

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4777 HJUD SB 322 (FILE 3) - SB 343

519

Executive Director

**Humana Hospital
Alaska**

March 17, 1988

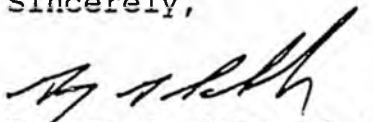
Representative John Sund
P.O. Box V
Juneau, AK 99504

Dear Representative Sund:

The current worker's compensation laws are adversely affecting employers in the state of Alaska. The issue is very complex, but I believe CSSB 322 (L&C) does correct some of the system's deficiencies.

Therefore, I urge you to vote favorably on CSSB 322 (L&C).

Sincerely,


George G. Schneider
Executive Director

GE/je



March 22, 1988

Representative John Sund
Pouch V
Capitol Building, RM 122
Juneau, Alaska 99811

Dear Representative Sund:

I am writing to recommend prompt passage of proposed House Bill 322 and 352 as is, with no modification. The current Worker's Compensation situation does not serve a beneficial purpose, is counterproductive and its resulting loss of employment opportunities is detrimental to the labor force it attempts to safeguard. Small business economic conditions in Southeast Alaska are extremely poor. Passage of House Bill 322 and 352 would be a much needed step in a road to recovery, opportunity, and healthy economy.

Very truly yours,

A handwritten signature in black ink, appearing to be "Virgil Soderberg", is written above the typed name. The signature is stylized and somewhat cursive.

Virgil Soderberg
President

March 22, 1988

Representative Jim Zawacki
Pouch V
Juneau, Alaska 99811

Dear Jim;

Thank you for sending me the copy of HB 352 and SB322, referencing the proposed changes to the Worker's Compensation Laws.

I wish to voice my opinions on the following issues:

Issue # 3 - Board established list of providers; I agree the board should provide a list of health care providers, who would be pre-approved by the board by means of application to the board by the provider.

Issue # 4 - I think an employe should be denied benefits for making a "false statement" about pre-existing injury as the employer does depend on that statement.

Issue # 5 - I believe the Vocational Rehabilitation Service needs to be closely monitored as this is an area that can be highly abused.

Issue # 7 - Medical "Continuous and Multiple Treatment"; I believe there should be some limitations on the number of treatments in a given period. Mainly, I am referring to the chiropractors who wish to put an individual on a "maintenance program" which goes on and on and on!

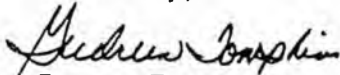
Other issues:

I am in favor of mandating a rate decrease and including it in the bill.

I would also like to see the "all states rider" eliminated. As long as a contractor is working in the state of Alaska, he should pay the same premium as an Alaska contractor.

Hopefully, these changes will make the program more equitable for the employe and the employer.

Sincerely,



Gudrun Tompkins
14185 Hancock Dr.
Anchorage, Ak 99515
907 345 3114



March 23, 1988

Representative John Sund
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Representative Sund:

The purposes of this correspondence is to express our support for the positions the Task Force has taken with regard to Senate Bill 322, "An Act Relating to Workers' Compensation." We feel the Task Force positions on this bill are equitable to both employees and employers and will result in lowering Alaska work comp costs to everyone's benefit.

It has come to our attention that the House Labor and Commerce Committee has proposed a change to Senate Bill 322 which is not supported by the Task Force. We ask that you not support this change, which requires that Independent Medical Examiners be in the same speciality as the treating physician of the employee unless the Work Comp Board unanimously agrees otherwise. We suggest instead, that the original wording, which required majority approval by the Board rather than unanimous approval, be implemented. Such a change not only has our and the Task Force's support, it also has the support of the Department of Labor, Workers' Compensation Division.

We greatly appreciate your taking the time to hear our concerns.

Sincerely,

Kevin James
Senior Vice President &
Chief Financial Officer

KJ:mls

RICK ABBOTT, D.C. HOPE WING, N.D.
CHIROPRACTIC & NATUROPATHIC HEALTH CARE
520 EAST 34TH AVENUE SUITE 305
ANCHORAGE, ALASKA 99503
1907) 561-2330

APR 5 1988

March 25, 1988

Representative John Sund
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

RE: S.B. 322

Dear Representative Sund:

Enclosed you will find a recent article dated Wednesday, March 23, 1988 that appeared in the Anchorage Daily News business section.

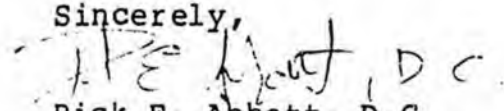
This article deals with the current rapid rise in liability insurance fees. It is my belief that there are many similarities and questions that this article raises that apply to the proposed changes in the Workers Compensation law in this state.

We have no hard statistical breakdown as to where the Workers Compensation premium goes. We do not know what percentage goes to administrative, medical, legal, salary compensation or disability settlement expenses. To make sweeping changes without this information is questionable.

The legislature should be freezing the W/C premium level for one year, and gathering hard data in order to study all the variables which effect premium levels.

S.B. 322 as written will, in all propability, raise W/C premiums in this state. Please do not support this legislation.

Sincerely,


Rick E. Abbott, D.C.

REA/sb

MAR 30 1988

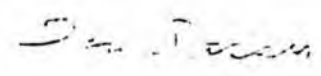
P. O. Box 670055
Chugiak, AK 99567
March 28, 1988

Mr. John Sund
Alaska State Legislature
P. O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Mr. Sund,

Enclosed is a discussion in answer to statements made in the newspapers concerning the Workers' Comp law. Also, an Oratory on the cost of Workers' Comp insurance. I understand that the rehabilitation process has been addressed properly, however there is much misinformation being fed to the public concerning the new Workers' Comp amendments. There really needs to be another public hearing to give everyone, especially workers, rather than business the change to express their concerns about the new proposed law.

Sincerely,



Don Sasser

AN ORATORY ON WORKERS COMPENSATION COST

He could not visit a nearby town. He could not travel to another state. He was being punished for a crime against society by incarceration. Most of society does not need the threat of punishment to encourage them not to commit serious crimes. However, a significant percentage of the population need to be reminded that they will suffer restrictions of their freedoms if they criminalize others. A few arrogant, insensitive, greedy individuals will commit crimes against society anyway. They are the ones who are incarcerated. If it were not for the reminder of punishment for a crime, anarchy would soon prevail. The cost of imprisonment is very expensive. The total cost per year of conviction, incarceration, and housing one criminal is more than most people will ever make, per year, during their life time. The point is, regardless of the cost of the justice system, it is justifiable.

Automobile drivers must have liability insurance. Automobile liability insurance is costly. However, having the insurance guarantees complete compensation for damage you may cause with your automobile. Is this reasonable? - For a civilized society the answer has to be yes. Homeowners insurance gives a property owner complete compensation for loss incurred. Therefore, it is only reasonable that a worker be covered by liability insurance. The insurance may be costly, but it is just as justifiable, even more justifiable, than the cost of incarceration or drivers' liability insurance. Workers' Compensation is no more welfare than the compensation for other losses. Is compensation for the loss of one's home welfare? Or if you decided to leave the state would it be just to reduce the amount of the homeowners loss. Of course not, however, this is the logic the Workers' Comp insurance companies would have everyone accept.

A law abiding individual works hard and contributes to the well-being of society, but if he has an unfortunate accident while working he is punished. Many times the accident is caused by negligence on the part of the employer. Is the employer punished? No, however, the Workers' Comp insurance companies are allowed to punish the injured worker economically and mentally. If the cost of liability insurance for workers is to be reduced, then maybe it is time the employer insists on a safe work place. Maybe it is time to look much closer into the insurance companies hidden profits. It is certainly not just to punish an injured worker by scarring him economically for the rest of his life.

Don Sasser



COMMUNITY CHIROPRACTIC CLINIC

APR 3 1963



550 EAST TUDOR ROAD
ANCHORAGE, ALASKA 99503
TELEPHONE (907) 582-5388

Dear Representative Sund:

The enclosures on insurance problems are only a sample of how widespread the collusion of the insurance companies has progressed.

One year they target malpractice insurance for increases, the next liability insurance, then workers' compensation, then auto and etc.

The Alaska workers' compensation bills that were stimulated by high insurance rates and prodding from the insurance companies (adjusting companies included) are nothing more than "our turn in the barrel." Last year it was Medical Malpractice. Next year, who knows what?

What is wrong with our legislative body that it cannot see through the scam? Have we reached the point in Alaska that the public interest is no longer of concern? It seems that way!

I urge you to re-think your position on passing any workers' compensation reform this year. The State of Alaska deserves a better bill than you have before you now.

Sincerely,

Adrian G. Barber, D.C.

AGB/jc

cc: Governor Steve Cowper
House Judiciary Committee
Representative Dave Donley
Senator Tim Kelly
Alaska Chiropractic Society
Dr. Trevor Ireland

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

S B

3 2 4

HOUSE COMMITTEE REPORT

(7)

Date referred: 4/27/88

FURTHER REFERRALS:

DATE: May 4, 1988

The Judiciary Committee has considered CSSB 324 (Jud)

"An Act relating to eligibility to serve time in a correctional restitution center."

RECOMMENDS:

- replace with _____ 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 3/25/88
- zero with analysis

SIGNING DO PASS:

[Handwritten signatures]

SIGNING OTHER RECOMMENDATIONS:

[Handwritten signature]

[Handwritten signature]

 Chairman's signature

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

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

H. Jud.

5-4-88

1:30 p.m.

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 11, 1988

The Honorable Jan Faiks
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Faiks:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the eligibility of prisoners for placement in a correctional restitution center.

The bill makes a minor change in existing law which will expand the pool of prisoners who are eligible for placement in a correctional restitution center, thereby facilitating both the rehabilitation process and the repayment of restitution to victims of crimes.

Presently AS 33.30.161(b)(2) precludes placement of a prisoner in a correctional restitution center if the prisoner has ever been convicted of an offense involving violence or the use of force. This bill would amend that paragraph to allow placement in a restitution center of a prisoner who has a criminal history of misdemeanor violence, but not a prisoner who has ever been convicted of a felony offense involving violence. Of course, the Department of Corrections would still make a classification decision that the prisoner does not otherwise present a risk to the community before placement in a restitution center.

This bill is a responsible way to promote rehabilitation of low-risk prisoners, assist victims of crimes, and help address the problem of prison crowding.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper".

Steve Cowper
Governor

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to eliqipility
to serve time in a correctional
Sponsor: RULES restitution center.
Requestor: GOVERNOR

Agency Affected: Department of Corrections
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS : (Attach a separate page if necessary)

Susan E. Knighton

Prepared by: Susan E. Knighton, Director Phone: 465-3376
Division: Administrative Services Date: 3-24-88
Approved by Commissioner: *Susan Humphrey-Barnett* Date: 3-24-88
Agency: Department of Corrections

Distribution (by preparer):

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

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

130 Seward, No. 301 • Juneau, Alaska 99801 • (907) 586-3650

Abused Women's Aid in Crisis (AWAIC);
Advocates for Victims of Violence (AVV);
Aiding Women in Abuse and Rape Emergencies (AWARE);
Alaska Women's Resource Center (AWRC); Arctic Women in Crisis (AWIC);
Bering Sea Women's Group (BSWG); Emmonak Women's Shelter;
Kodiak Women's Resource & Crisis Center (KWRCC);
Maniilaq Regional Women's Crisis Program; MEN, Inc.;
Safe & Fear-Free Environment (SAFE); Sakans Against Family Violence (SAFV);
Southwestern Alaska Council for the
Prevention of Child Sexual Assault (SWACPLSA);
South Peninsula Women's Services (SPWS);
Standing Together Against Rape (STAR); Tundra Women's Coalition (TWC);
Valley Women's Resource Center (VWRC);
Women in Crisis Counseling & Assistance (WICCA);
Women in Safe Homes (WISH); Women's Resource & Crisis Center (WRCC)

LETTER IN SUPPORT OF SENATE BILL 324

This bill would broaden the number of offenders eligible to serve time in correctional restitution centers from what the current statute allows. Under this bill, offenders would be prohibited from serving in a restitution center if their present offense involves violence, or if they have a past conviction that includes a felony involving violence or the use of force. The Network is very supportive of the fact that the bill also recognizes that offenders convicted of custodial interference in the first or second degrees (AS 11.41.320 and 11.41.330), and those convicted of harassment as defined under Sec. 11.61.120 (a) (6) should not serve in correctional restitution centers, because these crimes indicate a particularly high potential for violence.

