interest."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

_____

_____

_____

_____

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_____

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

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_____

_____
CHAIRMAN

H 60 (Rev. 12/78)

ALASKA STATE LEGISLATURE

ELEVENTH Legislature FIRST Session

HOUSE BILL NO. 466

By MALONE

"An Act relating to the rate of prejudgment interest."

Rate of prejudgment interest

Introduced in the House 4-17, 19 79

HISTORY IN THE HOUSE

19 79

Read first time and referred to Committee on

April 17 Judiciary

Reported back with recommendation that

Read second time and

Read third time and

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reconsideration

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reported correctly engrossed
Signed by Speaker
Sent to Senate

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19

Read first time and referred to Committee on

Reported back with recommendation that

Read second time and

Read third time and

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reconsideration

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reported correctly engrossed
Signed by President
Returned to House

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19

Received from Senate

Concurred in Senate amendment thus adopting:
VOTE

Failed to concur in Senate amendment; asked Senate to recede
VOTE

Senate receded from amendment
VOTE

Senate failed to recede from amendment
VOTE

CC appointed by House

CC appointed by Senate

CC adopted by House
VOTE

CC adopted by Senate
VOTE

To enrolling
Reported correctly enrolled
Sent to Governor

..... by Governor

Filed with Lt. Governor

Chapter No. .....

31-002

HB

479

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CS for House Bill 479
Title "An Act revising the drug laws of the state; and providing for an effective date."
Requested by House Judiciary Committee Date April 30, 1980

II. FISCAL DETAIL
Agency Affected Department of Health and Social Sevices
Program Category Affected Social Services
BRU, Program, or Subprogram(s) Affected Office of Alcoholism and Drug Abuse
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100	PERSONAL SERVICES		-0-	-0-	-0-	-0-	-0-
200	TRAVEL		-0-	-0-	-0-	-0-	-0-
300	CONTRACTUAL		-0-	-0-	-0-	-0-	-0-
400	COMMODITIES		-0-	-0-	-0-	-0-	-0-
500	EQUIPMENT		-0-	-0-	-0-	-0-	-0-
600	LAND & STRUCTURES		-0-	-0-	-0-	-0-	-0-
700	GRANTS, CLAIMS, ETC.		-0-	-0-	-0-	-0-	-0-
	TOTAL		-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS		-0-	-0-	-0-	-0-	-0-
OTHER (Specify Fund Source)		-0-	-0-	-0-	-0-	-0-

POSITIONS

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

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

The Department of Health and Social Services is presently authorized to receive appropriations for the prevention, education, treatment, and research of drug abuse currently authorized under AS 44.29.100-150.

The Department is currently providing limited drug abuse education through its local drug treatment programs, such as distribution of pamphlets, counseling, public speaking, showing of films, etc. The Department by contract is also presently developing a drug abuse education component to the K-12 alcoholism prevention education school program funded by the Department's alcoholism grant budget. Also, there is currently no active research effort being conducted beyond data gathering to prepare the needs ass ssment for the Drug Abuse State Plan. We have, therefore, projected a zero (-0-) fiscal note to meet the minimum requirements of the bill.

RLC

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

Prepared by: Robt. L. Cole Date: 4/30/80
XXXXXXXX/Office: Alco. & Drug Abuse PH: 586-6201
Department of Health & Social Services

Approval DHSS Mgt. & Bdgt [signature] Date: 4/30/80

33-001 (Rev. 12/79)
Modify by DHSS (11-28-79)

If the Legislature wishes to increase the level of drug abuse research and education, the Department recommends expansion into the following areas:

1.	Establish a prescription drug diversion monitoring program utilizing the Department's Medicaid billing system to determine abuse through excessive usage by clients of drugs with known "street" value or drugs with a high potential of abuse (valium, librium, percodan, codeine, darvon, etc.)	$ 75,000
2.	Investigate the possibility of development a triple prescription form system for dispensing legal drugs. The third copy of the form would be utilized to establish norms for usage of individual drugs and then determine deviations and accordingly institute appropriate actions.	75,000
3.	Design and implement demonstration program models regarding drug abuse to reach specific target groups such as women, youth, elderly, physicians, and pharmacists.	75,000
		$225,000

Have Bill only allow; must be more restrictive
100.

Because of the decriminalization of marijuana possession, in many situations a feeling of acceptance of the use of the drug has grown among many of the younger people in Alaska. Forgetting for now about the personal individual effects of marijuana, I wish to discuss the social effects which local governments have to deal with.

Supposedly, local governments function to serve a relatively small population living in a certain area. Each area has differing needs with respect to capital improvements, cultural facilities, ~~size and type of visitities~~, etc. however, each local area seems also to take on its own social flavor also.

Local officials must be responsive to the social desires of thier constituents.

I don't know what the people want in Anchorage and Fairbanks, but in Sitka, they want to get rid of marijuana. And we don't want to tell Anchorage and Fairbanks what's best for them--let them make their own decisions and let us make ours.

