

2416

HJ

HB 8

-

HB 14

Representative Rhonda L. Barnes

Page 2

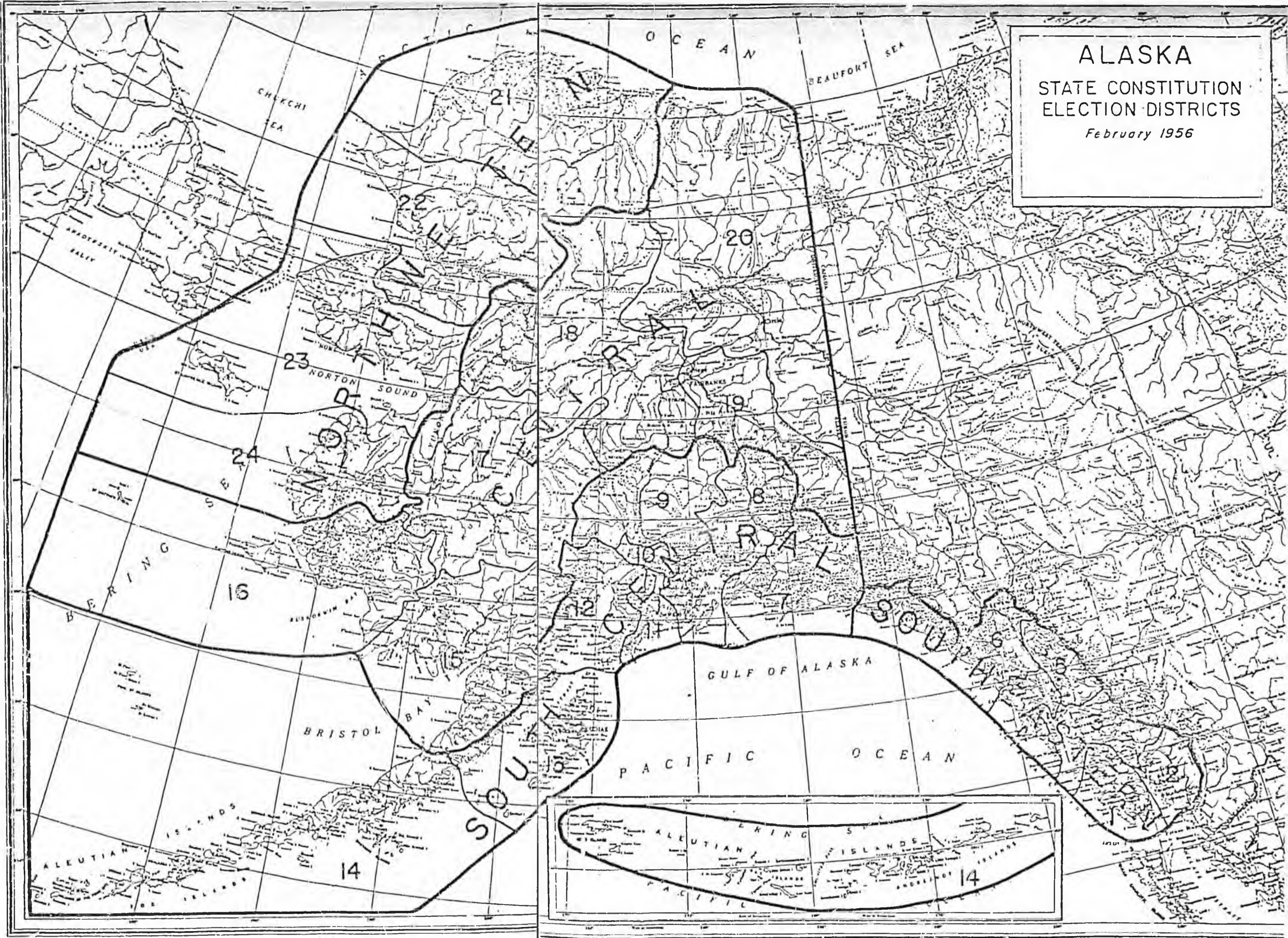
February 18, 1982

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

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

RAB:ljb

ALASKA
STATE CONSTITUTION
ELECTION DISTRICTS
February 1956



4/11

given the opportunity to express their will in response to a ballot that is drawn in conformity with the intent of the framers

of the Constitution of Alaska. *Boucher v. Bomhoff*, Sup. Ct. Op. No. 775 (File No. 1487), 495 P.2d 77 (1972).

Section 4. Powers. Constitutional conventions shall have plenary power to amend or revise the constitution, subject only to ratification by the people. No call for a constitutional convention shall limit these powers of the convention.

The United States Congress has no power to amend a state's constitution. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, cert. denied, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

Adoption of provision in Statehood Act did not amend constitution. — Although included in Alaska Statehood Act, § 8(b), 48 U.S.C. Prec. § 21, was the provision that in the event that three propositions to be submitted to the voters were adopted by a majority vote, "the proposed constitution of the proposed State of Alaska ... shall be deemed amended accordingly," and although the propositions were adopted, the Alaska Constitution was not thereby amended to include "the terms or conditions of the grants of land" set forth in Alaska Statehood Act, § 6(i) since there was no state legislature in existence at the time of passage of the Statehood Act, the territorial legislature never approved an amendment incorporating the restrictions of Alaska Statehood Act, § 6(i), which relates to mineral land grants, into the Alaska Constitution, and no constitutional convention was called to act on the matter. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, cert. denied, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

The constitution of the State of Alaska provides only two means for its amendment. Alaska Const., art. XIII, § 1 authorizes such amendments by a two-thirds vote of each house of the legislature thereafter approved by a majority vote at the next statewide election. This section provides for amendments by a constitutional convention subject to ratification by the people. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, cert. denied, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

The Alaska Constitution may not be amended by popular vote alone, without prior action by either the legislature or a constitutional convention. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, cert. denied, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

Article XIV

Apportionment Schedule

Cross reference. — As to legislative apportionment, see Alaska Const., art. VI.

Section 1. Election Districts. Members of the house of representatives shall, until reapportionment, be elected from the election districts and in the numbers shown below:

Number of District	Name of District	Number of Representatives
1	Prince of Wales	1
2	Ketchikan	2

<i>Number of District</i>	<i>Name of District</i>	<i>Number of Representatives</i>
3	Wrangell-Petersburg	1
4	Sitka	2
5	Juneau	2
6	Lynn Canal-Icy Straits	1
7	Cordova-McCarthy	1
8	Valdez-Chitina-Whittier	1
9	Palmer-Wasilla-Talkeetna	1
10	Anchorage	8
11	Seward	1
12	Kenai-Cook Inlet	1
13	Kodiak	2
14	Aleutian Islands	1
15	Bristol Bay	1
16	Bethel	1
17	Kuskokwim	1
18	Yukon-Koyukuk	1
19	Fairbanks	5
20	Upper Yukon	1
21	Barrow	1
22	Kobuk	1
23	Nome	2
24	Wade Hampton	1

Reapportionment and redistricting.
— The reapportionment proclamation of the governor, dated June 14, 1974, as modified by the Alaska supreme court in *Groh v. Egan*, Sup. Ct. Op. Nos. 1081a, 1081b (File No. 2237), 526 P.2d 863 (1974),

provides that the election districts are to have the following numbers, names, and assignments of seats in the house of representatives:

<i>Election District</i>	<i>Name of District</i>	<i>Number of Representatives</i>
1	Ketchikan-Prince of Wales	2
2	Wrangell-Petersburg	1
3	Sitka	1
4	Juneau-Lynn Canal	2
5	Cordova-Valdez-Seward	1
6	Palmer	1
7	Anchorage Northwest	4
8	Anchorage Northeast	4
9	Anchorage Spenard	2
10	Anchorage East	2
11	Anchorage South	2
12	Anchorage West	2
13	Kenai-Cook Inlet	2
14	Kodiak	1
15	Aleutian Chain	1
16	Bristol Bay	1



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

May 21, 1981

MEMORANDUM

TO: Representative Ben Grussendorf

FROM: Leslie Longenbaugh ✓
Research Staff

RE: Retention Election of Judges
Research Request Number 81-141

You asked that we provide information on options for changing the system of retention by election for district and superior court judges in this state. You would like to find a way of reconciling the differences between the population most likely to be served by the judge and the population which is given the opportunity to vote on the judge's retention.

The "modified Tennessee plan," where judges are appointed and then subject to approval or rejection by the voters, is incorporated in the Alaska Constitution; however, that Constitution does vest the Legislature with the power to establish the manner in which judges are approved or rejected (see Article IV, Section 6, of the Alaska Constitution, which is Attachment C to this memorandum).

PRESENT SITUATION

One question raised by this inquiry is whether the group which is served by a judge includes few, many, or most of those who may vote for his or her retention. For the most part, the disparity between these two groups is significant. For example, a judge whose court is in Sitka will seldom hear cases from Juneau, Ketchikan, and Wrangell, and yet will be subject to approval or rejection by voters in those communities. Some proponents of change argue that a judge who is unpopular among the population he or she serves is nonetheless likely to be retained by a voting population that includes a majority who are uninformed about the judge's performance.

This difference between those served and those who may vote on a judge's retention is also perceived as a problem by some staff within the court system. The Honorable Duane Craske, Superior Court Judge in Sitka, for example, told us that he would welcome a reform in this area, seeing it

as a way of furthering communication between a judge and those he or she serves. Nick Maroules, Attorney for the Judicial Council,¹ also has said that he thinks some change in this direction is a good idea, particularly for Southeast.

For the purposes of court administration, Alaska is divided into four judicial districts (see Attachment A). The First Judicial District encompasses all of Southeast Alaska, the Second includes the far northwestern region of the state, the Third comprises Southcentral Alaska and the Aleutian Islands, and the Fourth cuts a diagonal swathe across the center of the state, including Fairbanks and Bethel. In the First Judicial District, superior and/or district court judges sit in four municipalities: Juneau, Ketchikan, Sitka and Wrangell. In the Second, judges sit in Kotzebue and Nome; the Third Judicial District contains five communities where judges sit: Anchorage, Homer, Kenai, Kodiak and Valdez. The Fourth has judges in Bethel and Fairbanks. The size of the four districts is thought by some to reduce the chances that a voter will be well-informed about the performance and popularity of a judge from another part of the judicial district.

Once appointed by the Governor, an Alaskan district or superior court judge is likely to spend most of his or her tenure in the municipality where he or she was originally assigned. This position contradicts the popular view that judges quite frequently move from one town to another. There are three occasions when a district or superior court judge will be temporarily replaced by a judge from another part of his or her judicial district: 1) illness; 2) vacation; and 3) preemption, or disqualification.

The third case mentioned above, that of disqualification, is the most common reason for temporary reassignment. Alaska law allows participants in civil cases and defendants in criminal prosecutions to request that their cases be tried before a judge other than the one assigned. The petitioner need not provide any reason for the request for disqualification. In addition, it sometimes happens that a judge feels himself or herself to be unable to participate fairly in a proceeding; in these cases, the judge files a disqualification from the case.

On a change of judge has been granted, the Presiding Judge of the judicial district must choose a judge of the same authority as the disqualified judge, i.e., district or superior, to go to the other court to hear the case. This reassignment is sometimes a problem, particularly in judicial districts with only a few courts. For example,

¹Nick Maroules, Attorney/legal Analyst, Alaska Judicial Council, 420 "L" Street, Suite 502, Anchorage, 99501; telephone: 279-2526.

Because none of the four towns in the First Judicial District which have courts presently contains more than one superior court judge, judges who are reassigned within this district must nearly always travel some distance. During 1980, 2% of the cases heard in the First Judicial District were reassigned because of the disqualification of the original judge.²

In terms of the number of judges and the size of the population served, the Third Judicial District is the largest in the State. Anchorage, which is located within the Third District, has ten Superior Court judges and seven District Court judges. When a judge is disqualified from a case in the Anchorage area, another judge usually can be found in Anchorage to replace him or her on the case. Judges in Valdez, Kenai, Homer, and Kodiak, however, are also likely to be replaced by Anchorage judges. For this reason, it would seem that voters in the Third Judicial District would be more likely than voters in the First to know the judges from throughout their district.

The two remaining judicial districts, the Second and the Fourth, present situations similar to that in the First, although on a different scale. Each of these districts contains two municipalities with courts, and in each the two municipalities are separated by hundreds of miles.

OPTIONS

In your request to this Agency, you mentioned two alternatives for resolving the perceived disparity between those eligible to vote for a judge's retention and those who are served by that judge. These options are: 1) to have the voters within each election district vote on the retention of the judges in their election district; and 2) to have the voters in each community vote on the retention of judges serving in their community. For reasons discussed below, we offer a third option for your consideration: to break the present judicial districts down into smaller election units which would correspond more closely to the areas actually served by the judges within them.

²We computed this figure ourselves by counting the number of disqualifications in Judge Stewart's 1980 files, and using the figure for the total number of cases other than traffic violations given to us by Merle Martin, the Manager of Technical Operations for the Court System (telephone: 264-0544). This figure is not presently available for the other three judicial districts, but presumably could be computed in the same fashion.

Representative Grussendorf

May 21, 1981

Page 4

The first option, to have judges retained only by the voters in their election districts, would present difficulties because of the impracticability of matching election district boundaries with the present areas served by judges (compare Attachments A and B). In order to institute this change, the area served by each judge would have to be redefined to conform to the election district.

The second option you suggested, to have only those voters in the community where a judge sits vote on his or her retention, also would be difficult to institute. If only the community where the judge sits is included in this plan, the surrounding smaller communities whose inhabitants are routinely subject to the judge's orders will be disenfranchised. For example, the judge in Sitka who hears cases from Angoon would not be voted upon by the inhabitants of Angoon, or of any of the small communities whose cases he or she hears.

We have worked out a third option, which is a combination of the two you suggested and the present practice: having the Division of Elections break up the present judicial districts, precinct by precinct, into smaller election units. This would be similar to the Division's present practice, which is to divide the election districts every ten years, precinct by precinct, in order to match the ballots to the judicial districts involved.

