

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4540 HHE S HB 258 - HB 261

1 B. Is approved by the department as meeting the
2 standards for licensure of family foster homes
3 and specialized children's homes, promulgated in
4 accordance with section 8102; or

5 C. Is caring for a child at the request of the
6 department pending the licensure or approval.

7 2. Exceptions to immunity; limits of liability.
8 No person may be liable if they fall under either of
9 the following exceptions.

10 A. Notwithstanding subsection 1, a person pro-
11 viding foster care is liable for damages in a
12 civil action for acts of willful, intentional
13 abuse or neglect or gross neglect that result in
14 serious harm to the foster child.

15 B. If a person is found liable pursuant to this
16 subsection, the damages may not exceed \$10,000
17 for any and all claims arising out of a single
18 occurrence.

19 3. Enforcement of criminal and licensing law.
20 This section is not intended to limit in any way the
21 State's ability to take appropriate legal action to
22 enforce criminal laws or laws and rules applicable to
23 family foster homes and specialized children's homes.

24 Sec. 2. 22 MRSA §7914 is enacted to read:

25 §7914. Liability of adult foster home providers

26 1. Immunity from liability. Except as provided
27 in subsection 2, a person licensed to operate an
28 adult foster home pursuant to this subtitle is immune
29 from civil liability related to the provision of
30 boarding care to residents.

31 2. Exceptions to immunity; limits of liability.
32 No person may be liable if they fall under either of
33 the following exceptions.

34 A. Notwithstanding subsection 1, a person li-
35 icensed to provide boarding care in an adult fos-
36 ter home is liable to damages in a civil action
37 for acts of willful, intentional abuse or neglect

1 or gross neglect that result in serious harm to
2 the resident.

3 E. If a person is found liable pursuant to this
4 subsection, the damages may not exceed \$10,000
5 for any and all claims arising out of a single
6 occurrence.

7 3. Enforcement of criminal and licensing law.
8 This section is not intended to limit in any way the
9 State's ability to take appropriate legal action to
10 enforce criminal laws or laws and rules applicable to
11 adult foster homes.

12 STATEMENT OF FACT

13 This bill provides immunity from civil liability
14 to foster parents of children and adult foster home
15 providers when the foster parent is licensed, ap-
16 proved as meeting standards for licensure, or caring
17 for a child at the request of the Department of Human
18 Services pending licensure or approval.

19 A foster parent will not be immune from liability
20 in a civil action for willful or intentional abuse or
21 neglect, or for gross neglect that results in serious
22 harm to the child or adult. Liability for a single
23 occurrence would be limited to \$10,000.

24 This bill will not affect enforcement of criminal
25 or regulatory laws.

26

1176012887

STATE OF NEW YORK

719--A

Cal. No. 69

1987-1988 Regular Sessions

IN SENATE

January 20, 1987

Introduced by Sen. GOODHUE -- read twice and ordered printed, and when printed to be committed to the Committee on Child Care -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report, and to be reprinted as amended, retaining its place in the order of second report

AN ACT to amend the social services law, in relation to liability of foster parents

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. The social services law is amended by adding a new section
2 three hundred seventy-seven-a to read as follows:
3 § 377-a. Liability of foster parents. Any person providing care to a
4 minor pursuant to section three hundred seventy-six, three hundred
5 seventy-seven or three hundred seventy-eight of this title shall be sub-
6 ject to liability for injuries incurred by a minor under such care only
7 where such injuries arise from the willful misconduct, gross negligence
8 or criminal act of such person or where such injuries arise from the
9 operation of such person's motor vehicle. For the purposes of any civil
10 proceeding arising out of injuries to a child receiving care as
11 described in this section, the good faith of persons providing such care
12 shall be presumed provided that such person was acting in the discharge
13 of his or her responsibilities within the scope of his or her license
14 and certification pursuant to section three hundred seventy-eight of
15 this title.
16 § 2. This act shall take effect immediately.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [] is old law to be omitted.

LE009109-01-7

TESTIMONY FOR HOUSE HESS

Mr. Chairman and Committee members:

Alaska Foster Parent Association again requests you to pass this legislation that would limit the liability of foster parents and provide a method that insures foster parents will be reimbursed for damages to their property caused by foster children.

Foster parents are fearful of liability because of vague regulations, community and agency misunderstandings of foster care and/or the role of foster parents, the rise in legal suits and threats of legal suits, the vulnerability of foster parents dealing with youth who have great potential for loss, foster parents limited decision-making ability, and the difficulty of foster parents paying for legal action since they do not receive any salary and do not qualify for any legal assistance.

The first section of HB 258 eliminates the civil liability of foster parents except in cases of gross negligence or intentional misconduct.

The second section provides for damages to a foster parents belongings to be covered. Since insurance is not available for this purpose, it must be covered within the agency. Most of these children are wards of the state--therefore, the state is the parent and should be responsible for their actions.

It has been stated many times that DFYS does not have the statutory authority to cover damages done by the foster child, therefore, we must give them that statutory authority at least for those children in the custody of the state. When that statutory authority is given, the program could be administer in various way, including though the special needs funds already designated within DFYS or through Risk Management.

Alaska Foster Parent Association would prefer the more informal method through DFYS if a procedure was set up and followed that was easily accessed by foster parents in a timely manner.

The issue facing us here today is not specific implementation, but the statutory authority for DFYS to reimburse for damages of foster children who are wards of the state, as well as limited the civil liability of foster parents. Therefore, we urge you to pass this legislation with necessary language to insure these provisions.

The petition regarding this issue should be in your packets signed by 25 individuals and representatives of 10 foster parent groups or agencies. This is a statewide concern that needs immediate action.

Thank you.

Miriam Sumner

11.2.87

3/n

PETITION

①

We, the undersigned, do hereby request you to introduce, support, and pass legislation that would limit the liability of foster parents. This needs to cover two areas:

1. Any liability for actions of a foster parent other than in cases of gross negligence or intentional misconduct.
2. Statutory authority, funding, and a procedure that would insure foster parents are reimbursed for damages caused by a foster child.

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self
self - AFPA.

25 self
13 organizations

Recommended revisions to HB 258

Submitted by the Departments of Administration, Health and Social Services, and Law.

1. The title of the bill should be amended to read: "An Act relating to the civil liability and uninsured property loss of licensed foster parents."
2. Section 1 of the bill would remain unchanged.
3. Section 2 of the bill would be amended as follows:

* Sec. 2. AS 47.35 is amended by adding a new section to read:

Sec. 47.35.110. UNINSURED PROPERTY LOSS. The state shall reimburse a licensed foster parent for the loss of or damage to tangible property of a value exceeding \$100 owned or under the lawful control of the foster parent which results from the intentional misconduct of a child in the custody of the state placed in the care of a foster parent under this title.

H B

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STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY
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May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House Hess:

April 27, 1987

HB 260 An Act establishing an excise tax on the sale of
 smokeless tobacco; and providing for an effective
 date.

FILE CONTENTS

- I Copy of HB 260
- II Fiscal Note
- III Information from American Lung Association of Alaska
- IV States Which Tax Both Cigarettes and Other Tobacco
 Products
- V Alaska Area Smokeless Tobacco Survey Results
- VI AS 43.50.010 - 43.50.180 - Cigarette Tax Act
- VII AS 43.50.190, Additional tax levy on cigarettes.
- VIII Fiscal Note, Department of Revenue, 4/27/87
- IX Sectional Review of CS for HB 260, 4/26/87
- X CS for HB 260, Bannister, 4/25/87

HOUSE COMMITTEE REPORT

(7)

Date referred: 4/8/87

FURTHER REFERRALS: Finance

DATE: 4-29-87

The Health, Education and Social Services Committee has considered HB 260

"An Act establishing an excise tax on the sale of smokeless tobacco; and providing for an effective date."

RECOMMENDS:

- replace with CS HB 260 CHSS the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

[Handwritten signatures]

SIGNING OTHER RECOMMENDATIONS:

[Handwritten signatures]

[Large handwritten signature]

 Co-Chairman's signature

5-1008L
Bannister
4/27/87

Original sponsors: Ellis, Gruenberg,
and Pourchot, et al.

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NC 260 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a tax on cigars, smokeless
7 tobacco, and smoking tobacco; and providing for an
8 effective date."

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

10 * Section 1. AS 43 is amended by adding new sections to read:

11 ARTICLE 3. EXCISE TAX ON CERTAIN TOBACCO PRODUCTS.

12 Sec. 43.50.300. EXCISE TAX LEVIED. A tax of 25 percent of the
13 sale price is levied on the first sale in the state of a tobacco
14 product after the tobacco product

15 (1) has been manufactured in the state; or

16 (2) arrives in the state after having been purchased from,
17 or supplied by, a person outside the state.

18 Sec. 43.50.310. EXEMPTION. A sale is exempt from the tax if the
19 sale is by a facility operated by one of the uniformed services of the
20 United States. In this section, "uniformed services" has the meaning
21 given in 5 U.S.C. 2101.

22 Sec. 43.50.320. LICENSING. (a) A person may not sell a tobacco
23 product in the state if the sale is subject to the tax unless the
24 person is licensed by the department.

25 (b) The department, upon application and payment of a fee, shall
26 issue a license for one year to a person who applies for a license
27 under (a) of this section.

28 (c) The department may refuse to issue a license under this
29 section if there is reasonable cause to believe the information

1 submitted in the application is false or misleading and is not made in
2 good faith.

3 (d) A license issued under this section must include the name
4 and address of the licensee, the type of business to be conducted, and
5 the year for which the license is issued.

6 (e) The department may renew a license issued under this sec-
7 tion.

8 (f) The department may suspend or revoke a license issued under
9 this section if the person violates a provision of AS 43.50.300 -
10 43.50.390 or a regulation adopted under AS 43.50.370.

11 (g) A license required by this section is in addition to any
12 other license required by law.

13 (h) A license issued under this section is not assignable or
14 transferable, except that in the case of death, bankruptcy, receiver-
15 ship, or incompetency of the licensee, or if the business of the
16 licensee is transferred to another by operation of law, the department
17 may extend the license for a limited time to the executor, administra-
18 tor, trustee, receiver, or the transferee.

19 Sec. 43.50.330. RETURNS. (a) On or before the last day of each
20 calendar month, a licensee shall file a return with the department.
21 The return must state the number of tobacco products sold by the
22 licensee during the preceding calendar month, the selling price of the
23 tobacco products, and the amount of tax imposed on the sale of the
24 tobacco products.

25 (b) The licensee shall remit with the return the tax due under
26 AS 43.50.300 for the month covered by the return, after deducting one
27 percent of the tax due, which the licensee shall retain to cover the
28 expense of accounting and filing the return.

29 Sec. 43.50.340. RECORDS. A licensee shall keep a complete and

1 accurate record of all tobacco products subject to the tax and sold by
2 the licensee, including purchase prices, sales prices, the names and
3 addresses of the sellers and the purchasers, the dates of delivery,
4 the quantities of tobacco products, and the trade names and brands.
5 Statements and records required by this section must be in the form
6 prescribed by the department, preserved for three years, and available
7 for inspection upon demand by the department.

8 Sec. 43.50.350. DISPOSITION OF PROCEEDS. The tax collected by
9 the department shall be deposited in the general fund. The commis-
10 sioner of administration shall separately account for the taxes that
11 are deposited in the general fund under this section. The annual
12 estimated balance in the account may be used by the legislature to
13 make appropriations for health care, health research, health pro-
14 motion, and health education programs.

15 Sec. 43.50.360. ANNUAL REPORT. The department shall submit to
16 the legislature by the first day of each regular legislative session a
17 report indicating the amount of the tax collected during the year that
18 ends on the June 30 preceding the session. The report shall itemize
19 the tax collected according to the tax collected for cigars and the
20 tax collected for the combined tobacco products of smokeless and
21 smoking tobacco.

22 Sec. 43.50.370. REGULATIONS. The department shall adopt under
23 the Administrative Procedure Act (AS 44.62) reasonable regulations
24 that it considers necessary to carry out the provisions of AS 43.50.-
25 300 - 43.50.390, including regulations prescribing the amount of the
26 license fee under AS 43.50.320.

27 Sec. 43.50.390. DEFINITIONS. In AS 43.50.300 - 43.50.390

28 (1) "cigar" means a roll for smoking of any size or shape,
29 made entirely or partially of tobacco, whether the tobacco is

1 flavored, adulterated, or mixed with another ingredient, if the wrap-
2 per or cover of the roll is made of tobacco;

3 (2) "licensee" means a person licensed under AS 43.50.320;

4 (3) "the tax" means the tax levied by AS 43.50.300;

5 (4) "tobacco product" means a cigar, smokeless tobacco, or
6 smoking tobacco.

7 * Sec. 2. This Act takes effect September 1, 1987.
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5-1008B
Bannister
4/25/87

Original sponsors: Ellis, Gruenberg,
Pourchot, et al.

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 260 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to cigarettes, cigars, smokeless
7 tobacco, and pipe tobacco; and providing for an
8 effective date."

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

10 * Section 1. AS 14.11.100(b) is amended to read:

11 (b) The commissioner shall administer the program of reimburse-
12 ment authorized under this section and shall provide by regulation for
13 the filing of applications for reimbursement, the form of proof of
14 costs for which application for reimbursement is made, and other
15 regulations necessary to administer the program. The commissioner
16 shall exclude from the total school construction cost of the local
17 district all state and federal funds included in these costs except
18 funds provided under this section and AS 43.50.140(a) [AS 43.50.140].

19 In approving applications for reimbursement, the commissioner shall

20 [(1)] offset against the amount of reimbursement authorized
21 the amount of [ANY] funds distributed to the borough or city in the
22 second preceding fiscal year from the school fund provided for in
23 AS 43.50.140(a) [AS 43.50.140;

24 (2) Repealed].

25 * Sec. 2. AS 43.50.010(a) is amended to read:

26 (a) A [NO] person may not sell, purchase, possess, or acquire a
27 tobacco product [CIGARETTES] as a manufacturer, distributor, direct-
28 buying retailer, vending machine operator, or buyer without a license.

29 * Sec. 3. AS 43.50.020 is amended to read:

1 Sec. 43.50.020. SEPARATE LICENSES. If a person operates more
2 than one place of business, the person shall [MUST] obtain a separate
3 license for each place of business, except that a person operating one
4 or more [CIGARETTE] vending machines for a tobacco product is con-
5 sidered to have only one place of business for the purpose of a li-
6 cense under AS 43.50.010 - 43.50.180. A person licensed only as a
7 manufacturer, distributor, direct-buying retailer, vending machine
8 operator, or buyer may not operate in another capacity unless the
9 appropriate license for it is first secured. Each license shall be
10 exhibited at the place of business for which it is issued and in the
11 manner prescribed by the department.

12 * Sec. 4. AS 43.50.035 is amended to read:

13 Sec. 43.50.035. WHOLESALER-DISTRIBUTOR LICENSE. A person may
14 qualify for a wholesaler-distributor license by furnishing a good and
15 sufficient surety bond in an amount equal to twice the average monthly
16 return and in no case less than \$5,000, payable to the department and
17 approved by the Department of Law. If a wholesaler-distributor fails
18 to pay when due the [CIGARETTE] tax under AS 43.50.090(a) or the tax
19 under AS 43.50.090(d) [WHEN DUE], the bond may be forfeited and the
20 license revoked. The department may issue permits in place of bonds to
21 resident holders of wholesaler-distributor licenses doing business
22 wholly in the state who pay the tax before shipment.