We are not talking about a person's nation-wide fundamental rights when we seek to prohibit possession in public in Sitka; we are seeking to protect the public's right to have a society where the public is protected from harm.

Our point is not to argue whether or not marijuna is harmful to an individual's health or personality, but to state that Sitkans see marijuana as harmful to society in Sitka.

The Ravin case, where the Alaska Supreme Court allowed marijuana possession in the home, is interesting for a number of reasons. First, the court did not conclude that marijuana is a fundamental right. Second, they discussed fully the question of the rights of the individual vs. the rights of society and concluded that the only place an individual's concern for marijuana outweighed society was in the person's home. The court found that society had a right to regulate marijuana in public.

One very interesting aspect of Ravin was that the Alaska Supreme Court found that at that time (early 70's), there was insufficient evidence of social harm from marijuana to prohibit it in the home, but the court indicated that it might change its decision on allowing home use if more evidence of social harm appeared in the future.

With the decriminalization of most marijuana possession, Sitka has seen a continuing growth of this drug's use.

As a result, we witnessed the opening of a "Head Shop" selling pipes and other paraphernalia only a few feet away from the racks of popular music for sale to our youngsters.

At a recent Assembly meeting, the Asst. Principal of our junior High School displayed a collection of pot pipes he had confiscated from his junior high students.

The Sitka Police are arresting an increasing number of dangerous drivers who act as though drunk, but give low readings on the breathalyzer machine.

Cocaine is now beginning to be found with increasing regularity.

The point is, that many people live at the edge of or just slightly beyond ~~societies~~ society's restrictions. ~~As we make more types of behavior,~~ legal society faces increased dangers and parents find their young children falling victim to peer pressure of their classmates who emulate their older friends.

Decriminalization of marijuana has adversely affected Sitka, for marijuana is more than simply a drug. It symbolizes a lifestyle antithetical to social responsibility. Look at magazines such as "High Times" which glamorizes a drug lifestyle to see how marijuana is used as a symbol of freedom from social restriction.

I'm sure you've all heard these comments before, and I'm sure you all made up your own minds on marijuana, which is all well and good, but more importantly, Sitka has made up its mind on marijuana and Sitka doesn't like it and wishes to exclude it as much as possible from Sitka.

We don't want to tell you what to do where you come from, but give us the local option to handle marijuana in Sitka as Sitkans want.

Let each Alaska Community decide the question themselves itself.

In Sitka we wrote a proposed Anti-marijuana Ordinance and submitted it to the Electorate at a Special Election and the ordinance passed. It can't go into effect though, unless you allow us local option.

Nobody really expects our local ordinance to solve the problem, but it is by no means as ineffective as some people would claim.

What this ordinance really does it move the limits back towards where they used to be and it expresses the public's displeasure and disapproval with the drug culture. It should make many people think, especially our youngsters, about what society will not tolerate.

Majors 21-0 →

To tell the truth, many Alaskans ~~have little faith in~~ are concerned with their State Lawmakers when they see them legislate on matters of great local importance and don't allow the localities the choice of settling the matter for themselves. You could probably gain a renowned reputation for collective wisdom if you allowed Home-Rule municipalities to handle more problems in manners where unique solutions could fit unique situations. Sitka will thank you if you do that in this situation.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER POUCH H 01 – JUNEAU 99811

April 30, 1980

Document# 97-80

The Honorable Hugh Malone
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Malone:

You requested that the Department of Health and Social Services propose language for inclusion in CS for House Bill 479 which would speak to issues raised in the Department's position paper on this bill.

These issues have been reviewed with the Department of Law and they have advised us that they are taking them into consideration in working with the House Judiciary Committee in presenting the Administration's position on drug legislation.

Mr. Dan Hickey has indicated that he will be available to work with you and the Committee in an effort to address these concerns.

Sincerely,

Allen K. Korhonen
Deputy Commissioner

cc: Daniel W. Hickey
Chief Prosecutor
Department of Law

Robert L. Cole, Coordinator
State Office of Alcoholism and Drug Abuse

06-F38LH

(1) Legg
(2) HB 479 file

Alaska State Legislature

LEGISLATIVE ADDRESS
POUCH V
JUNEAU, ALASKA 99811
TELEPHONE (907) 465-3734
465-3779

HOME ADDRESS
4603 SAN ROBERTO
ANCHORAGE, ALASKA 99504
TELEPHONE (907) 337-7942

REPRESENTATIVE BILL MILES

April 15, 1980

Charles H. Parr, Chairman
House Judiciary
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Parr:

It has recently come to my attention that some persons are claiming the House Health, Education and Social Services Committee Substitute for House Bill 479, an act relating to drugs, reduces, in some cases, penalties for drug and drug-related crimes.

Please be advised that it is the unanimous recommendation of the Sub-Committee that drafted the Committee Substitute that no penalities be reduced from currently enacted law. If there was one principle we all agreed upon it was this: drug - law offenders, especially repeat offenders, should be penalized at least as harshly as existing law and usually much more severly.