According to Patty Ann Polley, Director of the Division of Elections,³ her office hopes to divide up the reapportioned election districts in time for the 1982 retention elections. Ms. Polley reports that making divisions smaller than the four judicial districts would not present any real difficulty.

The primary problem associated with this approach seems to lie in the timing. Ms. Polley has estimated that the Division of Elections must have the figures from the reapportioned election districts by February 1982 in order to use the new districts in the 1982 elections. Thus, February 1982 is the latest date, assuming that there are no major delays in the progress of the reapportionment plan, that the Division of Elections will be starting work on the decennial division of election districts into judicial districts. If new election units of some kind are to be included in the Division's efforts, the Legislature will have had to pass the appropriate legislation, and the Judicial Council (or some other group which is qualified to make such judgments about the judiciary) will have had to decide on the boundaries of the new "judicial election districts" before February 1982.

³Patty Ann Polley, Director, Division of Elections, 3rd Street Community Building, Juneau, 99811; telephone: 586-5181.

Representative Grussendorf
May 21, 1981
Page 5

Of course, at the request of the Legislature, the Division of Elections could redivide the judicial districts at almost any time; the time limits mentioned above refer to the earliest possible election, i.e., 1982, and to the most efficient use of staff time at the Division of Elections, since they must redivide the districts in 1982 as they do every ten years.

Mr. Maroules, the Attorney for the Judicial Council, has told us that as far as he knows, the idea of redistricting for judicial elections has never come before the Judicial Council. Mr. Maroules has placed the idea on the agenda for the next general meeting of the Council, scheduled for the first week in June, and has said that he will call us with the results of that meeting. We will keep you informed of the Judicial Council's response to the suggestion.

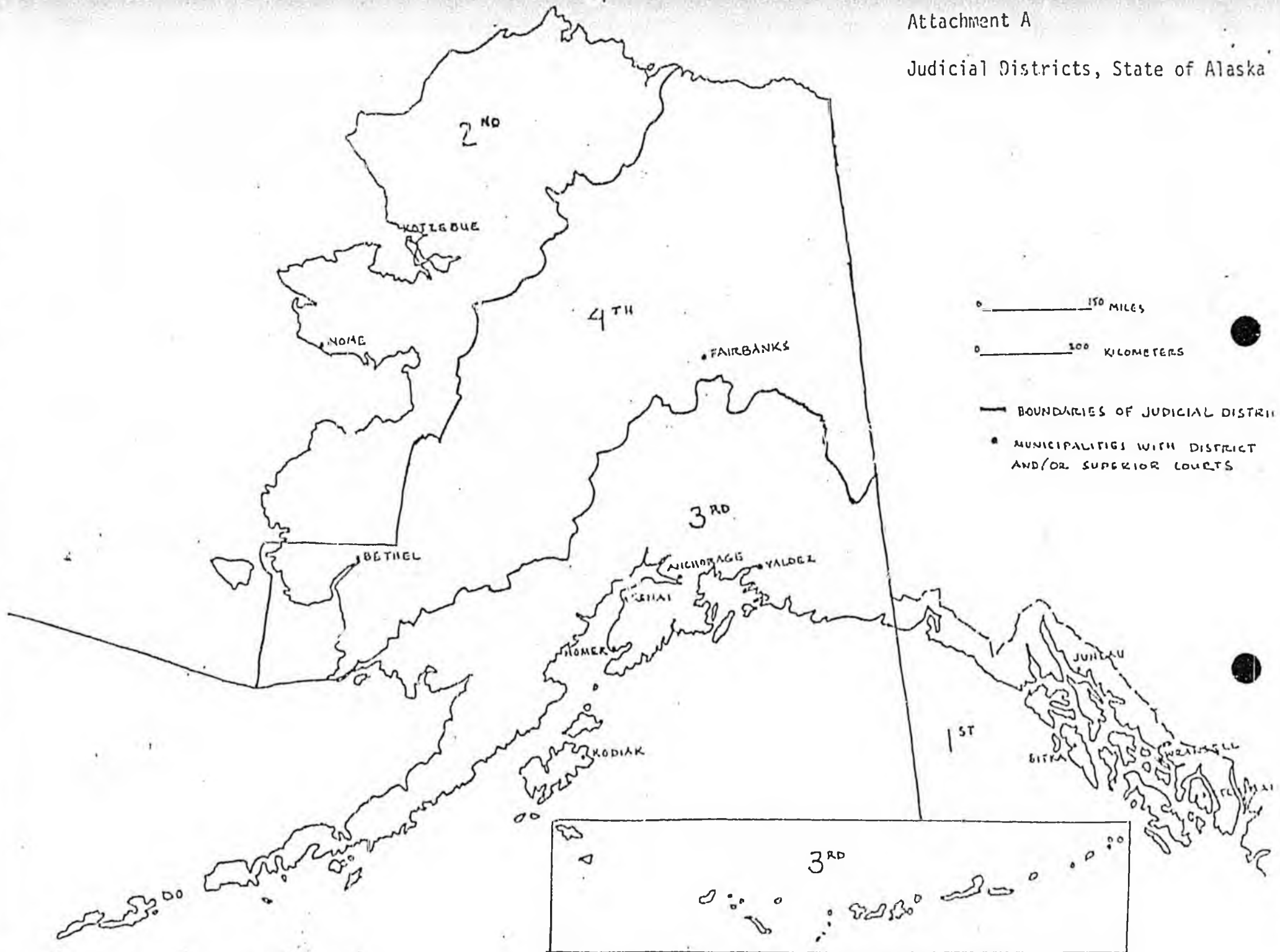
If you would like us to research further any of the alternatives listed above, please do not hesitate to call on us.

LL/bf

Encls.

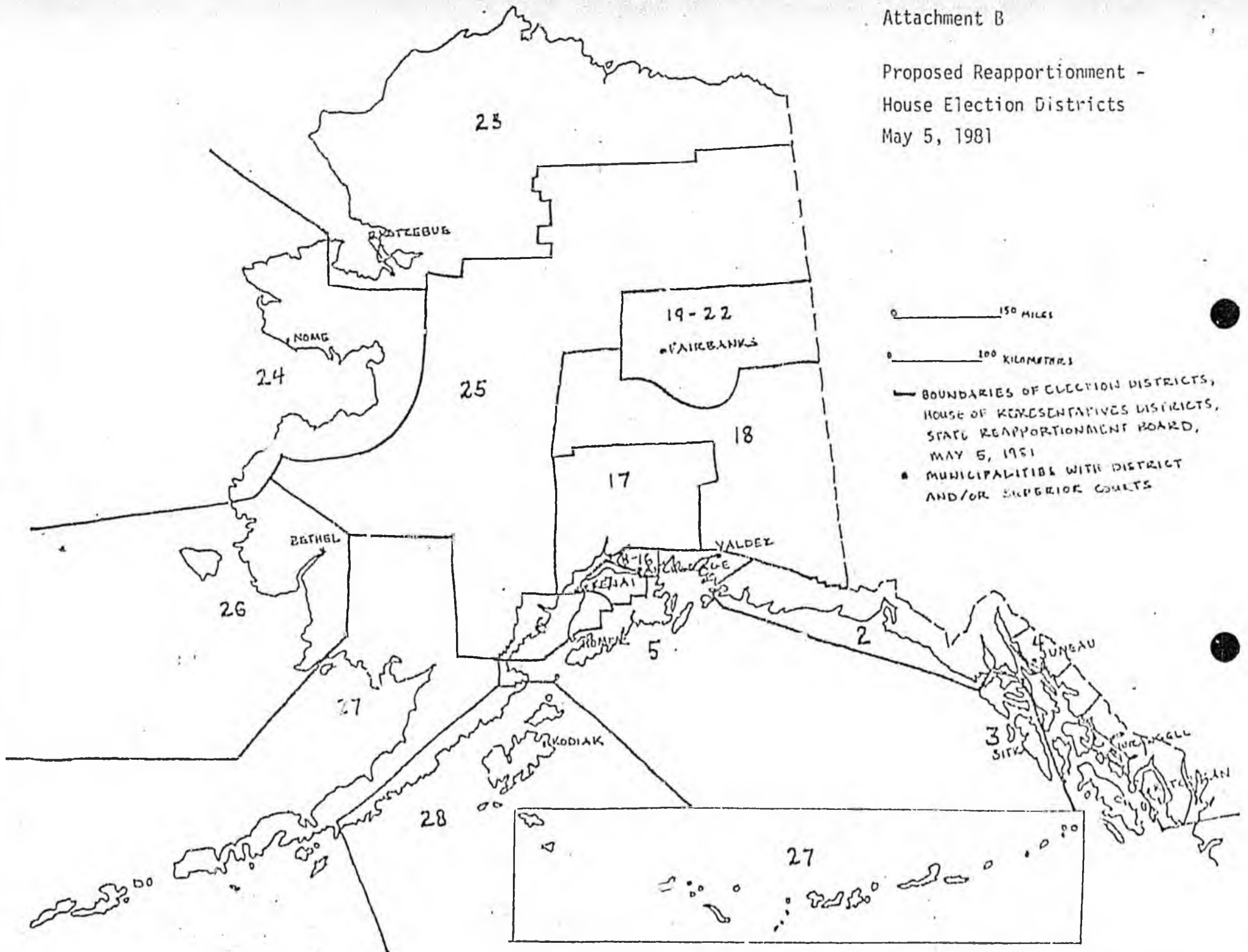
Attachment A

Judicial Districts, State of Alaska



Attachment B

Proposed Reapportionment -
House Election Districts
May 5, 1981



...effective at a
...by the governor.
...department shall
...ernor.
...principal depart-
...unless otherwise
...nted by the gov-
...majority of the
...nt session, and
...governor, except
...with respect to
...of all principal
...e United States.

...changing the name of the
...of the Alaska Constitution,
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...er of the State is
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tion of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law.

Supreme Court

SECTION 2. (a) The supreme court shall be the highest court of the State, with final appellate jurisdiction. It shall consist of three justices, one of whom is chief justice. The number of justices may be increased by law upon the request of the supreme court.

(b) The chief justice shall be selected from among the justices of the supreme court by a majority vote of the justices. His term of office as chief justice is three years. A justice may serve more than one term as chief justice but he may not serve consecutive terms in that office.

(The amendment to this section was approved by the voters of the state August 25, 1970 and became effective October 10, 1970. Subsection (b) was added.)

Superior Court

SECTION 3. The superior court shall be the trial court of general jurisdiction and shall consist of five judges. The number of judges may be changed by law.

Qualifications of Justices and Judges

SECTION 4. Supreme court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the State, and possessing any additional qualifications prescribed by law. Judges of other courts shall be selected in a manner, for terms, and with qualifications prescribed by law.

Nomination and Appointment

SECTION 5. The governor shall fill any vacancy in an office of supreme court justice or superior court judge by appointing one of two or more persons nominated by the judicial council.

Approval or Rejection

SECTION 6. Each supreme court justice and superior court judge shall, in the manner provided by law, be subject to approval or rejection on a nonpartisan ballot at the first general election held

more than three years after his appointment. Thereafter, each supreme court justice shall be subject to approval or rejection in a like manner every tenth year, and each superior court judge, every sixth year.

Vacancy

SECTION 7. The office of any supreme court justice or superior court judge becomes vacant ninety days after the election at which he is rejected by a majority of those voting on the question, or for which he fails to file his declaration of candidacy to succeed himself.

Judicial Council

SECTION 8. The judicial council shall consist of seven members. Three attorney members shall be appointed for six-year terms by the governing body of the organized state bar. Three non-attorney members shall be appointed for six-year terms by the governor subject to confirmation by a majority of the members of the legislature in joint session. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration to area representation and without regard to political affiliation. The chief justice of the supreme court shall be ex officio the seventh member and chairman of the judicial council. No member of the judicial council, except the chief justice, may hold any other office or position of profit under the United States or the State. The judicial council shall act by concurrence of four or more members and according to rules which it adopts.

Retirement

Additional Duties

SECTION 9. The judicial council shall conduct studies for improvement of the administration of justice, and make reports and recommendations to the supreme court and to the legislature at intervals of not more than two years. The judicial council shall perform other duties assigned by law.

Impeachment

Commission on Judicial Qualifications

SECTION 10. The commission on judicial qualifications shall consist of nine members, as follows: one justice of the supreme court, elected by the

Compensation



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

March 31, 1981

MEMORANDUM

TO: Representative Pat O'Connell

FROM: Leslie Longenbaugh *LL*
Research Staff

RE: Campaign Laws
Research Request Number 81-96

You have asked that we clarify the effect of the two Judiciary Committee amendments to House Bill 89 on the reporting obligations of candidates for judicial retention.

Presently judicial candidates for retention are governed by AS 15.13.110 (attached), which requires all candidates for civil office to report campaign contributions and expenditures to the Alaska Public Offices Commission. Nancy Carlson, Director of APOC¹, reports that judges are treated by the Commission in the same manner as other candidates, although judges very rarely file more than a "15-0 form," which states that they have received no contributions and have made no campaign expenditures. To Ms. Carlson's knowledge, no judges have been accused of violating the reporting requirements.

Because judges are already within the jurisdiction of APOC, this amendment would have the effect of clarifying the steps to be taken by APOC in the case of a violation by a judicial candidate of the reporting requirements. The amendment would not alter the reporting requirements already imposed upon judicial candidates.

If we can be of further assistance, please call on us.

LL/dp

Encls.

¹Nancy Carlson, Director, Alaska Public Offices Commission; phone: 274-0321.