23 * Sec. 5. AS 43.50.070 is amended to read:

24 Sec. 43.50.070. REVOCATION OF LICENSES. The department may
25 suspend or revoke a license issued under AS 43.50.010 - 43.50.180 (1)
26 for violation of AS 43.50.010 - 43.50.180 or a regulation of the
27 department adopted under AS 43.50.010 - 43.50.180, or (2) if a li-
28 censee ceases to act in the capacity for which the license was issued.
29 A [NO] person whose license is suspended or revoked may not [SHALL] sell

1 tobacco products [CIGARETTES] or permit a tobacco product [CIGARETTES]
2 to be sold during the period of the suspension or revocation on the
3 premises occupied or controlled by that person. A [NO] disciplinary
4 proceeding or action is not barred or abated by the expiration, trans-
5 fer, surrender, renewal, or extension of a license issued under
6 AS 43.50.010 - 43.50.180. The department shall comply with the pro-
7 visions of the Administrative Procedure Act (AS 44.62).

8 * Sec. 6. AS 43.50.080 is amended to read:

9 Sec. 43.50.080. RETURNS. (a) On or before the last day of each
10 calendar month a licensee shall file with the department a return,
11 under penalty of perjury, for each place of business. The return must
12 [SHALL] state the number of cigarettes or cigars manufactured, im-
13 ported, or acquired by the licensee during the preceding calendar
14 month, the amount of smokeless tobacco and pipe tobacco manufactured,
15 imported, or acquired by the licensee during the preceding calendar
16 month, and other information that [WHICH] the department requires. If
17 a licensee ceases to import or acquire tobacco products [CIGARETTES,]
18 the licensee shall immediately file with the department a return for
19 the period ending with the cessation.

20 (b) A person holding a wholesaler-distributor license under
21 AS 43.50.035 shall file a return with the department on or before the
22 last day of each calendar month. The return shall state the number of
23 cigarettes and cigars sold, the amount of smokeless tobacco and pipe
24 tobacco sold, including the tobacco products [THOSE CIGARETTES] exempt
25 from a tax under this chapter, and remit the tax due by the whole-
26 saler-distributor for the preceding calendar months and other informa-
27 tion that [WHICH] the department may require.

28 * Sec. 7. AS 43.50.090 is amended to read:

29 Sec. 43.50.090. TAX IMPOSED. (a) There is levied an excise tax

1 of two and one-half mills on each cigarette imported or acquired in
2 the state. [EACH LICENSEE SHALL, AT THE TIME OF FILING THE RETURN
3 REQUIRED BY AS 43.50.080, PAY TO THE DEPARTMENT THE EXCISE FOR THE
4 CALENDAR MONTH COVERED BY THE RETURN, DEDUCTING ONE PERCENT OF THE
5 TOTAL TAX DUE, WHICH THE LICENSEE SHALL RETAIN TO COVER THE EXPENSE OF
6 ACCOUNTING AND FILING RETURNS. CIGARETTES UPON WHICH THE EXCISE IS
7 IMPOSED ARE NOT AGAIN SUBJECT TO THE EXCISE WHEN ACQUIRED BY ANOTHER
8 PERSON.]

9 (b) It is the intent and purpose of this section to provide for
10 the collection of this excise from the person who first acquires the
11 tobacco product [CIGARETTES] in this state.

12 (c) The tax imposed under (a) of this section does not apply to
13 tobacco products [CIGARETTES] imported or acquired in the state by an
14 exchange, commissary, or ship's stores operated by one of the uni-
15 formed services of the United States. In this subsection "uniformed
16 services" has the meaning given [AS DEFINED] in 5 U.S.C. 2101.

17 * Sec. 8. AS 43.50.090 is amended by adding new subsections to read:

18 (d) An excise tax equal to 25 percent of the import or acquisi-
19 tion price is levied on cigars, smokeless tobacco, and pipe tobacco
20 imported or acquired in the state.

21 (e) Each licensee shall, at the time of filing the return re-
22 quired by AS 43.50.080, pay to the department the excise tax levied by
23 this section for the calendar month covered by the return, deducting
24 one percent of the total tax due, which the licensee shall retain to
25 cover the expense of accounting and filing returns.

26 (f) A tobacco product on which the excise tax is imposed is not
27 subject to the excise tax again when acquired by another person.

28 * Sec. 9. AS 43.50.100(d) is amended to read:

29 (d) A person or licensee who is in control or possession of a

1 tobacco product [CIGARETTES] contrary to AS 43.50.010 - 43.50.180, or
2 who offers to sell or dispose of a tobacco product [CIGARETTES] to
3 others for the purpose of resale without being licensed to do so is
4 considered to have possession of the tobacco product [CIGARETTES] as a
5 consumer and is personally liable for the tax, plus a penalty of 100
6 percent.

7 * Sec. 10. AS 43.50.130(a) is amended to read:

8 (a) Every licensee shall keep a complete and accurate record of
9 all tobacco products [CIGARETTES] manufactured, purchased, or ac-
10 quired. The records, except in the case of a manufacturer, must
11 [SHALL] include a written statement containing the name and address of
12 the seller and the purchaser, the date of delivery, the quantity of
13 tobacco products [CIGARETTES], the trade name and brand, and the price
14 paid for each brand of the tobacco product [CIGARETTES] purchased.
15 The licensee shall keep [SUCH] other records that [AS] the department
16 prescribes. All statements and records required by this section must
17 [SHALL] be in the form prescribed by the department, [SHALL BE] pre-
18 served for three years, and [SHALL BE] offered for inspection upon
19 demand by the department.

20 * Sec. 11. AS 43.50.130(d) is amended to read:

21 (d) An invoice for the sale of a tobacco product [CIGARETTES]
22 given or accepted by a licensee under AS 43.50.010 - 43.50.180 must
23 [SHALL] state whether the tax imposed by AS 43.50.010 - 43.50.180 has
24 been paid.

25 * Sec. 12. AS 43.50.140 is amended to read:

26 Sec. 43.50.140. DISPOSITION OF PROCEEDS. The proceeds derived
27 from the payment of the tax under AS 43.50.090(a) [TAXES], fees, and
28 penalties, provided for under AS 43.50.010 - 43.50.180, and the li-
29 cense fees received by the department shall be paid into a state fund

1 entitled "School Fund," and shall be used exclusively to rehabilitate,
2 construct, and repair the state's school facilities, and for costs of
3 insurance on buildings comprising school facilities during the reha-
4 bilitation, construction, and repair, and for the life of the build-
5 ings. .

6 * Sec. 13. AS 43.50.140 is amended by adding a new subsection to read:

7 (b) The tax collected under AS 43.50.090(d) shall be deposited
8 in the general fund. The commissioner of administration shall sepa-
9 rately account for the taxes that are deposited in the general fund
10 under this subsection. It is the intent of the legislature that the
11 annual estimated balance in the account be available for appropriation
12 for health care, health research, health promotion, and health educa-
13 tion programs.

14 * Sec. 14. AS 43.50 is amended by adding a new section to read:

15 Sec. 43.50.145. ANNUAL REPORT. The department shall submit to
16 the legislature by the first day of each regular legislative session a
17 report indicating the amount of the tax collected under AS 43.50.-
18 090(d) during the year that ends on the June 30 preceding the session.

19 * Sec. 15. AS 43.50.170 is repealed and reenacted to read:

20 Sec. 43.50.170. DEFINITIONS. In this chapter, unless the con-
21 text otherwise requires,

22 (1) "buyer" means a person who imports or acquires a tobac-
23 co product for the person's own consumption from a source other than a
24 manufacturer, distributor, direct-buying retailer, or retailer;

25 (2) "cigar" means a roll for smoking of any size or shape,
26 made entirely or partially of tobacco, whether the tobacco is fla-
27 vored, adulterated, or mixed with another ingredient, if the wrapper
28 or cover of the roll is made of tobacco;

29 (3) "cigarette" means a roll for smoking of any size or

1 shape, made wholly or partly of tobacco, whether the tobacco is fla-
2 vored, adulterated, or mixed with another ingredient, if the wrapper
3 or cover of the roll is made of paper or a material other than tobac-
4 co;

5 (4) "department" means the Department of Revenue;

6 (5) "direct-buying retailer" means a person who is engaged
7 in the sale of a tobacco product at retail in this state, and who
8 brings or causes a tobacco product to be brought into the state;

9 (6) "distributor" means a person who brings or has a tobac-
10 co product brought into the state, and who sells or distributes at
11 least 75 percent of the tobacco product to others for resale in the
12 state;

13 (7) "licensee" means a person licensed under AS 43.50.010 -
14 43.50.180;

15 (8) "manufacturer" means a person who makes, fashions, or
16 produces a tobacco product for sale to distributors or other persons;

17 (9) "person" includes an individual, company, partnership,
18 joint venture, joint agreement, association, mutual or otherwise,
19 corporation, estate, trust, business trust, receiver or trustee,
20 syndicate, or political subdivision of this state, or combination
21 acting as a unit;

22 (10) "place of business" means a place where a tobacco
23 product is sold, or where a tobacco product is brought or kept for the
24 purpose of sale or consumption, including a vessel, vehicle, airplane,
25 or train;

26 (11) "retailer" means a person in the state who is engaged
27 in the business of selling a tobacco product at retail;

28 (12) "sale" includes a sale, barter, exchange, and every
29 other manner of transferring the ownership of personal property;

1 (13) "tobacco product" means a cigarette, a cigar, smokeless
2 tobacco, or pipe tobacco.

3 * Sec. 16. AS 43.50.180 is amended to read:

4 Sec. 43.50.180. SHORT TITLE. AS 43.50.010 - 43.50.180 may be
5 cited as the Tobacco [CIGARETTE] Tax Act.

6 * Sec. 17. This Act takes effect July 1, 1987.
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April 26, 1987

SECTIONAL REVIEW OF CS FOR HB 260
4/25/87 DRAFT VS. 4/22/87 DRAFT

The 4/25/87 draft amends AS 43.50 to include a 25% tax on smokeless tobacco, pipe tobacco and cigars, and to require sellers of these tobacco products to be licensed.

4/22/87 DRAFT:

Page 1, lines 10 - 16: These have been eliminated and replaced with an across-the-board tax of 25% of the wholesale price for smokeless tobacco, pipe tobacco and cigars. This can be found on Page 4, lines 18 - 20 of the 4/25/87 draft.

Page 1, line 17 through Page 2, line 1: These have been eliminated since the tax is now proposed to be on the wholesale level rather than the retail level.

Page 2, lines 2 - 9: This has been kept and can be found on Page 6, lines 6 - 13 of the 4/25/87 draft. The intent language as to how the proceeds should be used has been strengthened.

Page 2, lines 10 - 14: This has been kept and can be found on Page 6, lines 14 - 18 of the 4/25/87 draft.

Page 2, lines 15 - 19: Definition section has been expanded due to amending AS 43.50 to include licensing of sellers of smokeless tobacco, pipe tobacco and cigars.

The effective date has remained the same.

HIGHLIGHTS OF 4/25/87 DRAFT:

Section 1: Amends AS 14.11.100(b) to protect the use of dedicated cigarette tax fund that was established in AS 43.50, and to separate the cigarette tax from the tax on the other tobacco products.

Sections 2 - 6: Amends AS 43.50 to require sellers of smokeless tobacco, pipe tobacco and cigars to be licensed as are sellers of cigarettes.

Section 7: Maintains the 2 1/2 mill tax on cigarettes which is placed in the dedicated fund.

Section 8: Establishes the 25% wholesale tax on smokeless tobacco, pipe tobacco and cigars.

Sections 9 -11: Amends AS 43.50 in regards to licensing requirements.

Section 12: Maintains the dedicated cigarette tax fund.

Section 13: Intent language for the proceeds from tax on the other tobacco products.

Section 14: Requires annual report indicating amount of tax collected from the other tobacco products.

Section 15: Modifies definitions to use the generic term of "tobacco product" rather than "cigarette". Adds definition of "cigar" and "tobacco product".

Section 16: Amends the short title.

Section 17: Effective date.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST _____

Bill Version: _____
Publish Date: _____

Revision Date: _____
Title: An act establishing an excise tax on the sale of smokeless tobacco.
Sponsor: Ellis, Gruenberg, Pourchot, etc
Requestor: _____

Agency Affected: Department of Revenue
BRU: Division of Audit
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	15.0	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	15.0-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	Will range from 625.0 to 1 million each year				

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	15.0-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	15.0-	-	-	-	-

POSITIONS:

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

ANALYSIS: See attached analysis.

Prepared By: Steven E. Kettel
Division: Division of Audit
Approved by Commissioner: [Signature]
Agency: REVENUE

Phone: 465-2320
Date: April 24, 1987
Date: 4/27/87

- Distribution (by Agency preparing fiscal note):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

HB 260 Fiscal Note Analysis
Prepared April 24, 1987

The estimated tax revenue from HB 260 taxing other tobacco products at 25%¹ of the wholesale price² of the product would generate \$625,000-\$1.0 million per year.

The Department's poll of Alaska distributors indicates that between 3.4-8.0% of their sales are for non-cigarette tobacco products. Using the revenue from the State's excise tax on cigarettes we would estimate their other tobacco sales to be \$2.5-4.2 million. Taxing at a rate of 25% of these sales would generate the above mentioned tax revenue.

The average retail price for a pack of 20 cigarettes for the State of Alaska is 121.5¢³ (including state and federal excise tax). From the manufacturer's invoices the average price of a package of cigarettes from the manufacturer is 72¢. Assuming a 10% mark up by the distributor the distributor's price would be 79¢.

Based on the above prices, the current state excise tax on cigarettes (8 mils) as a percentage of the price (without excise taxes) would be:

Manufacturer's invoice price- $\frac{16¢ \text{ per pack State excise tax}}{72¢ \text{ manufact. inv. price}} = 22\%$

Distributor's price- $\frac{16¢ \text{ per pack State excise tax}}{79¢ \text{ distributor's price}} = 20\%$

¹ Of the 10 states taxing on the wholesale price of the tobacco products the average rate of the tax is 29.0%. Excluding the State of Washington which has a 64.9% tax on the wholesale price the average is 25.5%.

² Taxing on the price of the other tobacco products is the most common form of taxation. Of the 25 states taxing other tobacco products 20 states tax based on the price of the product. With the exception of the tax method on cigars 23 of these states tax other tobacco products based on the price.

³ This information was from The Tax Burden on Tobacco by The Tobacco Institute, Vol. 21, 1986. of the product.

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

HB 260 An Act establishing an excise tax on the sale of
 smokeless tobacco; and providing for an effective
 date.

FILE CONTENTS

- I Copy of HB 260
- II Fiscal Note
- III Information from American Lung Association of Alaska
- IV States Which Tax Both Cigarettes and Other Tobacco
 Products
- V Alaska Area Smokeless Tobacco Survey Results
- VI AS 43.50.010 - 43.50.180 - Cigarette Tax Act
- VII AS 43.50.190, Additional tax levy on cigarettes.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST _____

Bill Version: CS HB 260
Publish Date: _____

Revision Date: _____
Title: An act establishing an excise tax on the sale of smokeless tobacco.
Sponsor: Ellis, Gruenberg, Pourchot, etc
Requestor: _____

Agency Affected: Department of Revenue
BRU: Division of Audit
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	15.0	15.0-	15.0-	15.0-	15.0-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	15.0-	15.0-	15.0-	15.0-	15.0-
CAPITAL	-	-	-	-	-	-
REVENUE	-	425.0-	425.0-	425.0-	425.0-	425.0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	15.0-	15.0-	15.0-	15.0-	15.0-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	15.0-	15.0-	15.0-	15.0-	15.0-

POSITIONS:

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

ANALYSIS: See attached analysis.