Sincerely yours,

Bill Miles
Sub-Committee
Member

Joyce Munson
Sub-Committee
Chair

C. V. "Chat" Chatterton
Sub-Committee Member

Alaska State Legislature

file copy

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

February 28, 1980

TO: Charlie Parr, Chairman, House Judiciary Committee

FROM: Margaret W. Berck, Staff

SUBJECT: Sectional Analysis of HB 479

I. STANDARDS AND PROCEDURES.

*Section 1

Sec. 17.17.010. This section establishes a Controlled Substances Advisory Committee in the Department of Law. The members of the Committee are the Attorney General, Commissioners of Health and Social Services and Public Safety, a pharmacist and a criminal defense attorney. The latter two members are appointed by the Governor. All members serve without pay, but are entitled to travel expenses and per diem.

Sec. 17.17.020. This section defines the authority of the Controlled Substances Advisory Committee. The Committee is empowered to add, delete or re-schedule substances. All such actions must be adopted under the Administrative Procedures Act and in accord with the "public safety" criteria contained in this section. Should there be a change in the Federal schedules, the Committee is required to consider a similar change to Alaska law. The Committee is free to determine that such a Federal change is not warranted in Alaska, but must report such a decision, together with findings of fact, to the Lieutenant Governor.

Decisions by the Committee have no legal effect until the Legislature is given an opportunity to review them. Committee decisions must be submitted to the Legislature within the first 10 days of a session. The Legislature must act by the 56th day of the session if it wants to annul a proposal. All legislative annulments must take place in the form of a bill. Should the Legislature reject a proposal by

the Committee, the Committee cannot re-assert such a proposal to the Legislature for three years.

The Committee has no authority over tobacco or alcohol.

Sec. 17.17.030. This section provides that the inclusion of slang terms for drugs to assist the layperson in identifying controlled substances, has no bearing or effect in a criminal prosecution.

Sec. 17.17.040 - Sec. 17.17.090. These sections establish six schedules of controlled substances. The most dangerous substances are contained in Schedule I, while the least dangerous, marijuana, is contained in Schedule VI.

II. OFFENSES AND PENALTIES.

Sec. 17.17.200. This section creates a criminal offense and provides penalties for distributing a controlled substance to a minor. Although the penalties vary depending upon the schedule classification of the particular controlled substance distributed, all violations of this section would constitute a felony.

This section is designed to impose stiffer penalties on those persons over 18 years of age who distribute controlled substances to persons under 18 years of age. However, the recipient must be at least three years younger than the distributor before this section comes into effect. If the three-year age differential does not exist, the distributor would be subject to prosecution under the general distribution offenses.

This scheme was taken from the Uniform Controlled Substances Act and their rationale is as follows: "The three-year age differential is included to prevent imposition of the stiffer penalties in a case such as where a 19-year-old college student distributes two or three marijuana cigarettes to his 17-year-old roommate. In this situation, there is not the element of seduction so often found in cases where the distributor and recipient are far apart in age."

Sec. 17.17.210. This section creates a criminal offense and provides penalties for manufacturing a controlled substance. Although the penalties vary depending upon the schedule classification of the particular controlled substance manufactured, all violations of this section would constitute a felony. The definition of "manufacture" (Sec. 17.17.900(14))

includes propagation of certain of the substances, such as marijuana. In order to comply with the Alaska Constitution as interpreted in Ravin, and in order to justify the stiffer penalties for this offense, the definition of "manufacture" excludes manufacturing for personal use. A person manufacturing controlled substances for his personal use would be subject to prosecution under possession offenses.

Sec. 17.17.220 - Sec. 17.17.270. These sections create a criminal offense and provide penalties for distributing a controlled substance. Separate sections are provided for each schedule classification. Penalties vary depending upon the schedule classification and the amount involved. Despite penalty variations, distribution of any amount of a Schedule I, II, III, or IV substance would constitute a felony offense. Distributions of small amounts of a Schedule V or a Schedule VI substance would constitute a Class A misdemeanor. Furthermore, a "non-remuneration defense" is provided for the distribution of an ounce or less of a Schedule VI substance (marijuana). If the distributor is successful in providing that such a distribution was made for no remuneration to a person 18 years of age or older, the penalty is reduced from a Class A misdemeanor to a Class B misdemeanor. This provision is compatible with Federal law which provides that a person who distributes a small amount of marijuana for no remuneration is guilty of a misdemeanor rather than a felony. (21 USCA 841) Furthermore under Federal law (21 USCA 844), if such a person has never been previously convicted of a drug offense, the court may place the person on probation and subsequently dismiss the criminal charge against the person if he does not violate his parole. Under this Federal provision, the person would not acquire a criminal record.