- 1-- This adds a chapter to Title 22, Judiciary, re-enacting existing wording now found in separate chapters this bill will repeal (i.e., AS 22.15.100, Supreme Court; AS 22.07.060, Criminal Court of Appeals; AS 22.10.150, Superior Court and AS 22.15.195, District Court) It combines the procedures regarding retention elections all in one new chapter.
- 2--Changes from running for election in an entire judicial district (one of the four) to running in those election districts the judges on the ballot serve. For example, under this bill, Sitka voters would not vote on Juneau judges and vice versa; Ketchikan voters would vote on judges there, not in other Southeast locations; Anchorage judges would not be voted on in the Matanuska-Susitna Borough; a judge serving Cordova-Glennallen, Valdez would be voted on in those districts rather than those plus the entire Third Judicial District.
- 3--Provision is made for certification by the Judicial Council to the director of elections, that a judge can be on ballots in other election districts when the judge sits or serves other election districts as well on a "routinely and frequently" basis.

IMPACT:

FISCAL NOTE:

AMENDMENTS:

(Suggested amendment: Lines 15,16 page 1; lines 2,3 page 2; line 17, page 2 and line 3, page e):

Omit words "...and may provide a recommendation regarding retention or rejection." This would remove the possibility of a recommendation based on whim, fancy, hearsay, manipulated statistics, personal dislike or disregard by people around the state who comprise the Judicial Council, who have never seen particular judges, observed them in court, read their opinions and may be totally unqualified to judge whether a judge is qualified..

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: House Bill #8 Date on Bill: 1-17-83
 Title: "An Act relating to judicial retention elections; and providing for an
 Sponsor: Grussendorf and Barnes effective date."
 Requestor: House Judiciary

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating			-0-	-0-	91.8			
Total			-0-	-0-	91.8			

b. Revenues:

Revenue								
---------	--	--	--	--	--	--	--	--

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

Sponsor suggested taking the funds from the budget of the Office of Budget and Management.

3. Assumptions:

See attached sheet.

4. Disclaimer:

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

Prepared By: Dana C. Coffman, Deputy Director Phone: 586-6181
 Division: Division of Elections Date: 2-14-83

Approved by Commissioner: _____ Date: _____
 Department: _____

5. Distribution:

Original to Legislative Finance
 Copy to OMB
 Copy to Sponsor

"An Act relating to judicial retention elections"

Assumptions:

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

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

Programming costs related to ballot counting will be substantial.

Professional Services Agreement will be required to contract for the production of a cross-reference listing of communities using the 1959 and 1981 reapportionments.



FOUCH V
JUNEAU, ALASKA 99801
19071 405-4000

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLES BURSSELL
CHAIRMAN

Committee on Judiciary

March 21, 1983

Mr. Francis L. Bremson
Executive Director
Alaska Judicial Council
1031 W. Fourth Avenue, Suite 301
Anchorage, Alaska 99501

Dear Director Bremson:

Thank you for your letter of March 16, 1983, expressing your views on HB 8 and SB 84, regarding judicial retention elections, and your participating in the legislative process.

I would like to comment on points raised through this letter in the order conveyed by the letter.

Statutory Reasons. A judge would be voted on, I gather, in all the districts from which litigation stems that would come before a particular judge or judges, so I do not believe there would be an insurmountable difficulty in the Council's making that determination.

Where would a conflict arise in the Council's determining where a judge must run and at the same time making an evaluation of that judge? Surely you would not want the Council considering either positive or negative comments from interested persons who would never have a case going before the particular judge or judges? Or would the Council rather solicit good (or bad) comments from any area in order either to boost or knock down a judge? I cannot believe the Council would resort to such tactics, as they might possibly border on the unethical.

As you know, the Constitution establishes the Council, but it does not set forth Council duties, which is accomplished by legislation. Perhaps clarifying legislation should be enacted.

Administrative Reasons. I think you are confusing the four judicial districts which have existed since long before statehood with the House and Senate smaller election districts we now have. That tends to obfuscate the issue.

MEMBERS:

REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDIE

Mr. Francis L. Breason
March 21, 1983
Page No. 2

You maintain that judges of one judicial district (one of the territorial four?) might actually be voted on by voters in another judicial district (one of the territorial four). As I understand the bills, no voter would be able to vote for a judge unless, in prosecuting or defending a piece of litigation, there would be the distinct possibility of a particular judge or judges of a location hearing the litigation. If the particular voter would have to bring the lawsuit in some other court, then that is the area in which the voter would vote on judges. Let us neither be confused or bound by out-moded, out-dated territorial judicial district boundaries, which probably should be demolished anyway!

I do not understand your point of confusion "by using different election districts for retention elections than are used for general elections." That is already a fact and has been a fact since statehood. That is to say, retention elections for judges are judicial district-wide now (referring to the four judicial districts mentioned earlier), whereas legislators use small divisions within those huge districts as their election districts, so the differences you mention already exist, you see. Both legislators and judges are elected now at general elections and I fail to see why confusion would reign merely by narrowing the scope of geographical areas in which judges should run. Or, would you rather scrap all House/Senate election district boundaries and have legislators run at large in the four judicial districts? For example, why should residents of the Aleutian Islands in the Third Judicial District vote for judges in Palmer, or Kenai, or Valdez, and visa versa? For that matter, why should residents of Valdez, Cordova and Glennallen vote for Anchorage and Kodiak and Kenai judges whom they rarely, if ever, see? Using common sense in establishing retention election districts should cause no confusion.

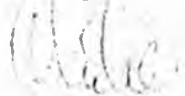
Constitutional Reasons. It is my understanding that the authors of the bills have no intention of anyone ever being disenfranchised in voting for a judge or judges. It cannot be that there would have to be a courthouse in every House (or Senate) election district in order for a citizen to vote; rather, wherever such voter would bring his/her cause of action, if one existed, would be the area in which that voter would see judges' names on the ballot. Is that not quite simple?

Mr. Francis L. Branson
March 21, 1983
Page No. 3

You mention the willingness to appear before the Committee(s) to discuss the legislation in further detail. I cannot speak for my counterpart in the Senate, but I will assure you that testimony from interested persons is always welcome. It seems to me, however, that as far as the House is concerned, the Committee quite fully understands the purpose of the proposed legislation. A determination of whether further testimony is needed will be made, I am sure, at the appropriate time.

Again, I wish to thank you for your interest in involving yourself in the legislative process.

Very truly yours,



Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

cc: Alaska Judicial Council

Mr. Francis L. Anderson
March 21, 1983
Page No. 3

You mention the willingness to appear before the Committee to discuss the legislation in further detail. I cannot speak for my counterpart in the Senate, but I will assure you that testimony from interested persons is always welcome. It seems to me, however, that as far as the House is concerned, the Committee quite fully understands the purpose of the proposed legislation. A determination of whether further testimony is needed will be made, I assume, at the appropriate time.

Again, I wish to thank you for your interest in involving yourself in the legislative process.

Very truly yours,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

cc: Alaska Judicial Council

bcc: Edmund W. Burke, Chief Justice
Alaska Supreme Court
Chairman, Exofficio, Alaska Judicial Council
303 "K" Street, Anchorage, Alaska 99501

Mr. John E. Longworth
Robert H. Moss
James B. Bradley
Joseph L. Young
Barbara L. Schumann

Mary Jane Fate

H

B

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MSG 52 000 5765 PTY 4 02/03/82 11 53 01 ORIG: LA02 IN- 0009 OUT- 00
FROM: SHIRLEE AND LIO TO: POMS, JUNEAU INFO
TARGET: LHL SURF POK

2/3/82 SHIRLEE AND LIO, MSG 5965

SSH810

TO: ALL SENATORS
ALL REPRESENTATIVES

FROM: TOM FITZKE
3840 PATRICIA LANE
ANCHORAGE, AK 99504 (H)337-7335

I WANT THE SO-CALLED LOOK-ALIKE DRUG TO BE MADE ILLEGAL TO OWN, DISTRIBUTE AND MANUFACTURE, ETC. THESE DRUGS CAN AND HAVE BECOME A BIG PROBLEM WITH OVERDOSE DEATHS AND OTHER VIOLENCE RELATING TO DRUG DEALING. THE SELLERS ARE THE WORST OFFENDERS.

WARMEST REGARDS.

More Work for Police

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

"It is like dealing with a greased pig," says Richard J. McMahon of the attorney general's office in Delaware. In June 1980, that state became the first to pass an anti-fraud law aimed at halting the flow of look-alikes. So far, only two cases have reached the courts; the state won one of them, "and even then the penalty was probation," Mr. McMahon says. More recently, nine other states have passed such laws: Arkansas, Colorado, Connecticut, Indiana, Kansas, Louisiana, Maryland, Oklahoma and South Dakota.

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

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

Please Turn to Page 21, Column 2

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

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

By STEVE R. MASSEY

Staff Reporter of THE WALL STREET JOURNAL

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

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

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

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

Reports of Overdoses

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

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

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

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

Almost as Much Fear as Real Ones

Continued From First Page

cialists are forced to pass the buck.

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

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

Death in Michigan

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

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

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

Firms Take Steps

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

The founder of the look-alike industry, William Saye, 33, of Fairburn, Ga., applauds the prohibitive measures. "Today, it is being abused," he says. "Kids don't know how to handle business. There are too many bathtub operations in existence now and not enough quality controls."

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

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

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

Small Operations

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

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

them. Supplies come from larger wholesalers such as Clifton Pharmacal Inc. in Milroy, Pa., which has its own pharmaceutical factory, or from one of an estimated 10 to 12 big manufacturers in Pennsylvania and on Long Island. They are sold in high volumes, in lots of 100 or 1,000, at prices ranging from about two cents to 10 cents a pill. On the street, says Mr. Tudor of the Ohio pharmacy board, they fetch anywhere from 50 cents to \$8 a pill.

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

STATE OF ALASKA
THE LEGISLATURE

POUCH Y. STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 21, 1983

SUBJECT: Imitation controlled substances
(SSHB 10)

TO: Representative Mitchell E. Abood, Jr.

FROM: James H. Lear
Legislative Counsel *JHL*

You have asked for a sectional analysis of SSHB 10 (An Act relating to imitation controlled substances). SSHB 10 is based on the Model Imitation Controlled Substances Act drafted by the Drug Enforcement Agency of the United States Department of Justice in October, 1981.

The bill consists of one section creating a new Chapter 73 in AS 11. The chapter contains several new sections:

Sec. 11.73.010. Prohibits the manufacture or distribution of imitation controlled substances as defined in Sec. 11.73.099(3) or possession of the same with intent to distribute. Violation of the section is punishable as a class C felony (maximum of five years in prison and maximum fine of \$50,000).

It is not a crime in certain instances if the substance is to be used as a placebo for medical treatment. This section is intended to curb the distribution of noncontrolled substances currently sold over-the-counter if manufactured or distributed as imitation controlled substances. See also sec. 11.73.050.

Sec. 11.73.020. Prohibits the possession of certain noncontrolled substances with the intent to manufacture an imitation controlled substance. The substances are those most frequently used to manufacture imitation controlled substances. Violation of this section is punishable as a class C felony. This section is not part of the "Model Act".

February 21, 1983

Sec. 11.73.030. This section imposes a stricter punishment for distribution of imitation controlled substances by an adult to a minor. The crime is a class B felony punishable by a maximum of ten years in prison and a maximum fine of \$50,000.

Sec. 11.73.040. Prohibits advertisement to promote the distribution of an imitation controlled substance. This crime is punishable as a class C felony. The section is directed mainly at those persons who promote the distribution of an imitation controlled substance by soliciting advertising space in newspapers, magazines, et cetera, or by publicly distributing advertisements for an imitation controlled substance. A publisher and a distributor of not only a local but of a national publication could be prosecuted for violation of sec. 11.73.040 if the state can establish beyond a reasonable doubt that the person had the requisite mental state. The defendant must have known that the purpose of the advertisement or solicitation was to promote the distribution of an imitation controlled substance in the State of Alaska. It is obvious that it would be easier for the state to prosecute an individual who resides within the state, but Alaska has criminal jurisdiction over a nonresident publisher of a national magazine or newspaper who knowingly publishes an advertisement to promote the distribution of an imitation controlled substance if that person consummates the crime from outside the state by the intervention of an innocent or guilty agent, such as a newsstand operator, within the state (AS 12.05.010 -- crime commenced outside the state but consummated inside).

Sec. 11.73.050. This section specifies that manufacturing, distributing, or possessing an imitation controlled substance solely for use as a placebo under prescription is not a crime. See also sec. 11.73.010.

Sec. 11.73.060. This section addresses the circumstances under which a violator of the chapter may have to forfeit to the state those items associated with the perpetration of offenses involving imitation controlled substances. The section is rather lengthy since it is intended to provide adequate guidelines for determining what property may be subject to forfeiture, how it is to be seized, what procedure is to be used for litigating the interests of possible owners, disposition of forfeited property, et cetera. If the degree of detail in this section were absent, an individual might successfully challenge the

forfeiture on the basis that it constitutes a taking of property without due process.

The section is almost identical to AS 17.30.110, the forfeiture provision of the 1982 drug bill enacted by Chapter 45, SLA 1982.

Sec. 11.73.099. Definition section. "Controlled substance" is defined by incorporating the definition codified in AS 11.81.900(6). However, sec. 13, Chapter 45, SLA 1982, repealed and reenacted that paragraph by substituting the following language for the former definition:

(6) "controlled substance" has the meaning ascribed to it in AS 11.71.900(4).

The other important definition is the definition of "imitation controlled substance". Basically, a substance is an imitation controlled substance if it appears by dosage unit appearance to be a controlled substance or if it is represented as one. The definition enumerates those circumstances under which such a representation could be found.

JRL:ljb

AMENDMENT

To: House Bill No. 10

Page 8, line 18:

Delete "AS 11.81.900(6)" and insert "AS 11.71.900(4)"

P: 60 . RXY. 1977 NEWS 4/2/82

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

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

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

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

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

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

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

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

'Look-alike' drugs can lead to violence, trooper testifies

by Harry McFarland
Associated Press

2-2-83

Juneau — When the buyer discovered he had been sold imitation drugs, he grabbed a gun, went back to the seller's home and shot him.

That is an example of the violence that imitation drugs, or "look-alikes," can cause on the streets, said Alaska State Trooper Lt. Roger McCoy during testimony on a bill to outlaw their sale in the state.