The crimes of harassment and custodial interference are most often committed at the time when a couple in a violent relationship separates. Alaska's harassment statute Sec. 11.61.120 (a) (6) is the enforcement mechanism for no contact orders issued under AS 25.35.010(b) or 25.35.020 (the domestic violence injunctive relief orders). Offenders who break no contact orders can be arrested under the harassment statute. The custodial interference statutes prohibit children from being unlawfully taken from their custodial parent. Custody is often a major point of contention at separation.

Research from the University of Alaska at Fairbanks indicates that 26% of the adult women living in Alaska have been abused by a spouse or live-in partner at sometime during their adult lives; 10.2% have been abused in 1986; 63.3% of the women abused during 1986 and 34.5% of those abused during their lifetime reported that their children had also be abused. Department of Public Safety statistics indicate that a third of female murder victims in Alaska were killed by their husbands, ex-husbands or boyfriends.

As a public policy matter, it should be our goal to intervene in domestic violence cases at the earliest discernible onset. Unfortunately, victims often do not leave an abusive relationship until the violence reaches the severity of risking their live or the lives of the children. This is why the highest potential for violence in a violent relationship is at the time of separation.

It is important that law enforcement and the criminal justice system respond to domestic violence in a manner that is least likely to allow a continuation of the escalating violence pattern. It has been shown that arrest, combined with a realistic threat of jail or actual jail time, lengthy monitoring to ensure lack of re-offense, and rehabilitation are needed to stop future violent behavior. Allowing an offender to have a serve at a restitution center in lieu

S B

339

STATE OF ALASKA THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

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

H. JUD.	5-4-88	1:30 p.m.
H. JUD.	5-3-88	1:30 p.m.

HOUSE COMMITTEE REPORT

(7)

Date referred: 4/21/88

FURTHER REFERRALS:

DATE: May 4, 1988

The Judiciary Committee has considered CSSB 339 (Jud) am

"An Act relating to tobacco products."

RECOMMENDS:

- replace with HCS CS SB 339 (Jud) 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:

SIGNING OTHER RECOMMENDATIONS:

Chairman's signature

Adopted

5-1426N
Chenoweth
4/12/88

*w/ HESS
CS, sec's 1+4*

Original sponsors: Faiks and Binkley

1 IN THE SENATE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 339

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to tobacco products."

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

8 * Section 1. AS 11.76.100 is repealed and reenacted to read:

9 Sec. 11.76.100. SELLING OR GIVING TOBACCO TO A MINOR. (a) A
10 person commits the offense of selling or giving tobacco to a minor if
11 the person

12 (1) knowingly sells, exchanges, or gives a cigarette, a
13 cigar, tobacco, or a product containing tobacco to a person under 19
14 years of age; or

15 (2) maintains a vending machine that dispenses cigarettes,
16 cigars, tobacco, or products containing tobacco and that is accessible
17 to persons under 19 years of age.

18 (b) Notwithstanding the provisions of (a) of this section, a
19 person who maintains a vending machine is not in violation of (a)(2)
20 of this section if

21 (1) the vending machine is in a location that is generally
22 supervised by a person who maintains the vending machine, or an em-
23 ployee of the person, during the hours the machine is accessible;

24 (2) the vending machine is in a location where a person
25 under 21 years of age, other than an employee of the owner of the
26 premises, is not allowed entry by law unless accompanied by a parent,
27 guardian, or spouse of the person who is 21 years of age or older; or

28 (3) the vending machine is in a location where a person
29 under 19 years of age is not allowed entry by policy of the owner of

1 the premises unless accompanied by a person 19 years of age or older.

2 (c) In this section, a person maintains a vending machine if the
3 person owns the machine or owns or controls a facility in which the
4 machine is located.

5 (d) Selling or giving tobacco to a minor is a violation.

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

7 Sec. 11.76.105. PURCHASE OF TOBACCO BY A MINOR. (a) A person,
8 being younger than 19 years of age, may not purchase a cigarette, a cigar,
9 tobacco, or a product containing tobacco in this state.

10 (b) Purchase of tobacco by a minor is a violation.

11 * Sec. 3. AS 43 is amended by adding new sections to read:

12 ARTICLE 3. EXCISE TAX ON CERTAIN TOBACCO PRODUCTS.

13 Sec. 43.50.300. EXCISE TAX LEVIED. An excise tax is levied on
14 tobacco products in the state at the rate of 25 percent of the whole-
15 sale price of the tobacco products. The tax is levied when a person

16 (1) brings, or causes to be brought, a tobacco product into
17 the state from outside the state for sale;

18 (2) makes, manufactures, or fabricates a tobacco product in
19 the state for sale in the state; or

20 (3) ships or transports a tobacco product to a retailer in
21 the state for sale by the retailer.

22 Sec. 43.50.310. EXEMPTIONS. (a) A facility operated by one of
23 the uniformed services of the United States is exempt from the tax.
24 In this subsection, "uniformed services" has the meaning given in 5
25 U.S.C. 2101.

26 (b) The tax does not apply to a tobacco product if the United
27 States Constitution or other federal laws prohibit the levying of the
28 tax on the product by the state.

29 Sec. 43.50.320. LICENSING. (a) Except as provided in (g) of

1 this section, a person must be licensed by the department if the
2 person engages in business as a distributor for a tobacco product that
3 is subject to the tax.

4 (b) The department, upon application and payment of a fee of
5 \$50, shall issue a license for one year to a person who applies for a
6 license under (a) of this section.

7 (c) The department may refuse to issue a license under this
8 section if there is reasonable cause to believe the information sub-
9 mitted in the application is false or misleading and is not made in
10 good faith.

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

14 (e) The department may renew a license issued under this section
15 for a fee of \$50.

16 (f) The department may suspend or revoke a license issued under
17 this section if the licensee violates a provision of AS 43.50.300 -
18 43.50.390 or a regulation adopted under AS 43.50.370.

19 (g) A license required by this section is in addition to any
20 other license required by law, except that a person who is licensed
21 under AS 43.50.010 - 43.50.180 is exempt from the licensing require-
22 ments of this section.

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

29 Sec. 43.50.330. RETURNS. (a) On or before the last day of each

1 calendar month, a licensee shall file a return with the department.
2 The return must state the number or amount of tobacco products sold by
3 the licensee during the preceding calendar month, the selling price of
4 the tobacco products, and the amount of tax imposed on the tobacco
5 products.

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

10 Sec. 43.50.340. RECORDS. A licensee shall keep a complete and
11 accurate record of all tobacco products of the licensee subject to the
12 tax, including purchase prices, sales prices, the names and addresses
13 of the sellers and the purchasers, the dates of delivery, the quan-
14 tities of tobacco products, and the trade names and brands. State-
15 ments and records required by this section must be in the form pre-
16 scribed by the department, preserved for three years, and available
17 for inspection upon demand by the department.

18 Sec. 43.50.350. DISPOSITION OF PROCEEDS. The tax collected by
19 the department shall be deposited in the general fund. The commis-
20 sioner of administration shall separately account for the taxes that
21 are deposited in the general fund under this section. The annual
22 estimated balance in the account may be used by the legislature to
23 make appropriations for health care, health research, health pro-
24 motion, and health education programs.

25 Sec. 43.50.360. ANNUAL REPORT. The department shall submit to
26 the legislature by the first day of each regular legislative session a
27 report indicating the amount of the tax collected during the fiscal
28 year that ended on the June 30 preceding the session.

29 Sec. 43.50.370. REGULATIONS. The department shall adopt under

1 the Administrative Procedure Act (AS 44.62) reasonable regulations
2 that it considers necessary to carry out the provisions of AS 43.50.-
3 300 - 43.50.390.

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

5 (1) "distributor" means a person who

6 (A) brings, or causes to be brought, a tobacco product
7 into the state from outside the state for sale;

8 (B) makes, manufactures, or fabricates a tobacco
9 product in the state for sale in the state; or

10 (C) ships or transports a tobacco product to a retail-
11 er in the state for sale by the retailer;

12 (2) "licensee" means a distributor who is

13 (A) licensed under AS 43.50.320; or

14 (B) exempted by AS 43.50.320(g) from licensing under
15 AS 43.50.320;

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

17 (4) "tobacco product" means

18 (A) a cigar;

19 (B) a cheroot;

20 (C) a stogie;

21 (D) a perique;

22 (E) snuff and snuff flour;

23 (F) smoking tobacco, including granulated, plug-cut,
24 crimp-cut, ready-rubbed, and any form of tobacco suitable for
25 smoking in a pipe or cigarette;

26 (G) chewing tobacco, including cavendish, twist, plug,
27 scrap, and tobacco suitable for chewing; or

28 (H) an article or product made of tobacco or a tobacco
29 substitute, but not including a cigarette as defined in

1 AS 43.50.170;

2 (5) "wholesale price" means the established price for which
3 a manufacturer sells a tobacco product to a distributor, after deduc-
4 tion of a discount or other reduction received by the distributor for
5 quantity or cash.

6 * Sec. 4. AS 43.50.170 is amended to read:

7 Sec. 43.50.170. DEFINITIONS. In AS 43.50.010 - 43.50.190 [THIS
8 CHAPTER], unless the context otherwise requires,

9 (1) "buyer" means a person who imports or acquires ciga-
10 rettes for the person's [HIS] own consumption from any source other
11 than a manufacturer, distributor, direct-buying retailer, or retailer;

12 (2) "cigarette" means a roll for smoking of any size or
13 shape, made wholly or partly of tobacco, whether the tobacco is fla-
14 vored, adulterated, or mixed with another ingredient, if the wrapper
15 or cover of the roll is made of paper or a material other than tobac-
16 co;

17 (3) ["DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE;

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

21 (4) [(5)] "distributor" means a person who brings ciga-
22 rettes, or has cigarettes brought into the state, and who sells or
23 distributes at least 75 per cent of the cigarettes to others for
24 resale in the state;

25 (5) [(6)] "licensee" means a person licensed under AS 43.-
26 50.010 - 43.50.180;

27 (6) [(7)] "manufacturer" means a person who makes,
28 fashions, or produces cigarettes for sale to distributors or other
29 persons;

1 (7) [(8)] "person" includes an individual, company, part-
2 nership, joint venture, joint agreement, association, mutual or other-
3 wise, corporation, estate, trust, business trust, receiver, [OR]
4 trustee, syndicate, or political subdivision of this state, or combi-
5 nation acting as a unit;

6 (8) [(9)] "place of business" means a place where ciga-
7 rettes are sold, or where cigarettes are brought or kept for the
8 purpose of sale or consumption, including a vessel, vehicle, airplane,
9 or train;

10 (9) [(10)] "retailer" means a person in the state who is
11 engaged in the business of selling cigarettes at retail;

12 (10) [(11)] "sale" includes a sale, barter, exchange, and
13 every other manner of transferring the ownership of personal property.
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A M E N D M E N T

Offered in the HOUSE

TO: HCS CSSB 339(HESS)

Page 1, following line 7:

Insert a new bill section to read:

"* Section 1. PURPOSE. AS 11.76.105, added by sec. 3 of this Act, makes the purchase of cigarettes by persons under age 19 a violation. The sole penalty for a violation is a fine. The amendment of AS 47.10.010(b), made by sec. 4 of this Act, implements legislative intent. Because children's proceedings do not provide for the imposition of fines, the amendment of AS 47.10.010(b) excludes these offenses from the juvenile jurisdiction of the superior court, allowing the citation of minors and the imposition of fines by the district court."

Page 1, line 8:

Delete "* Section 1."

Insert "* Sec. 2."

Renumber subsequent section accordingly.

Page 2, following line 10:

Insert a new bill section to read:

"* Sec. 4. AS 47.10.010(b) is amended to read:

(b) When a minor is accused of violating a traffic statute or

regulation, a traffic ordinance or regulation of an incorporated municipality, AS 11.76.105 relating to the purchase of tobacco by a minor, a fish and game statute or regulation under AS 16, or a parks and recreational facilities statute or regulation under AS 41.21, excepting a statute the violation of which is a felony, the procedure prescribed in AS 47.10.020 - 47.10.090 may not be followed, except that a parent, guardian, or legal custodian shall be present at all proceedings. The minor accused of an [A TRAFFIC] offense specified in this subsection [, A FISH AND GAME STATUTE OR REGULATION VIOLATION UNDER AS 16 OR PARKS AND RECREATIONAL FACILITIES VIOLATION UNDER AS 41.21] shall be charged, prosecuted, and sentenced in the district court in the same manner as an adult."

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to tobacco products.
Sponsor: Falks
Requestor: _____

Agency Affected: Health & Social Services
BRU: State Health Services
Components: Public Health Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The enactment of CSSB 339 (Jud.) would have no direct fiscal impact on the Department of Health and Social Services.