Prepared By: Steven E. Kettel
Division: Division of Audit

Phone: 465-2320
Date: April 20, 1987

Approved by Commissioner: _____
Agency: _____

Date: 4/22/87

Distribution (by Agency preparing fiscal note):

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

Fiscal Note
HB 260

Analysis:

The bill provides for a one-cent tax on each one-tenth ounce of smokeless tobacco. Smokeless tobacco would include chewing tobacco and snuff. Currently the state levies a tobacco tax on cigarettes at 16¢ per pack. All but 5¢ of this tax are deposited in the general fund.

Chewing tobacco is generally sold in 1 and 1.2 ounce cans or three ounce packets, HB 260 would require a tax of ten and twelve cents per can, and thirty cents per packet. New product types, such as Skoal Bandit pouches are not sold by weight and may present a problem to distributors in determining the correct amount of tax.

Fiscal Note:

A polling of Alaska tobacco product distributors indicates that approximately 3.4 to 8.0 percent of their sales are for non-cigarette products, including smokeless, cigar and pipe tobacco. A tax levy in the amount suggested in HB 260, applied against all non-cigarette products would raise approximately \$425,000. We recommend expanding HB 260 to include pipe tobacco and cigars.

Department costs of 15.0 include new report and claim forms and regulation hearings.

Recommended changes:

1. Change title of bill to:

An act establishing an additional excise tax on the sale of all non-cigarette type tobacco products and change the Article Title to Excise Tax on Non-Cigarette Type Tobacco Products.

2. Sec 43.50.300(a) - EXCISE TAX LEVIED. A tax of \$.01 is levied on the sale of each .1 ounce of non-cigarette type [smokeless] tobacco products customarily sold by weight or volume, and a tax of eight mills is levied on each cigar imported or acquired in this state.

(b) - The tax levied by this section shall be administered and collected in the same manner as the tax levied by AS 43.50.010 - 43.50.180.

(c) - The tax imposed under (a) of this section does not apply to non-cigarette type tobacco products imported or acquired in the state by an exchange, commissary, or ship's stores operated by one of the uniformed services of the United States as defined in 5 U.S.C. 2101.

3. Sec 43.50.320 add another sentence to read: In order to sell, purchase, possess or acquire non-cigarette type tobacco products as a manufacturer, distributor, direct buying retailer, vending machine operator, or buyer, a person must obtain a license and is subject to the licensing provisions of AS 43.50.010 - 43.50.100 and is further subject to the tax return reporting requirements of AS 43.50.080.

Is There A Safe Tobacco?

Is there a way to use tobacco without risking your health and your life?

Should you switch from cigarettes to another form of tobacco use?

- Snuff? • Cigars? • Pipes?
- Chewing Tobacco?
- Clove Cigarettes?
- Low-Yield Cigarettes?

Take a look at

The Facts



AMERICAN  LUNG ASSOCIATION
The Christmas Seal People

AMERICAN LUNG ASS'N. OF ALASKA
605 BARROW ST., SUITE 2
ANCHORAGE, AK 99501
(907) 276-1400

This publication was made possible in part by your support of Christmas Seals® and other contributions to the American Lung Association.

11-88

SMOKELESS TOBACCO

As cigarette smoking becomes increasingly unpopular in American life, tobacco companies are trying hard to promote chewing tobacco and snuff.

They aim at two groups:

- Young people who may never have been regular smokers.
- Smokers and ex-smokers who want a substitute for cigarettes.

But how safe are these products?

Chewing tobacco is leaf tobacco chewed by placing a wad—called a “quid” or “chaw”—between the cheek and the teeth, and sucking on it.

Snuff is finely ground tobacco. It is “dipped” by placing a pinch between the lower lip and teeth. Although the practice is rare, it may also be breathed through the nose.

Chewing tobacco and snuff definitely are dangerous health hazards. Because they are not smoked, they increase the risk of disease in certain other parts of the body instead of the lungs.

The dangers of using smokeless tobacco stem from two facts:

- They can lead to nicotine addiction.

- They damage the delicate lining of the mouth and throat.
- As a result, they can contribute to serious disease or death from oral cancers, heart disease, or stroke.

Some health problems linked to chewing tobacco and snuff

- Mouth cancer • Throat cancer • Gum disease

Other effects

- Bad breath • Stained teeth • Tooth loss
- Slow healing of mouth wounds • Lowered sense of taste and smell • Excess saliva, need to spit

Smokeless tobacco companies want you to believe chewing tobacco or dipping snuff is the “in” thing to do—that it makes you more attractive.

CIGARS AND PIPES

Pipe and cigar smokers have death rates that are lower than those of cigarette smokers, but higher than non-smokers. Since they tend to smoke less and usually do not inhale, pipe and cigar smokers have less risk of heart and lung disease. Those who switch from cigarettes to pipes and cigars, however, may inhale more than those who originally smoked cigars and pipes—or smoke more often.

Smoking pipes or cigars is far from safe. Here are the facts:

- Pipe and cigar smoke contain many of the same harmful ingredients as cigarette smoke, often in much higher amounts.
- People who *inhale* pipe or cigar smoke have greater risks of death from lung or heart disease than do cigarette smokers.
- Cigarette smokers who switch to pipes or cigars are likely to inhale the smoke—often unintentionally.
- Little cigars are especially dangerous. People tend to use them like cigarettes—

smoking more and inhaling the smoke—but they have higher nicotine and tar levels than cigarettes.

- Cigar smokers have slightly higher early death rates than pipe smokers. But the rates for both go up if they:
 - smoke more often.
 - smoke over a longer period of years.
 - begin at a young age.
 - inhale often or deeply.
- Pipe smokers have an especially high risk of getting lip cancer.
- Compared with cigarette smokers, pipe and cigar smokers have higher risks of dying from cancer of the mouth, throat, or larynx (voice box).

THE LONELY SMOKERS

Pipe and cigar smokers have a special social problem. Their smoke is even more offensive and irritating to nonsmokers than cigarette smoke. It is banned in more places—including airlines—and can be disturbing to spouses, best friends, coworkers.

One study showed the smoke from one cigar polluted the air more than 42 cigarettes in a half hour. What's in that smoke? There are some 4,000 chemicals, and nearly 50 cancer-causing substances.

A few of the 4,000 pollutants in tobacco smoke

Carbon monoxide	Vinyl chloride
Nitrites	Hydrocarbons
Ammonia	Volatile alcohols
Nitrosamines	Urethane
Hydrogen cyanide	Formaldehyde
Sulfur compounds	Hydrazine

The pollution created by tobacco smoking is one of the major reasons why smokers are becoming an increasingly lonely minority.

4

CLOVE CIGARETTES

Like cigars or pipes, clove cigarettes (which are also known as "kreteks" and usually imported from Indonesia) have a pungent odor. Recently they've become popular among young people, many of whom seem to think that they're "safe" because they're allegedly made of cloves.

But in fact clove cigarettes are usually 60 percent tobacco and 40 percent ground cloves, clove oil (eugenol), and other additives. So they may be just as hazardous as other tobacco cigarettes. And some scientists think they are even more hazardous—that they may cause more immediate injury to the lungs.

LOW-YIELD CIGARETTES

More than half of cigarette smokers now use brands that promote low tar and nicotine. Those cigarettes may or may not be less dangerous. That depends on how smokers use them. Most smoke more to compensate—to achieve certain nicotine levels or taste more flavor, for instance.

What do the labels mean?

Tar and nicotine ratings are estimates of what a cigarette may deliver. Although a standard smoking machine is used to arrive at the numbers, the actual amounts can vary widely from those numbers.

Smokers breathe in a greater amount of these dangerous products if they:

- inhale deeply.
- take more than one puff a minute.
- hold the smoke in their lungs longer.
- smoke the cigarette down too far.
- cover vent holes that are near the filter on some brands.

When smokers become addicted, their desire for nicotine often causes them to do these things unintentionally when they switch to lower-yield cigarette brands.

5

What's missing from cigarette labels?

What the labels fail to tell you may be as important to your health as what they say. More and more, makers of low tar cigarettes are using additives to try to improve taste and burning quality. They are not required to list those additives on cigarette labels, and the health effects of many of them are unknown.

How do "ultra low tar" brands work?

These brands usually depend on mixing air with the smoke. A ring of tiny vent holes near the filter causes the smoker to draw air and smoke together.

Some people block the holes, purposely or accidentally, defeating the purpose. A cigarette rated at 1 mg tar can yield 12 mg of tar or more. People also tend to over-smoke these brands to satisfy their desire for nicotine.

Low tar brands also fail to reduce health hazards caused by side-stream smoke, which enters the air directly from the burning end of the cigarette and is not filtered.

Tar is the weight of all the chemicals, less nicotine and moisture, that can be taken out of tobacco smoke. It is deposited in smokers' lungs. Some chemicals in tar are known to cause cancer.

Nicotine is the addictive drug in cigarettes. Evidence suggests that nicotine intake raises the risk of death from heart disease and stroke. In its pure form, nicotine is a strong poison. A small dose of it, injected directly into the bloodstream, would kill a person within one hour.

If you are using low-yield cigarettes as a step to quitting, these tips may help:

- Smoke as few cigarettes as possible.
- Take fewer puffs per cigarette.
- Inhale fewer puffs, and don't inhale deeply.

6

- Leave longer butts.
- Do not block vent holes.
- Take the cigarette out of your mouth between puffs.
- Smoke the lowest yield cigarette you can tolerate. When you've had time to adjust, switch down again.
- Keep quitting as your final goal—and get to that goal as soon as you can.
- Ask your local American Lung Association for help in quitting smoking. They have self-help manuals, group programs, and new video techniques. Find out which one—or several—work best for you.

These are the facts: There is no safe tobacco, either smokeless or regular.

Take care of your lungs.
They're the only human.

7

AMERICAN



LUNG ASSOCIATION OF ALASKA

Dedicated to the prevention and control of lung disease

April 1, 1987

Deborah Williams, Executive Director

Representative Max Gruenberg
Pouch V
Juneau, Alaska 99811

Dear Representative Gruenberg:

Thank you for your interest in a state tax on chewing tobacco and snuff. Your support of this measure would mean a great deal to the 12,000 contributors to the American Lung Association, and the state as a whole.

Per your request, I am sending an outline of my testimony before the Health and Human Services Subcommittee. The points I raised were:

- 1) Tobacco addiction is the number one preventable cause of death and disability in the United States.
- 2) The rate of cigarette addiction in Alaska is higher than the national average; and there is reason to believe that the rate of snuff and chewing tobacco addiction is also higher in Alaska than the national average; an estimated 40 percent of male and female rural native Alaskans between the ages of 6 and 18 use snuff or chewing tobacco on a regular basis.
- 3) The health costs associated with tobacco addiction are immense: tobacco related diseases such as emphysema, chronic bronchitis, lung cancer, mouth cancer, cancer of the tongue, and cancer of the throat cost the nation \$54 billion annually in lost work, production, and medical costs.
- 4) Lung cancer is the 4th leading cause of death in Alaska; 85% of lung cancer is caused by smoking.
- 5) The health costs associated with the use of snuff and chewing tobacco are rising as their use increases. The most tragic fact is that very young children - 4,5, and 6 year olds are beginning to use these dangerous, addictive substances.
- 6) The use of chewing tobacco often leads to cigarette smoking because of the nicotine addiction associated with each.
- 7) Currently, neither chewing tobacco nor snuff are taxed at the

federal, local, or state levels in Alaska. This simply does not make social economic sense.

8) The benefits of taxing chewing tobacco and snuff are three fold:

- a) a tax will generate much needed revenues for health programs, particularly those dealing with the prevention of tobacco addiction (our best estimate is that a 16 cent tax would raise between \$1/2 and 1 million annually).
- b) a tax will give us a "handle" on the distribution and use of these products.
- c) a tax will serve as a disincentive to the use of these dangerous products, particularly to youth who are most cost sensitive. This will ultimately save the state direct and indirect health care costs.

9) Some of the monies generated from a chewing tobacco tax together with some of the monies generated from the recent cigarette tax increase can best be spent on tobacco addiction prevention studies and programs. At least \$250,000 should be included in the budget for these purposes. Again, this is sound preventative health, which translates into sound economics.

10) The time to act is now: the state needs the revenue; the state needs to know more about the distribution and sale of chewing tobacco and snuff; and the state needs to lower the rates of tobacco addiction, particularly among our youth who are the future of this state.

Please contact me or Nancy Babb if you have any questions. We are anxious to provide whatever additional assistance we can to get this measure through the legislature.

Sincerely,

Deborah Williams

Deborah Williams
Executive Director

DW/lr

STATE OF ALASKA
DEPARTMENT OF REVENUE
DIVISION OF AUDIT

M E M O R A N D U M

TO: Royce Weller
Special Assistant to the Commissioner

FROM: Steven E. Kettel *SK*
Acting Director of Audit

DATE: April 13, 1987

SUBJECT: Tax levy on smokeless tobacco

RECEIVED
APR 14 1987
DIVISION OF AUDIT

Per your request we have attempted to determine the potential revenue increase by adding a tax on smokeless tobacco. In our research we have contacted the major importers of tobacco products in the state, as well as the U.S. Tobacco Institute.

On a nationwide average, states that tax both smokeless and non-smokeless products generate 3.8% of their tax from sources other than cigarettes; including cigars, pipe tobacco, chewing tobacco and snuff. Nationwide statistics do not separate gross sales among the non-cigarette categories. Of interest, Alaska is the national leader in consumption of smokeless products per capita. A polling of Alaska distributors indicates that between 3.4 and 8.0 percent of their sales are for non-cigarette products.

Assuming Alaska's consumption of smokeless products follows the national average, and that the 8 mill cigarette tax was imposed, an additional \$426,600 in tax revenues would be generated.

ALASKA AREA SMOKELESS TOBACCO SURVEY RESULTS

Prepared by: Candy Schlife
August 12, 1986

SMOKELESS TOBACCO USAGE IN RURAL ALASKA

Candy Schlife, R.D.H.
Dental Prevention Specialist
Alaska Area Native Health Service

INTRODUCTION

The use of smokeless tobacco products is increasing. Sales of smokeless tobacco products have increased about 11 percent each year since 1974 with an estimated 12 million users in the United States in 1985.

A recent national survey indicated that 16 percent of males between 12 and 25 years of age had used some form of smokeless tobacco within the past year. Several studies have reported 25 to 35 percent of adolescent males currently use these products (1).

The primary purpose of this survey was to determine the use of smokeless tobacco in the youth of rural Alaska both Native and non-Native. Amount used, number of years used and awareness of health problems associated with the use of these products was also assessed.

METHODS

In the spring of 1986, a nine-question survey was distributed by the Indian Health Service Dental Programs in eight rural regions of the state. These surveys were self-administered by students in grades kindergarten through twelve. Data from about 5,000 surveys was compiled and will be reported here. The method of sampling was based upon those school administrators and dental programs who chose to participate in the survey. (Not all schools in all areas were asked to participate due to time and energy restraints). The perceived problem of use of smokeless tobacco products may have influenced some to participate. A random sample method was not used. The school system was chosen to administer the survey, therefore the sample size was limited to only 5 to 18 year-old children. Students attending school out of their region i.e. boarders were obviously not included. Since school attendance was crucial for participation in the survey there was no attempt to survey those students who had dropped out of school.