"Look-alikes" are designed to resemble or duplicate the appearance of brand name amphetamines, barbituates, tranquilizers and narcotic pain killers. On the streets, they are known and sold by the same names as their drug counterparts: Black Beauties, Dexies, Yellows, Christmas Trees and Rainbows.

"Look-alikes," though, contain non-controlled substances such as caffeine, ephedrine and other over-the-counter drugs.

The bogus drugs are showing up in Alaska in large quantities, said Anchorage Police Department Lt. Ron Needham.

"I have seen bags with the sum of 100,000 dosage units," Needham said from Anchorage via the state teleconference system. "I have

seen bags with 500,000, a half a million, dosage units."

The state has seen an increase in cases involving the look-alikes, McCoy said. In 1981, troopers had 95 cases involving the imitation drugs. Last year, they had 214 cases.

McCoy gave three reasons for the bill's passage: the potential of violence, the potential of overdose and the potential that juveniles will be introduced into the drug culture, McCoy said.

While the drugs are not physically addicting, they can be psychologically so, the policemen said.

Imitation drugs are very profitable, McCoy said. They sell for the same price as their real counter-

parts. A bag of speed will sell for \$200 to \$300. So will the fake stuff.

The difference is that the fake costs substantially less to manufacture, McCoy said. A tablet that sells for \$3 to \$5 dollars may only cost three cents to make.

Needham said 90 percent of the drugs sold on the street in Anchorage are imitations.

Rhonda Butterfield, assistant attorney general with Special Prosecution and Appeals, said there is a need for the legislation as only two ways currently exist to prosecute sellers of imitation drugs.

The first is to charge a seller with attempting to commit a crime; the other, charge the seller with theft by deception.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

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

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

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

b. Revenues:

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

3. Assumptions:

No Fiscal Impact

4. Disclaimer:

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

Prepared By: Francis C. Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 3-2-83
 Approved by Commissioner: [Signature] Date: 2/28/83
 Department: Public Safety

5. Distribution:

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

2/15/83

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

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

D. Cost Estimates:

1. Capital Expenditures

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

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

2. Personal Services

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

3. Other Costs

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

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

4. Disclaimer:

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

POSITION PAPER / Department of Health & Social Services

POSITION PAPER

HOUSE BILL 10

"An Act relating to imitation controlled substances."

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

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

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

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

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

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

George E. Mundell
George E. Mundell, Director
Division of Adult Corrections

Recommended by:

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

Date:

1/24/83

Approved by:

Robert London Smith, Ph.D.
Robert London Smith, Ph.D.
Comaissioner
Dept. of Health &
Social Services

Date:

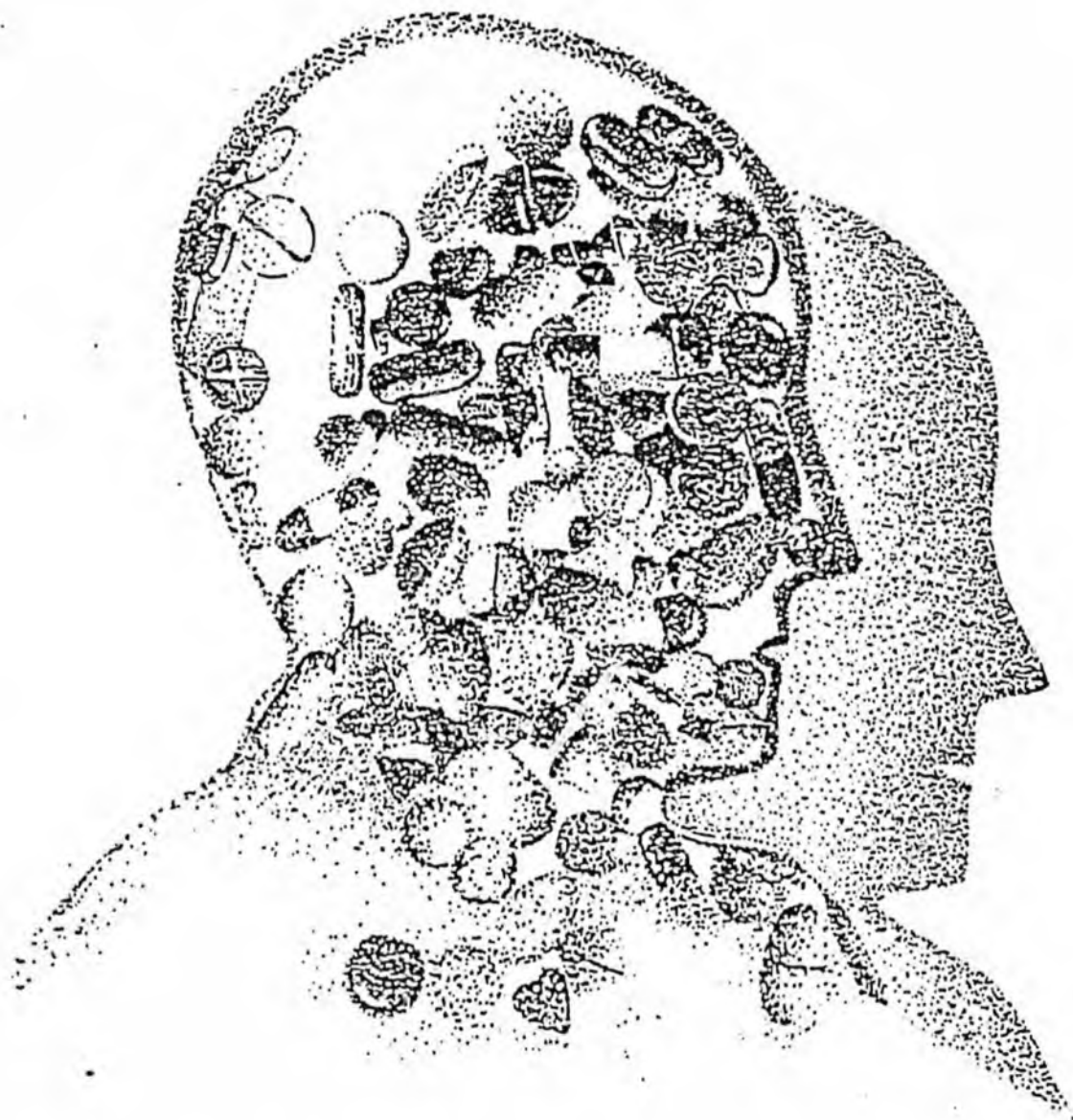
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Trafficking in Look-Alikes ; an Update



Trafficking in Look-Alikes; an Update

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

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

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

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

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

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

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

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

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

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

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

sn: (202) 533-1263

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

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

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

BT Pharmaceuticals, Inc.
Tampa, Florida

Pharmadose, Inc.
Bohemia, New York

Frye Pharmaceuticals, Inc.
Birmingham, Alabama

Standard Pharmacal Corp.
Elgin, Illinois

Jerome Stevens Pharmaceuticals, Inc.
Central Islip, New York

LNK International, Inc.
Hauppauge, New York

Valley Run Pharmaceutical
Milroy, Pennsylvania

VIP Pharmaceuticals, Inc.
Pearl River, New York

Newtron, Pharmaceuticals, Inc.
Coram, New York

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

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

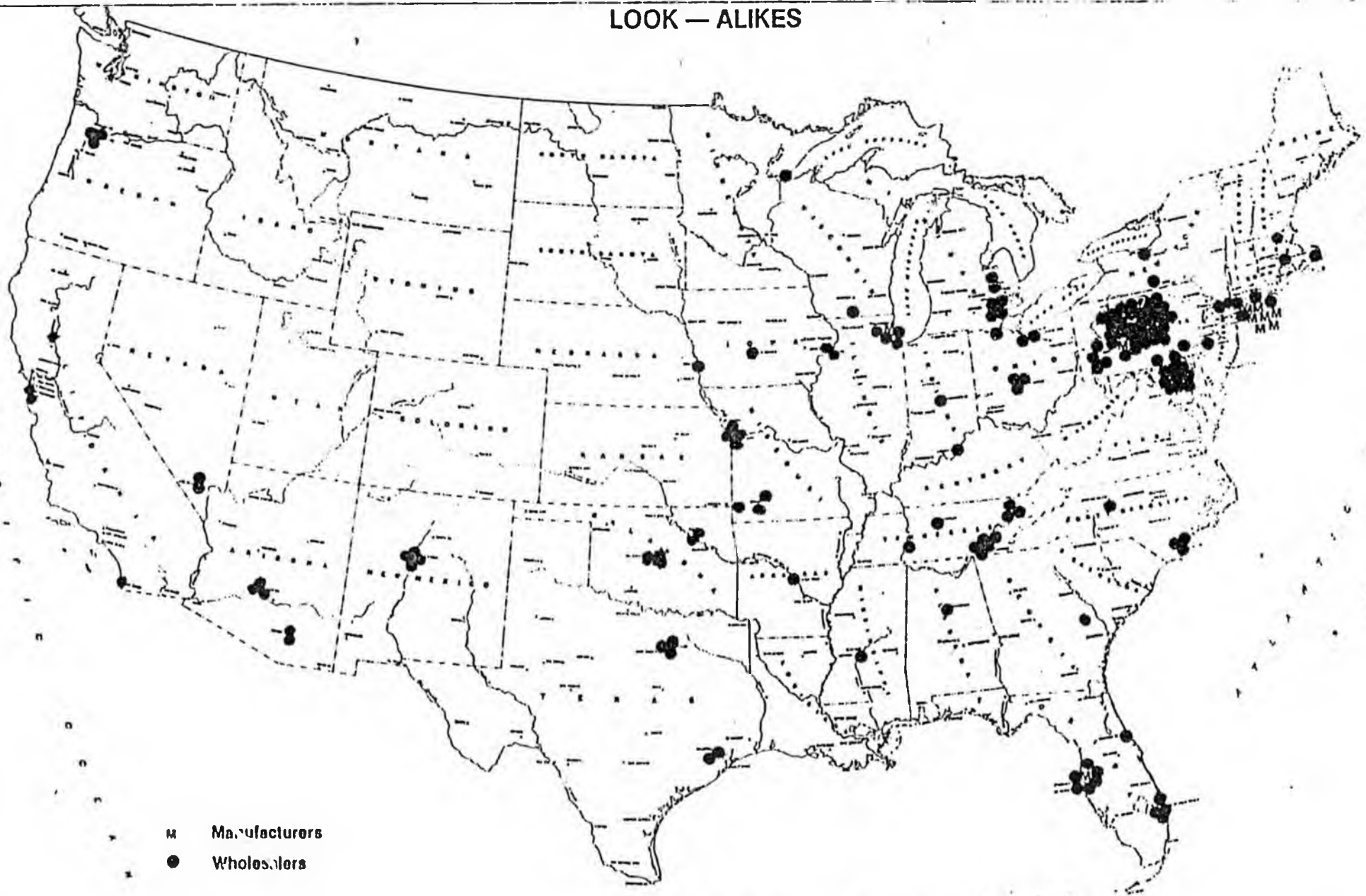
The actions described above comprise a promising start toward ending the nation-wide trafficking in look-alikes. It is too early to make an accurate evaluation of the overall damage suffered by look-alike traffickers, but there is room for some optimism. Continuing action by federal agencies, state and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

Laurence B. Golden
Office of Intelligence
November 2, 1981

(202) 633-1263

UNITED STATES

LOOK — ALIKES



M Manufacturers
● Wholesalers

GULF OF MEXICO



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

November 3, 1982

MEMORANDUM

TO: Representative Mitch Abood
Attention: Carol Horos

FROM: Christine Johnson, Research Staff

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

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

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

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

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

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

FDA Seeking to Bottle Up Fake Narcotics

By Pete Earley
Washington Post Staff Writer

In 1980, an Albuquerque teen-ager died after drinking several shots of bourbon at a Christmas party and swallowing two capsules he had been told were amphetamines. Police discovered that the capsules were not amphetamines, but non-prescription drugs made to look like them.

Since then, imitation amphetamines and barbiturates have been linked to 11 other teen-age deaths, according to the Food and Drug Administration.

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

While the agencies say they are taking what steps they can, they are somewhat reluctant to take on new enforcement tasks in times of tight budgets.

Fake amphetamines contain large amounts of caffeine, phenylpropandamine (a nasal decongestant and appetite suppressant) and the decongestant "ephedrine." Imitation barbiturates contain acetyaminophen, salicylamide, chlorpheniramine or other sedatives and hypnotic agents.

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

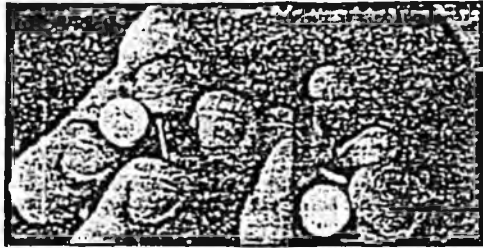
Many young people take them that way, a DEA spokesman said, because they believe that will help simulate the "high" caused by controlled substances. In mid-1981, DEA estimated that 30 million doses of fake narcotics were being manufactured each week and distributed through a network of 200 dealers.

Since 1980, FDA has filed administrative complaints against 46 companies that it claims violated counterfeit provisions of the Food, Drug and Cosmetic Act by making imitation drugs. Over the same period, the U.S. Postal Service has filed 20 complaints that accused drug makers of false advertising because they did not disclose that their products could cause illness or death.

Last week, FDA unveiled what it believes is its toughest tactic to date. It informed 16 small companies that they must submit any products that contain combinations of caffeine, ephedrine and phenylpropandamine for certification as new drugs. "We have researched this extensively and can find no precedent for the three-drug combination. It would be hard to believe that anyone can show a medical purpose or need for these drugs," said Bill Grigg, an FDA spokesman. In effect, Grigg said, FDA's action will force many of the stimulants off the market.