Prepared by: Elizabeth Ward Director *Elizabeth Ward* Phone: 465-3090
Division: Public Health Date: 3-16-88

Approved by Commissioner: Mary Jo Neenan *Mary Jo Neenan* Date: 3-16-88
Agency: Department of Health & Social Services

Distribution (by preparer):

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

SERVICE AMERICA CORPORATION



Service America is concerned over the encumbrance this bill would have on our adult customers who choose to smoke.

We currently have eighteen private sector locations with controlled access or lunch rooms for employees that are not supervised. This list of accounts include Alascom, Alaska Railroad, Alyeska Pipeline, ERA Aviation, National Bank of Alaska, and the U.S. Post Office General Mail Facility.

As written, the language in Senate bill 339 would prohibit these locations from providing the convenience of a cigarette machine to their employees who choose to smoke.

The financial burdens including 17% loss in sales and equipment worth more than \$25,000 sitting idle is more than we can absorb in this failing economy. Most of all this bill would cause termination of one employee and the reduction in hours of one other.

Since this equipment is generally in locations where minors are not present, the bill as written and the removal of the vendors would only put an undue hardship on our industry and do nothing to achieve the intent which is to prevent our youth from purchasing cigarettes from vending machines.

Our industry has the ability to act responsibly and work with the location owners to insure adequate supervision over the vendors and also to react by removing equipment which is not supervised.

April 19, 1988

The Honorable Niilo Koponen and Johnny Ellis
Co-Chairmen
HESS Committee
House of Representatives
Alaska State Legislature
Juneau, Alaska

Gentlemen:

I represent C. J. Enterprises, a local vending company serving the City of Juneau. We support the proposed legislation and we truly endorse any reasonable effort to keep cigarettes out of the hands of minors. We also recognize that there are some real costs associated with this legislation. We hope that you will consider some efforts to mitigate problems created by this legislation.


Cigarette sales in Juneau most probably reflect cigarette sales in the rest of the State. The method of sale can be studied easily in Juneau as there is only one distributor and one full-service vending company. Cigarette sales are predominately made through food store outlets -- 49.1% (see attachment #1), and 47.9% through various other across-the-counter outlets. The remaining 3% are sold through vending machines. Using the above data we can quickly calculate figures representing purchases by minors. There are 25,369 people living in Juneau, and according to the latest Department of Education figures, 2,155 are between the ages of 12 and 19 (8%). If total vending sales are 3%, and 8% of the total population are in the vulnerable age group and are buying cigarettes at the same rate as adults, then the proposed legislation will stop the purchase of 2.4 packages per thousand sold.

Our company operates 55 cigarette vending machines in this market. Under the proposed legislation, we will lose half of our locations. From this loss of business we will have to lay off one employee. In addition, we will have to pull \$45,000 worth of equipment off location and try to sell them for a fraction of their value. Twenty of these machines will be taken from state-operated locations. When we signed our vending agreement with the State, we had reasonable expectations of operating those machines until 1990. This law will nullify that agreement. That portion of the vending agreement represents a \$35,000 investment for our company. We hope that you will provide some sort of compensation for companies like ours, as well as some sort of relief for the people who will be unemployed because of this legislation.

I believe that this legislation can work if you are willing to look at the costs associated with its implementation.

Yours truly,

C. J. ENTERPRISES


Donald Dapcévich
President

Encl.



P.O. BOX 1707 JUNEAU, ALASKA 99802

3-3-88

Mr. Don Dapcevich
C.J. Enterprises
917 Glacier Ave
Juneau, Alaska 99801

Dear Don,

I have researched the figures that you asked for. As you know, we supply virtually all the cigarettes sold in the Juneau area. The breakout by category is as follows:

5 major food stores	49.1%
All other accounts **	47.9%
Vending	3.0%

It is apparent that vending is a very small factor in the total distribution of cigarette products. If there needs to be any substantiation of these numbers, I can be contacted at 586-3945.

Please let me know if I can be of further help on this issue.

Sincerely,

Thomas J. Satre
President
Northern Sales Co. of Ak. Inc.

** Includes shipments to outlying communities



Alaska State Legislature

SENATE

Office of the President

P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3755

MEMORANDUM

April 21, 1988

TO: Representative John Sund, Chairman
House Judiciary Committee

FROM: Senator Jan Faiks
President of the Senate

SUBJECT: HCS CSSB 339 (HESS) "An Act relating to tobacco products."

Senate Bill 339 has been referred to the House Judiciary Committee for consideration. This bill proposes changes to the laws regulating the sale of tobacco products to minors.

Under current law, a person 19 years of age or older commits a violation if the person sells or gives cigars, cigarettes or tobacco to a person under 16 years of age.

There are several problems with current law. First, it only covers cigars, cigarettes and tobacco. It does not clearly prohibit adults from providing tobacco products such as snuff or certain other types of smokeless tobacco to underage individuals. As you know, these products are increasingly popular with our youth, and they pose clear health risks, such as cancer of the mouth, tongue and throat, as well as gum disease.

Second, while current law prohibits adults from providing tobacco to underage persons, it allows vending machines to dispense tobacco products. The predictable result of this is that most teenagers who smoke cigarettes obtain them from vending machines.

Third, current law allows the sale of tobacco to minors 16, 17 and 18 years of age. The problem with this is that fully 90% of all adults who smoke began smoking before the age of 19. If a person can make it to age 19 without acquiring the smoking habit, probably he or she never will.

Fourth, while current law prohibits adults from providing tobacco to underage persons, it does not prohibit minors from purchasing tobacco. Minors know that they can use vending machines and deceive store clerks about their age with impunity, since there is no penalty if they are

caught.

HCS CSSB 339 (HESS) proposes to correct this situation.

Section 1. Provides that the purpose of section 4 is to exclude the violation of proposed AS 11.76.105 from the juvenile jurisdiction of the superior court.

Section 2. Repeals AS 11.76.100, and reenacts it as follows:

AS 11.76.100(a)(1): A person 19 years of age or older commits the offense of selling tobacco to a minor if the person knowingly sells, exchanges or gives a cigarette, a cigar, tobacco or a product containing tobacco to a person under 19 years of age.

AS 11.76.100(a)(2): A person commits the offense of selling tobacco to a minor if the person maintains a vending machine that dispenses cigarettes, cigars, tobacco or tobacco products and that is accessible to persons under the age of 19.

AS 11.76.100(b)(1): A person who maintains a vending machine is not in violation of this statute if the machine is in a location that is generally supervised by a person who maintains the machine, during the hours the machine is accessible. As an example, a vending machine in the lobby of a hotel within sight of the desk clerk, or a vending machine in the entrance of a restaurant within sight of the cashier, would be lawful. However, a completely unsupervised machine, such as the one in the Capitol Building, would be prohibited.

AS 11.76.100(b)(2): A person who maintains a vending machine is not in violation of this statute if the machine is located in a bar.

AS 11.76.100(b)(3): A person who maintains a vending machine is not in violation of this statute if the machine is located in a place where a person under the age of 19 is not allowed entry by policy of the owner of the premises unless accompanied by a person 19 years of age or older. This will allow canneries and other businesses to place vending machines in smoking rooms which are off limits to underage employees.

AS 11.76.100(c): A person "maintains" a vending machine if the person owns the machine, or owns or controls the premises in which the machine is located.

AS 11.76.100(d): Selling or giving tobacco to a minor is a violation.

Section 3. Adds a new section to AS 11.76 as follows:

AS 11.76.105: A person under 19 years of age commits a violation if the person purchases cigarettes, cigars, tobacco or a product containing tobacco.

Section 4. Amends AS 47.10.100(b) to provide that the purchaser of tobacco who is under 19 years of age may be charged, prosecuted and

sentenced in the district court in the same manner as an adult. This is the way violations of traffic laws are treated, and is necessary since the juvenile jurisdiction does not allow the imposition of fines.

As with any drug, there are hard-core users and marginal users of tobacco. Easy access to tobacco increases use among young people, many of whom are marginal users. Any barriers we can erect to easy access will strip off a layer of these marginal users. By raising the age of persons to whom stores can sell tobacco, and by eliminating the completely unsupervised vending machine, this bill will make it more difficult for minors to obtain tobacco, and will thus ensure that many marginal users will give up smoking, or will never start.

Please feel free to contact my office if you have any comments or questions.

Thank you.

POSITION PAPER

CS FOR SB NO. 339 (Jud.) am

For an Act entitled: "An Act relating to tobacco products."

This bill would expand the acts which constitute the offense of selling or giving tobacco to a minor.

Current law prohibits the knowing sale, exchange, or giving of cigars, cigarettes, or tobacco to a person under 16 years of age by a person 19 years of age or older. CSSB 339 would expand the prohibited acts to include maintaining a vending machine that dispenses tobacco products if the machine is accessible to persons under age 19.

CSSB 339 would also eliminate age distinctions in current law making the sale, exchange, or giving of tobacco to a person under 19 years of age by a person of any age illegal. In doing this the bill seems to depart from the apparent intent of prohibiting adults from supplying young persons with tobacco. It also presents the possibility of a very young person being charged with a violation for giving tobacco products to an older person. For example a 12 year old could be charged with a violation for giving tobacco to an 18 year old. The bill would also prohibit the purchase of a tobacco product by a person under age 19.

Acts prohibited by CSSB 339 would be noncriminal offenses punishable only by a fine. A person charged with these offenses would not have a right to a jury trial or counsel provided at public expense. This is problematic in the case of juveniles because violations of laws by minors come under the jurisdiction of the superior court as a children's delinquency proceeding unless specifically excluded from children's court jurisdiction. There is no provision for imposing fines as a result of such proceedings and minors have the right to jury trials and to appointed counsel in these proceedings. Non-felony traffic, fish and game, or parks and recreation violations are, however, specifically excluded from children's court jurisdiction and fines are regularly imposed on minor's in such cases.

Department Position

The Department supports the intent of SB 339. Eliminating the access to tobacco by young persons reduces the likelihood that they will become users of tobacco as adults and reduces the myriad health risks associated with tobacco use. However, the Department cannot support this bill in its present form.

The Department believes that changes in the bill are necessary to clearly maintain the intended prohibition against adults supplying tobacco to young persons.

1 Definition of a violation in AS 11.81.900

Department Position (Continued)

Section 1 should be amended at page 1 line 10 to indicate that the offense of selling or giving tobacco to a minor can be committed only by a person 19 years of age or older. This can be accomplished by inserting a comma after person and inserting the phrase "being 19 years of age or older," before the word commits. This sentence would then read, in pertinent part:

"A person, being 19 years of age or older, commits the offense of selling or giving tobacco to a minor if the person..."

The Department opposes Section 2 of the bill which makes the purchase of cigarettes by persons under age 19 a violation. Although the Department recognizes the health hazards associated with tobacco use by minors, we believe that the threat to the public from this activity is not sufficient to justify legal intervention into an area which can be best addressed within the family. Tobacco purchase and use by youth is most effectively controlled at the family level through education and discipline.

If Section 2 is not deleted from the bill as recommended or if Section 1 is not amended to eliminate the potential for a minor to be cited for selling or giving tobacco to another minor, an additional section must be included in order to implement the legislative intent of imposing fines on minors who violate those provisions. Because children's proceedings do not provide for the imposition of fines it will be necessary to exclude the defined offenses from juvenile jurisdiction of the superior court. This would allow the citation of minors and the imposition of fines within the district court as occurs with misdemeanor traffic offenses. This could be accomplished by amending AS 47.10.010(b) as indicated in the attached language.

RECOMMENDED: *Yvonne M. Chase*
Yvonne M. Chase, Director
Division of Family
and Youth Services

DATE: 4/14/88

APPROVED: *Myra M. Munson*
Myra M. Munson, Commissioner
Department of Health
and Social Services

DATE: 4/15/88

SUGGESTED AMENDMENT TO CS SB 339 (Jud) am

Sec. 3. AS 47.10.010(b) is amended to read:

(b) When a minor is accused of violating a traffic statute or regulation, a traffic ordinance or regulation of an incorporated municipality, a fish and game statute or regulation under AS 16 [OR] , a parks and recreational facilities violation under AS 41.21, or AS 11.76.105, excepting a statute, the violation of which is a felony, the procedure prescribed in AS 47.10.020 -- AS 47.10.090 may not be followed, except that a parent, guardian, or legal custodian shall be present at all proceedings. The minor accused of traffic offense, a fish and game statute or regulation violation under AS 16 [OR] , a parks and recreational facilities violation under AS 41.21, or AS 11.76.105 shall be charged, prosecuted, and sentenced in the district court in the same manner as an adult.