Sec. 17.17.280 - Sec. 17.17.330. These sections create a criminal offense and provide penalties for possessing a controlled substance. Separate sections are provided for each schedule classification. Penalties vary depending upon the schedule classification and the amount involved. Possession of small amounts of any substance would constitute a Class A misdemeanor. This provision is compatible with Federal law which establishes misdemeanor penalties for simple possession of any controlled substance. Unlike the Federal law, however, HB 479 would establish felony offenses for the possession of large amounts of any controlled substance. This scheme was adopted in HB 479, in order to facilitate the capture of drug dealers who are not caught in the act of distribution. Traditionally, these individuals have been prosecuted under a "possession with intent to sell" offense. But due to the difficulties in prosecuting "intent to sell"

offenses, HB 479 eliminates that type of offense and looks strictly to the amount possessed in determining appropriate penalties.

In order to comply with the Alaska Constitution as interpreted in Raven, possession of less than a pound of marijuana by an adult would not constitute a criminal offense.

Sec. 17.17.340. This section makes it a Class B misdemeanor to possess any amount of marijuana in your immediate control while operating a motor vehicle, vessel, or aircraft. Under existing law, the maximum punishment for this type of offense is a $1,000 fine. Under HB 479 an offender is subject to a 90 day jail sentence, or a $1,000 fine, or both.

Sec. 17.17.350. This section makes it a violation (a fine of up to $300) to display or use any amount of marijuana in a public place.

Sec. 17.17.360. This section makes it unlawful for a minor to possess any amount of marijuana. A minor who violates this section is guilty of a violation.

Sec. 17.17.370. This section is directed at the legitimate drug industry. It makes it a Class B misdemeanor for a person to refuse or fail to make or keep all records required by this Act.

Sec. 17.17.380. This section also is directed at the legitimate drug industry. It makes it a Class C felony to do any of the following: (1) to keep or maintain any structure for storing or selling controlled substances in violation of this Act; (2) to use a registration number that is ficticious, revoked or suspended; (3) to obtain a controlled substance by fraud, forgery or deception; (4) to make, distribute, or possess a die to print a trademark upon a drug or container so as to render a drug a counterfeit substance; and (5) to furnish false or fraudulent information on any record required to be made and kept by this Act.

Sec. 17.17.390. This section provides for the creation of a three-year felony offense for certain possession and distribution offenses. In order to graduate the penalties in relation to type of offense, substance classification and quantities, an additional felony offense to those established in the new criminal code was required.

Sec. 17.17.400. This section provides that in those offenses which require the consideration of an amount for determining

appropriate penalties, it is no defense to a prosecution that the amount was in fact larger than that required for the offense charged.

Sec. 17.17.410. This section provides that a penalty imposed under this law is in addition to other civil or administrative penalties imposed by law.

Sec. 17.17.420. This section prohibits the prosecution of an individual under this law, if the individual's act constituted an offense under Federal law or the law of another state and the individual was convicted or acquitted under those laws.

III. REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES

Sec. 17.17.550. This section empowers the Commissioner of Health and Social Services to adopt regulations under the Administrative Procedure Act and to establish reasonable fees relating to the regulation of the legitimate drug industry.

Sec. 17.17.560. This section requires any person who manufactures, distributes, or dispenses controlled substances in this State to register annually with the Commissioner of Health and Social Services. Certain individuals, such as employees of registered dispensers or common carriers, need not register. Furthermore, the commissioner may inspect the establishment of a registrant or applicant.

Sec. 17.17.570. This section establishes the standards whereby the Commissioner of Health and Social Services may grant or deny registration. A person is entitled to registration if he complies with Federal registration requirements.

Sec. 17.17.580. This section establishes the standards whereby the Commissioner of Health and Social Services may revoke or suspend a registration to manufacture, distribute, or dispense a controlled substance.

Sec. 17.17.590. This section provides for the due process rights of an individual whose registration is the subject of a denial, suspension, or revocation. Prior to taking action, the Commissioner of Health and Social Services must serve the individual with a factual statement on which the proposed action is based. The individual is entitled to an adjudication under the Administrative Procedure Act. The commissioner may suspend the registration during the administrative proceedings only if he finds there is an imminent danger to the public.

Sec. 17.17.600. This section requires a registrant to keep and maintain records in conformance with the requirements of Federal law and with the additional requirements the commissioner may adopt.

Sec. 17.17.610. This section provides that the distribution of controlled substances must conform to Federal requirements regarding order forms and prescriptions.

IV. ENFORCEMENT AND ADMINISTRATION.

Sec. 17.17.750. This section requires the Commissioner of Public Safety, the Attorney General, and all law enforcement officers of the State to cooperate with drug enforcement agencies of the United States and other states.

Sec. 17.17.760. This section provides for the forfeiture of various items of property utilized in violation of this Act. Aircraft, motor vehicles and vessels are not subject to forfeiture if their use was committed by a person other than the owner or secured party unless such owner or secured party was privy to the violation.

Such property may be forfeited to the state upon a criminal conviction of the defendant or upon a judgment of a court in a civil proceeding against the property.

