

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5705 HOUSE HEALTH, EDUCATION & SOCIAL SERVICES 109

sexual intercourse between teenage students over the age of consent constitute "maltreatment" in any case? Would it constitute "reportable maltreatment" if one of the parties felt uncomfortable after the fact about having engaged in the intercourse? If a student came to a teacher and said she felt guilty for having had intercourse with another student which was otherwise lawful, would a report have to be made? Moving out of the sexual context, if doctors or teachers see parents yelling at their children, criticizing them with sarcastic remarks, humiliating them in front of others in public, or engaging in other "behavior" which could conceivably "threaten the child's welfare," must a report be made? What is the scope of the term "a child's welfare." This term is unconstitutionally vague if any consequence, particularly a criminal one, can be imposed upon a person who fails to make a report when they supposedly have cause to believe or reason to suspect that such a vague occurrence has happened. It is vague because the concept of "health or welfare" is vague and undefined and also because behavior is supposedly reportable even if it has no actual, observable, or concrete effect on the child, but merely "threatens" health or welfare. No potential reporter can understand what his or her legal obligations are so long as such a definition of this term is included in the statute.

Significantly, the term "maltreatment" was originally included in Title 47 in order to maintain compliance with Child Abuse Prevention Treatment Act of 1974, 42 U.S.C. 5101 et seq., and thus to enable the state to continue to receive federal funds. Federal regulations define "maltreatment" for purposes of the

parallel federal statute as including the "failure to provide adequate food, clothing, shelter, or medical treatment." 45 CFR 1340.2(d)(2)(i). The term "maltreatment" does need to be defined if it is going to remain in Title 47. The appropriate definition is the one provided for in the CFR, which defines the same term in the federal legislation from which Alaska originally borrowed it.

In subparagraph 14, Senate Bill 450 expands the reporting requirement to cover "mental injury."

The Legislature has twice before considered the inclusion of "mental injury" in the reporting requirements of Title 47, Chapter 17. On both occasions, in 1976 and 1985, inclusion of "mental injury" in the reporting requirements was rejected by legislators. In 1985 the proposed amendment specifically defined "mental injury" as:

An injury to the intellectual or psychological capacity of a child as evidenced by an observable and substantial impairment to the child's ability to function within a normal range of performance and behavior, with due regard to the child's culture."

See, Minutes of House Health, Education & Social Services Standing Committee, April 9, 1985.

In discussing whether to include "mental injury" in the reporting requirement a number of legislators were insightful in their recognition of the difficulties that the amendment created. The concerns expressed by legislators in 1985 under the working definition of "mental injury" provided above, are equally valid when considering the inclusion of "mental injury" as proposed in the current Senate Bill 450. A few of the concerns expressed in 1985 are as follows: (1) Representative Pettyjohn was concerned

that as defined the term "mental injury" could be very easily interpreted in an overly broad manner which he was not comfortable with; (2) Representative Thompson was concerned with the term "mental injury," specifically referring to the phrase "normal range of performance of range and behavior," used to define mental injury, believing these phrases to be too ambiguous; and (3) Representative Handley stated her concern was that the phrase "mental injury" was too broad as defined.

Each of these comments made concerning the proposed amendment to include "mental injury" in the reporting requirement, from 1985 are equally applicable to the present discussion concerning "mental injury." No potential reporter can understand what his or her legal obligations are so long as the definition of "mental injury" remains as currently drafted. Therefore, "mental injury" as defined should be left out of the reporting statute.

The discretionary standard at which point a report is required has been altered by Senate Bill 450 in proposed subparagraph (15) from "cause to believe" to "reasonable cause to suspect." The definition is meaningless and gives no guidance on the conduct required by one subject to the reporting obligation. According to the Bill, "reasonable cause to suspect" means when a "reasonable person [would] suspect that something might be the case." Obviously, the bill does not define this critical term, but simply repeats it. That is not an explanation of the content of the reporting standard. Yet, according to the bill, if a reporter fails to file a report within 24 hours from the moment at which this undefined standard is satisfied, then he or she is subject to

strict liability in a criminal prosecution. The notion that a standard depending so much on the facts of an individual case, hinging so much on individual professional judgment, and providing for such little direction in its definition could somehow be the basis of a criminal prosecution is a startling rejection of the most basic constitutional guarantees of fair notice, due process, and specificity which lie at the bottom of all criminal legislation.

Additionally, the dilution of the standard from cause to believe to "reasonable cause to suspect" raises further constitutional problems by imposing legal obligations upon citizens to make accusations against other citizens which they do not believe and which they do not believe have a minimally sufficient basis in fact. Such requirements are anathema in a free society, and abridge the state and federal rights of citizens to due process of law and to be free from unreasonable searches and seizures and the specific right to privacy contained in the Alaska Constitution.

Although the School District does not believe that "reasonable cause to suspect" or "cause to believe" can be defined with sufficient precision to justify the imposition of criminal sanctions for miscalculating when that cause exists, it is apparent that if there is going to be such a standard and a criminal penalty, the standard must be defined. Accordingly, at a minimum, "reasonable cause to suspect" or "cause to believe" should be defined as existing; --

where, based on the total circumstances, including direct observation, knowledge and information gained from others, and the exercise through professional judgment, a

person has a good or adequate reason, supported by specific and identifiable facts, to believe that child abuse or neglect has occurred or is occurring. "Reasonable cause to suspect" or "cause to believe" is less than a probability, but more than a mere suspicion, conjecture, or inkling.