RESULTS

The total number of male and female respondents was 2,511 and 2,454 respectively. Of the 4,965 respondents, 34 percent of the males and 39 percent of the females indicated they used smokeless tobacco products. This is contrary to much data that supports substantially higher usage by male vs. female populations. According to a national survey only about two percent of the female population of all ages used smokeless tobacco products (1).

A user was defined as anyone who responded positively to the question, "Do you use smokeless tobacco products?". Our survey indicated that 24 percent of the males age 5-12 years were users and 45 percent of the 13-18 year-old male students were users. The percentage of females who regularly use was 22 percent for ages 5-12 years and 34 percent for ages 13-18. The highest user age group was 16 year-old males: 52.7 percent of this age population used. It is alarming to find that about 17 percent of the five-year old females and 10 percent of five-year old males are using these products and had been doing so for 1.3 - 1.5 years (Tables 2, 3)!

Higher use was seen in Interior and Northern Alaska (Yukon-Kuskokwim Delta Region, Bristol Bay Area, Kotzebue Service Unit, Barrow and Anchorage Service Units). Lower usage was seen in Southeast Alaska, Mt. Edgecumbe and Annette Island Service Units (Table 6). The number of surveys completed from the service units with a higher usage was also indicative of a greater percentage of the population surveyed (Table 5).

According to the survey, 45 percent of the males and 43 percent of the females had tried smokeless tobacco products.

Another item of concern was how much of these products was being used. The average male used 1.4 cans per week and the average female used 1.1 cans per week. National average = 1 can per week.

Copenhagen was the brand selected most often when asked to list brands used. Eighty-four percent of the users chose Copenhagen as the brand or one of the brands used. Copenhagen is U.S. Tobacco's strongest product (2). High use of Copenhagen may indicate a sophisticated and experienced user population. Many home-made versions were also reported.

Respondents were also asked how long they had used these products. The answers ranged from 1.3 years for the five-year old female users to 7.9 years for the eighteen-year old female users. The males length of use varied from 1.0 years in the five-year old males to 6.5 years in eighteen-year old male users. In looking at the average number of years which these products were used, we see that females in general have used these products longer than the males (Tables 3, 4). Use of these products showed a linear progression for both males and females with no particular "target age" or sharp rise in use by an age group. There was a slight increase in use in females from age 8 to 9 and 12 to 13 (Table 4). The average 18 year-old student has used these products for almost seven or eight years. This is compared to a 5 year-old user today who may have 13 to 14 years of use by the time he/she reaches age eighteen.

Scientific evidence is strong that the use of smokeless tobacco can cause cancer in humans, especially oral cancer. The degree it affects depends on many factors such as type of smokeless tobacco product used, frequency, duration, and site of action. Leukoplakia, gingival recession (root caries), staining of teeth and tooth abrasion have also been reported.

Respondents were finally asked if they were aware of any health problems associated with the use of smokeless tobacco products. The majority (60.1 percent) responded positively. Ninety-three percent of those who responded positively to awareness of health problems listed "cancer" as their answer or one of their answers.

A five-year old child probably cannot really comprehend what "cancer" means but this response is an indication that there is some level of awareness. The correlation of awareness of health problems and high usage rate is of concern. It was sad for this surveyor to look at responses of young children who were asking for help in trying to quit their addiction and didn't know what to do.

DISCUSSION

Once usage has been established, the fact of addiction must be addressed and intervention methods must be used.

It has been reported that the blood nicotine levels are similar to that of cigarette smoking and therefore one might expect a similar addiction in smokeless tobacco users. There is also evidence that nicotine may play a role in coronary artery and peripheral vascular disease, hypertension, peptic ulcers and fetal mortality and morbidity (1).

It has been reported in other articles that the number one factor in getting started with smokeless tobacco products is peer pressure. Pressure from older siblings may also be influential. Parental role models may also be a factor (not documented). The advertising campaigns of tobacco companies have been very effective in getting kids trying and hooked.

The job of educating parents as well as the children about the health problems associated with smokeless tobacco products is an important task of all health care providers. Communities need to be presented with this information and allowed to make a decision as to their perspective of the problem. Once it is perceived as a problem (education and awareness) they can then become part of the solution. There is a much greater chance for health behavior changes made with this approach.

We have a unique opportunity to educate and prevent a known negative health behavior. A multi-disciplinary approach involving Community Health Aides, Public Health Nurses, Health Educators, Dental and Medical Personnel, as well as community members, can play an important role in reducing the high usage rate in the rural population in Alaska.

References:

- 1 U.S. Department of Health and Human Services, The Health Consequences of Using Smokeless Tobacco. A Report of the Advisory Committee to the Surgeon General, April, 1986.
2. Youth Use of Smokeless Tobacco: More Than A Pinch Of Trouble National Program Inspection. January 1986.

Special thanks:

Technical consultation

Dr. David B. Jones and
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Dr. Bill Kohn
Pam Grantham, R.D.H.
Dr. Elizabeth Barrett
Dr. Kevin Craig
Dr. Bob Allen

TABLE 1
Percent Users by Sex
All Ages

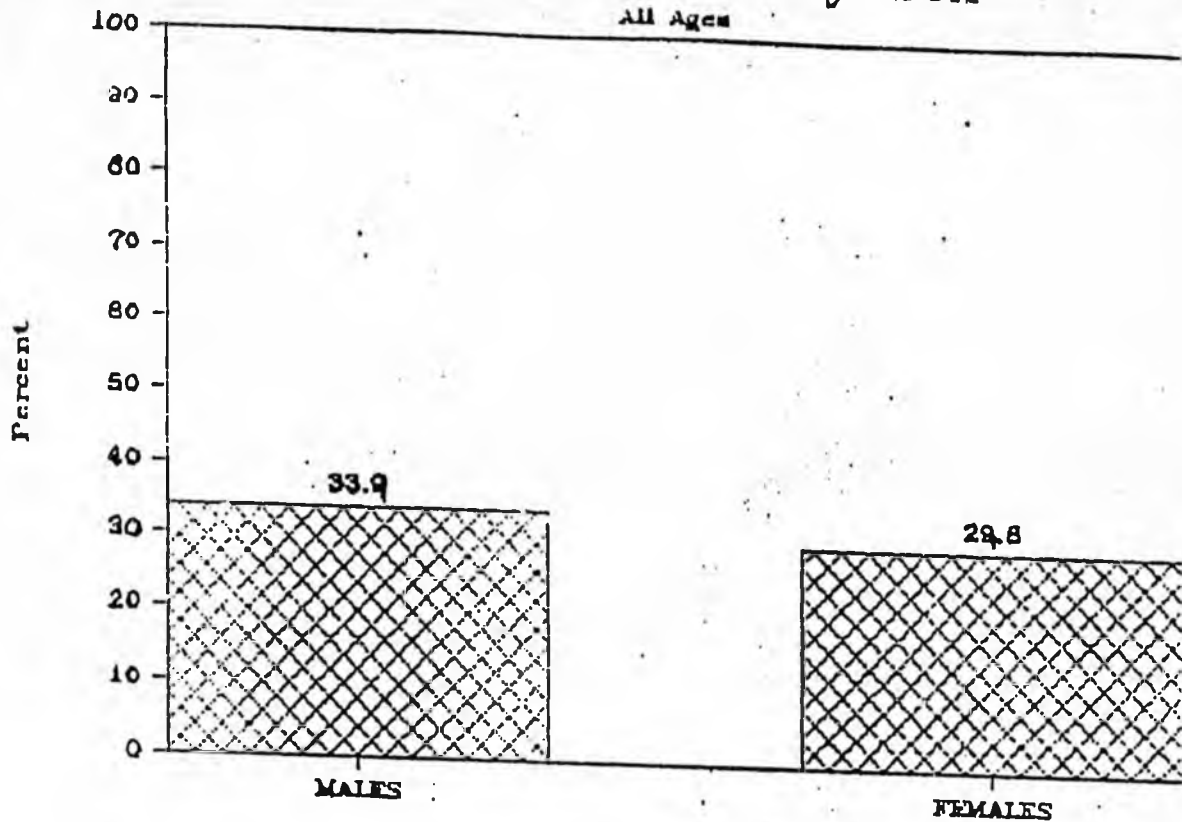


TABLE 2
Percentage of Smokeless Tobacco Users
by Sex and Age

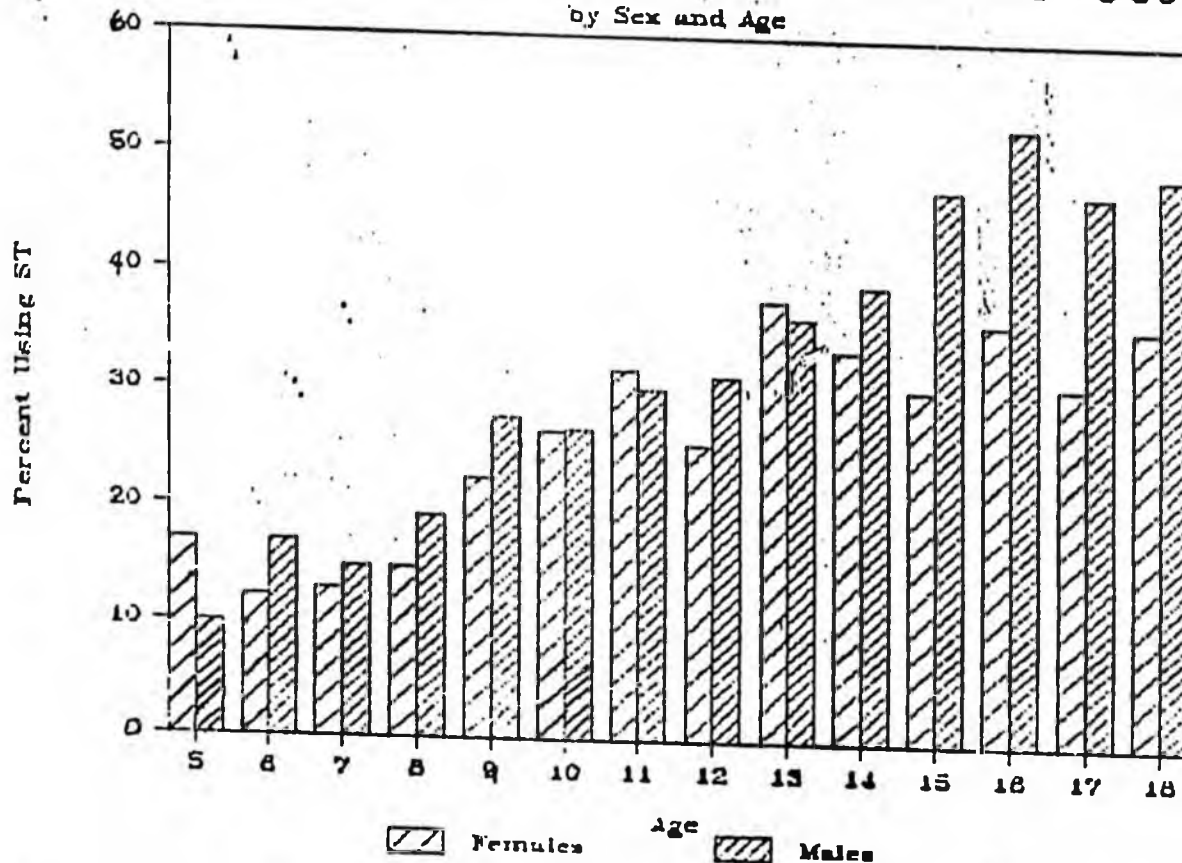


TABLE 3

AGE	SEX	NON-USERS	USERS	TOTAL	%USERS	CANS/WK	YRS USING
5	FEMALE	49	10	59	16.9	0.5	1.3
6	FEMALE	114	16	130	12.3	0.9	1.5
7	FEMALE	140	21	161	13.0	0.9	2.1
8	FEMALE	143	25	168	14.9	1.1	1.9
9	FEMALE	137	40	177	22.6	1.3	2.7
10	FEMALE	150	54	204	26.5	0.9	2.7
11	FEMALE	124	58	182	31.9	1.1	2.4
12	FEMALE	168	58	226	25.7	1.2	3.6
13	FEMALE	138	84	222	37.8	1	3.2
14	FEMALE	146	74	220	33.6	1.3	3.8
15	FEMALE	150	66	216	30.6	1.1	5.2
16	FEMALE	145	83	228	36.4	1.2	5.5
17	FEMALE	121	54	175	30.9	0.9	5.1
18	FEMALE	55	31	86	36.0	0.9	7.9
5	MALE	55	6	61	9.8	1.5	1
6	MALE	123	25	148	16.9	0.9	1.5
7	MALE	156	27	183	14.8	0.9	2
8	MALE	134	32	166	19.3	2.1	1.9
9	MALE	120	46	166	27.7	1.4	2.3
10	MALE	139	51	190	26.8	1.5	3.1
11	MALE	155	47	222	30.2	1.5	3.1
12	MALE	144	66	210	31.4	1.1	3.2
13	MALE	132	76	208	36.5	1.1	4.3
14	MALE	123	80	203	39.4	1.3	4.6
15	MALE	117	106	223	47.5	1.5	4.9
16	MALE	95	106	201	52.7	1.7	5.2
17	MALE	105	94	199	47.2	1.4	5.7
18	MALE	67	64	131	48.9	1.6	6.5