The property may be seized by the Commissioner of Public Safety upon an order issued by a court finding that probable cause exists that the property is subject to forfeiture. Seizure without a court order may be made if: (1) it is incident to a valid arrest or valid search warrant; (2) it has been the subject of a prior judgment in favor of the State in either a criminal or civil proceeding; or (3) there is probable cause that the property was or is being used in a drug violation and the property is easily movable. Property seized under this last provision, may not be held over 48 hours or until an order may be applied for and issued by a court, whichever is earlier.

Property forfeited under this section shall be disposed of according to court order.

Sec. 17.17.770. This section provides that the burden of proof is on the State to prove by clear and convincing evidence that the property in question is subject to forfeiture. Liability is not imposed upon a State or local officer engaged in the lawful performance of his duties.

Sec. 17.17.780. This section requires the Commissioner of Health and Social Services to provide educational programs designed to prevent and deter abuse of controlled substances. Additionally, the commissioner shall encourage research on controlled substances.

V. GENERAL PROVISIONS.

Sec. 17.17.900. This section provides the definitions of various terms used in this Act.

Sec. 17.17.990. This section provides that the Act may be cited as the Controlled Substances Act.

*Section 2 and *Section 3.

These sections amend existing statutes that refer to current drug titles that would be repealed by this Act.

*Section 4.

This section amends AS 12.55.155(c) to provide additional aggravating sentencing factors to be utilized in drug offenses. These additional factors are: (1) smuggling a controlled substance into the State; (2) the commission of an offense involving large quantities of controlled substances; and (3) the commission of an offense involving the distribution of a controlled substance adulterated with a toxic substance.

*Section 5.

This section amends AS 12.55.155(d) to provide additional mitigating sentencing factors to be employed in drug offenses. Those additional factors are: (1) the commission of an offense involving small quantities of controlled substances; (2) the commission of an offense involving the distribution of a controlled substance for no remuneration to a personal acquaintance 19 years of age or older; and (3) the commission of an offense involving the possession of a controlled substance for personal use in the defendant's home.

*Section 6.

This section amends existing law regarding the duties of the Department of Health and Social Services.

Section 7.

This section provides for the continuation of various proceedings commenced prior to the effective date of this Act.

*Section 8.

This section provides for the continuation of orders and regulations not in conflict with this Act until modified, superseded, or repealed.

*Section 9.

This section provides for the repeal of existing drug statutes.

MWB:vc

ALASKA PHARMACEUTICAL ASSOCIATION
Box 1185 Anchorage, Alaska 99510

3-12-80

State Senator Ed Dankworth
Pouch U
Juneau, Alaska 99811

Dear Senator Dankworth:

The following resolution from the business meeting at our recent convention concerns S365, HB 479, HB 628:

7. WHEREAS the State of Alaska does not yet have a Uniform Controlled Substance Act, and WHEREAS three bills have been introduced into the current legislative session (1) SB65 — Senator Dankworth (Peace Officers)
(2) HB479 — Representative Parr
(3) HB628 — Governor Hammond
Therefore, be it RESOLVED that the Association recommend that:
(1) All punishment and prosecution standards be removed from Title 17 and inserted into the Criminal Legal Statutes (Code)
(2) The federal law should be the model law and adopted by the State of Alaska and Alaskan judges should be mandated to strictly follow the federal guidelines for prosecution and punishment.
Further be it RESOLVED that if the State of Alaska must change the Federal law, the Association recommends that:
(1) Drug classification for penalty use should not conflict with the federal law [redacted] to avoid confusion while testifying.
(2) Practitioners exempted from requirement of an Alaska license should be "An individual practicing a health profession in the discharge of official duties while in the military service of the United States, the United States public health service, or the United States veterans administration. The institution in which the individual practices shall report the name and address of the individual to the appropriate agency within 30 days after the date of employment.

"An individual residing in Washington or Oregon who is authorized under the laws of the state to practice a health profession and whose practice may extend into this state, but who does not maintain an office or designate a place to meet patients or receive calls in this state."
(3) "In emergency situations, a Schedule A, Schedule II, etc. drug may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy and handled in regards to the federal law.
(4) Any change in the Federal law should automatically become State law.
(5) Any armed robbery of pharmacies in order to obtain drugs should be considered at the highest penalty (or even a special category) for prosecution.
(6) The State should not consider any dual registration or departments that would duplicate those already handled by the federal government.
(7) A penalty for forged Controlled Drug prescriptions and bogus prescriptions should be written into the criminal statutes (Code) (PASSED) TELEPHONED

Discussion - This resolution will serve as the Association's recommendation to changes in the "drug" laws currently before the legislature. The Association has been trying to set up meetings with the governor's office to discuss these bills and our feelings. Any pharmacist wishing to obtain copies of these bills may contact the Legislative Affairs office in their respective cities.

The Alaska Pharmaceutical Association feels that Title 17 should remain as the current federal law for medical purposes only. Any punishment regulations should be pulled out of Title 17 & inserted into the current criminal code.