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

While federal officials are confident that their tactics have driven



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

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

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

promote drug abuse would be barred from the mails and FDA counterfeit laws would be expanded.

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

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

Working for Post Feb. 20, 1982

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

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



Photo courtesy of The Denver Post

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

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

Richard W. Foster

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

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

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

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

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

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

The drugs produce constriction of

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

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

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

Despite state and federal attempts to prohibit the distribution of these drugs, sales are on the rise. It is estimated that as many as 100 million look-alikes may be sold this year, compared to 70 million pills of amphetamines.

The FDA had not fully articulated its position on counterfeit drugs until September 28, 1981, when the agency raided nine factories in Alabama, Florida, Illinois, New York, and Pennsylvania. Equipment and over 10 million drugs were seized under a section of the Food, Drug and Cosmetic Act that defines a counterfeit drug and states that such drugs are liable to seizure.

Jane Germano

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More Work for Police

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

"It is like dealing with a greased pig," says Richard J. McMahon of the attorney general's office in Delaware. In June 1980, that state became the first to pass an anti-fraud law aimed at halting the flow of look-alikes. So far, only two cases have reached the courts; the state won one of them, "and even then the penalty was probation," Mr. McMahon says. More recently, nine other states have passed such laws: Arkansas, Colorado, Connecticut, Indiana, Kansas, Louisiana, Maryland, Oklahoma and South Dakota.

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

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

Please Turn to Page 21, Column 2

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

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

By STEVE R. MASSEY

Staff Reporter of THE WALL STREET JOURNAL

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

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

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

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

Reports of Overdoses

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

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

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

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

Almost as Much Fear as Real Ones

Continued From First Page

cialists are forced to pass the buck.

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

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

Death in Michigan

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

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

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

Firms Take Steps

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

The founder of the look-alike industry, William Saye, 38, of Fairburn, Ga., applauds the prohibitive measures. "Today, it is being abused," he says. "Kids don't know how to handle business. There are too many bathtub operations in existence now and not enough quality controls."

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

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

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

Small Operations

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

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

them. Suppliers come from larger wholesalers such as Clifton Pharmacal Inc. in Milroy, Pa., which has its own pharmaceutical factory, or from one of an estimated 10 to 12 big manufacturers in Pennsylvania and on Long Island. They are sold in high volumes, in lots of 100 or 1,000, at prices ranging from about two cents to 10 cents a pill. On the street, says Mr. Tudor of the Ohio pharmacy board, they fetch anywhere from 50 cents to \$8 a pill.

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

P. 60 RKY. NEWS 4/2/82

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

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

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

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

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

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

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

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

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 1, 1983

SUBJECT: Imitation controlled substances
(HB 10)

TO: Representative Mitchell E. Abood, Jr.

FROM: James H. Lear
Legislative Counsel

You have asked for a sectional analysis of HB 10 (An Act relating to imitation controlled substances). HB 10 is based on the Model Imitation Controlled Substances Act drafted by the Drug Enforcement Agency of the United States Department of Justice in October, 1981.

The bill consists of one section creating a new Chapter 14 in AS 17. The chapter contains several new sections:

Sec. 17.14.010. Prohibits the manufacture or distribution of imitation controlled substances as defined in Sec. 17.14.099(3) or possession of the same with intent to distribute. Violation of the section is punishable as a class C felony (maximum of five years in prison and maximum fine of \$50,000). It is not a crime in certain instances if the substance is to be used as a placebo for medical treatment. This section is intended to curb the distribution of noncontrolled substances currently sold over-the-counter if manufactured or distributed as imitation controlled substances.

Sec. 17.14.015. Prohibits the possession of certain noncontrolled substances with the intent to manufacture an imitation controlled substance. The substances are those most frequently used to manufacture imitation controlled substances. Violation of this section is punishable as a class C felony. This section is not part of the "Model Act".

Sec. 17.14.020. This section imposes a stricter punishment for distribution of imitation controlled substances by an

adult to a minor. The crime is a class B felony punishable by a maximum of ten years in prison and a maximum fine of \$50,000.

Sec. 17.14.030. Prohibits advertisement to promote the distribution of an imitation controlled substance. This crime is punishable as a class C felony. The section is directed mainly at those persons who promote the distribution of an imitation controlled substance by soliciting advertising space in newspapers, magazines, et cetera, or by publicly distributing advertisements for an imitation controlled substance. A publisher and a distributor of not only a local but of a national publication could be prosecuted for violation of sec. 17.14.030 if the state can establish beyond a reasonable doubt that the person had the requisite mental state. The defendant must have known that the purpose of the advertisement or solicitation was to promote the distribution of an imitation controlled substance in the State of Alaska. It is obvious that it would be easier for the state to prosecute an individual who resides within the state, but Alaska has criminal jurisdiction over a nonresident publisher of a national magazine or newspaper who knowingly publishes an advertisement to promote the distribution of an imitation controlled substance if that person consummates the crime from outside the state by the intervention of an innocent or guilty agent, such as a newsstand operator, within the state (AS 12.05.010 -- crime commenced outside the state but consummated inside).

Sec. 17.14.040. This section specifies that manufacturing, distributing, or possessing an imitation controlled substance solely for use as a placebo under prescription is not a crime.

Sec. 17.14.050. This section addresses the circumstances under which a violator of the chapter may have to forfeit to the state those items associated with the perpetration of offenses involving imitation controlled substances. The section is rather lengthy since it is intended to provide adequate guidelines for determining what property may be subject to forfeiture, how it is to be seized, what procedure is to be used for litigating the interests of possible owners, disposition of forfeited property, et cetera. If the degree of detail in this section were absent, an individual might successfully challenge the forfeiture on the basis that it constitutes a taking of property without due process.

The section is almost identical to AS 17.30.110, the forfeiture provision of the 1982 drug bill enacted by Chapter 45, SLA 1982.

Sec. 17.14.099. Definition section. "Controlled substance" is defined by incorporating the definition codified in AS 11.81.900(6). However, sec. 13, Chapter 45, SLA 1982, repealed and reenacted that paragraph by substituting the following language for the former definition:

(6) "controlled substance" has the meaning ascribed to it in AS 11.71.900(4).

Rather than requiring the reader to make a two-step process to get to the definition, the internal reference on line 18, page 8, of HB 10 should be amended to read "AS 11.71.900(4)".

The other important definition is the definition of "imitation controlled substance". Basically, a substance is an imitation controlled substance if it appears by dosage unit appearance to be a controlled substance or if it is represented as one. The definition enumerates those circumstances under which such a representation could be found.

JHL:ljb



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

A handwritten signature in dark ink, appearing to be "M. Johnson".

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

November 3, 1982

MEMORANDUM

TO: Representative Mitch Abood
Attention: Carol Horos

FROM: Christine Johnson, Research Staff

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

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

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

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

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

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

FDA Seeking to Bottle Up Fake Narcotics

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48

By Pete Earley

Washington Post Staff Writer

In 1980, an Albuquerque teenager died after drinking several shots of bourbon at a Christmas party and swallowing two capsules he had been told were amphetamines. Police discovered that the capsules were not amphetamines, but non-prescription drugs made to look like them.

Since then, imitation amphetamines and barbiturates have been linked to 11 other teen-age deaths, according to the Food and Drug Administration.

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

While the agencies say they are taking what steps they can, they are somewhat reluctant to take on new enforcement tasks in times of tight budgets.

Fake amphetamines contain large amounts of caffeine, phenylpropanolamine (a nasal decongestant and appetite suppressant) and the decongestant, ephedrine. Imitation barbiturates contain acetaminophen, salicylamide, chlorpheniramine or other sedatives and hypnotic agents.

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

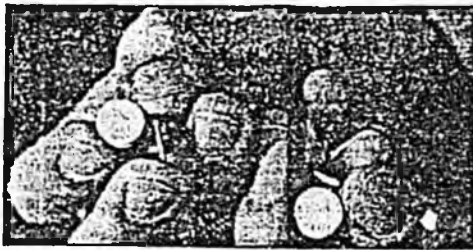
Many young people take them that way, a DEA spokesman said, because they believe that will help stimulate the "high" caused by controlled substances. In mid-1981, DEA estimated that 30 million doses of fake narcotics were being manufactured each week and distributed through a network of 200 dealers.

Since 1980, FDA has filed administrative complaints against 46 companies that it claims violated counterfeit provisions of the Food, Drug and Cosmetic Act by making imitation drugs. Over the same period, the U.S. Postal Service has filed 20 complaints that accused drug makers of false advertising because they did not disclose that their products could cause illness or death.

Last week, FDA unveiled what it believes is its toughest tactic to date. It informed 16 small companies that they must submit any products that contain combinations of caffeine, ephedrine and phenylpropanolamine for certification as new drugs. "We have researched this extensively and can find no precedent for the three-drug combination. It would be hard to believe that anyone can show a medical purpose or need for these drugs," said Bill Grigg, an FDA spokesman. In effect, Grigg said, FDA's action will force many of the stimulants off the market.

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

While federal officials are confident that their tactics have driven



As examples of look-alike, imitation drugs, left, and the real controlled substances.

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

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

promote drug abuse would be barred from the mails and FDA counterfeit laws would be expanded.

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

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

Working for Post Aug 29, 1980

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248-1515



CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 23, 1983

The Proprietary Association
1700 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

ATTENTION: Mr. Allan R. Rexinger, Director of Legislative
Relations

SUBJECT: HB 10, Imitation Controlled Substance Act

Dear Mr. Rexinger: .

Thank you for your interest and offer of help in draft-
ing a proper subject act.

Enclosed for your further information is a copy of the
Act as amended and passed from the House Judiciary Committee
on February 22, 1983.

I welcome any further comments you have regarding this
or any other act we have under consideration.

Again, thank you for becoming involved in our legisla-
tive process.

Regards,

Charlie Bussell
Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

cc: Representative Abood



THE PROPRIETARY ASSOCIATION

1700 Pennsylvania Avenue N.W./Washington, D.C. 20006/Phone (202) 393-1700

February 4, 1983

Representative Mitch E. Abood
Pouch V - Room 102
Alaska State Legislature
Juneau, Alaska 99811

Attn: July McGhie

Dear Representative Abood:

The purpose of this letter is to follow-up my conversation with Ms. McGhie during which we discussed several amendments to HB 10 — the Imitation Controlled Substances Act. As I explained to Ms. McGhie, The Proprietary Association is a 102-year-old national trade association which represents manufacturers of nonprescription, i.e., over-the-counter (OTC) medicines such as St. Joseph's Aspirin for Children, Anacin, Bayer Aspirin, Contac, Tylenol, Excedrin, Pepto Bismol and many others.

Enclosed is a summary of the amendments to HB 10. Also enclosed is a memorandum on street-drug look-alikes, the U.S. Drug Enforcement Administration Imitation Controlled Substances Model State Bill, the American Medical Association Model State Bill, and the Imitation Controlled Substances Amendment as passed the United States Senate on September 30, 1982. Please note that several of these amendments appear in the text of the enclosed bills. The amendments are marked by number for your convenience and correspond to the summary of our amendments.

Please do not hesitate to contact us if we can be of further assistance. In the mean time, I intend to keep in contact with Ms. McGhie and look forward to speaking with you in the future.

Thank you.

Sincerely,

Allan R. Rexinger
Director of Legislative Relations

Enclosures: As stated

ARR/ds



THE PROPRIETARY ASSOCIATION

1700 Pennsylvania Avenue N.W./Washington, D.C. 20006/Phone (202) 393-1700

AMENDMENTS TO ALASKA HB 10 IMITATION CONTROLLED SUBSTANCES ACT

*CAPITALS indicate material to be added.

**[Bracketed] material is to be deleted.

AMENDMENT I

On page 1, line 12 after the word "person" add the following words:

KNOWINGLY OR INTENTIONALLY

Comment: The addition of these words adds specific intent to the Section which is necessary to prevent coverage of a person who does not intend to manufacture, distribute, or possess an imitation controlled substance, but who by unforeseen circumstances becomes unwhitingly liable under the Act.

AMENDMENT II

On page 2, line 14 after the word "possesses" add the following:

: (1)

On page 2, line 16 after the word "research" add the following:

, (2) A NONCONTROLLED SUBSTANCE THAT WAS INITIALLY INTRODUCED INTO COMMERCE PRIOR TO THE INITIAL INTRODUCTION INTO COMMERCE OF THE CONTROLLED SUBSTANCE WHICH IT IS ALLEGED TO IMITATE, OR (3) AN IMITATION CONTROLLED SUBSTANCE FOR USE IN U.S. FOOD AND DRUG ADMINISTRATION INVESTIGATIONAL NEW DRUG TRIALS.

Comment: Two additional exemptions are needed beyond that already provided for placebos. The first would provide an exemption for a legitimate over-the-counter medicine that is already on the market and which may be rendered in violation of the Act if a controlled substance is subsequently marketed with identical dosage unit appearance. It is possible therefore that the legitimate OTC would be forced off the market or its manufacturer made subject to a penalty by the subsequent manufacture of a controlled substance. We do not believe this is the intention of the bill. In addition, an exemption ought to be provided for manufacturers of drugs that are used in U.S. Food and Drug Administration approved investigational new drug trials. These tests are conducted with the approval of the FDA.

AMENDMENT III

On page 8, strike line 22-29 and in lieu thereof add the following:

(3) "IMITATION CONTROLLED SUBSTANCE" MEANS ANY SUBSTANCE THAT IS NOT A CONTROLLED SUBSTANCE, AND THAT BY DOSAGE UNIT APPEARANCE (INCLUDING COLOR, SHAPE, SIZE, AND MARKINGS) OR BY REPRESENTATIONS WOULD LEAD A REASONABLE PERSON TO BELIEVE THAT THE SUBSTANCE IS A CONTROLLED SUBSTANCE; THE TERM "REPRESENTATIONS", AS USED IN THIS PARAGRAPH, INCLUDES BUT IS NOT LIMITED TO THE FOLLOWING:

Comment: By removing any reference to specific drug entities or ingredients, the definition of an "imitation controlled substance" is broader and would necessarily cover the widest possible range of noncontrolled substances intended to imitate controlled substances. Use of specific references to drug entities or ingredients creates room for reformulation for the purpose of escaping coverage under the current language of HB 10.