FISCAL NOTE

REQUEST:

Revision Date: 3/28/88
Title: An Act relating to tobacco products.
Sponsor: Falks, Binkley
Requestor: _____

Agency Affected: Health & Social Services
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: *Russell Webb for*
Yvonne M. Chase, ACSW, Director Phone: 465-3170
Division: Family & Youth Services Date: 4-14-88
Approved by Commissioner: *Myra M. Munson* Date: 4-15-88
Myra M. Munson
Agency: Health & Social Services

Distribution (by preparer):

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

Elementary Education

Lay Public Ignorant of Drug Prevention Success

by Mark S. Gold, M.D.



Everyone has an opinion about drug prevention. Some experts and journalists declare that prevention is impossible. Parents, acting on this theory, "look the other way" when their children "borrow" their liquor or return home smelling of alcohol or obviously having smoked marijuana.

Other parents, believing drug use to be inevitable and part of "normal" adolescence, try to procure the best, "clean" marijuana for their children, or they use drugs with their children. When drug use is considered by some experts to be normal, primary prevention becomes all the more difficult.

Primary prevention means prevention of drug use. To understand how primary prevention can work, we should study how it is already working. Lost in the shuffle of drug abuse statistics is the fact that 49 percent of United States high school seniors do not use, and have never used, marijuana. Eighty-three percent of high school seniors have never tried cocaine, even once, and 99 percent have never tried heroin!

Illicit drugs break down primary prevention efforts by pretending to be normative, but the use of them by the nation's young people is a real problem; it is neither normative nor normal.

A simple equation for conceptualization of prevention is: drug use/abuse/addiction = exposure X predisposition. Predisposition is the vulnerability to use and/or develop abnormal patterns of use when exposed to a particular drug. Predisposition is comprised of complex psychosocial and biological factors.

The vulnerability to develop alcoholism and abnormal use is inherited. The genetic predisposition is a biological (physical) vulnerability that is transmitted from parents to offspring. Evidence is growing

that the genetic predisposition for alcohol extends to other drugs such as cocaine and marijuana.

The majority of alcoholics under the age of 30 are addicted to at least one other drug, most often marijuana and followed by cocaine. Cigarettes also may be included in this vulnerability since nicotine is a drug and cigarettes are commonly used by alcohol/drug users. The biological vulnerability most likely resides in the brain, and drug

To prevent marijuana
use we must
prevent cigarette
and alcohol use.

(and/or alcohol) addiction is in part a neurological disease.

To prevent marijuana use we must prevent cigarette and alcohol use. To prevent cocaine use we must prevent cigarette, alcohol, and marijuana use. With 91 percent of high school seniors having tried alcohol—85 percent using in the past year, 65 percent using in the past month, and 4.8 percent using every day—it is obvious where secondary prevention efforts should be focused.

Prevention efforts have been somewhat successful in reducing cigarette smoking among adults and new adolescent smokers. From a peak in 1976 of 76 percent of high school seniors having ever tried a cigarette in their lifetime, currently 68 percent have ever tried smoking. Daily cigarette smoking among high school seniors has dropped during this decade from 28.8 percent to 18.7 percent.

Secondary prevention requires early identification and interven-

tion. Early identification can be made by a pediatrician at an annual physical, or it can be made during a sports physical by the use of urinalysis.

Education with outpatient recovery programs can quickly help a drug-using adolescent and co-dependents when the diagnosis is made at an early phase of the illness.

Prevention programs in the schools should begin early in elementary schools with discussions of the body, the difference between medicine and drugs, and the proper way to fill, use, and discard prescription drugs. Shortly thereafter, the health effects of cigarette smoking and alcohol consumption should be stressed; this should include a discussion of the reasons why people start drinking or smoking. Children should be encouraged to help their parents stop smoking.

Educational prevention is the most effective when focusing elementary education first on cigarettes, then alcohol, then marijuana. Antidrug messages should be reinforced in biology and other subjects. The drug curricula should continue through senior high school, with an increase in experiential learning and exposure to real-life victims of addiction.

Children at risk (e.g. children with a family history of addiction, etc.) should be identified and receive additional individual and family prevention information. While drug prevention is not as precise a science as we would like, it is a lot more effective than professionals or the lay public recognize.

Mark S. Gold, M.D., is the author of the new "Facts About Drugs and Alcohol," Bantam Books, 1987.



SMOKING AND HEALTH

A NATIONAL STATUS REPORT

A Report to Congress

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Centers for Disease Control

Center for Health Promotion and Education

Office on Smoking and Health

Rockville, Maryland 20857

HHS/PHS/CDC - 87-8396

the program. Connecticut law dictates that universities that train teachers must provide instruction on the effects of nicotine and tobacco use on health, character, citizenship, and personality development and the best methods for instructing students on these topics. Connecticut will not grant a certificate to teach or supervise in any public school to any person who has not passed an examination on the effects of nicotine and tobacco use.

California and Florida have no specific statutory provisions for mandatory instruction on the effects of tobacco use in elementary and secondary schools. Both states, however, require that upon adoption of instructional materials for use in the schools, school boards shall include only instructional materials that portray accurately the physical effects of tobacco use.

Florida's Cancer Control and Research Act provides that proven causes of cancer, including smoking, should be publicized and made the subject of educational programs for the prevention of cancer. These programs will be made available to all citizens of the state.

The Iowa and Louisiana legislatures have taken a hard line on the use of tobacco products by students in public schools. In Iowa, the school board may suspend or expel any student who violates the rule prohibiting the use of tobacco. In Louisiana, school principals are authorized to suspend any student who uses tobacco in school buildings, on school grounds, or in school buses.

Regulation of Sale to and Use of Tobacco Products by Minors

The sale or distribution of cigarettes or tobacco products to minors is regulated by 39 jurisdictions. Missouri and South Dakota impose no restrictions at the state level, but permit cities, towns, and municipalities to enact ordinances prohibiting the sale to or use of cigarettes by minors or both. The only states that do not regulate the sale or distribution of tobacco products to minors are Colorado, Georgia, Kentucky, Louisiana, Montana, New Hampshire, New Mexico, Virginia, Wisconsin, and Wyoming.

Indiana, Kansas, New York, and Oregon prohibit only the sale of cigarettes to minors. The other state statutes have much broader prohibitive language and randomly outlaw the sale or furnishing (or both) of cigars, cigarettes, snuff, chewing tobacco, smoking material, and tobacco in any form to minors. (See Table 5.)

Twenty-one states also prohibit the sale or furnishing of cigarette wrapping papers and other smoking paraphernalia to minors.

The majority of states prohibiting the sale of cigarettes or other tobacco products to minors define a minor as anyone under the age of 18 years. Ten jurisdictions define a minor as anyone under the age of 16 years, and four define a minor as 17 years of age or younger. At the two extremes are Hawaii, which prohibits the sale of tobacco products to anyone under the age of 15 years, and Alabama and Utah, which prohibit such sales to anyone under the age of 19 years. (See Table 6.)

Table 5. Restrictions on Sale or Distribution of Cigarettes or Other Tobacco Products to Minors

State	TYPES OF DISTRIBUTION				
	Sell	Give	Furnish	Deliver	Provide
Alabama	X	X			
Alaska	X	X			
Arizona	X	X	X		
Arkansas	X	X			
California	X	X	X		
Connecticut	X	X		X	
Delaware	X	X	X		X
District of Columbia	X	X	X		
Florida	X	X	X	X	
Hawaii	X		X		
Idaho	X	X	X		
Illinois	X	X	X	X	
Indiana	X				X
Iowa	X	X	X		
Kansas	X				
Maine	X	X	X		
Maryland	X	X			
Massachusetts	X	X			X
Michigan	X	X	X		
Minnesota	X		X		
Mississippi	X	X		X	
Nebraska	X	X	X		
Nevada	X	X			
New Jersey	X	X	X		
New York	X				
North Carolina	X	X	X		
North Dakota	X		X		
Ohio	X	X	X		X
Oklahoma	X	X	X		
Oregon	X				
Pennsylvania	X	X	X		
Rhode Island	X	X		X	
South Carolina	X	X	X		
Tennessee	X	X	X	X	X
Texas	X	X			
Utah	X	X	X		
Vermont	X	X			
Washington	X	X			
West Virginia	X	X	X		
TOTAL	39	32	23	6	5

(Continued)

Table 5. (Continued)
Restrictions on Sale or Distribution of Cigarettes or Other Tobacco Products to Minors

PRODUCTS AFFECTED

State	Cigarettes	Cigars	Smoking Tobacco	Chewing Tobacco	Any Tobacco	Snuff	Smoking Herbs
Alabama	X			X			
Alaska	X	X			X		
Arizona	X	X					
Arkansas			X	X	X		
California	X				X		
Connecticut					X		
Delaware					X		
District of Columbia	X	X			X		
Florida					X		
Hawaii					X		
Idaho	X	X			X		
Illinois	X	X			X		X
Indiana					X		
Iowa	X				X		
Kansas	X						
Maine	X				X		
Maryland	X		X	X			
Massachusetts	X			X	X	X	
Michigan	X	X	X	X	X		
Minnesota					X		
Mississippi	X	X	X			X	
Nebraska	X				X		
Nevada	X				X		
New Jersey	X				X		
New York	X	X		X	X	X	
North Carolina	X				X		
North Dakota	X	X			X		X
Ohio	X				X		
Oklahoma	X						
Oregon		X			X		
Pennsylvania	X					X	
Rhode Island	X						
South Carolina	X				X		
Tennessee	X	X					X
Texas	X				X		
Utah	X	X			X		
Vermont		X			X	X	
Washington	X	X			X		
West Virginia	X	X			X		
TOTAL	30	15	4	6	29	3	5

IV. REGULATION OF SALE/USE OF TOBACCO PRODUCTS BY MINORS

	Age of Minor/ Less than () yrs.	Restrictions on Use/Possession of Cigarettes by Minors	Restrictions on Use/Possession of any Tobacco Products by Minors	Restrictions on Furnishing Cigarettes to To Minors	Restrictions on Furnishing any Tobacco Products To Minors	Restrictions on Furnishing Smoking Paraphernalia	Distributors/ Vendors Must Post Notice	Fine (F)/ Jail (J)/ Both (B) for Violation	Other
AL	19			X	X	X		B	
AK	16			X	X			B	
AZ	18	X	X	X	X	X		F	
AR	18				X	X		B	
CA	18			X	X	X		B	
CO									
CT	16				X			F	
DE	17				X			B	
DC	16			X	X			B	
FL	18			X	X	X		B	X ¹
GA									
HI	15				X			F	
ID	18	X	X	X	X	X		B	X ²
IL	18	X	X	X	X	X	X	B	
IN	16				X		X	F	
IA	18			X	X	X		B	X ³
KS	18	X		X				B	
KY									
LA									
ME	18			X	X			F	
MD	16			X	X			B	
MA	16			X	X		X	F	
MI	17	X		X	X			B	X ⁴
MN	18	X	X	X	X	X	X	B	
MS	18			X	X			B	
MO	18								X ⁵

¹In Florida, sheriffs, deputies, and police officers may summon any minor who may have or have had in his possession any cigarettes or cigarette materials and compel him to testify in court as to where and from whom he obtained such cigarettes or cigarette materials. Fla. Stat. Ann. Section 859.07 (West 1976).

²Idaho law provides that any person who maintains in his place of business a tobacco vending machine accessible to minors under 18 is guilty of a misdemeanor. Idaho Code Section 18-1503 (1977).

³Iowa law provides that any minor under 18 who is in the possession of a cigarette or cigarette papers in a place other than his parents' home shall be required at the request of any peace officer, juvenile court officer, truant officer or teacher to give information as to where the articles were obtained. Failure to provide such information constitutes a misdemeanor. Iowa Code Ann. Sections 98.4, 98.5 (West 1984).

⁴In Michigan, anyone who knowingly harbors a person under 18 or grants to him the privilege of gathering upon property held by him for the purpose of indulging in the use of cigarettes in any form is punishable by fine or imprisonment. This provision is not meant to interfere with the rights of parents or legal guardians in the rearing or management of their minor children within bounds of their own private premises. Mich. Comp. Laws Ann. Section 72.643 (Supp. 1984-1985).