Average Years Using Smokeless Tobacco by Age and Sex

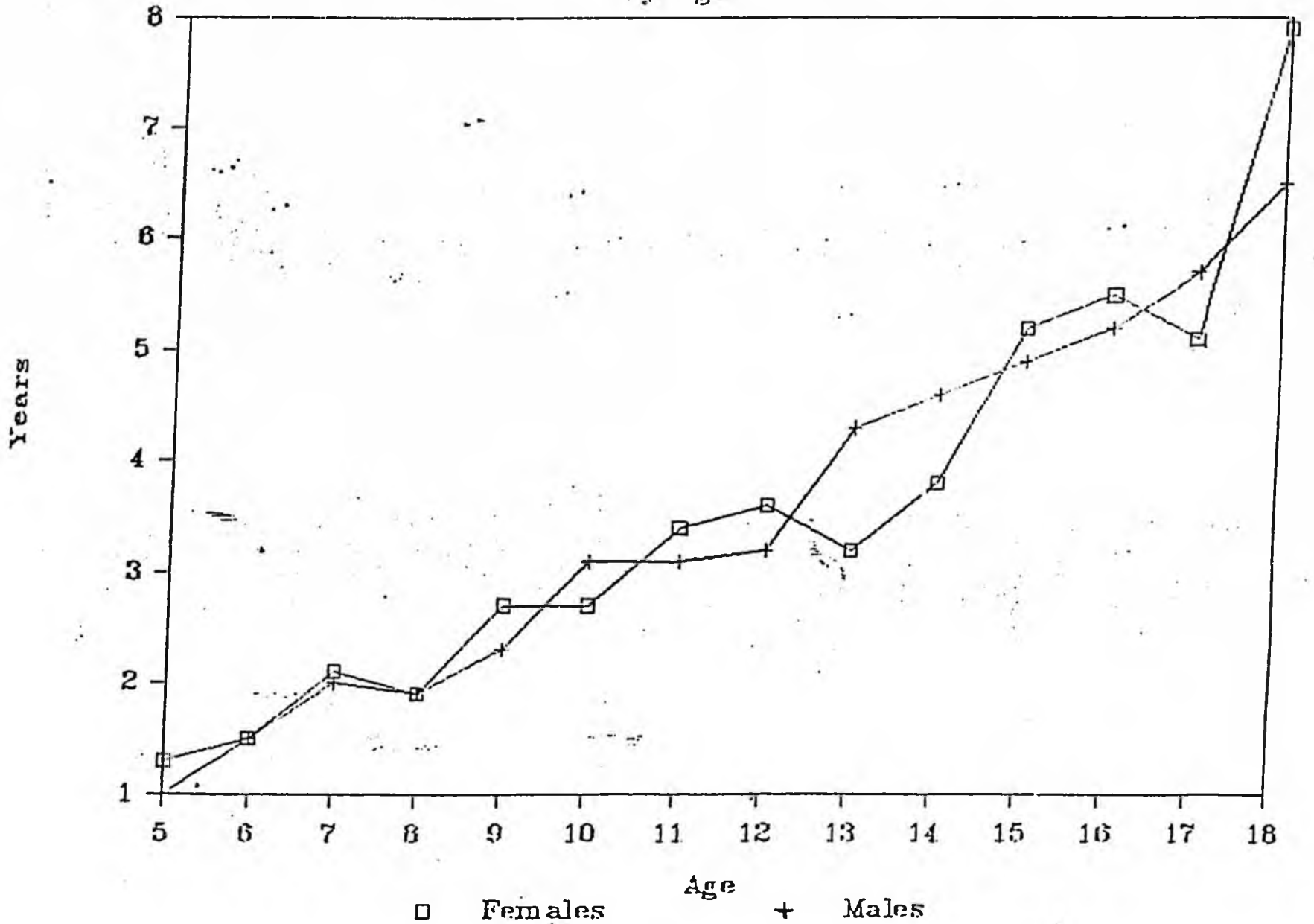
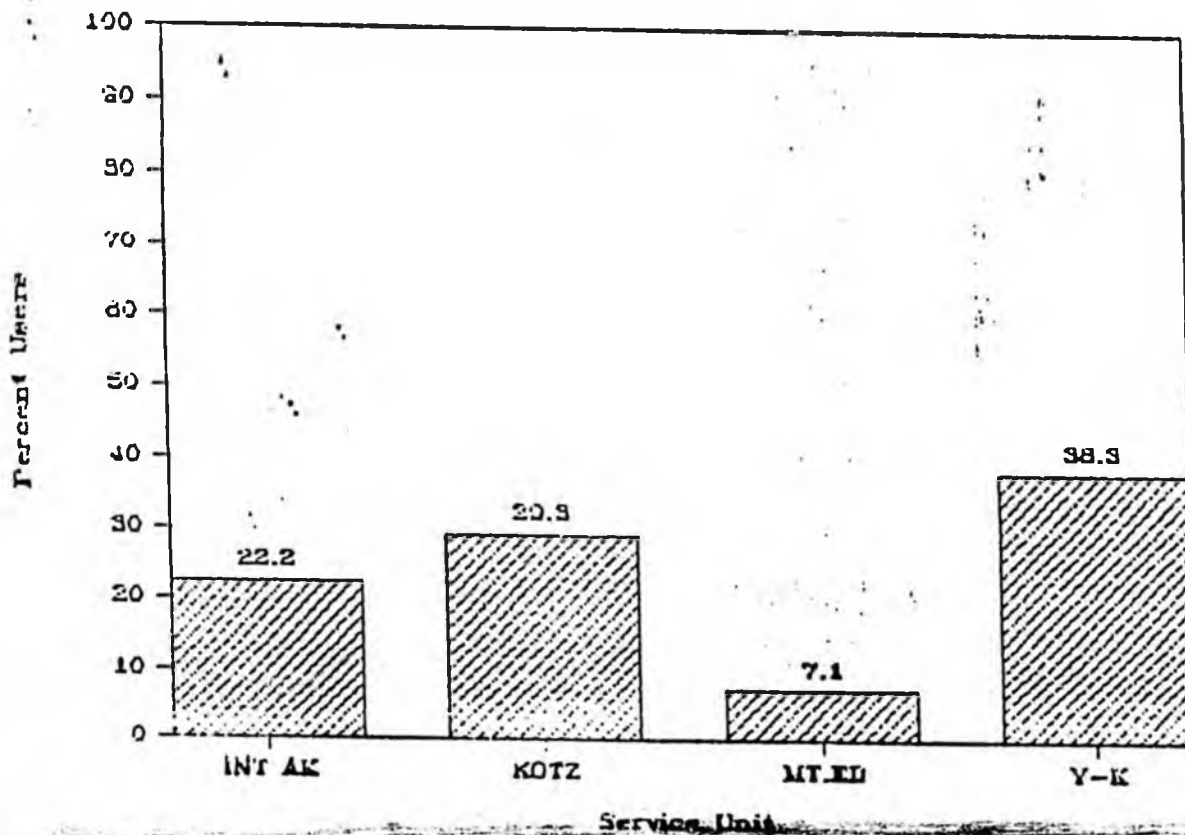
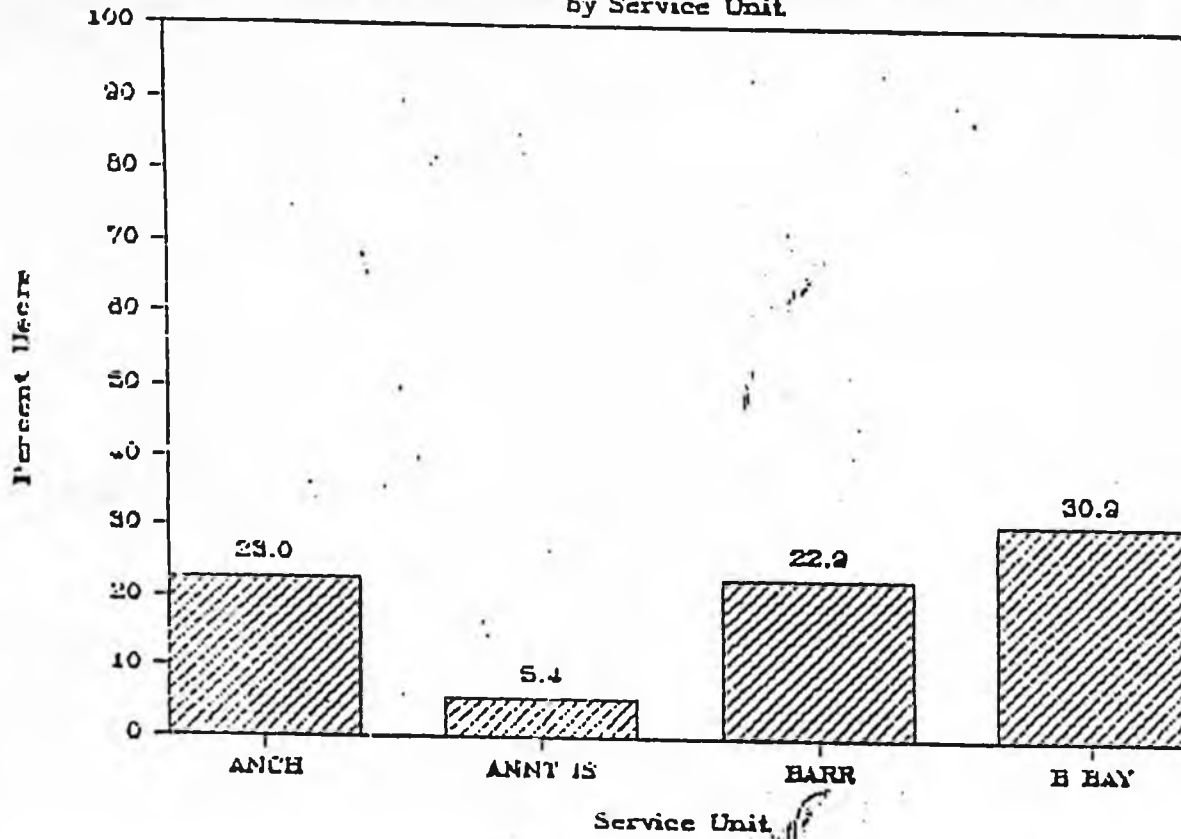


TABLE 5

SERVICE UNIT	NON-USERS	USERS	TOTAL	%USERS
ANCHORAGE	489	146	635	23.0
ANNETTE ISLAND	174	10	184	5.4
BARRÓW	316	94	410	22.9
BRISTOL BAY	284	127	411	30.9
INTERIOR AK*	448	128	576	22.2
KOTZEBUE	350	145	495	29.3
MT. EDGEUMBE	92	7	99	7.1
YUKON-KUSKOKWIM	1487	925	2412	38.3
TOTAL:	3640	1582	5222	30.3

* Numbers here represent total users and non-users. Sex was unintentionally left off on a majority of the surveys for Interior Alaska so these numbers are not included in any data which includes sex as a component of the results.

Smokeless Tobacco Users by Service Unit



Article 1. Cigarette Tax Act.

Section	Section
10. License	80. Returns
20. Separate licenses	90. Tax imposed
30. License fees	100. Civil penalties
35. Wholesaler-distributor license	130. Records
40. Expiration of licenses	140. Disposition of proceeds
50. Transfer of licenses	150. Administration
60. Refunds	170. Definitions
70. Revocation of licenses	180. Short title

Sec. 43.50.010. License. (a) No person may sell, purchase, possess, or acquire cigarettes as a manufacturer, distributor, direct-buying retailer, vending machine operator, or buyer without a license.

(b) The department, upon application and payment of the fee, shall issue a license to each manufacturer, distributor, direct-buying retailer, vending machine operator, or buyer. The department shall make reasonable regulations which it considers necessary in respect to the application for and the issuance of licenses.

(c) The department may refuse to issue a license if there is reasonable cause to believe that the applicant has wilfully withheld information requested to determine the applicant's eligibility to receive a license, or if there is reasonable cause to believe that information submitted in the application is false or misleading and is not made in good faith.

(d) A license required by this chapter is in addition to any other license required by law.

(e) A license issued under this chapter shall include

- (1) the name and address of the licensee;
- (2) the type of business to be conducted; and
- (3) the year for which the license is issued. (§ 3 ch 187 SLA 1955; am § 38 ch 113 SLA 1980)

Effect of amendments. — The 1980 amendment added subsection (e).

Sec. 43.50.020. Separate licenses. If a person operates more than one place of business, the person must obtain a separate license for each place of business, except that a person operating one or more cigarette vending machines is considered to have only one place of business for the purpose of a license under AS 43.50.010 — 43.50.180. A person licensed only as a manufacturer, distributor, direct-buying retailer, vending machine operator, or buyer may not operate in another capacity unless the appropriate license for it is first secured. Each license shall be exhibited at the place of business for which it is issued and in the manner prescribed by the department. (§ 4 ch 187 SLA 1955)

Sec. 43.50.030. License fees. (a) For each license issued to a manufacturer, and for each renewal, the fee is \$5.

(b) For each license issued to a distributor or wholesaler-distributor, and for each renewal, the fee is \$50.

(c) For each license issued to a vending machine operator, and for each renewal, the fee is \$25.

(d) For each license issued to a direct-buying retailer, and for each renewal, the fee is \$25.

(e) For each license issued to a buyer, and for each renewal, the fee is \$25.

(f) No license may be issued except upon the payment of the fee notwithstanding a statute or exemption to the contrary. (§ 5 ch 187 SLA 1955; am § 1 ch 47 SLA 1964)

Sec. 43.50.035. Wholesaler-distributor license. A person may qualify for a wholesaler-distributor license by furnishing a good and sufficient surety bond in an amount equal to twice the average monthly return and in no case less than \$5,000, payable to the department and approved by the Department of Law. If a wholesaler-distributor fails to pay the cigarette tax when due, the bond may be forfeited and the license revoked. The department may issue permits in place of bonds to resident holders of wholesaler-distributor licenses doing business wholly in the state who pay the tax before shipment. (§ 2 ch 47 SLA 1964)

Sec. 43.50.040. Expiration of licenses. A license issued under AS 43.50.010 expires on June 30, following the date of issue. If a license is revoked, or the business for which the license is issued changes ownership or the licensee changes the place of business from the premises covered by the license, the licensee shall immediately return the license to the department. If the licensee moves the business to another location in the state, the license shall, upon the payment of a fee of 50 cents, be reissued for the new location for the balance of the unexpired term. The licensee, on application to the department accompanied by the renewal fee, may, before the expiration of the license, renew the license for one year from the expiration date of the license. (§ 6 ch 187 SLA 1955)

Sec. 43.50.050. Transfer of licenses. A license is not assignable or transferable. However in the case of death, bankruptcy, receivership, or incompetency of the licensee, or if the business of the licensee is transferred to another by operation of law, the department may extend the license for a limited time to the executor, administrator, trustee, receiver, or the transferee. (§ 7 ch 187 SLA 1955)

Sec. 43.50.060. Refunds. The department may not refund the license fee upon the surrender or revocation of a license. The department may refund a license fee that is paid or collected in error. If a

license is lost, destroyed, or defaced, the department may issue a duplicate license upon payment of a fee of 50 cents. (§ 8 ch 187 SLA 1955)

Sec. 43.50.070. Revocation of licenses. The department may suspend or revoke a license issued under AS 43.50.010 — 43.50.180 (1) for violation of AS 43.50.010 — 43.50.180 or a regulation of the department adopted under AS 43.50.010 — 43.50.180, or (2) if a licensee ceases to act in the capacity for which the license was issued. No person whose license is suspended or revoked shall sell cigarettes or permit cigarettes to be sold during the period of the suspension or revocation on the premises occupied or controlled by that person. No disciplinary proceeding or action is barred or abated by the expiration, transfer, surrender, renewal, or extension of a license issued under AS 43.50.010 — 43.50.180. The department shall comply with the provisions of the Administrative Procedure Act (AS 44.62). (§ 9 ch 187 SLA 1955)

Sec. 43.50.080. Returns. (a) On or before the last day of each calendar month a licensee shall file with the department a return, under penalty of perjury, for each place of business. The return shall state the number of cigarettes manufactured, imported, or acquired by the licensee during the preceding calendar month, and other information which the department requires. If a licensee ceases to import or acquire cigarettes, the licensee shall immediately file with the department a return for the period ending with the cessation.

(b) A person holding a wholesaler-distributor license under AS 43.50.035 shall file a return with the department on or before the last day of each calendar month. The return shall state the number of cigarettes sold, including those cigarettes exempt from tax, and remit the tax due by the wholesaler-distributor for the preceding calendar months and other information which the department may require. (§ 10 ch 187 SLA 1955; am § 3 ch 47 SLA 1964)

Sec. 43.50.090. Tax imposed. (a) There is levied an excise tax of two and one-half mills on each cigarette imported or acquired in the state. Each licensee shall, at the time of filing the return required by AS 43.50.080, pay to the department the excise for the calendar month covered by the return, deducting one per cent of the total tax due, which the licensee shall retain to cover the expense of accounting and filing returns. Cigarettes upon which the excise is imposed are not again subject to the excise when acquired by another person.