ARR/ds

2/4/83



THE PROPRIETARY ASSOCIATION

1700 Pennsylvania Avenue N.W./Washington D.C. 20006/Phone (202) 393-1700

MEMORANDUM

STREET-DRUG LOOK-ALIKES

INTRODUCTION

The Proprietary Association is a 100-year-old trade association which represents manufacturers of nonprescription, i.e., over-the-counter (OTC) medicines such as St. Joseph's Aspirin for Children, Anacin, Distan, Contac, Tylenol, Excedrin, Sine-Off and many others. These products are classified as drugs under both the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 300, et. seq.] and State statutes. Many of the Association's members market OTC products in this state and/or maintain plants and facilities here, employing many persons. In addition, these products are sold at retail by thousands of food stores, pharmacies, discount and department stores, and other retail outlets. The Association is therefore interested in the proposed legislation.

NON-PRESCRIPTION DRUGS

Responsible self-medication is a valuable and crucial part of our health care system and economy. For the individual, it is a familiar, inexpensive, and convenient method of treating common discomforts. For the health care system, it shields against a deluge of visits to health professionals for minor self-limiting disorders. For the national economy, self-medication helps contain the demand for unnecessary visits to the doctor and thus the total cost for formal medical services. As the 1978 edition of the U.S. Department of Commerce's U.S. Industrial Outlook stated:

"Seventy-five percent of all illness and injuries are initially treated through self-care and OTC medications. If only a small percentage of self-treatment was shifted to medical practitioners, the patient load would disrupt the U.S. health care system" U.S. Industrial Outlook 1978, U.S. Department of Commerce, January, 1978, page 131.

OTC Labeling

Because OTC medicines are designed for use by consumers without medical supervision, federal and state law requires that they contain considerable U.S. FDA approved labeling information for the benefit of consumers -- labeling not carried by street-drug look-alikes. This information includes:

- (1) the product name;

Proposed Legislation Should Not Affect Legitimate Medicines

Laws to attack the problem of these street-drug look-alikes, however, must not be so over-broad as to make criminal the good faith marketing of legitimate drug manufacturers, nor must it make it impossible for them to comply with the law.

- Thus, a definition of an "imitation controlled substance" should take into consideration representations made about the substance as well as overall appearance of the final dosage form specifically including color, size, and shape and markings or lack thereof in determining whether a drug or a transaction in which the drug is illegal (cf. New York S 7994, February 11, 1982 attachment "green").

- In order to prevent a lawfully marketed nonprescription drug from being made illegal by introduction of a new controlled substance, nothing in the act should apply to a noncontrolled substance that was initially introduced into commerce prior to the introduction into commerce of a controlled substance.

- In addition, prescription drugs, placebos, and drugs approved by FDA for use in investigational new drug trials should be excluded from the legislation since they are already under strict professional supervision and the legislation should not nor need not interfere with legitimate medical practice or research.

- The legislation should also take into account the intent of the manufacturer or distributor by considering the packaging, labeling, advertising and promotion of the drugs, along with the other criteria discussed.

Medications lawfully marketed under State and Federal law should not be forced off the market. None of these drugs have any reason, nor is there any intent, to look like a controlled substance. There are some 300,000 OTC products on the market, very many of them solid dosages, and many hundreds of brand-name and generic controlled substances.

Given the relatively few color choices - red/blue/yellow/green/white; the fact that timed dosages have clear tops to indicate timed release beads; - and the fact that there is no comprehensive pictorial index to which a manufacturer might go to determine similarity of mere color, size and shape, there is a possibility of some accidental similarity in color, shape and size in the manufacture of legitimate non-prescription medicines. Their labeling, advertising, promotion and markings make it clear, however, that they should not be swept up in the attempt to curb otherwise illicit activities.

Attachments: Discussion Draft of DEA Model State Statute ("buff")
Discussion Draft of AMA Model State Statute ("pink")
New York S 7994 ("green")
PA letter to Thomas Searlett, Esq./"US HHS News" ("blue")
PA Memorandum ("yellow")

- (2) a statement of identity;
- (3) a list of ingredients;
- (4) the net quantity of the contents;
- (5) the name and address of the manufacturer, packer, or distributor;
- (6) the indications for use;
- (7) directions and dosage instructions;
- (8) warnings and cautionary statements;
- (9) drug interaction precautions, if any; and
- (10) an expiration date.

The Association is well aware of the critical functions which the labeling of an OTC serves in the appropriate and responsible use of OTC medicines. The Association makes available to consumers through pharmacists thousands of pamphlets entitled "Medicine Labels and You" (enclosed). In addition, the Council on Family Health, a non-profit organization funded by many of the Association's members, has broadcast millions of dollars worth of public service announcements on radio television urging consumers to read the label on OTC medicines.

Street-Drug Look-Alikes

The subject of the legislation is the fraudulent promotion of OTC medicines intentionally made to resemble controlled substances. The Association and its members are opposed to such practices because they necessarily involve the promotion and marketing of OTCs without adequate labeling, or encourage the disregard of OTC labeling, as well as the use of OTCs for inappropriate conditions. In addition, they damage the public's confidence in OTCs as the safe and effective medicines which they are when used as directed.

The Proprietary Association was first asked to assist in combating the marketing of street-drug look-alikes in 1979 when it was invited to testify before the Oregon Board of Pharmacy. The Association has also testified before the Wisconsin State Senate Committee on Judiciary and Consumer Affairs. The Pennsylvania House Health & Welfare Committee has provided technical advice to many other state legislatures. We have organized and keep updated a compilation of street-drug look-alike legislation which has been considered or enacted in the states. The Association has distributed this material to legislatures, pharmaceutical associations, boards of pharmacy, health officials and other interested persons in several states, including Colorado, Illinois, Iowa, Kentucky, Louisiana, Michigan, Missouri, Nebraska, New York, Utah, and Washington.

Because the marketing of imitation controlled substances has grown and changes in character in recent months, the Association has also discussed model state legislation with the U.S. Drug Enforcement Administration (attachment "buff") and the American Medical Association (attachment "pink"). Examining present law, however, the Association has concluded that the promotion of street-drug look-alikes is already illegal under several provisions of the Federal Food, Drug, and Cosmetic Act (attachment "yellow"). Accordingly, on September 21, 1981, in a letter to FDA General Counsel Thomas Scarlett, the Association formally requested that FDA take action against the practice. On September 30, 1981, FDA announced the seizure--as street-drug look-alikes--of the products of nine manufacturers in five states (attachment "blue"). The Association also has been working with the Post Office Department which has been moving against the practice.

DRUG ENFORCEMENT ADMINISTRATION
IMITATION CONTROLLED SUBSTANCES
MODEL STATE BILL
WITH CHANGES PROPOSED BY THE PROPRIETARY ASSOCIATION
AND THE PHARMACEUTICAL MANUFACTURERS ASSOCIATION

Section 1. Definitions

- a. The term "controlled substance" means a substance as defined in (insert appropriate citation for definition of "controlled substance" in State Controlled Substances Act).
- b. The term "distribute" means the actual, constructive, or attempted transfer, delivery, or dispensing to another of an imitation controlled substance.
- c. The term "manufacture" means the production, preparation, compounding, processing, encapsulating, TABLETING, packaging, or re-packaging, labeling or relabeling, of an imitation controlled substance.
- d. The term "imitation controlled substance" means a substance OTHER THAN A PRESCRIPTION DRUG that is not a controlled substance, which by OVERALL dosage unit appearance (including color, shape, size and markings), AND ~~or~~ by representations made, would lead a reasonable person to believe that the substance is a controlled substance. NOTHING IN THIS ACT SHALL APPLY TO A NON-CONTROLLED SUBSTANCE THAT WAS INITIALLY INTRODUCED INTO COMMERCE PRIOR TO THE INITIAL INTRODUCTION INTO COMMERCE OF THE CONTROLLED SUBSTANCE WHICH IT IS

*Deletions indicated by strikeout.
Additions indicated by CAPITALS.

Retyped by The Proprietary Association

(over, please)

ALLEGED TO IMITATE. ~~In those rare cases when the appearance of the dosage unit is not reasonably sufficient to establish that the substance is an "imitation controlled substance" (for example in the case of powder or liquid).~~ The court or authority concerned should consider, in addition, to all other logically relevant factors, the following factors as related to "representations made" in determining whether the substance is an "imitation controlled substance":

- (1) Statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, or its use or effect.
- (2) ~~Statements made to the recipient that the substance may be resold for inordinate profit.~~ WHETHER THE CONSIDERATION TENDERED IN EXCHANGE FOR THE NONCONTROLLED SUBSTANCE SUBSTANTIALLY EXCEEDS THE REASONABLE VALUE OF THE SUBSTANCE, CONSIDERING THE ACTUAL CHEMICAL COMPOSITION OF THE SUBSTANCE AND, WHERE APPLICABLE, THE PRICE AT WHICH OVER-THE-COUNTER SUBSTANCES OF LIKE CHEMICAL COMPOSITION SELL.
- (3) Whether the substance is packaged in a manner normally used for illicit controlled substances.
- (4) Evasive tactics or actions utilized by the owner or person in control of the substance to avoid detection by law enforcement authorities.

- (5) Prior convictions, if any, of an owner, or anyone in control of the object, under state or Federal law related to controlled substances or fraud.
- (6) The proximity of the substances to controlled substances.

Section 2. Offenses

- a. Manufacture or distribution - It is unlawful for any person to manufacture, distribute, or possess with intent to distribute, an imitation controlled substance. Any person who violates this section shall be guilty of a crime and upon conviction may be imprisoned for not more than _____, fined not more than _____, or both.
- b. Distribution to a minor - Any person 18 years of age or over who violates Section 2a by distributing an imitation controlled substance to a person under 18 years of age is guilty of an aggravated crime and upon conviction may be imprisoned for not more than _____, fined not more than _____, or both.
- c. Possession - It is unlawful for any person to use, or to possess with intent to use, an imitation controlled substance. Any person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than _____, fined not more than _____, or both.

- d. Advertisement - It is unlawful for any person to place any newspaper, magazine, handbill or other publication, or to post or distribute in any public place, any advertisement or solicitation with reasonable knowledge that the purpose of the advertisement or solicitation is to promote the distribution of imitation controlled substances. Any person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than _____, fined not more than _____, or both.
- e. Immunity - No civil or criminal liability shall be imposed by virtue of this Act on any person ~~registered under the Controlled Substances Act~~ who manufactures, distributes, or possesses ~~an imitation controlled substance for use as a placebo by a registered practitioner~~ in the ORDINARY course of professional practice or research OR FOR USE IN U.S. FOOD & DRUG ADMINISTRATION APPROVED INVESTIGATIONAL NEW DRUG TRIALS.

Section 3. Forfeiture

(Insert designation of state civil forfeiture section) is amended to provide for the civil forfeiture of imitation controlled substances by adding the following after paragraph (insert designation of last category of forfeitable property):

"() all imitation controlled substances as defined by (list appropriate citation for this Act in the state's statutes).

Section 4. Severability

If any provision of this Act or the application of the Act to any person or circumstances is held invalid, the invalidity does not affect the other provisions or applications of the Act which can be given effect without the invalid provision or application and to this end the provisions of this Act are severable.

MJU:khp

2/2/81

In The General Assembly

State of _____

A BILL

For An Act Pertaining to the Unlawful Manufacture,
Processing, Packaging, Distribution, Delivery and
Sale of Imitation Controlled Substances

Be it enacted by the Legislature of the State of _____

Section 1. The Legislature hereby finds and declares that there is a serious health threat in this state presented by tablets and capsules which contain only nonprescription ingredients, but which are manufactured to resemble various controlled drugs in size, shape, color and markings. The purpose of this legislation, therefore, is to prohibit the manufacture, processing, packaging, distribution, delivery and sale of such substances and to provide criminal penalties therefor.

Section 2. Except as otherwise may be authorized by law, no person shall knowingly:

- (a) Manufacture, process, package, distribute or sell a noncontrolled substance, other than a prescription drug, which, or the label or container of which, substantially resembles a specific controlled substance;
- (b) Distribute or sell a noncontrolled substance upon the express or implied representation that the substance is a controlled substance;
- (c) Distribute or sell a noncontrolled substance upon the express representation that the recipient, in turn, will be able to distribute or sell the substance as a controlled substance.

Section 3. In determining whether there has been a violation of Section 2 (a), the following factors shall be considered:

- (a) Whether the noncontrolled substance in its overall finished dosage form is substantially similar in size, shape, and color, and markings (or lack thereof) to a specific controlled substance;

~~(1r) Whether the noncontrolled substance in its finished dosage form has substantially similar markings on each dosage unit as a specific controlled substance;~~

(b) Whether the noncontrolled substance in its finished dosage form is packaged in a container which, or the labeling of which, bears markings or printed material substantially similar to that accompanying or containing a specific controlled substance.

Section 4. In determining whether there has been a violation of Section 2 (b), the following factors, in addition to those factors set out in Section 3, shall be considered:

- (a) Whether the noncontrolled substance is packaged in a manner ordinarily used for the illegal delivery of a controlled substance;
- (b) Whether the consideration tendered in exchange for the noncontrolled substance substantially exceeds the reasonable value of the substance, considering the actual chemical composition of the substance and, where applicable, the price at which over-the-counter substances of like chemical composition sell.
- (c) Whether the consideration tendered in exchange for the noncontrolled substance approximates or exceeds the price at which the substance would sell upon illegal delivery were it actually the specific controlled substance it physically resembles.

Section 5. In any criminal prosecution brought under this Act, it shall not be a defense that the defendant believed the noncontrolled substance actually to be a controlled substance.