⁵Missouri law provides that any city, town or village may by ordinance or act prohibit the sale of cigarettes or cigarette wrappers to minors. Mo. Ann. Stat. Section 71.740 (Vernon 1952).

continued on next page

IV. REGULATION OF SALE/USE OF TOBACCO PRODUCTS BY MINORS *continued*

	Age of Minor/ () yrs.	Restrictions on Use/Possession of Cigarettes by Minors	Restrictions on Use/Possession of any Tobacco Products by Minors	Restrictions on Furnishing Cigarettes to To Minors	Restrictions on Furnishing any Tobacco Products To Minors	Restrictions on Furnishing Smoking Paraphernalia	Distributors/ Vendors Must Post Notice	Fine (F)/ Jail (J)/ Both (B) for Violation	Other
MT									
NE	18	X	X	X	X	X		B	X ⁶
NV	18			X	X	X		F	
NH									
NJ	16			X	X	X		F	
NM									
NY	18			X	X		X	B	
NC	17			X	X			B	
ND	18	X	X	X	X	X		B	
OH	18			X	X		X	B	
OK	18			X	X	X		B	X ⁷
OR	18				X	X		B	
PA	16			X	X	X		B	
RI	16		X	X				F	
SC	18			X	X	X		B	
SD	18								X ⁸
TN	18	X	X	X	X	X	X	B	
TX	16			X	X			F	
UT	19	X	X	X	X	X	X	B	X ⁹
VT	17			X	X		X	F	
VA									
WA	18			X	X	X		B	
WV	18	X		X	X	X		F	X ¹⁰
WI									
WY									

⁶Nebraska law provides that any minor charged with violation of the law prohibiting smoking of cigarettes or cigars or use of tobacco in any form by minors may be free from prosecution when he furnishes evidence for the conviction of the person selling or giving him the cigarettes, cigars or tobacco. Neb. Rev. Stat. Section 28-1418 (1981).

⁷In Oklahoma, any minor who is in possession of cigarettes or cigarette papers and who refuses to divulge where and from whom such cigarettes or cigarette papers were obtained when asked by any police officer, constable, juvenile court officer, truant officer or teacher, is guilty of a misdemeanor. Okla. Stat. Ann. Title 21, Section 1242 (West 1983).

⁸South Dakota law provides that every municipality shall have the power to prohibit the sale or gift of cigarettes to and use thereof by minors. S.D. Codified Laws Ann. Section 9-29-8 (1981).

⁹In Utah, it is a misdemeanor for the proprietor of any place of business to knowingly permit persons under 19 to frequent such place of business while they are using tobacco. Utah Ann. Code Section 76-10-103 (1978). In addition, any person who maintains in his place of business a tobacco vending machine accessible to persons under 19 is guilty of a misdemeanor. Utah Code Ann. Section 59-18-18 (1974).

¹⁰West Virginia law provides that any minor under 18 who violates the law prohibiting smoking or possession of any cigarette or cigarette paper by minors shall be punishable by fine. However, if such person discloses the name or the person, firm or corporation from whom he obtained the cigarettes or cigarette papers, he shall be immune from further prosecution or punishment. W. Va. Code Section 16-9-5 (1985).

Table 6. Age of Minors

Alabama	19	Montana	*
Alaska	16	Nebraska	18
Arizona	18	Nevada	18
Arkansas	18	New Hampshire	*
California	18	New Jersey	16
Colorado	*	New Mexico	*
Connecticut	16	New York	18
Delaware	17	North Carolina	17
District of Columbia	16	North Dakota	18
Florida	18	Ohio	18
Georgia	*	Oklahoma	18
Hawaii	15	Oregon	18
Idaho	18	Pennsylvania	16
Illinois	18	Rhode Island	16
Indiana	16	South Carolina	18
Iowa	18	South Dakota	18
Kansas	18	Tennessee	18
Kentucky	*	Texas	16
Louisiana	*	Utah	19
Maine	18	Vermont	17
Maryland	16	Virginia	*
Massachusetts	16	Washington	18
Michigan	17	West Virginia	18
Minnesota	18	Wisconsin	*
Mississippi	18	Wyoming	*
Missouri	18		

*Age of minors is not specified for cigarette or tobacco use.

The penalties for violation of the laws relating to selling or furnishing tobacco products to minors vary from state to state. In 12 states, such offenses are punishable only by a fine. In the remaining jurisdictions, such offenses are punishable by fine, imprisonment or both. The heaviest penalties are imposed by Kansas: anyone convicted of the offense of selling cigarettes to a person under 18 years in Kansas is subject to a fine of not more than \$1000 or imprisonment for not more than one year (or both).

In addition to prohibiting the sale or furnishing of cigarettes or other tobacco products to minors, 12 states prohibit the use or possession (or both) of such products by minors. Minors found guilty of using or possessing tobacco are punishable by fine in Idaho, Illinois, Rhode Island, and West Virginia, and by fine or imprisonment (or both) in Kansas, Michigan, and Tennessee. Louisiana does not specifically prohibit the use of tobacco by minors, but does authorize public school principals to suspend any student who uses tobacco in school buildings, on school property, or in school buses. In the remaining five states, the offense is classified as either a misdemeanor or petty offense with no specific penalty described in the statute.

Neither Iowa nor Oklahoma make possession of cigarettes by a minor a punishable offense. However, any minor under 18 years who has cigarettes or cigarette papers in his possession and who refuses to give information at the request of any peace officer, juvenile court officer, truant officer, or teacher as to

where the articles were obtained is guilty of a misdemeanor. Florida does not make possession of cigarettes or cigarette materials by a minor a punishable offense. Nonetheless, minors who have or have had cigarettes in their possession may be summoned by sheriffs, deputies, and police officers and compelled to testify in court as to where and from whom they obtained such articles.

Minors charged with violation of the law prohibiting smoking or possession of cigarettes or other tobacco products in Nebraska and West Virginia may obtain immunity from prosecution or punishment upon disclosure of the identity of the person or firm from whom they obtained the cigarettes or tobacco products.

Nine states require dealers, distributors, or vendors of cigarettes or other tobacco products to post notice at the point of sale that the sale to or purchase of such products by minors is prohibited by law. Idaho and Utah go further by forbidding any person to maintain a tobacco vending machine accessible to minors. Violation of this restriction is a misdemeanor.

Utah and Michigan also make liable any persons who permit minors to smoke on their property. In Utah, it is a misdemeanor for the proprietor of any place of business to knowingly permit minors to use tobacco on his or her premises. In Michigan, anyone who knowingly harbors or grants a minor the privilege of gathering on his or her property for the purpose of indulging in the use of cigarettes is subject to punishment by fine or imprisonment.

Public Safety and Occupational Regulations

In an effort to protect the public from negligent activity that could result in fires, explosions, or the contamination of food, several states have enacted legislation relating to smoking and the discarding of smoking materials under potentially unsafe and unsanitary conditions. The most common legislation of this nature prohibits the discarding of cigarettes or other smoking materials in or near forest areas. Sixteen states outlaw such activity. New Jersey, Oregon, and Virginia have compensatory provisions that make any person who negligently causes a forest fire liable for the costs of confining, extinguishing, or suppressing the fire. A smaller number of jurisdictions also seek to control behavior that may cause a fire on public or private property by prohibiting persons from discarding lighted cigarettes, cigars, matches, or other materials from moving vehicles.

Seventeen states outlaw smoking in the vicinity of flammable materials such as fire works, explosives, and petroleum products. Restrictions on smoking in or near the surface structure of mines and upon taking smoking materials, such as matches, pipes, cigars or cigarettes, into underground mines are imposed by 14 states. Colorado, Illinois, Kentucky, and New Mexico permit the person in charge of an underground mine to search anyone entering the mine to prevent him or her from taking, carrying, or using any smoking materials therein.

Only nine states prohibit persons from indiscriminately disposing cigarettes or other smoking materials on public or private property. These laws are designed to control potential fire hazards and litter.



Alaska Dental Society

3400 Spenard Road, Suite 10
Anchorage, Alaska 99503
(907) 277-4675

APR 26 1988

April 21, 1988

Chairman: John Sund
Vice Chairman Fran Ulmer
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Sund and Representative Ulmer:

The Alaska Dental Society would like to encourage the passage through your committee of CSSB 339, "An Act relating to tobacco products." Earlier in the session, our group wrote of its general support to all House members.

This bill and another related bill, HB 260, have been strongly supported by the Healthy Alaska Coalition. Our group is a member of this coalition and the subject matter of these bills is certainly within the purview of the dental profession. We understand (from HAC) that CSSB 339 does have a good chance of passage, but HB 260 is temporarily stuck in the Senate State Affairs Committee. I have written of our support to Senator Mitch Abood.

Thank you very much for helping CSSB 339 along - please feel free to contact me if you have any questions needing dentist input.

Sincerely,

William A. Guy, DDS

William A. Guy, D.D.S.

President

Alaska Dental Society

907-486-4094

April 19, 1988

The Honorable Niilo Koponen and Johnny Ellis
Co-Chairmen
HESS Committee
House of Representatives
Alaska State Legislature
Juneau, Alaska

Gentlemen:

I represent C. J. Enterprises, a local vending company serving the City of Juneau. We support the proposed legislation and we truly endorse any reasonable effort to keep cigarettes out of the hands of minors. We also recognize that there are some real costs associated with this legislation. We hope that you will consider some efforts to mitigate problems created by this legislation.


Cigarette sales in Juneau most probably reflect cigarette sales in the rest of the State. The method of sale can be studied easily in Juneau as there is only one distributor and one full-service vending company. Cigarette sales are predominately made through food store outlets -- 49.1% (see attachment #1), and 47.9% through various other across-the-counter outlets. The remaining 3% are sold through vending machines. Using the above data we can quickly calculate figures representing purchases by minors. There are 25,369 people living in Juneau, and according to the latest Department of Education figures, 2,155 are between the ages of 12 and 19 (8%). If total vending sales are 3%, and 8% of the total population are in the vulnerable age group and are buying cigarettes at the same rate as adults, then the proposed legislation will stop the purchase of 2.4 packages per thousand sold.

Our company operates 55 cigarette vending machines in this market. Under the proposed legislation, we will lose half of our locations. From this loss of business we will have to lay off one employee. In addition, we will have to pull \$45,000 worth of equipment off location and try to sell them for a fraction of their value. Twenty of these machines will be taken from state-operated locations. When we signed our vending agreement with the State, we had reasonable expectations of operating those machines until 1990. This law will nullify that agreement. That portion of the vending agreement represents a \$35,000 investment for our company. We hope that you will provide some sort of compensation for companies like ours, as well as some sort of relief for the people who will be unemployed because of this legislation.

I believe that this legislation can work if you are willing to look at the costs associated with its implementation.

Yours truly,

C. J. ENTERPRISES


Donald Dapcovich
President

Encl.



P.O. BOX 1707 JUNEAU, ALASKA 99802

3-3-88

Mr. Don Dapceovich
C.J. Enterprises
917 Glacier Ave
Juneau, Alaska 99801

Dear Don,

I have researched the figures that you asked for. As you know, we supply virtually all the cigarettes sold in the Juneau area. The breakout by category is as follows:

5 major food stores	49.1%
All other accounts **	47.9%
Vending	3.0%

It is apparent that vending is a very small factor in the total distribution of cigarette products. If there needs to be any substantiation of these numbers, I can be contacted at 586-3945.

Please let me know if I can be of further help on this issue.

Sincerely,

Thomas J. Satre
President
Northern Sales Co. of Ak. Inc.

** Includes shipments to outlying communities

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to tobacco products.
Sponsor: Falks
Requestor: _____

Agency Affected: Health & Social Services
BRU: State Health Services
Components: Public Health Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The enactment of CSSB 339 (Jud.) would have no direct fiscal impact on the Department of Health and Social Services.

Prepared by: Elizabeth Ward, Director Phone: 465-3090
Division: Public Health Date: 3-16-88

Approved by Commissioner: Marye K. Trueman Date: 3-16-88
Agency: Department of Health & Social Services

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

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/28/88

FURTHER REFERRALS:

Judiciary

DATE: 4-20-88

The Health, Education and Social Services Committee has considered CSSB 339 (Jud) am

"An Act relating to tobacco products."

RECOMMENDS:

- replace with CSSB 339 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 3/16/88
- zero with analysis

SIGNING DO PASS:

J. Ellis

ROBERT E. REED

James Hendrix

Alvin Koppelman

Bill Hurd

SIGNING OTHER RECOMMENDATIONS:

Max F. Hurnberg Do pass with amendment striking sections 1, 3 & 4 of House HESS Committee Substitute.

Alvin Koppelman
co chairman's signature

J. Ellis

S B

343

HOUSE COMMITTEE REPORT

(7)

Date referred: 4/22/88

FURTHER REFERRALS:

DATE: May 4, 1988

The Judiciary Committee has considered CSSB 343 (Jud)

"An Act relating to the liability of directors of corporations."