(b) It is the intent and purpose of this section to provide for the collection of this excise from the person who first acquires the cigarettes in this state.

(c) The tax imposed under (a) of this section does not apply to cigarettes imported or acquired in the state by an exchange, commissary, or ship's stores operated by one of the uniformed services of the United States as defined in 5 U.S.C. 2101. (§ 11 ch 187 SLA 1955; am § 5 ch 94 SLA 1977)

NOTES TO DECISIONS

Constitutionality of 1977 act. — Chapter 94, SLA 1977, relating to both state and local taxation, does not violate Alaska Const., art. II, § 13, which requires every bill to be confined to one subject. *North Slope Borough v. Sohio Petroleum Corp.*, Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 3659), 585 P.2d 534 (1978).

Sec. 43.50.100. Civil penalties. (a) *[Repealed, § 45 ch 113 SLA 1980.]*

(b) *[Repealed, § 3 ch 166 SLA 1976.]*

(c) *[Repealed, § 45 ch 113 SLA 1980.]*

(d) A person or licensee who is in control or possession of cigarettes contrary to AS 43.50.010 — 43.50.180, or who offers to sell or dispose of cigarettes to others for the purpose of resale without being licensed to do so is considered to have possession of the cigarettes as a consumer and is personally liable for the tax, plus a penalty of 100 per cent.

(e) *[Repealed, § 45 ch 113 SLA 1980.]* (§ 12 ch 187 SLA 1955; am § 4 ch 47 SLA 1964; am § 3 ch 166 SLA 1976; am § 45 ch 113 SLA 1980)

Cross references. — For present provisions concerning civil penalties, see AS 43.05.220.

Effect of amendments. — The 1980 amendment repealed subsections (a), (c), and (e).

Sec. 43.50.110. Taxpayer's remedies. *[Repealed, § 3 ch 166 SLA 1976. For current law, see AS 43.05.240.]*

Sec. 43.50.120. Lien. *[Repealed, § 4 ch 94 SLA 1976. For current law, see AS 43.10.035.]*

Sec. 43.50.130. Records. (a) Every licensee shall keep a complete and accurate record of all cigarettes manufactured, purchased, or acquired. The records, except in the case of a manufacturer, shall include a written statement containing the name and address of the seller and the purchaser, the date of delivery, the quantity of cigarettes, the trade name and brand, and the price paid for each brand of cigarettes purchased. The licensee shall keep such other records as the department prescribes. All statements and records required by this section shall be in the form prescribed by the department, shall be preserved for three years, and shall be offered for inspection upon demand by the department.

(b) No licensee may issue or accept a written statement which falsely indicates the name of the customer, the type of merchandise, the price, the discounts, or the terms of sale.

(c) Where an invoice is given or accepted by a licensee (1) a statement which makes the invoice a false record of the transaction may not be inserted in the invoice; and (2) a statement which should be included in the invoice may not be omitted from the invoice if the invoice does not reflect the transaction involved without the statement.

(d) An invoice for the sale of cigarettes given or accepted by a licensee under AS 43.50.010 — 43.50.180 shall state whether the tax imposed by AS 43.50.010 — 43.50.180 has been paid. (§ 15 ch 187 SLA 1955)

Sec. 43.50.140. Disposition of proceeds. The proceeds derived from the payment of taxes, fees, and penalties, provided for under AS 43.50.010 — 43.50.180, and the license fees received by the department shall be paid into a state fund entitled "School Fund," and shall be used exclusively to rehabilitate, construct, and repair the state's school facilities, and for costs of insurance on buildings comprising school facilities during the rehabilitation, construction, and repair, and for the life of the buildings. (§ 16 ch 187 SLA 1955)

Opinions of attorney general. — In order to insure that tobacco tax funds are used most effectively in being a part of major rehabilitation, construction and major repair projects, the law requires that expenditures from such funds be made only after study and concurrence by the city school board, the city council, and the commissioner of education (now Department of Education). 1962 Op. Att'y Gen., No. 24.

It is necessary for the city council to concur by resolution in any expenditure of tobacco tax funds. 1962 Op. Att'y Gen., No. 24.

In addition to the approval of the city council, any disbursement of tobacco tax funds must be made with the authorization of the local school board. 1962 Op. Att'y Gen., No. 24.

Sec. 43.50.150. Administration. (a) The department shall (1) administer this chapter, and (2) collect, supervise, and enforce the collection of taxes due under this chapter and penalties as provided in AS 43.05.

(b) The department may adopt regulations necessary for the administration of this chapter. (§ 17 ch 187 SLA 1955; am § 39 ch 113 SLA 1980)

Effect of amendments. — The 1980 amendment in subsection (a), substituted "this chapter" for "AS 43.50.010 — 43.50.180," deleted "and penalties" following "the collection of taxes," and substituted "this chapter and penalties as provided in AS 43.05.010 — 43.05.290" for

"AS 43.50.010 — 43.50.180"; in subsection (b), substituted "adopt" for "publish," and "AS 43.05" for "AS 43.50.010 — 43.50.180," (1) to enforce AS 43.50.010 — 43.50.180, and (2) to collect the taxes, fees, and penalties imposed by AS 43.50.010 — 43.50.180."

Sec. 43.50.160. Criminal penalties. [Repealed, § 46 ch 113 SLA 1980. For current law, see AS 43.05.290.]

Sec. 43.50.170. Definitions. In this chapter, unless the context otherwise requires,

(1) "buyer" means a person who imports or acquires cigarettes for his own consumption from any source other than a manufacturer, distributor, direct-buying retailer, or retailer;

(2) "cigarette" means a roll for smoking of any size or shape, made wholly or partly of tobacco, whether the tobacco is flavored, adulterated, or mixed with another ingredient, if the wrapper or cover of the roll is made of paper or a material other than tobacco;

(3) "department" means the Department of Revenue;

(4) "direct-buying retailer" means a person who is engaged in the sale of cigarettes at retail in this state, and who brings or causes to be brought cigarettes into the state;

(5) "distributor" means a person who brings cigarettes, or has cigarettes brought into the state, and who sells or distributes at least 75 per cent of the cigarettes to others for resale in the state;

(6) "licensee" means a person licensed under AS 43.50.010 — 43.50.180;

(7) "manufacturer" means a person who makes, fashions, or produces cigarettes for sale to distributors or other persons;

(8) "person" includes an individual, company, partnership, joint venture, joint agreement, association, mutual or otherwise, corporation, estate, trust, business trust, receiver or trustee, syndicate, or political subdivision of this state, or combination acting as a unit;

(9) "place of business" means a place where cigarettes are sold, or where cigarettes are brought or kept for the purpose of sale or consumption, including a vessel, vehicle, airplane, or train;

(10) "retailer" means a person in the state who is engaged in the business of selling cigarettes at retail;

(11) "sale" includes a sale, barter, exchange, and every other manner of transferring the ownership of personal property. (§ 2 ch 187 SLA 1955; am § 27 ch 70 SLA 1964)

Sec. 43.50.180. Short title. AS 43.50.010 — 43.50.180 may be cited as the Cigarette Tax Act. (§ 1 ch 187 SLA 1955)

Article 2. Additional Cigarette Tax.

Section

190. Additional tax levy on cigarettes

Sec. 43.50.190. Additional tax levy on cigarettes. (a) There is levied an excise tax of one and one-half mills on each cigarette imported or acquired in this state.

(b) The tax levied by this section is in addition to the tax levied by AS 43.50.010 — 43.50.180. The tax shall be administered and collected in the same manner as the tax levied by AS 43.50.010 — 43.50.180, except that receipts from the tax shall be deposited in the general fund. The penalties provided in AS 43.05 apply to the tax levied in this section. (§§ 1, 2 ch 53 SLA 1961; am § 40 ch 113 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "provided in AS 43.50.180" in the third sentence of subsection (b).
43.05" for "established in AS 43.50.010 —

H B

261

STATE OF ALASKA
THE LEGISLATURE

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May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House Hess:

January 21, 1988

HB 261 An Act relating to ignition interlock
 devices; and establishing a class C misdemeanor

File Contents

- 1) Copy of HB 261
- 2) Memorandum, Rep. Gruenberg to HESS Committee,
 5/13/87
- 3) AS 28.15.181
- 4) Memo with sectional analysis, Rep. Gruenberg,
 4/6/87
- 5) Zero fiscal note, Department of Corrections,
 4/8/87
- 6) American Notes article
- 7) Letter, Alaska Court System (Forsythe) to Rep.
 Gruenberg, 4/15/87
- 8) CS for HB 261 (Ford, 5/13/87)

HOUSE COMMITTEE REPORT

(7)

Date referred: 4/8/87

FURTHER REFERRALS: Judiciary
Finance

DATE: 1-21-88

The Health, Education and Social Services Committee has considered HB 261

"An Act relating to ignition interlock devices; and establishing a class C misdemeanor."

RECOMMENDS:

- replace with CS HB 261 (HESS) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

RODRE ORO...

John Ellis

John Korman

Bill Hude

Max Ehrenberg

Gene Donley

SIGNING OTHER RECOMMENDATIONS:

Debra Stanley - No Rec

John Ellis
Chairman's signature
John Korman

WORK DRAFT

WORK

DRK DRAFT

*hisa - This is the
latest revision of
HB 261. It allows
the judge to deduct
the cost of the device from
the fine imposed (99).*

5-0634Lv
ord
1/3/87

Original sponsors: Gruenberg, Barne
Donley, et al.

*This is the version Max
wants in the Committee files.
March 8 1986*

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IN THE HOUSE

CS FOR HOUSE BILL NO. 261 ()

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to ignition interlock devices; and
establishing a class C misdemeanor."

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

* Section 1. AS 09.50.250 is amended to read:

Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE. A person
or corporation having a contract, quasi-contract, or tort claim
against the state may bring an action against the state in the superi-
or court. A person who may present the claim under AS 44.77 may not
bring an action under this section except as set out in AS 44.77.-
040(c). A person who may bring an action under AS 36.30.560 -
36.30.695 may not bring an action under this section except as set out
in AS 36.30.685. However, an [NO] action may not be brought under
this section if the claim

(1) is an action for tort, and is based upon an act or
omission of an employee of the state, exercising due care, in the
execution of a statute or regulation, whether or not the statute or
regulation is valid; or is an action for tort, and based upon the
exercise or performance or the failure to exercise or perform a dis-
cretionary function or duty on the part of a state agency or an em-
ployee of the state, whether or not the discretion involved is abused;

(2) is for damages caused by the imposition or establish-
ment of a quarantine by the state;

(3) arises out of assault, battery, false imprisonment,
false arrest, malicious prosecution, abuse of process, libel, slander,

1 misrepresentation, deceit, or interference with contract rights; or
2 (4) arises out of the use of an ignition interlock device
3 certified under AS 33.30.020(c).

4 * Sec. 2. AS 11.76 is amended by adding a new section to read:

5 Sec. 11.76.140. AVOIDANCE OF IGNITION INTERLOCK DEVICE. (a) A
6 person may not knowingly

7 (1) circumvent or tamper with an ignition interlock device
8 in a manner intended to allow a person on probation under AS 12.55.102
9 to avoid using the device; or

10 (2) rent, loan, or lease a motor vehicle to a person on
11 probation under AS 12.55.102, unless the vehicle is equipped with an
12 ignition interlock device described in AS 12.55.102.

13 (b) A person convicted of violating this section is guilty of a
14 class C misdemeanor.

15 * Sec. 3. AS 12.55.035(b) is amended to read:

16 (b) Upon conviction of an offense, a defendant who is not an
17 organization may be sentenced to pay, unless otherwise specified in
18 the provision of law defining the offense, a fine of no more than

19 (1) \$75,000 for murder in the first or second degree,
20 sexual assault in the first degree, kidnapping, or misconduct involv-
21 ing a controlled substance in the first degree;

22 (2) \$50,000 for a class A, B, or C felony;

23 (3) \$5,000 for a class A misdemeanor;

24 (4) \$1,000 for a class B misdemeanor;

25 (5) \$500 for a class C misdemeanor;

26 (6) \$300 for a violation.

27 * Sec. 4. AS 12.55 is amended by adding a new section to read:

28 Sec. 12.55.102. ALCOHOL RELATED OFFENSES. (a) The court may
29 order as a condition of probation that a defendant convicted of an

1 offense involving the use, consumption, or possession of an alcoholic
2 beverage may not operate a motor vehicle during the period of pro-
3 bation unless the vehicle is equipped with a properly functioning,
4 monitored, and maintained ignition interlock device.

5 (b) The court, in imposing probation under (a) of this section,
6 may allow the defendant limited privileges to drive a motor vehicle
7 without an ignition interlock device if the court determines that the
8 defendant is required as a condition of employment to drive a motor
9 vehicle owned or leased by the defendant's employer and that the
10 defendant's driving will not create substantial danger. If the court
11 imposes probation described by this subsection, the court shall re-
12 quire the defendant to notify the defendant's employer of the proba-
13 tion, and shall require that the defendant, while driving the em-
14 ployer's vehicle, carry a letter from the employer authorizing the
15 defendant to drive that vehicle.

16 (c) A court imposing a condition of probation under this section
17 shall require the surrender of the driver's license and shall issue to
18 the defendant a certificate valid for the duration of the probation or
19 a copy of the defendant's judgment of conviction. The defendant shall
20 bear all costs associated with fulfilling the condition of probation,
21 including installation, repair, and monitoring of an ignition inter-
22 lock device.

23 (d) The court may include the cost of the ignition interlock
24 device as a part of the fine required to be imposed against the defen-
25 dant under AS 28.35.030(c) or 28.35.032(g).

26 (e) In this section, "ignition interlock device" means equipment
27 designed to prevent a motor vehicle from being operated by a person
28 who has consumed an alcoholic beverage, and that has been certified by
29 the commissioner of corrections under AS 33.05.020.

1 * Sec. 5. AS 12.55.135 is amended by adding a new subsection to read:

2 (f) A defendant convicted of a class C misdemeanor may be sen-
3 tenced to a definite term of imprisonment of not more than 30 days
4 unless otherwise specified in the provision of law defining the of-
5 fense.

6 * Sec. 6. AS 28.35.030(c) is amended to read:

7 (c) Upon conviction under this section the court shall impose a
8 minimum sentence of imprisonment of not less than 72 consecutive hours
9 and a fine of not less than \$250 if the person has not been previously
10 convicted in this or another jurisdiction of driving while intoxicated
11 under this or another law or ordinance with substantially similar
12 elements or refusal to submit to a chemical test under AS 28.35.032 or
13 another law or ordinance with substantially similar elements. Upon
14 conviction under this section the court shall impose a minimum sen-
15 tence of imprisonment of not less than 20 consecutive days and a fine
16 of not less than \$500 if, within the preceding 10 years, the person
17 has been previously convicted once in this or another jurisdiction of
18 driving while intoxicated under this or another law or ordinance with
19 substantially similar elements or refusal to submit to a chemical test
20 under AS 28.35.032 or another law or ordinance with substantially
21 similar elements. Upon conviction under this section the court shall
22 impose a minimum sentence of imprisonment of not less than 30 consecu-
23 tive days and a fine of not less than \$1,000 if, within the preceding
24 10 years, the person has been previously convicted in this or another
25 jurisdiction of more than one of the following offenses or has more
26 than once been previously convicted of one of the following offenses:
27 (1) driving while intoxicated under this or another law or ordinance
28 with substantially similar elements; (2) refusal to submit to a chemi-
29 cal test under AS 28.35.032 or another law or ordinance with

1 substantially similar elements. The execution of sentence may not be
2 suspended nor may probation be granted except on condition that the
3 minimum imprisonment provided in this section is served. Probation
4 may be conditioned as provided in AS 12.55.102. Imposition of sen-
5 tence may not be suspended. In addition, if the offense involved
6 driving a motor vehicle for which a driver's license is required, the
7 person's driver's license shall be revoked in accordance with AS
8 28.15.181 and the vehicle used in commission of the offense may be
9 forfeited under AS 28.35.036. In addition, the court shall order, and
10 a person convicted under this section shall undertake, for a term
11 specified by the court, that program of alcohol education or reha-
12 bilitation that the court, after consideration of any information
13 compiled under (d) of this section, finds appropriate.