Section 6. The provisions of this Act shall not be applicable to:

- (a) Law enforcement officers acting in the course and legitimate scope of their employment;
- (b) ~~Persons who~~ The manufacture, processing, package packaging, distribute distribution or sell sale of noncontrolled substances to licensed medical practitioners for use as placebos in the course of professional practice ~~or research,~~ or for use in clinical research conducted pursuant to the Federal Food, Drug and Cosmetic Act;
- (c) Licensed medical practitioners, pharmacists and other persons authorized to dispense or administer controlled substances and acting in the legitimate performance of their professional license.

(d) For purposes of Section 2(a), a noncontrolled substance in its finished dosage form that was initially introduced into commerce prior to the initial introduction into commerce of a controlled substance in its finished dosage form it may substantially resemble.

Section 7. Violation of this Act shall be a _____, punishable by a fine of not more than _____, and/or by a period of imprisonment not to exceed _____.

Section 8. If any provision of this Act or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the provisions or application of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Section 9. This Act shall become effective _____.

NOTE: Stricken material to be omitted.
Underscored material to be added.



United States
of America

No. 133—Part II Congressional Record

PROCEEDINGS AND DEBATES OF THE 97th CONGRESS, SECOND SESSION

Vol. 128

WASHINGTON, THURSDAY, SEPTEMBER 30, 1982

No. 133—Part II

Senate

THURSDAY, SEPTEMBER 30, 1982

(Legislative day of Wednesday, September 8, 1982)

VIOLENT CRIME AND DRUG EN- FORCEMENT IMPROVEMENTS ACT OF 1982—Continued

OF AMENDMENT NO. 1886

Mr. THURMOND. Mr. President, I send to the desk certain amendments—in fact a group of amendments that I hope can be considered and adopted en bloc.

The PRESIDING OFFICER. The clerk will state the amendments.

The legislative clerk read as follows:

The Senator from South Carolina (Mr. THURMOND) proposes an unprinted amendment numbered 1856

(S. 12789)

SENATOR DANFORTH'S AND SENATOR HUM- PHREY'S SIMULATED CONTROLLED SUBSTANCES AMENDMENTS (NO. 9 AND 10)

The amendments provide Federal criminal sanctions for the manufacture, sale, and advertising of simulated controlled substances. The sale, manufacture, and distribution of these drugs—defined as any drug containing non-controlled substances that purport to act like a controlled substance, either stimulant or depressant—would be punishable by imprisonment of not more than two years. Distribution to a minor would carry a four-year penalty. Advertising these drugs would be a misdemeanor. The Food and Drug Administration would have the primary enforcement authority.

(S. 12795)

Congressional Record (9/30/82)

S.12789-127808



Reproduced by The Proprietary Association

pa 10/4/82

Sec. 308. (a) For purposes of this section, the term—

"(1) 'imitation controlled substance' means any substance other than a controlled substance or prescription drug, or

combination of such substances, which is marketed, sold, or distributed to encourage recreational drug use or abuse or any similar nonmedical use and—

"(A) by representation or appearance (including color, shape, size, and markings) would lead a reasonable person to believe that the substance is a controlled substance; or

"(B) purports to act, either alone, in multiple doses, or in combination with a substance or substances, like a controlled substance, either stimulant or depressant as defined in section 102(9) of the Controlled Substances Act;

"(2) 'distribute' means the actual, constructive, or attempted transfer, delivery, or dispensing to another of an imitation controlled substance;

"(3) 'manufacture' means the production, preparation, propagation, compounding, or processing of an imitation controlled substance, and includes any packaging or repackaging of such substance or labeling or relabeling of its container; except that such term does not include the preparation, compounding, packaging, or labeling of an imitation controlled substance in conformity with applicable State or local law by a practitioner as an incident to his administering or dispensing of such substance in the course of his professional practice; and

"(4) 'controlled substance' is used as defined in section 102(6) of the Controlled Substances Act.

"(b)(1)(A) Except as provided in subparagraph (B), it shall be unlawful for any person knowingly or intentionally to create, manufacture, or distribute, or possess with intent to create, manufacture, or distribute an imitation controlled substance. Any person who violates this paragraph shall be sentenced to a term of imprisonment of not more than two years, a fine of not more than \$10,000, or both.

"(B) Subparagraph (A) does not apply to the creation, manufacture, distribution, or possession of an imitation controlled substance by a person if the imitation controlled substance is created, manufactured, distributed, or possessed for use as a placebo in the course of the professional practice of a practitioner registered under part C of the Controlled Substances Act or in research conducted under section 505(i) of this Act or conducted in connection with an application filed under section 505(b) of this Act.

"(2) Any person at least 18 years of age who violates paragraph (1)(A) by distributing an imitation controlled substance to a person under 18 years of age shall be sentenced to a term of imprisonment of not more than four years, fined not more than \$20,000, or both.

(c) It is unlawful for any person to place any newspaper, magazine, handbill, or other publication, or to post or distribute in any public place, any advertisement of solicitation with reasonable knowledge that the purpose of the advertisement or solicitation is to promote the distribution of imitation controlled substances. Any person who violates this subsection is guilty of a crime and upon conviction may be imprisoned for not more than one year, fined not more than \$5,000, or both."

(b) Subsection (a) of section 302 of such Act is amended by striking out "paragraphs (h), (i), and (j)" and inserting in lieu thereof "paragraphs (h) and (j)".

(11) On page 47, beginning with line 12, strike out all through line 2 on page 51 and renumber subsequent lines accordingly.

(12) On page 59, beginning with line 20, strike out all through line 6 on page 61 and insert in lieu thereof the following:

HUMPHREY, and I are offering an amendment to deal with the problem of look-alike drugs. Cosponsoring this amendment are Senators ANDREWS, GRASSLEY, and LUGAR. This amendment is now part of the lengthy committee amendment.

The past few years have witnessed the birth of a new drug problem which has most of the moral and medical dangers of narcotics abuse, and yet the drugs being abused are legal under current Federal law. In legal circles, these drugs are known as imitation controlled substances; the press refers to them as look-alikes; and street pushers call them like turkeys or kiddie dope. The tablets are a combination of legal substances such as caffeine and powerful decongestants, but they are packaged to look like well-known controlled substances such as amphetamines and Quaaludes. Buyers, many of whom are junior high and high school students, think they are getting the illegal drugs when they are in fact receiving the look-alike.

According to the Drug Enforcement Administration, "the wholesale vending of look-alike drugs has become a major nationwide drug abuse problem." DEA reports that a handful of distributors at the end of 1979 grew to 110 in 1981. The pills are offered by the big distributors in 1,000-pill jars, with advertising that they can be sold individually for tremendous profits. DEA estimates that production of these pills has reached 30-million units per week.

Profits in this business are substantial. One small-time distributor of these drugs in Dallas, Tex., interviewed by the Texas Monthly, claims profits of \$90,000 a year; the profits of some larger manufacturers based in New York and large distributors such as Mid-State Supply in Oklahoma and Chicago Specialty Distributors of Illinois run into the millions of dollars. Even more troubling, the over-the-counter drug store, devoted entirely to the sale of look-alikes, opened in Los Angeles last fall despite the protests of concerned citizens. Officials fear this to be the first of what may be a string of similar stores which could appear all over the Nation. Indeed, some have already opened in New Mexico.

The manufacturers and distributors of look-alike amphetamines and barbiturates use every means of advertising legally available. The small-time dealer in Dallas walks the Texas beaches distributing his business cards; larger companies use more sophisticated advertising methods. One look-alike company mails its color brochures to college freshmen. The Drug Enforcement Administration reports that another look-alike company which distributes to college campuses puts the following words on envelopes: "To College Mall Handlers: Please deliver to dorms that have a high proportion of drug users. We request that this letter be delivered to an individual that needs or uses drugs so that he

may be given direction and shown the way." The implication here is that the brochure inside is from some public service organization which wishes to discourage drug abuse—a cheap ploy to reach potential customers.

The first danger of look-alikes is, then, their tendency to encourage drug abuse. As a member of the Ohio State Board of Pharmacy put it, look-alikes are "a very natural step up to the real thing." The medical hazards of look-alikes is a second. Consider the situation where someone has been using look-alikes and is then given the real amphetamine. One DEA official put it this way: "They take six or seven of the phonies and then they take six or seven of the real thing someday and they are dead." Many people do not realize that the look-alikes themselves can be lethal. The FDA has confirmed 12 deaths from look-alikes, and other sources say many more have died, and all within the last 2 years. For example, the Illinois Department of Public Health claimed six deaths in 9 months from look-alikes. Recent deaths attributed to look-alikes include a 17-year-old girl from Belvidere, Ill., a 21-year-old carnival worker from Columbus, Ga., and three young men from Albuquerque, N. Mex., aged 15 to 20, who were in excellent physical condition but suffered brain hemorrhaging from the drugs.

The medical problem presented by look-alike overdoses is ironic. Hospital officials usually find pills on the person of victims and assume the look-alikes to be real amphetamines. They then treat the patient for amphetamine overdose and he or she dies of a caffeine overdose. As an Illinois Department of Public Health official put it, "Treating a caffeine problem like it was amphetamines is useless." It is time to try to put an end to such deaths.

The Drug Enforcement Administration has advocated State and local laws prohibiting the manufacture and sale of look-alikes, and many of the States have responded. This is a commendable effort. But relying on the uncoordinated actions of a diverse group of lawmaking bodies is inadequate. The absence of Federal criminal sanctions makes the look-alike problem, according to a Delaware official, "like dealing with a greased pig." Presently, manufacturers or distributors chased out of one State simply set up in another. The American Pharmacy magazine has criticized the Federal Government for its failure to take action, saying "••• there appears to be no central plan of action, no spearhead force to halt this nationwide scourge ••• Yet this problem is a national one that must be stopped." In its report on look-alike drugs, Time magazine noted that "probably no serious headway will be made ••• until the Federal Government finds a way to block the look-alike loophole with a uniform national law."

Making the manufacture and sale of look-alike drugs a Federal crime will be more than a symbol, more than a gesture. Look-alike pushers are in business because their product is legal. One dealer has said: "This can't last forever. Someday they've got to write a law against it." Mr. President, we can no longer tolerate drug pushers who hide behind a facade of business cards, brochures, slogans, and sham corporations in an attempt to imitate the respectable business community.

This problem is beginning to get the attention it deserves. The Select Committee on Narcotics Abuse and Control in the House of Representatives, chaired by Congressman LEO ZEFERETTI of New York, has held very productive hearings on the dangers of look-alike drugs. Mr. ZEFERETTI has asked hard questions about how the Federal Government can stifle this new drug abuse problem that has grown to alarming proportions. The Select Committee on Narcotics has sought the advice of both the Food and Drug Administration, charged with protecting the health of the Nation against impure and unsafe drugs, and the Drug Enforcement Agency Administration, charged with suppressing narcotics and other dangerous drugs.

In September 1981, the Food and Drug Administration seized 15 million capsules and tablets and 20 million empty capsules used in the look-alike drug trade, as well as the machinery used to manufacture these items. This seizure was made possible because of the Federal statutes that outlaw the manufacture of counterfeit prescription drugs. This year, beginning in mid-August, the FDA seized 1 million finished capsules and tablets containing a combination of caffeine, ephedrine, and PPA, which had been advertised as "100 percent legal" pep pills and speed. The FDA has advised the manufacturers that pills with this combination of substances require their approval before they can be marketed. These and similar efforts on the part of FDA are commendable, and yet they are not enough. We must do more than confiscate the pills and implement new regulations.

In my view the time has come for Federal criminal sanctions for the manufacture, sale, and advertising of look-alike drugs. The amendment offered by the Senator from New Hampshire and myself is quite simple. It defines look-alike drugs and any other drug containing noncontrolled substances that purports to act like a controlled substance, either stimulant or depressant. The sale and manufacture and distribution of these drugs would be a felony under our amendment, with maximum imprisonment up to 3 years. Distributing these drugs to a minor would be an aggravated offense with imprisonment up to 4 years. Advertising these drugs would be a misdemeanor. The Food and Drug Admin-

istration will have the primary enforcement authority of these provisions. The FDA seems the best choice for enforcement because they now have jurisdiction over all noncontrolled substances, and they already have been active in the fight against look-alikes.

This amendment will not hamper any legitimate over-the-counter drug manufacturer. The intent of the amendment is clear. We are out to stop the look-alike drug trade, to stop those drugs sold primarily to teenagers and frequently passed off as controlled substances. The purpose of these drugs is clearly nonmedical.

The mushrooming look-alike drug market has been covered by all three national television networks and by publications ranging from American Pharmacy and Drug Topics to Time and the Wall Street Journal. I ask unanimous consent to insert into the RECORD a number of these program transcripts and newspaper and magazine articles about this drug problem.

I believe the Federal Government can afford to give no quarter to drug abuse. We must take sterner measures. This amendment is part of what must be a larger effort.

I want to extend my thanks to the chairman of the Judiciary Committee, Senator THURMOND, both for including this amendment in the committee amendment, and for the important work he has done on this entire legislation. Let me also extend my thanks to Mr. Paul Summitt, special counsel to the Judiciary Committee, who has devoted so much of his time to improving the criminal statutes of the United States. His tireless efforts are to be commended, and we in the Senate are glad to have the benefit of his able assistance.

Mr. HUMPHREY. Mr. President, I am delighted that the Senate Judiciary Committee has accepted this amendment to the crime bill because it contains a powerful new weapon against those who prey on our youth by manufacturing and distributing look-alike drugs to promote drug abuse.

Look-alikes resemble or duplicate the appearance of certain highly abused controlled substances such as amphetamines, barbiturates, and tranquilizers. They contain only substances commonly sold over the counter, but in multiple doses or in combination with aspirin or caffeine produce stimulant or depressant effects similar to the controlled substances they resemble.

Manufacturers and distributors are actively promoting these pills as the "legal way to get high" and have engaged in extensive advertising campaigns claiming their products to be both safe and legal. Look-alikes are sometimes advertised using the "street terms" for amphetamines and barbiturates such as black beauties, yellow jackets, speed, and white crosses, and are promoted through college newspapers, handbills at rock concerts, direct mail solicitations, magazine advertisements, and storefront operations near school campuses.