RECOMMENDS:

- replace with HCS ^{L+C} CSSB 343 (~~343~~) 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 2/23/88
- zero with analysis

SIGNING DO PASS:

[Handwritten signatures]

SIGNING OTHER RECOMMENDATIONS:

[Handwritten signature]

 Chairman's signature

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

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

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

H. JUD. 5-4-88 1:30p.m.

Alaska State Legislature



SENATOR
ARLISS STURGULEWSKI

Chairman, Senate Community and Regional Affairs Committee
Vice-Chairman, Senate Judiciary Committee
Member, Senate Resources Committee

2957 SHELDON JACKSON STREET
ANCHORAGE, ALASKA 99508


While in Juneau
P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3818

Senate

MEMORANDUM

April 22, 1988

TO: Representative John Sund, Chairman
House Judiciary Committee

FROM: Senator Arliss Sturgulewski 

RE: Hearing request for HCSSB 343(L&C) "An Act relating to the liability of directors of corporations."

This legislation addresses the question of limiting or eliminating a director's personal monetary liability to the corporation or its shareholders for breach of his or her fiduciary duty of care to the corporation. It requires a vote of the shareholders to amend the articles of incorporation to allow for the limiting or eliminating of liability. In this sense, the legislation is permissive only. This is a national problem as more suits are brought by shareholders against directors. Many states have adopted these provisions because of the high cost of directors insurance or in some cases prohibitive costs. It does not eliminate liability for wrong doing. It does not address suits brought against the directors from outside the corporation.

The following is a brief explanation relating to the origin of each section of the bill. A sectional analysis from legal services is also attached.

Sec. 1. Business Corporations. Originally the bill as first introduced only applied to profit corporations. The problem of directors liability was brought to my attention at Fish Expo in Seattle last October. Washington state has adopted the limitation legislation following Delaware and several other states. This legislation was introduced in order to encourage the incorporation of businesses in Alaska and for Alaska to remain competitive with other states as a location for incorporation.

Sec. 2. Native Corporation Voting Requirements. This section was suggested by Sealaska Corporation. The corporation statute dealing with amendments to articles of incorporation (AS 10.05.276) requires a two-thirds vote of the shareholders to amend the articles of any corporation. Sealaska asked that this requirement for Native corporations be reduced to a majority vote since they have in excess of 16,000 shareholders. This reduction would apply only to the question of director

liability and not to other issues of the Native corporations. (See attached letter from Birch, Horton, Bittner)

Sec. 3. Cooperative Corporations. This section was added at the request of John Abbott, Chairman of the Alaska Code Revision Commission to bring conformity to corporation statutes and for the same reasons that liability relief is needed in other corporate forms.

Sec. 4. Non-profit Corporations. This section was added at the request of the Alaska State Chamber of Commerce for the same reasons that apply to profit corporations and cooperatives. In addition, it was noted that it is increasingly difficult to find people to serve on the boards of volunteer organizations because of the growing risk of law suits and the personal financial exposure that exists.

This legislation is supported by the Director of Banking and Securities and by all others who testified.

I would appreciate your consideration of this bill in the House Judiciary Committee. Thank you.

Attachments: HCSSB 343 (L&C)
Sectional Analysis
Fiscal Note - Zero
Directors and Officers Liability Insurance - Feb. 1987
by Rollins Budick Hunter
Memo: Joe Plesha, Trident Seafood, Nov. 11, 1987
Legislative Briefs - Similar legislation in other states
Letter Birch, Horton, Bittner - Feb. 17, 1988

STATE OF ALASKA
THE LEGISLATURE

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


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 22, 1988

SUBJECT: Liability of corporate directors
(CSSB 343(Judiciary))

TO: Senator Arliss Sturgulewski

FROM: Richard A. Bradley
Legislative Counsel 

You have requested a sectional analysis of the above described bill.

The main effect of the bill, apart from sec. 2, discussed below, is to address the liability relationship between the directors of the corporation and the corporation itself (or its stockholders or shareholders derivatively, if it has stockholders or shareholders).

The bill applies to the widely-used general types of corporations that may be established under state law: business corporations (AS 10.05), cooperative corporations (AS 10.15), and nonprofit corporations (AS 10.20). Corporations not included in the bill are electric and telephone cooperatives (AS 10.25), cemetery associations (AS 10.30), religious corporations (AS 10.40), and professional corporations (AS 10.45).

Section 1 of the bill amends AS 10.05.255, the section establishing the contents of the articles of incorporation for business corporations. It permits a corporation to add a provision "eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for the breach of fiduciary duty as a director."

The provisions of the section establish certain public policy areas where a corporation may not agree to waive liability. The section also provides that the elimination

or limitation of liability is only prospective from the time the amendment takes effect.

An existing business corporation may amend its articles under AS 10.05.270 and following.

Section 2 of the bill amends AS 10.05.276, a section establishing the "procedure to amend articles of incorporation." It provides that a corporation incorporated under AS 10.05.005 (regional Native corporations and those village corporations that incorporate as business corporations) may take advantage of the provisions of section 1 of the bill. The main purpose of sec. 2 of the bill is to permit the Native corporation to adopt the amendment by lower thresholds than the existing provisions of law provide.

Section 3 of the bill amends AS 10.15.350, the section establishing the contents of the articles of incorporation for cooperative corporations. It permits a corporation to add a provision "eliminating or limiting the personal liability of a director to the corporation or its members for monetary damages for the breach of fiduciary duty as a director."

The provisions of the section establish certain public policy areas where a corporation may not agree to waive liability. The section also provides that the elimination or limitation of liability is only prospective from the time the amendment takes effect.

An existing cooperative corporation may amend its articles under AS 10.15.365 and following.

Section 4 of the bill amends AS 10.20.151, the section establishing the contents of the articles of incorporation for nonprofit corporations. It permits a corporation to add a provision "eliminating or limiting the personal liability of a director to the corporation for monetary damages for the breach of fiduciary duty as a director." Nonprofit corporations have neither stockholders nor members.

The provisions of the section establish certain public policy areas where a corporation may not agree to waive liability. The section also provides that the elimination or limitation of liability is only prospective from the time the amendment takes effect.

Senator Arliss Sturgulewski
Page 3
February 22, 1988

An existing nonprofit corporation may amend its articles under AS 10.20.171 and following.

If I may be of further assistance, please advise.

RAB:bb
wkb3/017

LAW OFFICES

BIRCH, HORTON, BITTNER, PESTINGER AND ANDERSON

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April 12, 1988

Representative John Sund
Chair, House Judiciary Committee
P. O. Box V
Juneau, Alaska, 99811

Re: CSSB 343 (Judiciary)

Dear John:

Sealaska Corporation has been closely following CSSB 343 (Judiciary), which we expect to be heard in the House Labor and Commerce Committee in the near future. The legislation authorizes shareholders to agree to limit director liability in shareholder suits under certain conditions. When the bill arrives in House Judiciary, Sealaska is hoping to receive a hearing at your committee's earliest convenience.

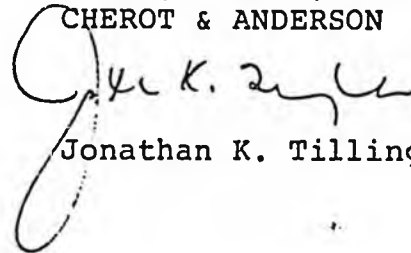
To that end, I am enclosing a report which our firm has prepared for the House Labor and Commerce Committee on the legislation, so that your staffs can get a head start on the bill.

April 12, 1988

On behalf of Sealaska, I want to thank you in advance for your consideration of this legislation, and I look forward to working with you, and your staff, when the bill arrives in your committee. If you have any questions or comments, please feel free to call.

Sincerely,

BIRCH, HORTON, BITTNER
CHEROT & ANDERSON



Jonathan K. Tillinghast

JKT/jrm
cc: Robert Loescher
Chris McNeil

LAW OFFICES

BIRCH, HORTON, BITTNER, PESTINGER AND ANDERSON

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February 17, 1988

Senator Arliss Sturgulewski
P. O. Box V
Juneau, Alaska 99811

Re: SB 343

Dear Senator *Arliss* Sturgulewski:

On Thursday, February 18, the Senate Judiciary Committee will revisit SB 343 -- a bill that would allow corporations, with shareholder approval, to limit their directors' liability for simple negligence. On behalf of Sealaska, I wanted to explain the purpose of an amendment to SB 343 that will be considered by the Committee in the form of a proposed Committee Substitute. That amendment would allow corporations formed under the Alaska Native Claims Settlement Act to amend their articles of incorporation with respect to directors' liability by a majority shareholders' vote, rather than the two-thirds vote otherwise required.

There are four sound public policy reasons for adopting the amendment. The proposal does not represent a "special deal" for Alaska Natives; rather, it recognizes that there are some fundamental differences between ANCSA corporations on the one hand, and general Alaska business corporations on the other, that must be addressed if the legislation is to achieve its intended goal. These considerations include:

1. Virtually all Alaska corporations have only a handful of shareholders. Indeed, in a typical situation the

only shareholders will be the directors themselves. As a result, obtaining a super-majority (or even unanimity) on this issue among shareholders would be an easy task. Typical of other regional corporations, however, Sealaska has 16,000 shareholders -- spread from southcentral Alaska to the lower 48. It is hard enough for corporations with such dispersed ownership to obtain a quorum; obtaining a two-thirds vote on any matter -- no matter how non-controversial -- is a virtual impossibility;

2. Normally, a corporation's directors hold large (and often controlling) blocks of shares in the company. As a result, they stand to realize substantial and direct profits from the corporation's business activities. This prospect of large personal gain compensates for the risk of liability that a director might suffer, and makes that potential for liability seem equitable. Native corporation directors, however, have no prospect of direct and substantial economic gain. They hold no more shares than any shareholder; and, as a result, directorship on a Native corporation is often viewed more as a form of community service than as an avenue of personal enrichment. The equitable symmetry of gain on the upside, and exposure on the downside, doesn't exist in the Native corporate context, and director liability legislation ought to recognize this substantial difference;


3. In the normal business setting, venturers voluntarily embark upon the corporate form in the expectation of gain. They voluntarily assume the risk, and they are usually familiar with the standard of care demanded of business men. Alaska's Natives, on the other hand, had the corporate form imposed upon them by Congress. They were told to administer their lands through a business organization with which -- particularly at the village level -- they were unfamiliar. Had the lands been administered through the Tribe, these same Native leaders would have performed essentially the same functions under the cloak of Tribal immunity. Moreover, they are not, by and large, familiar with the latest New York Court of Appeals cases defining permissible director conduct. It is perfectly proper for the state to be a bit sensitive in imposing personal liability for administering land entitlements through a form that is unfamiliar and, to a large extent, involuntarily; and

4. The purpose of the legislation is to encourage the formation of new corporations in Alaska. For new corporate ventures, a liability provision will be inserted in the initial articles of incorporation. Shareholders will, quite frankly, never read those articles. I will confess to never having reviewed the articles of incorporation of any company in which I have purchased stock. If, however, I receive a proxy solicitation from a company in which I own shares, asking me to accept limited director liability, I would probably give the matter some scrutiny. The point, of course, is that even majority shareholder approval for existing corporations will result in substantially broader scrutiny than that attendant the formation of new companies.

For these reasons, I believe the Judiciary Committee will be on firm footing in concluding that the sound philosophy behind SB 343 would be better served by acknowledging important differences between ANCSA and other business corporations. If I can be of any further assistance, or if you have any reservations about Sealaska's amendment, please do not hesitate to call.

Sincerely,

BIRCH, HORTON, BITTNER
PESTINGER & ANDERSON


Jon K. Tillinghast

JKT/jrm

NOVEMBER 11, 1987

MEMO

TO: CHUCK BUNDRANT
BART EATON

FROM: JOE PLESHA

RE: LIMITATION OF DIRECTOR LIABILITY UNDER DELAWARE LAW

INTRODUCTION

On July 1, 1986, a new law became effective in Delaware which permits a Delaware corporation to include in its certificate of incorporation a provision which limits or eliminates a director's personal monetary liability to the corporation or its stockholders for breach of his or her fiduciary duty of care to the corporation.¹

BACKGROUND

Delaware law has generally permitted a Delaware corporation to purchase insurance on behalf of its directors and officers against liability incurred in their corporate capacity, regardless of whether the corporation would have the power to indemnify the director against such liability under Delaware law.² The market for directors' and officers' liability insurance has, however, changed dramatically over the past several years. Despite the statutory authorization of Delaware corporations to purchase and maintain directors' liability insurance, many corporations have reportedly experienced difficulties in obtaining or maintaining sufficient coverage at a reasonable cost. As a result, many corporations have been forced to accept insurance with lower dollar limits of coverage, higher deductible amounts, and broader policy exclusions at a significantly higher cost.³

The insurance crisis for directors may be exacerbated by the courts increasing tendency to scrutinize the decisions of a director, even when the director acted in good faith and not out

¹ Indemnification of directors and officers, and limitation or elimination of director liability as authorized by the new Delaware law, are separate and distinct concepts. Alaska law already provides that directors can be indemnified for actions under certain circumstances. Alaska Stat. § 10.05.101.