The Criminal Code drug classifications for legal purposes only should not have the same classification (Schedule II, etc., Class III, etc.) as the Title 17 (current Federal law) would have. The nomenclature should be changed to avoid confusion by the medical professions while testifying.

Limiting practitioners to Alaska Licensees only will work a hardship on the consumers, especially in Southeastern Alaska, where many people do not patronize the local physicians, but use the facilities such as Virginia Mason Clinic or clinics in Washington or Oregon. Some pharmacists from the Association feel that Mayo Clinic practitioners should also be included in this exemption. Many of our sister states have exempted these professionals in states(bordering), including Massachusetts & Washington.

Because of the greater risk to consumers, armed robbery of pharmacies in order to obtain drugs, should carry the stiffest of the robbery penalties. An armed robbery of one of the super drug stores would endanger many people, with the increased possibility of hostages, etc.

The pharmacists' main problem concerning drugs is forged prescriptions, including bogus telephone prescriptions, primarily for controlled substances with a few antibiotics, etc thrown in to allay suspicion. Much time is expended on the pharmacists part to check out the authenticity of such prescriptions, when the culprit is actually apprehended, our current laws have no teeth.

Enclosed is the Kansas regulation regarding forged prescriptions, which surely could easily be incorporated into our own laws.

The pharmacists of Alaska stress the importance of listening to these recommendations. Remember we are the individuals who must <u>daily</u> deal with any "drug" bill that you, our legislators, enact.

We are very willing to meet with anyone to discuss these recommendations. Please contact the association secretary, Chuck Decker, so that he may arrange a meeting with a small representative group of members. Address: Box 1135, Anchorage, Ak 99510. Phone: 243-5976 (home) or 276-3921 (work).

Sincerely yours,

Dave Heinke, Pres.

cc/HSS & Judiciary Committee Members, Gov. Hammond, Rep. Parr, Comm. Peirne, Association Board Members, Jessie Dodson.

Clip and Insert in your Pharmacy Law Book for reference.

KANSAS FORGED PRESCRIPTION LAW: AN ACT supplementing the Kansas criminal code; defining and classifying the crimes of obtaining a prescription-only drug by fraudulent means and of obtaining a prescription-only drug by fraudulent means for resale.

Be it enacted by the Legislature of the State of Kansas:
Section 1. (1) Obtaining a prescription-only drug by fraudulent means is the: (a) Making, altering or signing of a prescription order by a person other than a practitioner; or (b) Delivery of a prescription order, knowing it to have been made, altered or signed by a person other than a practitioner; or (c) Possession of a prescription order with intent to deliver it and knowing it to have been made, altered or signed by a person other than a practitioner; or (d) Possession of a prescription-only drug knowing it to have been obtained pursuant to a prescription order made, altered or signed by a person other than a practitioner. (2) Obtaining a prescription-only drug by fraudulent means is a class A misdemeanor for the first offense and a class E felony for a second or subsequent offense. (3) As used in this section: (a) "Pharmacist", "practitioner" and "prescription-only drug" shall have the meaning ascribed thereto by K.S.A. 1978 Supp. 65-1626 and amendments thereto (b) "Prescription order" means a written, oral or telephonic order for a prescription-only drug to be filled by a pharmacist. "Prescription order" does not mean a drug dispensed pursuant to such an order. (4) This section shall be a part of and supplemental to the Kansas criminal code. Sec. 2 (1) Obtaining a prescription-only drug by fraudulent means for resale is the obtaining of a prescription-only drug by fraudulent means as defined in section 1 and: (a) Selling the prescription-only drug so obtained; or (b) Offering for sale the prescription-only drug so obtained. (2) Obtaining a prescription-only drug by fraudulent menas for resale is a class D felony. (3) The provisions of this section shall not be applicable to prosecutions involving prescription-only drug which could be brought under the uniform controlled substances act and to which the provisions of K.S.A. 1978 Supp. 65-4127b would be applicable. (4) This section shall be part of and supplemental to the Kansas criminal code. Sec. 3 This act shall take effect and be in force from and after its publication in the statutes book.

LA21 1605 11.21 JA01 0022 11.21 03/19/80

3/19/80

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TO: REP. BETTISWORTH, BROWN, PARR, RANDOLPH, ROGERS, SMITH.
SEN. BENNETT, FAHRENKAMP, HACKNEY

FROM: RAY G. ROWE
BOX 81043, COLLEGE, AK 99708 PH.----

RE:HB 479 & HB 628

I THINK HB 479 & HB 628 ARE OPPRESSIVE AND A STEP BACKWARDS TOWARDS A POLICE
STATE. THESE BILLS ARE INTRUSIONS INTO THE FREEDOMS AND RIGHTS OF ADU LTS
TO LIVE FREELY WITHOUT FEAR OF LAWS THEY DO NOT SUPPORT OR RECOGNIZE.