14 * Sec. 7. AS 28.35.030 is amended by adding a new subsection to read:

15 (h) Notwithstanding (c) of this section, if the court imposes
16 probation under AS 12.55.102 the court may reduce the fine required to
17 be imposed under (c) of this section by the cost of the ignition
18 interlock device.

19 * Sec. 8. AS 28.35.032(g) is amended to read:

20 (g) Upon conviction of a person under this section, the court
21 shall impose a minimum sentence of imprisonment of not less than 72
22 consecutive hours and a fine of not less than \$250 if the person has
23 not been previously convicted in this or another jurisdiction of
24 driving while intoxicated under AS 28.35.030 or another law or ordi-
25 nance with substantially similar elements or refusal to submit to a
26 chemical test under this section or another law or ordinance with
27 substantially similar elements. Upon conviction under this section the
28 court shall impose a minimum sentence of imprisonment of not less than
29 20 consecutive days and a fine of not less than \$500 if, within the

1 preceding 10 years, the person has been previously convicted once in
2 this or another jurisdiction of driving while intoxicated under
3 AS 28.35.030 or another law or ordinance with substantially similar
4 elements or refusal to submit to a chemical test under this section or
5 another law or ordinance with substantially similar elements. Upon
6 conviction under this section the court shall impose a minimum sen-
7 tence of imprisonment of not less than 30 consecutive days and a fine
8 of not less than \$1,000, if, within the previous 10 years, the person
9 has been previously convicted in this or another jurisdiction of more
10 than one of the following offenses or has more than once been previ-
11 ously convicted of one of the following offenses: (1) driving while
12 intoxicated under AS 28.35.030 or another law or ordinance with sub-
13 stantially similar elements; (2) refusal to submit to a chemical test
14 under this section or another law or ordinance with substantially
15 similar elements. The execution of sentence may not be suspended nor
16 may probation be granted except on condition that the minimum impris-
17 onment provided in this section is served. Probation may be condi-
18 tioned as provided in AS 12.55.102. Imposition of sentence may not be
19 suspended. If the offense involved driving a motor vehicle for which
20 a driver's license is required, the person's driver's license shall be
21 revoked under AS 28.15.181. In addition, the court shall order, and a
22 person convicted under this section shall undertake, for a term speci-
23 fied by the court, that program of alcohol education or rehabilitation
24 that the court, after consideration of any information compiled under
25 (h) of this section, finds appropriate. The sentence imposed by the
26 court under this subsection shall run consecutively with any other
27 sentence of imprisonment imposed on the committed person.

28 * Sec. 9. AS 28.35.032 is amended by adding a new subsection to read:
29

(k) Notwithstanding (g) of this section, if the court imposes

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probation under AS 12.55.102 the court may reduce the fine required to be imposed under (g) of this section by the cost of the ignition interlock device.

* Sec. 10. AS 33.05.020 is amended by adding new subsections to read:

(c) The commissioner shall by regulation establish standards for calibration, certification, maintenance, and monitoring of ignition interlock devices required as a condition of probation under AS 12.-55.102. The manufacturer of the interlock ignition device shall reimburse the state for the cost of certification. The department shall notify the manufacturer of the ignition interlock device when the device is certified.

(d) The commissioner may not certify an ignition interlock device unless the device displays a label warning that a person circumventing or tampering with the device in violation of AS 11.76.-140 is guilty of a class C misdemeanor.

State of Alaska

House Majority Leader

COMMITTEES

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES
HOUSE JUDICIARY
HOUSE RULES



P.O. BOX V
JUNEAU, ALASKA 99811
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465-4968/4986

914 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 276-6844

Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

MEMORANDUM

DATE: May 13, 1987
TO: Members of the House HESS Committee
FROM: Max F. Gruenberg, Jr. *MFG*
RE: HB 261, "An Act relating to ignition interlock devices: and establishing a class C misdemeanor."

As explained in the enclosed Time Magazine article, HB 261 will allow judges to require persons convicted of alcohol-related offenses to install, at their expense, an "ignition interlock device" on their motor vehicles. This "mini-breathalyzer" prevents the car from starting unless the driver "blows clean."

Courts around the country have started to require these devices. California passed a law last year similar to this bill.

In no reported case in which such a device has been installed has the offender been convicted of DWI while the device was on the car. Moreover, a survey of offenders who have installed the device shows that most believe this is an effective method of preventing DWI's.

The cost to the defendant is about \$360.00 per year for installation and maintenance of the interlock device.

If we can keep persons with known alcohol-related problems from driving while intoxicated, we can save many lives. I hope you will support the bill and consider co-sponsoring it.

Sec. 28.15.181. Court suspensions, revocations, and limitations. (a) Conviction of any of the following offenses is grounds for the immediate revocation of a driver's license:

- (1) manslaughter or negligent homicide resulting from driving a motor vehicle;
- (2) a felony in the commission of which a motor vehicle is used;
- (3) failure to stop and give aid as required by law when a motor vehicle accident results in the death or personal injury of another;
- (4) perjury or making a false affidavit or statement under oath to the department under a law relating to motor vehicles;
- (5) driving a motor vehicle while intoxicated;
- (6) reckless driving;
- (7) using a motor vehicle in unlawful flight to avoid arrest by a peace officer;
- (8) refusal to submit to a chemical test under AS 28.35.032;
- (9) driving while license canceled, suspended, revoked or in violation of a limitation.

(b) A court convicting a person of an offense described in (a)(1) — (4), (6), or (7) of this section shall revoke that person's driver's license for not less than 30 days for the first conviction, unless the court determines that the person's ability to earn a livelihood would be severely impaired and a limitation under AS 28.15.201 can be placed on the license that will enable the person to earn a livelihood without excessive danger to the public. If a court limits a person's license under this subsection, it shall do so for not less than 60 days. Upon a subsequent conviction of a person for any offense described in (a)(1) — (4), (6), (7) of this section occurring within 10 years after a prior conviction, the court shall revoke the person's license and may not grant the person limited license privileges for the following periods:

- (1) not less than one year for the second conviction; and
- (2) not less than three years for a third or subsequent conviction.

(c) A court convicting a person of an offense described in (a)(5) or (8) of this section arising out of the operation of a motor vehicle for which a driver's license is required shall revoke that person's driver's license. The revocation may be concurrent with or consecutive to an administrative revocation under AS 28.15.165. The court may not, except as provided in (e) of this section, grant limited license privileges for the following periods:

- (1) not less than 90 days if, within the preceding 10 years, the person has not previously been convicted of an offense
 - (A) described in (a)(5) or (8) of this section; or
 - (B) under a law or ordinance in another jurisdiction with elements substantially similar to an offense described in (a)(5) or (8) of this section;
- (2) not less than one year if, within the preceding 10 years, the person has been previously convicted of one offense

- (A) described in (a)(5) or (8) of this section; or
- (B) under a law or ordinance in another jurisdiction with elements substantially similar to an offense described in (a)(5) or (8) of this section;

(3) not less than 10 years if, within the preceding 10 years, the person has been previously convicted of more than one of the following offenses or has more than once been previously convicted of one of the following offenses:

- (A) an offense described in (a)(5) or (8) of this section; or
- (B) an offense under another law or ordinance in another jurisdiction with elements substantially similar to an offense described in (a)(5) or (8) of this section.

(d) A court convicting a person of an offense described in (a)(9) of this section shall revoke that person's driver's license for not less than the minimum period under AS 28.15.291(c).

(e) A court revoking a driver's license under (c) of this section, or sustaining the action of the department under AS 28.15.165(c), may grant limited license privileges for the final 60 days during which the license is revoked if the

(1) revocation was for driving while intoxicated but not if the revocation was for refusal to submit to a chemical test of breath under AS 28.35.032;

(2) person has not been previously convicted within the preceding 10 years of an offense

- (A) described in (a)(5) or (8) of this section; or
- (B) under a law or ordinance in another jurisdiction with elements substantially similar to an offense described in (a)(5) or (8) of this section;

(3) court determines that the person's ability to earn a livelihood would be severely impaired; and

(4) court determines that a limitation under AS 28.15.201 can be placed on the license that will enable the person to earn a livelihood without excessive danger to the public.

(f) For purposes of this section, convictions for both driving while intoxicated and for refusal to submit to a chemical test of breath under AS 28.35.031(a), if arising out of a single transaction and a single arrest, are considered one previous conviction. (§ 19 ch 178 SLA 1978; am §§ 7 — 9 ch 117 SLA 1982; am §§ 4 — 7 ch 77 SLA 1983)

Effect of amendments. — The 1982 amendment substituted the present provisions of paragraph (a)(5) for the former provisions, which read "driving or operating a motor vehicle while under the influence of alcohol or another drug," substituted "under (a)(1) — (4), (6), or (7) of this section" for "under (a)(1) — (7) of this section" in the first sentence of subsection (b) and for "under (a) of this section" in the

third sentence of subsection (b), and added subsection (c).

The 1983 amendment in subsection (a) rewrote the introductory language and added paragraphs (8) and (9); in subsection (b), in the second sentence substituted "60" for "30" and in the last sentence inserted "occurring within 10 years after a prior conviction"; rewrote subsection (c); and added subsections (d), (e), and (f). The

Sec. 28.35.030. Operating a vehicle, aircraft or watercraft while intoxicated. (a) A person commits the crime of driving while intoxicated if the person operates or drives a motor vehicle or operates an aircraft or a watercraft

(1) while under the influence of intoxicating liquor, or any controlled substance listed in AS 11.71.140 — 11.71.190;

(2) when, as determined by a chemical test taken within four hours after the alleged offense was committed, there is 0.10 percent or more by weight of alcohol in the person's blood or 100 milligrams or more of alcohol per 100 milliliters of blood, or when there is 0.10 grams or more of alcohol per 210 liters of the person's breath; or

(3) while the person is under the combined influence of intoxicating liquor and another substance.

(b) Driving while intoxicated is a class A misdemeanor.

(c) Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 72 consecutive hours and a fine of not less than \$250 if the person has not been previously convicted in this or another jurisdiction of driving while intoxicated under this or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 20 consecutive days and a fine of not less than \$500 if, within the preceding 10 years, the person has been previously convicted once in this or another jurisdiction of driving while intoxicated under this or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 30 consecutive days and a fine of not less than \$1,000 if, within the preceding 10 years, the person has been previously convicted in this or another jurisdiction of more than one of the following offenses or has more than once been previously convicted of one of the following offenses: (1) driving while intoxicated under this or another law or ordinance with substantially similar elements; (2) refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. The execution of sentence may not be suspended nor may probation be granted except on condition that the minimum imprisonment provided in this section is served. Imposition of sentence may not be suspended. In addition, if the offense involved driving a motor vehicle for which a driver's license is required, the person's driver's license shall be revoked in accordance with AS 28.15.181 and the vehicle used in commission of the offense may be forfeited under AS 28.35.036. In addition, the court shall order, and a person convicted under this section shall undertake, for a term specified by the court, that program of

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alcohol education or rehabilitation that the court, after consideration of any information compiled under (d) of this section, finds appropriate.

(d) Except as prohibited by federal law or regulation, every provider of treatment programs to which persons are ordered under (c) of this section shall supply the Alaska court system with the information regarding the condition and treatment of those persons as the supreme court may require by rule. Information compiled under this subsection is confidential and may only be used by a court in sentencing a person convicted under (c) of this section, or by an officer of the court in preparing a presentence report for the use of the court in sentencing a person convicted under (c) of this section.

(e) A person who is sentenced to imprisonment for 72 consecutive hours upon a first conviction under (c) of this section and who is not released from imprisonment after 72 hours may not bring an action against the state or a municipality or its agents, officers, or employees for damages resulting from the additional period of confinement if

(1) the employee or employees who released the person exercised due care and, in releasing the person, followed the standard release procedures of the prison facility; and

(2) the additional period of confinement did not exceed 12 hours.

(f) For purposes of this section, convictions for both driving while intoxicated and for refusal to submit to a chemical test of breath under AS 28.35.031(a), if arising out of a single transaction and a single arrest, are considered one previous conviction.

(g) In this section,

(1) "operate an aircraft" means to use, navigate, pilot, or taxi an aircraft in the airspace over this state, or upon the land or water inside this state;

(2) "operate a watercraft" means to navigate or use a vessel used or capable of being used as a means of transportation on water for recreational or commercial purposes on all waters, fresh or salt, inland or coastal, inside the territorial limits or under the jurisdiction of the state. (§ 50-5-3 ACLA 1949; am § 1 ch 107 SLA 1955; am § 1 ch 121 SLA 1967; am § 45 ch 32 SLA 1971; am § 4 ch 74 SLA 1974; am §§ 2, 3 ch 152 SLA 1978; am § 28 ch 94 SLA 1980; am § 10 ch 129 SLA 1980; am § 21 ch 45 SLA 1982; am §§ 13 — 15 ch 117 SLA 1982; am §§ 13 — 15 ch 77 SLA 1983)

Revisor's notes. — In 1984, former subsection (f) was redesignated as present subsection (g) and former subsection (g) was redesignated as present subsection (f).

Cross references. — For sentences for class A misdemeanors, see AS 12.55.035(b)(3) and 12.55.135(a).

Effect of amendments. — The first 1980 amendment, in subsection (a) as it existed prior to the second 1980 amendment, deleted "under AS 11.05.150" from

the end of the third sentence and substituted "AS 28.15.181" for "AS 28.15.210(c)" in the fourth sentence.

The second 1980 amendment rewrote the section.

The first 1982 amendment substituted "or any controlled substance listed in AS 11.71.140 — 11.71.190" for "depressant, hallucinogenic, stimulant or narcotic drug as defined in AS 17.10.230(13) and AS 17.12.150(3)" in subsection (a)(1).

MEMORANDUM

April 6, 1987

TO: Potential Co-Sponsors

FROM: Max F. Gruenberg, Jr.

RE: Sectional Analysis for "An Act relating to sentencing in criminal actions involving alcohol; and establishing Class C misdemeanor."

Section 1

AS 11.76.130 Makes it a Class C misdemeanor to tamper with an ignition interlock system or rent or loan a motor vehicle with the knowledge that to do so would help someone violate their probation.

Section 2

AS 12.55.035(b) Sets the maximum fine for conviction of a Class C misdemeanor at \$500.00.

Section 3

AS 12.55.102(a) Allows the court to require, as a condition or probation, that a person convicted of any alcohol related offense may only drive a vehicle equipped with a certified ignition interlock system.

AS 12.55.102(b) Allows the court to permit a limited exemption for a person to drive their employer's vehicle on the job.