² Del. Code Ann. tit. 8, § 145(g) (Supp. 1986) (amended 1986) provides:

A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent to the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under this section.

³ See Hilder, *Liability insurance is Difficult to Find Now for Directors, Officers*. Wall St. J., July 10, 1985, at 1, col. 6.

of self interest. For example, the court in the case of *Smith v. Van Gorkom*⁴ found that the board of directors of Trans Union Corporation breached their fiduciary duty of due care in approving a proposed cash merger and the court held members of the board personally liable for the resulting damages.

The expense of defending these lawsuits and the inevitable uncertainties with respect to application of the business judgment rule (the rule by which corporate directors actions are judged) may impact upon an individual's willingness to serve as director of a corporation. In addition, such uncertainty could cause directors to act defensively out of concern over costly litigation and potential personal liability, rather than acting to manage the business in the best interest of the corporation. For these reasons, Delaware adopted legislation in 1986 which would permit a corporation to limit or eliminate the director's personal monetary liability to the corporation or its stockholders for breach of his or her fiduciary duty of care to the corporation.

ANALYSIS OF NEW DELAWARE LAW

Title 8, §102(b)(7) of the Delaware General Corporation Law enables a Delaware corporation to include in its articles of incorporation a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of their fiduciary duty as a director. In addition, § 102(b)(7) states that no such provision can eliminate or limit a director's liability (i) for breach of the director's *duty of loyalty* to the corporation or its stockholders; (ii) for acts of omissions *not in good faith or involving intentional misconduct or a knowing violation of law*; (iii) for willful or negligent conduct *paying dividends or repurchasing stock out of other than lawfully available funds*; or, (iv) for any transaction from which the director derives an *improper personal benefit*.

Section 102(b)(7) is an enabling provision only. Amendment of the corporate articles of incorporation, therefore, is required to include the provision authorized by this section before it is an effective limitation of personal liability for a corporation's directors. The ultimate determination as to the propriety of limiting the opportunity of a corporation or its stockholders to seek monetary damages from the directors rest with the stockholders of the corporation who vote on any amendments to the articles of incorporation. As a practical note, it can be argued that a board which proposes an amendment pursuant to this law is an "interested party," since the individual directors of the board will benefit from the elimination of monetary liability which they otherwise may be required to pay. Obtaining the required stockholder approval after full disclosure of all material facts, however, eliminates any conflict of interest which might otherwise arise.

Section 102(b)(7) does not preclude or limit damages in actions instituted by third parties. In addition, it can be argued that §102(b)(7) permits limitation or elimination of monetary liability only for directors acting as directors. Actions taken by a majority stockholder in his capacity as such cannot be exempted from liability. Finally, §102(b)(7) does not permit limitation or elimination of liability arising under other laws or regulations. A director's potential liability under state and federal securities laws, for example, is unaffected by this section

⁴ 488 A.2d 858 (Del. 1985). The court found the board grossly negligent in that the directors had failed to fully inform themselves of "all material information reasonably available to them," and had acted hastily in approving the proposed merger, after two hours' consideration. *id.* at 872.

Fiduciary Duty

Directors are charged with the fiduciary duty of *due care* and *loyalty* to the corporation. Loyalty basically requires that a director, in making a business decision, act in good faith and in the honest belief that the action taken is in the best interest of the corporation. Under the new Delaware law, a director can still be found to be personally liable for monetary damages where they violate the fiduciary duty of loyalty by acting in their own "self-interest," and not in the best interest of the corporation.⁵ (For example, by usurping a corporate opportunity for their own personal benefit or competing with the corporation.)

The official legislative synopsis of §102(b)(7) notes that this provision permits a corporation to protect its directors from monetary liability only from liability for breach of the *fiduciary duty of due care*.⁶ It is clear that if a director negligently or with gross negligence (want of even scant care, or failure to exercise even that care which a careless person would use) disregarded his fiduciary duty of due care, they could be protected from monetary liability under the new Delaware law.

It is not clear, however, whether §102(b)(7) exempts directors from liability for recklessness (actions that fall somewhere between gross negligence and intentional wrongdoing) or disregard for the fiduciary duty of due care. It could be argued that to the extent that the recklessness involves conscious disregard for a known risk, such conduct is not taken in good faith and therefore, would not be a liability subject to limitation under §102(b)(7)(ii). To the extent recklessness encompasses merely inattention to duty by the directors, however, I believe that such conduct should be labeled "gross negligence" and therefore any liability resulting from it would be subject to limitation.

§102(b)(7), however, does not *eliminate* a director's fiduciary duty to act with due care, it merely insulates directors from personal *monetary* liability for failure to satisfy that duty. A director's conduct would, therefore, still be subject to injunctive or rescissory relief. A stockholder can institute an action to enjoin completion of a board's action or to rescind a completed action if such action involves violations of the duty of care. This may be relevant in proxy contest, elections, resignations, etc.

In conclusion, Delaware's new law only allows for a corporation to limit or eliminate the monetary damages a corporation or its shareholders can receive from its directors for a breach of the director's fiduciary duty of due care. It does not limit damages that can be awarded for a directors breach of their fiduciary duty of loyalty, or violations of law, or any transaction from which a director derives an improper personal benefit. In addition, the corporation or shareholder can still seek equitable remedies, such as recession or injunctive relief for a directors breach of their fiduciary duty of due care.

WASHINGTON & ALASKA LAW

Like Delaware, Washington State and Alaska law provide that a corporation may purchase insurance on behalf of its directors and officers to protect against personal liability incurred

⁵ Del. Code Ann. tit. 8, § 102(b)(7)(i).

⁶ The synopsis notes: "[t]his provision enables a corporation in its original certificate of incorporation or an amendment thereto validly approved by stockholders to eliminate or limit personal liability of members of its board of directors or governing body for violations of a director's fiduciary duty of care."

in their corporate capacity, regardless of whether the corporation would have the power to indemnify against such liability under the relevant state law.⁷

On Washington recently enacted legislation similar to Delaware's which would allow for a Washington corporation limit the monetary liability of directors for a breach of their fiduciary duty of due care to the corporation.⁸ I am having a copy of the new provision sent to me. Alaska has not yet enacted such legislation.

I have attached the relevant portions of the Delaware, Alaska and Washington State law.

⁷ Nearly identically to Delaware law, Wash. Rev. Code § 23A.08.025(11) (1980) provides:

A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent to the corporation, or is or was serving at the request of the corporation as a officer, employee or agent of another corporation, partnership, joint venture, trust or other employee benefit plan against any liability asserted against him incurred by him in any such capacity, or arising out of his status as such, *whether or not the corporation would have the power to indemnify him against such liability under this section.*

The Alaska Statutes §10.05.015(g) (1970) provide that:

A corporation may purchase and maintain insurance on behalf of a person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership joint venture, trust or other enterprise against any liability asserted against him and incurred by the person in such a capacity, or arising out of the person's status as such, *whether or not the corporation would have the power to indemnify the person against the liability under the provisions of this section.*

⁸ S.E. 6048, effective July 26, 1987.

fact that most major banks are reporting their most profitable year in history for 1986."

LEGISLATIVE BRIEFS

Arizona: SB 1103, limiting the release by the state of information contained in annual reports filed by corporations with the state, has been introduced. The information may not be released "unless it is in statistical form that prevents identification of particular corporations." Further, the bill provides that the information may be used as evidence in judicial proceedings or certain hearings, may be released to the state department of revenue for tax purposes, or may be released to a state or federal agency upon written request.

• HB 2082, SB 1087, and SB 1096, providing that directors and officers of nonprofit corporations are immune from personal liability for actions taken in good faith within the scope of their authority, have been introduced. Further, a "customary level of corporate indemnification" must have been obtained under §10-10005.

Georgia: HB 219, permitting a corporation to limit or eliminate directors' personal liability for breaches of fiduciary duty through its articles of incorporation, has been introduced. A limiting provision may not restrict a director's liability for breach of the duty of loyalty or for acts not done in good faith or that involve intentional misconduct or a knowing violation of the law. The bill also would amend indemnification provisions for directors.

Kansas: SB 26, amending Kansas corporation law to permit shareholders to limit directors' liability through a charter amendment or provision in the original certificate of incorporation, has been introduced. The bill permits elimination of directors' personal liability for breaches of fiduciary duty of care, but not for breaches of the duty of loyalty, failure to act in good faith, intentional misconduct, knowingly violating a law, paying an illegal dividend or approving an illegal stock repurchase, or obtaining an improper personal benefit. The bill would also eliminate provisions in the corporate law prohibiting indemnification by a corporation of officers and directors who have been found liable for negligence or misconduct. Shareholders may not limit directors' liability retroactively.

• HB 2107, limiting liability of directors or officers of a charitable organization, has been introduced. The bill provides that directors or officers may not be individually liable or the board as a whole may not be liable in a civil damages action for acts or omissions "unless such conduct constitutes willful or wanton misconduct or intentionally tortious conduct, but only to the extent the directors and officers are not required to be insured by law or are not otherwise insured against such acts or omissions."

Maryland: HB 242, permitting corporations to adopt provisions in the articles of incorporation that permit limitations on directors' personal liability, has been

introduced. A director would only be liable if the person fails to perform the duties of a director in accordance with the statutory standard and the conduct amounts to willful misconduct or deliberate recklessness, or if the director received an improper benefit or voted for an illegal dividend.

• HB 233, which would permit only limited liability for directors or officers of a voluntary organization where the organization obtains insurance with certain minimum coverage, has been introduced.

Minnesota: SB 7, which would repeal current securities regulation provisions and basically adopt the Uniform Securities Act of 1985 as issued by the National Conference of Commissioners on Uniform State Laws, has been introduced.

• HB 141, which would make directors or trustees of organizations that are exempt from state income tax immune from most civil suits if the directors or trustees acted in good faith and were not reckless, has been introduced. The director or trustee also must have been acting within the scope of the person's responsibilities as director or trustee.

Mississippi: HCR 62 and SCR 550, calling for an amendment to the Mississippi Constitution of 1980 that would repeal provisions that give all stockholders the right to vote their shares cumulatively for a single candidate for the board of directors or to vote shares of stock for all directors to be elected, have been introduced. The current constitutional provision also permits the issuance of preferred stock without voting rights.

• HB 1050, amending provisions dealing with a corporate director's duties to the corporation, has been introduced. The bill would amend §79-3-91, Mississippi Code of 1972, to state that a director must discharge directorial duties in accordance with the director's good faith business judgment of the best interests of the corporation. Unless a director has special knowledge, a director is entitled to rely on information, reports, or statements prepared by other officers or employees that the director believes to be reliable and competent; legal counsel or public accountants, or a committee of the board of directors, if certain conditions are met. A director is not personally liable for actions taken as a director if the director performs the duties of the office in compliance with subsection 79-3-91.

• SB 2574, permitting a corporation to include provisions in its articles of incorporation limiting a director's personal liability for breaches of fiduciary duty, has been introduced.

• SB 2501, limiting the liability of charitable and nonprofit organizations and their directors in certain cases, has been introduced.

Montana: HB 182, which would impose escrow requirements on securities issues to a promoter while a corporation is in a promotional or developmental stage, has been introduced.

• SB 49, abolishing individual liability of officers and directors or nonprofit corporations except in in-

stances of willful or wanton misconduct, has been introduced.

Nebraska: LB 650, which would permit the Nebraska Director of Banking and Finance to impose a fine of up to \$25,000 for violations of the Nebraska Securities Act or rules or regulations under the Act, has been introduced. Failure to pay the fine and investigative costs would constitute a forfeiture of the violator's right to do business in the state under the Nebraska Securities Act.

• LB 425, permitting a corporation to amend its articles of incorporation to eliminate or limit the personal liability of a director to the corporation or its stockholders for breaches of fiduciary duty in certain cases, has been introduced.

Nevada: SB 52 and 58, permitting limitations on directors' liability in articles of incorporation, have been introduced. The limitation may not cover breaches of loyalty by a director.

New York: SB 830, which would provide for greater regulation of commodity contracts trading, has been introduced. The bill would provide a statutory definition of commodity and commodity contract, and would permit the attorney general to prosecute persons charged with commodity fraud where exclusive jurisdiction is not within the Commodity Futures Trading Commission. The bill also would give the attorney general authority to bring an action for either legal or injunctive relief in federal court to enjoin a fraudulent practice, or to enforce compliance with the Commodity Exchange Act or CFTC rules. For persons registered under the CEA other than floor brokers or registered futures associations, the attorney general may bring an action under the CEA in state court. The attorney general also is given certain investigative authority under the bill.