PERHAPS MORE OF THESE DECISIONS SHOULD BE LEFT UP TO THE PEOPLE INSTEA D OF
OVER-RIGHTEOUS PUBLIC SERVANTS OR LAW ENFORCEMENT AGENTS. PERHAPS IF THESE
AGENCIES SPENT MORE TIME IN THE PREVENTION OF THEFT, MURDER AND THE SA LE OF
CONTROLLED SUBSTANCES TO MINORS WE WOULD LIVE IN A SAFER STATE. AFTER ALL
LOOK HOW SUCESSFUL PROHIBITION WAS.

CONTACT BY MAIL AS HAVE NO PHONE.

LA21 1747 11.35 JA01 0026 11.35 03/19/80

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PLEASE NOTE ADDITIONS!!!!!!!!

ADDITIONAL SIGNATURES ON THE MESSAGE JUST SENT FROM RAY G. ROWE:

1. CRAIG N. BUCHANAN, #1 MANAYUNK AVE. ESTER, AK 99725
2. MARILYNN BANKS EAST, #1 MANAYUNK AVE. ESTER, ALASKA 99725
3. RUBEN M. CLAYTON, P.O. BOX 81101, FAIRBANKS 99708
4. THELA M. CLAYON, P.O. BOX 81101, FAIKS 99708
5. ROBERT BROWN, JR. BOX 81788, COLLEGE, ALASKA 99708
6. THOMAS HART, BOX 81990, COLLEGE, ALASKA 99708
7. PAULA BRINK HART, BOX 81990, COLLEGE, ALASKA 99708
8. ROBIN FORD, BOX 73121, FAIRBANKS 99707
9. DANIEL CONSENSTEIN, BOX 73121, FAIRBANKS, ALASKA 99707
10. PAMELA ROWE, BOX 81043, COLLEGE, ALASKA 99708

THAT COMPLETES THE LIST OF SIGNATURES THNX FBX/LIO/MW

STATE OF ALASKA

Interdepartmental Route Slip

TO: Mail Station	Department
3100	Legislature
Attention: Rep. Thelma Buchholdt	

- ☐ Approval
- ☐ Signature
- ☐ Comment
- ☐ Contact Me
- ☐ Prepare Reply
- ☐ For Your File
- ☐ Note & Return
- ☐ Initial & Return
- ☐ Return as Requested
- ☐ Return for Approval
- ☐ Necessary Action
- ☑ For Your Information

Remarks:

Cap. Bldg.
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FROM: Mail Station	Department	
0600	DHSS	
By: L Rodriguez		Date: 4/25/80

02-002(Rev. 2/80)

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

POUCH H 01 – JUNEAU 99811

April 23, 1980

Document# 92-80

The Honorable Charles Parr
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Parr:

During the Department's testimony on House Bill 479 - Revising the Drug Laws of the State, your Committee requested further information regarding the prevalence of prescription drug abuse in medical assistance programs and what controls the Medicaid program has to monitor the problem. I referred your question to the Division of Public Assistance and enclose that Division's response.

I hope this answers your Committee's concerns on this matter. If the Department may be of further assistance, please do not hesitate to contact me at 465-3030.

Sincerely,

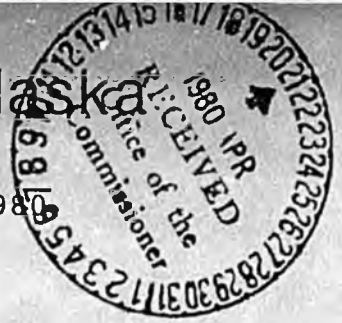
Deborah E. Behr

Deborah E. Behr
Special Assistant to
the Commissioner

Enclosure
cc: Representative Thelma Buchholdt
Representative Nels Anderson
Representative Patrick O'Connell
Representative Ramona Barnes
Representative Terry Martin
Representative Randy Phillips
Representative Hugh Malone
Representative Fred Brown

06-F38LH

MEMORANDUM State of Alaska



TO: Debbie Behr
Special Assistant to the Commissioner

DATE: April 18, 1980

FILE NO:

THRU: Rod Betit, Director
Division of Public Ass.

TELEPHONE NO:

FROM: Robert G. Ogden
Chief
Medical Assistance Section

SUBJECT: Abuse of Prescription Drugs

I understand various legislators have requested information on the prevalence of prescription drug abuse and what controls Medicaid has to monitor the problem.

First, I must indicate that we have no evidence of this being a problem. As you may remember, approximately one and one half years ago two physicians in Anchorage lost their licenses for a year as a result of not being careful of to whom and how many prescription drugs they issued. This incident has done a great deal in alerting physicians throughout the State of the importance of closely scrutinizing their patients and their prescription requests.

Also, as you know, the U.S. Bureau of Narcotics and Dangerous Drugs has a very active program of monitoring controlled substance abuse. In the last five years, many prescription drugs have been added to this controlled substance list, so that virtually all so called "dangerous" drugs are federally controlled and classified.

Pharmacist's are all quite good about informing the federal narcotics agents about chronic abusers, either patient or physician.