AS 12.55.102(c) Requires the surrender of the driver's license and issuing a special driver's certificate while the driving restriction applies.

The defendant must bear all costs of installing and maintaining the device.

AS 12.55.120(d) Defines ignition interlock device as a device certified by the Commissioner of Corrections that will prevent a motor vehicle from starting if the driver has consumed alcohol.

Section 4

AS 12.55.135(f) Sets the maximum term of imprisonment for a Class 'C' misdemeanor at 30 days.

Section 5

AS 28.35.030 Amends DWI statute to allow the imposition of an ignition interlock restriction as a condition of probation.

Section 6

AS 28.35.032(g) Amends "refusal to submit to a breathalyzer" statute to allow the imposition of an ignition interlock restriction as a condition of probation.

Section 7

AS 33.05.020 Requires the Commissioner of Corrections to adopt regulations for the certification, maintenance, and monitoring of ignition interlock devices.

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: HB 261
Publish Date: 4-8-87

Revision Date: _____
Title: "An Act relating to ignition
interlock devices"
Sponsor: Rep. Gruenberg, Barnes,
Requestor: Donlev

Agency Affected: Dept. of Corrections
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

The Department of Corrections will be able to perform the responsibilities described in this Bill and supports its concept.

Prepared by: Susan E. Knighton, Research Analyst IV *S.E.K.* Phone: 465-3376
Division: Statewide Programs Date: 4-21-87

Approved by Commissioner: Susan Humphrey-Barnett *S.H.B.* Date: 4-21-87
Agency: Department of Corrections

- Disribuon (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

American Notes



Mayor Washington at a rally with senior citizens



The doomed Atlas-Centaur



If she had one for the road, her car won't start

CRIME

Etta Smith's Fatal Vision

For Etta Louise Smith, the nightmare began shortly before Christmas 1980, when she claims to have had a vision of something white, covered by brush. A Lockheed aerospace worker in Burbank, Calif., Smith does not consider herself a psychic. Yet after she heard radio reports about Nurse Melanie Uribe, 31, who had vanished on her way to work, Smith was convinced she knew where the body could be found. She took her information to the police, who put her off.

Smith then organized a search with two of her young children and a 20-year-old niece. In remote Lopez Canyon, 18 miles north of Los Angeles, her daughter spotted a white heap that turned out to be Uribe—robbed, raped and beaten to death. Smith told police of her discovery and was arrested for the murder.

While she was held in jail for four days, the killers—three men with prior arrest records—turned up. Smith, 39, filed a suit for false arrest. Last week Los Angeles County Superior Court Judge Joel Rudolf ruled that despite Smith's detailed account of the murder of a woman she never knew or saw, police did not have probable cause to lock her up. Smith's attorney has asked for \$750,000 in damages; the jury's verdict is expected this week.

SPACE

A Bolt In the Blue

Atlas-Centaur rockets have been launching U.S. satellites into orbit for the past 25 years, but last week the sturdy workhorse suffered a rare failure. Less than a minute after lift-off from Pad 36B at Cape Canaveral in threatening weather, a \$78 million, 137-ft. rocket disappeared into rain-swollen thunderheads and went out of control. A range safety officer hit the destruct button, and the rocket exploded along with its payload, an \$83 million communications satellite. For NASA, struggling to recover from the loss of the *Challenger* shuttle 14 months ago, the aborted flight broke a string of seven successful launches since September. The cause was not immediately known, although a leading suspect was lightning.

INVENTIONS

Drunkproofing Automobiles

The crusade against drunk driving has gained an ingenious new weapon: the breath-test ignition lock. The auto's ignition is linked to a breath-alcohol measuring device, and it becomes impossible to start a car unless the driver is sober. Already used in some states, in-

cluding Ohio, Maryland and Michigan, and pending in a dozen or so others, the locks will undergo their first systematic trial in California by summer.

Intended as an alternative to jail terms and suspended licenses for drunk drivers, the locks have mouthpieces into which drivers must exhale to measure their breath-alcohol level. The manufacturers, Guardian Interlock Systems of Denver and Safety Interlock of Carmel, Calif., claim that built-in safeguards make it difficult for drivers to use compressed air or borrow a breath of fresh air from a friend. One unsolved problem: how to prevent a tipsy driver from borrowing a car that has not been drunkproofed.

CALIFORNIA

What's Yours Is Mine

Mount Pico Blanco near Big Sur contains 600 million tons of limestone, one of the largest deposits in the U.S. The Granite Rock Co. wants to quarry the scenic mountain, which is on federal land, while the California coastal commission wants to protect it. Last week the Supreme Court ruled 5 to 4 for the coastal commission, upholding the right of states to enforce environmental requirements even on federal property. California can require the mining company to obtain a state permit, even

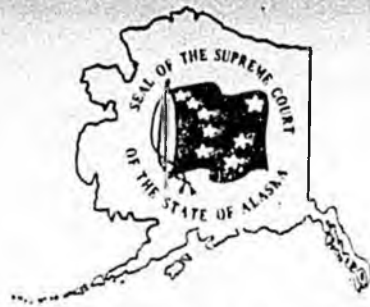
though it had received a federal go-ahead. Fully 19 states, along with the National Governors' Association, had filed briefs as friends of the court on behalf of the coastal commission.

CHICAGO

Dishonorable Opponents

Chicago has never been known for civics-textbook politics, but this year's mayoral race amounts to a demolition derby. After winning February's Democratic primary, black Mayor Harold Washington has been challenged by two white opponents from his own party for the April 7 election, although both are running under minor-party labels. Yet Cook County Tax Assessor Thomas Hynes and Alderman Edward Vrdolyak are spending most of their time attacking each other.

After Vrdolyak accused Hynes of using his office as county tax assessor to gain more business for his law firm, Hynes was quoted in the *Chicago Sun Times* suggesting that Vrdolyak had met with a Mafia boss. Vrdolyak sued for libel and accused Hynes of being a "liar and a sleaze." Even Washington, who leads Hynes by 35% and Vrdolyak by 39%, could not resist stooping for a shot at his longtime enemy Vrdolyak. Said the mayor: "He's slime."



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE
STAFF COUNSEL

303 K Street
Anchorage, Alaska 99501

(907) 264-8228

April 15, 1987

Representative Max F. Gruenberg, Jr.
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Dear Max:

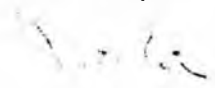
I am writing with regard to House Bill 261, an act relating to ignition interlock devices. There are several minor points regarding this bill that I wanted to bring to your attention.

Paragraph (c) on page 2 provides that a court imposing a condition of probation under this section would issue to the defendant a certificate valid for the duration of the probation. The court system would implement this provision by giving the defendant a copy of the judgment with the conditions of probation on it, rather than a separate piece of paper called a certificate.

On page 4, new language would provide that probation may be conditioned as provided in AS 12.55.102. It is unclear how this provision would impact the AS 28.15.181 prohibition on granting a limited license (except during the last 60 days of the 90-day revocation for a first time DWI offender). The same comment applies to identical language which appears on page 5.

Thank you for the opportunity to comment. Please let me know if you have any questions.

Sincerely,


Karla L. Forsythe
Staff Counsel

KLF:bs

cc: Representative Ramona Barnes
Representative Dave Donley
Representative Virginia M. Collins
Representative Johnny Ellis
Representative Bill Hudson
Representative Niilo Koponen
Susan Miller, Manager, Special
Projects

Representative Ron Larson
Representative Terry Martin
Representative Heinrich Springer
Representative Fran Ulmer
Arthur H. Snowden, II, Administrative
Director

5-0634B ✓
Ford
5/13/87

Original sponsors: Gruenberg, Barnes,
Donley, et al.

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 261 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to ignition interlock devices; and
7 establishing a class C misdemeanor."

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

9 * Section 1. AS 11.76 is amended by adding a new section to read:

10 Sec. 11.76.130. AVOIDANCE OF IGNITION INTERLOCK DEVICE. (a) A
11 person may not knowingly

12 (1) circumvent or tamper with an ignition interlock device
13 in a manner intended to allow a person on probation under AS 12.55.102
14 to avoid using the device; or

15 (2) rent, loan, or lease a motor vehicle to a person on
16 probation under AS 12.55.102, unless the vehicle is equipped with an
17 ignition interlock device described in AS 12.55.102.

18 (b) A person convicted of violating this section is guilty of a
19 class C misdemeanor.

20 * Sec. 2. AS 12.55.035(b) is amended to read:

21 (b) Upon conviction of an offense, a defendant who is not an
22 organization may be sentenced to pay, unless otherwise specified in
23 the provision of law defining the offense, a fine of no more than

24 (1) \$75,000 for murder in the first or second degree,
25 sexual assault in the first degree, kidnapping, or misconduct involv-
26 ing a controlled substance in the first degree;

27 (2) \$50,000 for a class A, B, or C felony;

28 (3) \$5,000 for a class A misdemeanor;

29 (4) \$1,000 for a class B misdemeanor;

1 (5) \$500 for a class C misdemeanor;

2 (6) \$300 for a violation.

3 * Sec. 3. AS 12.55 is amended by adding a new section to read:

4 Sec. 12.55.102. ALCOHOL RELATED OFFENSES. (a) The court may
5 order as a condition of probation that a defendant convicted of an
6 offense involving the use, consumption, or possession of an alcoholic
7 beverage may not operate a motor vehicle during the period of pro-
8 bation unless the vehicle is equipped with a properly functioning,
9 monitored, and maintained ignition interlock device.

10 (b) The court, in imposing probation under (a) of this section,
11 may allow the defendant limited privileges to drive a motor vehicle
12 without an ignition interlock device if the court determines that the
13 defendant is required as a condition of employment to drive a motor
14 vehicle owned or leased by the defendant's employer and that the
15 defendant's driving will not create substantial danger. If the court
16 imposes probation described by this subsection, the court shall
17 require the defendant to notify the defendant's employer of the
18 probation, and shall require that the defendant, while driving the em-
19 ployer's vehicle, carry a letter from the employer authorizing the
20 defendant to drive that vehicle.

21 (c) A court imposing a condition of probation under this section
22 shall require the surrender of the driver's license and shall issue to
23 the defendant a certificate valid for the duration of the probation or
24 a copy of the defendant's judgment of conviction. The defendant shall
25 bear all costs associated with fulfilling the condition of probation,
26 including installation, repair, and monitoring of an ignition inter-
27 lock device.

28 (d) In this section, "ignition interlock device" means equipment
29 designed to prevent a motor vehicle from being operated by a person

1 who has consumed an alcoholic beverage, and that has been certified by
2 the commissioner of corrections under AS 33.05.020.

3 * Sec. 4. AS 12.55.135 is amended by adding a new subsection to read:

4 (f) A defendant convicted of a class C misdemeanor may be sen-
5 tenced to a definite term of imprisonment of not more than 30 days
6 unless otherwise specified in the provision of law defining the of-
7 fense.

8 * Sec. 5. AS 28.35.030(c) is amended to read:

9 (c) Upon conviction under this section the court shall impose a
10 minimum sentence of imprisonment of not less than 72 consecutive hours
11 and a fine of not less than \$250 if the person has not been previously
12 convicted in this or another jurisdiction of driving while intoxicated
13 under this or another law or ordinance with substantially similar
14 elements or refusal to submit to a chemical test under AS 28.35.032 or
15 another law or ordinance with substantially similar elements. Upon
16 conviction under this section the court shall impose a minimum sen-
17 tence of imprisonment of not less than 20 consecutive days and a fine
18 of not less than \$500 if, within the preceding 10 years, the person
19 has been previously convicted once in this or another jurisdiction of
20 driving while intoxicated under this or another law or ordinance with
21 substantially similar elements or refusal to submit to a chemical test
22 under AS 28.35.032 or another law or ordinance with substantially
23 similar elements. Upon conviction under this section the court shall
24 impose a minimum sentence of imprisonment of not less than 30 consecu-
25 tive days and a fine of not less than \$1,000 if, within the preceding
26 10 years, the person has been previously convicted in this or another
27 jurisdiction of more than one of the following offenses or has more
28 than once been previously convicted of one of the following offenses:
29 (1) driving while intoxicated under this or another law or ordinance

1 with substantially similar elements; (2) refusal to submit to a chemi-
2 cal test under AS 28.35.032 or another law or ordinance with substan-
3 tially similar elements. The execution of sentence may not be sus-
4 pended nor may probation be granted except on condition that the
5 minimum imprisonment provided in this section is served. Probation
6 may be conditioned as provided in AS 12.55.102. Imposition of sen-
7 tence may not be suspended. In addition, if the offense involved
8 driving a motor vehicle for which a driver's license is required, the
9 person's driver's license shall be revoked in accordance with AS
10 28.15.181 and the vehicle used in commission of the offense may be
11 forfeited under AS 28.35.036. In addition, the court shall order, and
12 a person convicted under this section shall undertake, for a term
13 specified by the court, that program of alcohol education or reha-
14 bilitation that the court, after consideration of any information
15 compiled under (d) of this section, finds appropriate.

16 * Sec. 6. AS 28.35.032(g) is amended to read:

17 (g) Upon conviction of a person under this section, the court
18 shall impose a minimum sentence of imprisonment of not less than 72
19 consecutive hours and a fine of not less than \$250 if the person has
20 not been previously convicted in this or another jurisdiction of
21 driving while intoxicated under AS 28.35.030 or another law or ordi-
22 nance with substantially similar elements or refusal to submit to a
23 chemical test under this section or another law or ordinance with
24 substantially similar elements. Upon conviction under this section the
25 court shall impose a minimum sentence of imprisonment of not less than
26 20 consecutive days and a fine of not less than \$500 if, within the
27 preceding 10 years, the person has been previously convicted once in
28 this or another jurisdiction of driving while intoxicated under
29 AS 28.35.030 or another law or ordinance with substantially similar

1 elements or refusal to submit to a chemical test under this section or
2 another law or ordinance with substantially similar elements. Upon
3 conviction under this section the court shall impose a minimum sen-
4 tence of imprisonment of not less than 30 consecutive days and a fine
5 of not less than \$1,000, if, within the previous 10 years, the person
6 has been previously convicted in this or another jurisdiction of more
7 than one of the following offenses or has more than once been previ-
8 ously convicted of one of the following offenses: (1) driving while
9 intoxicated under AS 28.35.030 or another law or ordinance with sub-
10 stantially similar elements; (2) refusal to submit to a chemical test
11 under this section or another law or ordinance with substantially
12 similar elements. The execution of sentence may not be suspended nor
13 may probation be granted except on condition that the minimum impris-
14 onment provided in this section is served. Probation may be condi-
15 tioned as provided in AS 12.55.102. Imposition of sentence may not be
16 suspended. If the offense involved driving a motor vehicle for which
17 a driver's license is required, the person's driver's license shall be
18 revoked under AS 28.15.181. In addition, the court shall order, and a
19 person convicted under this section shall undertake, for a term speci-
20 fied by the court, that program of alcohol education or rehabilitation
21 that the court, after consideration of any information compiled under
22 (h) of this section, finds appropriate. The sentence imposed by the
23 court under this subsection shall run consecutively with any other
24 sentence of imprisonment imposed on the committed person.

25 * Sec. 7. AS 33.05.020 is amended by adding a new subsection to read:

26 (c) The commissioner shall by regulation establish standards for
27 certification, maintenance, and monitoring of ignition interlock
28 devices required as a condition of probation under AS 12.55.102.