Ohio: HB 156 and SB 50, which would provide that authority conferred on corporations to grant options with conditions that preclude shareholders of a certain percentage of outstanding common shares from exercising the options applies only to companies that have shares listed on a national securities exchange or that are regularly quoted in an over-the-counter market by members of a national or affiliated securities association, have been introduced.

• HB 155, clarifying when shareholders may not authorize directors to amend a merger or consolidation agreement, has been introduced.

Oklahoma: HB 1038, permitting corporations to limit personal liability of directors through provisions in the articles of incorporation, has been introduced. Under the bill, a liability-limiting provision may not limit liability for breach of a director's duty of loyalty, for acts not in good faith or involving intentional misconduct or a knowing violation of the law, or for

transactions from which the director derived an improper personal benefit. The provision also may not excuse a director from liability under §1053 of Section 6, Chapter 292, O.S.L. 1986. The bill also would provide that a director's or officer's right to indemnification continues even though the person has ceased to be a director or officer, and that the right inures to the estate of a former director or officer.

Oregon: SB 145, adopting the Oregon Commodity Code, has been introduced. The bill would prohibit certain commodity contracts, grant the corporation commissioner authority to enforce the Act, and punish violations of the Act by a maximum of 10 years imprisonment and a \$100,000 fine.

South Dakota: SB 98, which would excuse directors and officers of tax-exempt, nonprofit corporations from personal liability unless there was willful or wanton misconduct, has been introduced.

Texas: HB 403, which would permit a corporation to amend its articles of incorporation to eliminate or limit a director's personal liability for breaches of fiduciary duty, has been introduced. The provision could not eliminate liability for breaches of the duty of loyalty, or for an act not done in good faith or that involved intentional misconduct.

REGULATORY BRIEFS

Florida: A trial court should have compelled parties in a securities law and fraud dispute to arbitrate their claims due to an arbitration clause in a franchise agreement between the parties, the Florida District Court of Appeal determines. Carol McCrory and Linda Kline brought a complaint with five causes of action against Doctors Associates, Inc. The complaint contained Florida securities law, franchise misrepresentation, common law fraud, and civil theft claims. The trial court granted a motion to compel arbitration under a franchise agreement only for the Florida securities law claim. The appeals court says that the trial court should have compelled arbitration of each count. Judge Monterey Campbell III relies on *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Melamed*, 453 So.2d 858 (FlaDistCtApp 1984), in reversing, and ordering arbitration of all claims (*Doctors Associates, Inc. v. McCrory*, Case No. 86-1151, FlaDistCtApp, 1/21/87).

Maine: New rules governing investment adviser registration in Maine took effect Feb. 1. The Securities Division of the Maine Bureau of Banking proposed the rules last August, and the comment period closed Sept. 26, 1986. The rules cover applications for licensing, amendments to an adviser's licensing file, renewal applications, custody of clients' securities and funds, statements of financial condition, and recordkeeping by advisers.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSSB 343 (Jud.) 2/18/88
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Relating to the liability
of directors of corporations
Sponsor: Sturqulewski, Uehling,
XXXXXXXXXXXX Fahrenkamp and Kelly
Requester: _____

Agency Affected: Commerce & Econ. Dev.
BRU: Banking, Securities & Corporations

Components: _____

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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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.)

Prepared by: Willis F. Kirkpatrick, Director
Division: Banking, Securities and Corporations

Phone: 465-2521
Date: 2-18-88

Approved by Commissioner: J. Anthony Smith, Commissioner
Agency: Department of Commerce and Economic Development

Date: 2-18-88

Distribution (by preparer):

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page _____ of _____

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April 12, 1988

Representative Dave Donley
Alaska House of Representatives
P. O. Box V
Juneau, Alaska 99811

Re: CSSB 343 (Judiciary)
Our File No. 600,100.644

Dear Representative Donley:

This letter is written on behalf of Sealaska Corporation in support of CSSB 343 (Judiciary). The legislation is patterned after Delaware's model director liability statute. The bill would allow a corporation's shareholders to agree to limit the liability of their directors for simple negligence in actions by these shareholders or the corporation itself. The bill has no impact whatsoever on directors' liability to creditors or other third parties.

In the past two years, 38 states have enacted legislation authorizing limitations of liability that are either identical to the provisions of SB 343 or substantially broader. See Attachment 1, Exhibit A. Our sister states have acted in response to rapidly increasing shareholder-related D&O liability litigation -- a situation that has discouraged qualified people from serving as corporate directors, and that has caused D&O liability insurance premiums to increase by about 1,000% in three years. Without this legislation, Alaska will remain far behind the

curve in responding to the situation, and its corporate code will remain a disincentive to incorporating in Alaska. 1/

The most visible manifestation of the current crisis are the well publicized, multi-million dollar settlements that have been obtained against directors and officers in the past few years. Banks have been particularly hard hit by these settlements -- for example, five former officers and directors of Seafirst Corp. agreed to a \$110 million settlement of litigation arising out of the bank's participation in energy loans. In Attachment 2, director liability expert Dan A. Bailey lists 16 such settlements -- ranging from \$13.9 million to \$200 million. Id. at 2-5.

The problem, however, goes far beyond occasional horror stories. There has been, in fact, a "virtual explosion of litigation against corporate managers within the last five to seven years . . ." Attachment 2 at 1. The Wyatt Company has performed a comprehensive survey both of the increase in D&O litigation, and its impact upon available insurance coverage. The company reports that the frequency of D&O claims has been increasing "in the range of 15% to 20% per year." Attachment 3 at 12.

Among corporations other than banks, about 40% of claims against directors and officers are brought by shareholders. Id. at 28. These are the only claims that would be affected by CSSB 343. 2/ The statistics strongly suggest

1/ A disincentive to local incorporation will, in many cases, also serve as a disincentive to doing business in our state. For example, if a corporation expects to earn a profit in Alaska, it will want to form an Alaska subsidiary so that Alaska earnings are not included in other states' income tax base. If, however, creation of an Alaska subsidiary carries with it exposure to an outdated, minority approach on director liability, the price of doing business here may be just too high.

2/ For banks, over 50% of the claims are brought by
(Footnote Continued)

that a large number of shareholder claims are, in fact, nuisance suits. Between 1977-85, 90% of the shareholder suits sought damages in excess of \$1 million. Id. at 29. However, fully 74% of the cases closed during that period resulted in no payment to shareholders at all. Id.

If a large number of shareholder claims are ultimately shown frivolous, why the crisis? The answer, of course, are in the substantial defense costs associated with shareholder litigation -- whether meritless or not. Between 1977 - 85, the median attorneys' fee associated with shareholder actions against directors was \$275,000.00 per claim. Id., at 30. 3/

D&O litigation's increasing popularity among shareholders has had a predictable impact on D&O insurance premiums. The firm of Heidrick & Struggles, for example, found that D&O liability insurance premiums increased an average of 506% in 1986, and that in 20% of the cases, the annual increase was over 1,000%. Attachment 4. Similarly, the Wyatt Company found in excess of a 1,000% increase in D&O premiums between 1984 and 1987. Attachment 3 at 91. In that same period, the average deductible for claims subject to corporate reimbursement increased from \$46,511.00 (1984) to \$649,947.00 (1987). Id. at 76. Policy limits during that period decreased from between 14.9% and 41.7%, depending upon the size of the company. Id. at 57. The substantial increase in premiums, coupled with the decline in coverage, has put D&O insurance out of the reach of many small corporations. For example, in 1974, 70% of American corporations with assets under \$10 million were covered by D&O liability insurance; by 1987, that percentage had shrunk to 29%. Id. at 51.

(Footnote Continued)

customers, while 12 to 16% are brought by shareholders. Id. Customer claims would not be affected by CSSB 343.

3/ For all D&O claims, the legal fees for claims that were dropped by claimants altogether averaged \$130,340.00. Id. at 25.

The crisis has had a significant effect on the ability of corporations to keep and retain outside directors, and it threatens the quality of corporate decision making:

These problems have left many businesses facing a difficult choice: A company can go without insurance, which may expose the personal assets of directors to the risk of liability judgments; or the company can utilize one of the alternatives to traditional insurance -- alternatives which may be challenged in court, and which may in themselves be a source of litigation.

The loss of talented directors can affect the success of a company and this consequence must be included in coverage decisions. Outside directors can most easily leave and they are frequently considered to be the representatives of non-management shareholders. Their resignation may be viewed as a significant loss by the shareholders. Even when directors remain on an uninsured board, the need to avoid litigation may adversely effect their decisions. 4/

Available statistics also indicate that the crisis has, in fact, caused a decline in the number of outside directors. For example, in 1975, 63.2% of the directors of America's largest companies were "outsiders," while that number decreased to 57.5% in 1986. Attachment 4 at 2. Obviously, without the large personal stake possessed by a major shareholder/manager, the potential personal risks to an outside director will more and more outweigh the benefits of serving the company. In fact, almost one-third of the directors surveyed in a 1986 Touche Ross survey "have considered retiring from their boards because of the increased liability to which they are exposed." Attachment 6 at 2.

4/ Rollins Burdick Hunter, "Directors and Officers Liability Insurance: Challenge and Alternatives," February, 1987 at 2 (Attachment 5).

As a result, the director liability crisis will likely have, in the long run, precisely the opposite effect that shareholder activists might have expected. It is likely to cause directorships to be more tightly held by the corporation's major shareholders -- who may still have the financial incentive to take the increasing risk. Boards of Directors are likely to become more closed, and more defensive. In economic terms, corporations are likely to become less aggressive.

Out of economic self-interest, as well as fairness, most states, other than Alaska, have responded to this crisis by enacting legislation authorizing a limitation on director liability to their shareholders in limited cases. As Mr. Bailey has observed:

The single most important development in D&O liability during the last two years has been the enactment by most of the states of various forms of remedial legislation which attempts to address the D&O liability and insurance crisis. These legislative efforts are significant not only because of the additional protections which they afford directors (and sometimes officers), but also because they evidence the concerns which the state legislators and presumably the public have toward preserving an environment in which directors, particularly outside directors, are willing to serve.

Attachment 1 at 1.

The benchmark legislation is Delaware's, on which CSSB 343 is patterned. Under the Delaware approach, and CSSB 343, a director's liability may be limited (e.g., in monetary terms) or eliminated for simple negligence. The liability limitations, however, apply only to actions against the director by the corporation or its stockholders, and do not apply in the case of a breach of the director's duty of loyalty, or for intentional misconduct. Further, liability can be limited only if the shareholders agree to amend the corporation's Articles of Incorporation to so provide.

20 states (including Delaware, California, and Oregon) have enacted substantially similar legislation.

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Attachment 1, Exhibit A. Three additional states have adopted the Delaware approach, but have extended its protections to corporate officers (Louisiana, Maryland and New Jersey). Id. 12 other states (including Indiana, New York and Ohio) have gone further. Typical of the more comprehensive approach is Indiana's statute, which makes directors liable only for reckless or willful misconduct (or violations of federal securities laws), and which is self-executing -- that is, it does not require shareholder approval. See Attachment 1 at 4-5. In all, five states have enacted "self-executing" legislation.

Director liability legislation is as important in Alaska as in any other state. Indeed, directors of Alaska corporations hardly fit the mold of corporate "fat cats" who have: (1) the kind of personal fortunes necessary to withstand personal liability; and (2) the expectation of extraordinary personal gain that might, in other circumstances, make personal liability more appropriate. This is particularly true, for example, of Alaska's Native corporations. At the village, and even the regional level, the corporations' directors generally serve on the board as a matter of community service, and have no disproportionate expectation of personal gain.

The willingness of a state to adapt its corporate code to present realities provides a strong indication of that state's general business climate. Enactment of CSSB 343 would bring Alaska in line with its sister states, and would send a strong signal that the state is willing to strike a reasonable balance in its commercial laws.

Sincerely,

BIRCH, HORTON, BITTNER
CHEROT & ANDERSON



Jonathan K. Tillinghast

JKT/jrm
encs.

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/2/88

FURTHER REFERRALS: Judiciary

DATE: 4/21/88

The Labor & Commerce Committee has considered CSSB 343 (Jud)

"An Act relating to the liability of directors of corporations."

RECOMMENDS:

- replace with HCS CSSB 343 (LC) 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 2/23/88
- zero with analysis

SIGNING DO PASS:

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature]

 Chairman's signature