The Alaska Medicaid and General Relief Medical programs do not at this time have a method of monitoring or reviewing claims for possible drug abuse.

Our plan for the future is to develop a surveillance and utilization review system which would, among other things, monitor drug use. Through the budget process, we have requested funds to develop a new and permanent Medicaid Management Information System (see attached). This new system, if funded, would provide the Medicaid program with many management capabilities it does not now have:

1) Surveillance and Utilization Review
2) Management and Administrative Reporting
3) Accurate and timely program information
4) Data for budget projections.

FY 81 Budget Amendment

Public Assistance Administration BRU

For many years the Department has operated the Medicaid and General Relief Medical (GRM) programs with a claims processing system that manually priced invoices and used a very simple computer system to store a record of each payment. This system worked satisfactorily for a few years until the number of persons eligible for the programs grew, resulting in more invoices being processed. The Department was unable to secure an adequate number of employees to perform the time-consuming manual pricing function and the time required to pay invoices grew to several months from the date of receipt by the Department. As the programs grew, more pressure was placed on the computer system to provide information about the status of claims being processed, to provide better budget projections, and to accurately report financial and statistical information on claims paid. The problems continued to mount until July 1979 when the Department was faced with another in a long series of system failures. In this case, the computer system "lost" 1000 claims that had been manually priced and approved for payment. The Department shut down the system and immediately began to develop a request for proposals (RFP) for an interim claims processing system that would be operated by a private firm either in Alaska or at a site selected by the contractor. The goal of the contract was to provide the Department with the capability to maintain minimum control over the payment of claims, use a computerized pricing mechanism, pay 90% of clean claims within 30 days of receipt, provide a reliable history of that payment, and provide the Department with minimal payment information to allow fulfillment of federal reporting requirements.

Between August 8, 1979 and September 28, 1979, the Department advertised for proposals from experienced Medicaid claims processors. On October 5, 1979, the Department awarded the contract to Computer Sciences Corporation (CSC), one of three companies submitting proposals. A final contract was signed on December 17, 1979. During the time between awarding of the contract and signing, CSC had begun designing the system in an attempt to shorten the time required for installation and testing prior to operation. Since this contract was not an expected event, the Department had not budgeted for the additional expenditure. In order to provide funds for the contract, the Department reduced its claims processing staff from eleven to three employees. In retrospect, this may have been an error on the part of the Department as the problems experienced in making the transition from a fully state-operated system to one involving a private contractor were magnified in part by lack of state staff. Problems were experienced by the contractor in making their computer system compatible with the Department of Administration system used to write state warrants. It is obvious to the Department and CSC that CSC greatly under-estimated the cost of performing the terms of the contract, and that both parties misgauged the amount of time and effort necessary to complete the implementation phase.

The contract with CSC provides for performance through September 1980. Federal financial participation (FFP) in this interim claims processing contract was contingent upon the Department showing that it would move toward a long-term solution of the claims processing problems. At the time, the goal was that the Department would move to a long-term contract by October 1, 1980. While all parties now realize that that goal was overly optimistic, the Department still must develop a long-term solution to the problem as quickly as possible consistent with state and federal requirements and efficient implementation. The Department has set a target date of July 1, 1981, to begin operation of a new long term claims processing system.

Under federal regulations, a state agency may choose to operate a Medicaid Management Information System (MMIS) to process Medicaid claims and provide management information on the payment of those claims. While such a system is not required a state implementing such a system, once it is federally certified, will be eligible for greater federal funding--90% FFP for development and installation and 75% FFP for the operation and management of an on-going system. A state not having a certified MMIS is only entitled to receive its regular matching rate, which for Alaska is 50% FFP. A basic, bare-bones MMIS includes two components that go beyond the simple system presently used by the Department. These two modules are the Surveillance and Utilization Review Subsystem (SURS) and the Management and Administrative Reporting Subsystem (MARS). They provide state agencies with information about what services are being provided to whom and at what frequency and cost, and they provide information to the state agency and federal officials in an aggregate form to provide the tools needed to manage the program--the means of identifying causes for cost increases or decreased utilization, budgeting for future program expenditures, and determination of inappropriate expenditures due to fraud, abuse, or waste. While these two subsystems do result in a higher cost of operating the claims processing system they are absolutely essential if the Department is ever going to be able to accurately identify the costs of the Medicaid and GRM programs. The Department currently spends less than 5% of program expenditures for all possible costs related to the administration of the Medicaid and GRM programs.

Until now, the Department has had a checkered experience in providing accurate and timely program information. A recent study by the University of Alaska, Institute of Social and Economic Research prepared for the House Finance Committee, points out the need for the Department to have increased capability to do accurate budget projections to reduce the likelihood of continued erratic budgeting and submission of requests for supplemental appropriations. Another area of concern is the Department's ability to respond to requests for information about the Medicaid and GRM programs by providers, concerned citizens, and legislators. The Department has never been able to provide reliable data, but an MMIS would give the Department the ability to meet these demands for information.