The industry is lucrative and growing. According to the Drug Enforcement Administration (DEA), mail order and storefront wholesale distributors grew from a mere handful in early 1980 to more than 150 outlets in November 1981 and production had increased to 30 million dosage units per week. The profits to distributors have been estimated to range from \$100,000 per year for the small operator to the millions for a larger distributor.

As chairman of the Subcommittee on Alcoholism and Drug Abuse, the rapid expansion of this industry is extremely disturbing to me. First and most importantly, look-alikes are not safe. If taken in multiple doses or in combination with alcohol, there is a risk of hypertension, cardiac problems, or cerebral hemorrhage. To date the Food and Drug Administration (FDA) has documented at least 12 deaths attributed to look-alike drugs. Additionally, the marketing of these legal drugs solely to encourage recreational mind alteration or experimentation supports the drug culture in our society and by encouraging teenagers to accept a climate of drug use, may lead to the later use of illegal drugs. Finally, development of the look-alike industry seriously undermines the efforts of all of us, both in Government and the private sector, who are working to educate young people about the serious risks of drug use and reduce the drug problem in our society.

Especially disturbing is the apparent lack of effective Federal jurisdiction over this industry. DEA has jurisdiction over drugs which are illegally trafficked if the drug components are scheduled in the Controlled Substances Act. Since DEA's jurisdiction is limited to enforcement of the Controlled Substances Act, DEA has no power to restrict sales and distribution of look-alikes which do not contain controlled substances. DEA has been influential in the fight against look-alikes by developing and distributing to the States a Model Imitation Controlled Substances Act. To date 28 States have passed some legislation aimed at dealing with look-alikes and 17 more States have legislation pending. Individual statutes differ from jurisdiction to jurisdiction and manufacturers only seek new locations more favorable to their activities.

Over the counter substances are regulated by the FDA under the Federal Food, Drug and Cosmetic Act. The FDA has exerted jurisdiction under the counterfeit provisions of the act against those look-alikes designed to resemble specific controlled substances. In September 1981, the FDA seized materials and manufacturing equipment from nine manufacturers which produced and mislabeled counterfeit drugs, and is now proceeding to move against distributors under both its counterfeit and imitation provisions.

But as a result of these FDA enforcement actions manufacturers have become more sophisticated and are currently producing pills, tablets, and capsules that do not look like controlled substances and therefore are no longer subject to legal action under the Federal Food, Drug and Cosmetic Act. Now that the market has been established among our young people, these non-look-alikes are being promoted and sold in the same manner to willing buyers. As so often happens, the drug abuse promoters remain one step ahead of existing law.

Recently the FDA announced that the triple combination of phenylpropanolamine, ephedrine sulfate, and caffeine—the ingredients commonly contained in look-alikes—will now be regarded as a "new drug" and will thus require an application to FDA for marketing approval. Regulatory letters were issued to 14 manufacturers of triple combination products informing them that shipment of these drugs in interstate commerce without FDA approval violates the law. But there is already evidence that the response of these manufacturers has been to simply delete one or more of the three ingredients and thus produce a product that already possesses FDA approval. This is only further evidence of the ability of these manufacturers to modify their behavior to escape piecemeal Federal regulation, and of the need for a comprehensive Federal statute outlawing the manufacture and distribution of both look-alikes and non-look-alikes.

The U.S. Postal Service has also been involved in the look-alike drug enforcement effort. The Postal Service filed complaints against 41 distributors under its false representation statute and obtained false representation orders or consent agreements requiring postmasters to discontinue mail delivery to these distributors. The problem, however, continues. Most of the major promoters are evading the orders and agreements by restricting their business to telephone orders and payment by credit card, bank wire, or United Parcel Service COD.

Also, look-alike distributors and manufacturers no longer claim their products are absolutely safe and occasionally enumerate side effects related to consumption. Since the labels no longer misrepresent the nature of the product, the Postal Service is without

jurisdiction to restrain counterfeit materials for product distribution. The only other Federal agency which may have jurisdiction over the advertising and distribution practices exhibited by look-alike dealers is the Federal Trade Commission (FTC). I am informed the Commission is reviewing its jurisdictional posture, but to date has not prosecuted.

Thus the look-alike industry appears to have circumvented ordinary regulation due to the unique characteristics of this product and the industry's innovative ability to make changes in order to frustrate law enforcement efforts. We are confronted with an industry promoting drug use and abuse in our youth which we have no direct ability to regulate.

For these reasons, in July I introduced in the Senate a legislative package intended to supplement and clarify ongoing Federal enforcement efforts against look-alikes. The package of three bills was designed to fill the existing gaps and articulate a national policy in opposition to those who would encourage our children to take drugs for recreation, those who would make "pill popping" a national pastime, and those who would seek to make drug trafficking a socially acceptable occupation.

And it is for these reasons that I join today with Senator DANFORTH in offering this amendment to S. 2572, which incorporates the thrust of this look-alike legislation. Our amendment is simple and straightforward. It outlaws the creation, manufacture, and distribution of imitation controlled substances which look like, or are represented to be controlled substances, and substances which purport to act like controlled substances, if they are marketed to encourage recreational drug use or abuse or any similar nonmedical use. Our definition of imitation controlled substances is broad enough to include both look-alikes and non-look-alikes, so long as they are marketed, sold, or distributed to encourage recreational drug use or abuse—but narrow enough to make it clear that prescription drugs, over-the-counter drugs, and legitimate generic drugs, over the counter drugs, and legitimate generic drugs are excluded. Exemptions are also included for placebos used in the course of professional practice and research.

The amendment imposes a felony sanction and intentional sales to minors would result in a doubled penalty. The amendment also imposes a misdemeanor sanction for advertisement of imitation controlled substances. Enactment of this legislation vests jurisdiction in the FDA to monitor and control the marketing practices of distributors.

Further, the amendment proposes to amend the Federal Food, Drug and Cosmetic Act to provide the FDA, acting through the U.S. Attorney, with power to seek injunctions to restrain manufacturers of counterfeit

materials and equipment used to manufacture counterfeits but they are unable to restrain the manufacturer from distribution. Thus if the subject manufacturer has other warehouses stockpiled with counterfeits that are unknown to food and drug agents, the manufacturer can continue to distribute inventories until the FDA seizes it. The omission of injunctive power does not make sense and probably was a legislative oversight. The FDA should be empowered to restrain distribution by counterfeit manufacturers until it can be assured that future distribution by the subject manufacturer is in compliance with Federal Law.

Mr. President, enactment of this legislation will send a powerful signal that the Federal Government is firm in its resolve to shut down the look-alike drug industry. Dr. Carlton Turner, Director of the President's Drug Abuse Policy Office, DEA, FDA, FTC, the National Institute on Drug Abuse, the U.S. Postal Service, the Internal Revenue Service, and the Consumer Product Safety Commission are now doing all within their power, through interagency meetings and cooperative efforts, to coordinate a Federal effort against these unscrupulous manufacturers and distributors. It is important that the Congress assist these agencies in this effort with a clear and comprehensive Federal policy outlawing the manufacture, distribution, and sales of look-alike drugs for the purpose of fostering drug abuse. I urge my colleagues to support this amendment in order that we may protect our young people by moving quickly and decisively against the look-alike industry.

The PRESIDING OFFICER. The question is on agreeing to the amendments en bloc.

The amendment (UP No. 1356) was agreed to.

(S. 12798)

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 10

Title "An Act relating to imitation controlled substances."

Requested by Representative Abood

Date 1/19/83

II. FISCAL DETAIL

Agency Affected Department of Law

Program Category Affected Administration of Justice

BRU, Program, Or Subprogram(s) Affected Prosecution

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

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

FUNDING (Thousands of Dollars)

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

POSITIONS

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

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

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

IV. DATE 1/19/83

PREPARED BY Daniel W. Hickey, Chief Prosecutor

AGENCY Department of Law

Original: Legislative Finance

PHONE 465-3428

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

Office of Management and Budget

Reviewed by: Mike Maher, Program Budget Analyst

Division of Budget Review

II. FISCAL DETAIL

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

EXPENDITURES (Thousands of Dollars)

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

FUNDING (Thousands of Dollars)

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

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

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

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

OMB review: *TD*

EXPENDITURES (Thousands of Dollars)

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

FUNDING (Thousands of Dollars)

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

POSITIONS

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

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

A. Assumptions

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

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

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

B. Cost Estimates:

1. Capital Expenditures

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

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

2. Personal Services

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

3. Other Costs

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

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

SPONSOR: H. Judiciary
SUBJECT: Control of In Patient
Substances
MAILING ADDRESS: _____

TAKEN BY: Grub
T/C DATE/DAY: Tues Feb 1
TIME: 1:30 - Pacific

(1) witness to testify from anchorage at committee meeting
zip

11:30 - Alaska
10:30 - Bering

PHONE: 4990 CONTACT: Ruth ^{ERIDE} Zalewski

T/C DURATION: 1 hr.

SITES PARTICIPATING:

- | | | | | | |
|---------------|------------------|------------|-----------------|-------------|------------------|
| ALL ALASKAN | <u>Anchorage</u> | Dillingham | <u>Juneau</u> * | Mat-Su | Sitka |
| | Barrow | Fairbanks | Ketchikan | Nome | Seward |
| WASHINGTON DC | Bethel | Haines | Kodiak | *Petersburg | Soldotna (Kenai) |
| | Delta Junction | Homer | Kotzebue | Sand Point | Valdez |
| Sen. Stevens | | | | | *Wrangell |

Sen. Murkowski
Congressman Young

SPECIAL OFF-NET*
LOCATIONS/PHONE

NUMBERS: Rhonda Butterfield + perhaps one other

Chairing Site/Person * _____ *

↳ will come do Anch L10.

X Katherine Zalewski
Signature of Sponsor/Contact Person

Date _____

----- TELECONFERENCE OFFICE USE ONLY -----

MODERATOR NOTES

Special backup, publicity
or technical considerations.

POST TELECONFERENCE NOTES

SITE/LOCATION: _____

LOCAL MODERATOR: _____

T/C Started: _____

T/C Ended: _____

Was T/C Recorded? _____

Was T/C Broadcast on RADIO or TV?

(If yes, what stations?) _____

TESTIFIED/PARTICIPATED: _____

UNABLE TO TESTIFY: _____

OBSERVERS: _____

TOTAL #: _____

BILLING INFORMATION

Billing Address: _____
_____ zip _____

Phone Charges To: _____
(area code) (phone number)

CATEGORY: Legislative ___ Non-Legislative ___

AMOUNT PAYABLE: _____

NOTIFICATION OF BILL HEARING

WEEK OF: 2/1

<u>BILL #</u>	<u>BILL TITLE</u>	<u>DEPARTMENT</u>	<u>DATE</u>	<u>SPONSOR</u>	<u>DATE</u>
HB10 (HB679)	unintentional Contracted Sub.			Alwood	1/19
	received back up material 1/18 Roger McKay to Jersey (1/21)				
	Request for FN. (1/21) Set up LLC on Feb 1 at 1.30 with Anon.				
1/31	St. Roger McKay				

HB No. 10--RE: Imitation Controlled Substances Act---ABOOD, WENDTE, LINDAUER

1--This bill names seven substances that could be used to manufacture imitation controlled substances (look-alike drugs), as depicted in AS. 17.10 etc. (Narcotic drugs) and AS 17.12,etc. (Depressant, Hallucinogenic and Stimulant Drugs).

2--This worksheet is NOT section-by-section analysis, (Sponsor should provide that, as well as witness(es)), but see material in file from 12th Legislature.

3--In FORFEITURES chapter (AS 17.14.050) possible forfeitures are considerably expanded from the meagre paragraph in AS 17.12.130 which merely mentions in passing "counterfeit drugs" and forfeitures of same. This provides for forfeiture the substance, raw materials, products, equipment used in making same. or processing, compounding, distributing, delivering or containers or conveyances including aircraft, vehicles or vessels used in sale, transporting, receipt, possession or concealment of substance.

IMPACT:

WITNESSES:

PROPOSED CHANGES:

FISCAL NOTE:

HB

14

COMMITTEE REPORT

HOUSE

FINANCE

FURTHER:

3/10/83

Date: 11/10/82

Mr. Speaker:

The Committee on JUDICIARY has had HS 14

"An Act relating to processing of permits by state agencies; and to administration of the Alaska coastal management program."

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HS 14 (CS) same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]

CHAIRMAN

COMMITTEE REPORT

HOUSE

FINANCE

FURTHER:

(7)

5/27/83

Date: 6-10-83

Mr. Speaker:

The Committee on JUDICIARY has had H.R. 14

"An Act relating to processing of permits by state agencies, and to administration of the Alaska coastal management program."

under consideration and reports it back as follows:

- do pass [] do not pass
- do pass with attached amendments(s)
- replace with CS for H.R. 14 (CS) [] same title [] new title
- and recommends _____
- [] AND attaches a "Letter of Intent" [] New Fiscal Note
- [] reports it back without recommendation [] Zero Fiscal Note Attached
- [] referred to the _____ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

CHAIRMAN

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 14 Date on Bill: 1/18/83
 Title: Permit Processing/Alaska Coastal Management Program
 Sponsor: Representative Martin
 Requestor: _____

1. Estimated fiscal impacts on: Department of Community & Regional Affairs

a. Expenditures:

(Thousands of Dollars)

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

b. Revenues:

Revenue								
---------	--	--	--	--	--	--	--	--

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

3. Assumptions:

The reshuffling of permit authority would have no impact upon the Department. No fiscal impact.

4. Disclaimer:

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

Prepared By: Richard Rainery *RR* Phone: 465-4703
 Division: Commissioner's Office Date: 2/15/83
 Approved by Commissioner: *[Signature]* Date: 2/18/83
 Department: Community & Regional Affairs

5. Distribution:

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

2/8/83