Finally, the proposal to define "sexual abuse" contained in subparagraph (17) is desirable, but the definition should end with the incorporation of the criminal provisions provided in AS 11.41.410-11.41.455. The purported definition contained in Senate Bill 450 becomes unconstitutionally vague when it extends to include "any other sexual behavior intentionally performed in the presence of a child that harms or threatens the child's health or welfare." "Sexual behavior" which is not contained within the criminal provision of Title 11 is nowhere defined. Nor is any definition given to the circumstances under which touch, otherwise lawful behavior, would be considered to harm or threaten a child's "health or welfare." By introducing such vague language, the Senate Bill virtually guarantees its rejection by courts of law. Perhaps the proponents of the legislation can explain or give examples of when sexual behavior intentionally performed in the presence of a child does not harm or threaten the child's health or welfare. Such vagueness in terms invites court challenges, but more seriously prevents the thousands of persons subject to the reporting requirements of Title 47 from reasonably being able to understand when they have an obligation to file a report under its provisions. Undefined "sexual behavior" which "threatens a child's welfare" contains if anything, less content than the phrase "crime against nature" which has been held unconstitutionally vague by the

Alaska Supreme Court. Harris v. State, 457 P2d 638, 647 (Alaska 1969).

CONCLUSION

Constructive amendments can and should be made to Title 47. The amendment should encourage inter-agency cooperation, not facilitate the prosecution of persons who may in good faith fail to make reports or make reports in a manner which, after the fact, someone else determines should have been made sooner. New provisions should be more specific, increase the clarity of definitions, and provide guidance so that the thousands of dedicated professionals subject to the law's provisions and who try their best to comply with them, be given some direction in making the judgment calls required of them. Senate Bill 450 not only fails to encourage cooperation and increase clarity, but represents a major step backwards.

AMENDMENTS TO SB 450
Proposed by the Department of Law
March 27, 1990

AMENDMENT #1

Reason for amendment: The proposed amendment was recommended in "Part I of Grand Jury Investigation Concerning Reporting of Sexual Abuse of School Children" in Section (B)(1)(e) on pages 8 - 9 of the grand jury report.

Page 3, line 23, following "adding":

Delete "a new section"

Insert "new subsections"

Page 4, following line 11:

Insert

(g) A person required to report child abuse or neglect under (a) of this section is not relieved of the obligation to make a report to the department by reporting the abuse or neglect to a job supervisor, or other individual working for the agency or organization that employs the person required to make a report of child abuse or neglect.

AMENDMENT #2

Reason for Amendment: The proposed amendment was recommended in "Part I of Grand Jury Investigation Concerning Reporting of Sexual Abuse of School Children" in Section (B)(2) on pages 11 - 12 of the grand jury report.

Page 4, line 5, following "mination." - line 11:

Delete all material.

Insert:

"If the notification involves a person in the teaching profession, as defined in AS 14.20.370, the law enforcement agency shall provide a copy of the notification required under this section to the Professional Teaching Practices Commission."

AMENDMENT #3

Reason for amendment: The amendment was requested by several school districts because the current wording of SB 450 limits the obligation of law enforcement agencies to report only those incidents of child abuse or neglect having a connection to the school in which the child is enrolled. The districts point out that harm to a student can occur in connection with activities conducted at district facilities other than the one the child attends, or by employees other than those employed at the particular school a child attends, and suggest expanding the scope of the section as set out in Amendment #3.

Page 3, line 26, following "school":

Insert "or district"

Page 3, line 28, following "school":

Insert "or district"

Page 4, line 1, following "student":

Insert "or on the premises of a school within the district in which the child is enrolled as a student"

AMENDMENT #4

Reason for Amendment: The proposed amendment was requested by several school districts in order to provide immunity for school officials who permit a child to be interviewed on school property without obtaining parental consent. In addition, the proposed amendment clears up several ambiguities in the immunity section that were identified by the school districts.

Page 7, lines 4 - 12:

Delete all material.

Insert:

Sec. 47.17.050. IMMUNITY. Except as provided in (b) of this section, a [A] person who, in good faith, makes a report under this chapter, permits an interview pursuant to AS 47.17.027. or who

participates in judicial proceedings related to the submission of reports under this chapter, is immune from [ANY] civil or criminal liability that [WHICH] might otherwise be incurred or imposed, except that a person who makes an untimely report is not immune from civil or criminal liability based on the delay in making the report.

Page 7, line 16, following "liability":

Insert "for the child abuse or neglect"

A M E N D M E N T #1

OFFERED IN THE HOUSE

TO: CSSB 450 (Judiciary) am

Page 3, line 23:

Delete "a new section"

Insert "new subsections"

Page 4, after line 11:

Insert a new subsection to read:

"(g) A person required to report child abuse or neglect under (a) of this section who makes the report to the person's job supervisor or to another individual working for the entity that employs the person is not relieved of the obligation to make the report to the department as required under (a) of this section."

A M E N D M E N T #2

OFFERED IN THE HOUSE

TO: CSSB 450 (Judiciary) am

Page 4, line 5, after "." through line 11:

Delete all material.

Insert "If the notification involves a person in the teaching profession, as defined in AS 14.20.370, the law enforcement agency shall send a copy of the notification required under this subsection to the Professional Teaching Practices Commission."

A M E N D M E N T #3

OFFERED IN THE HOUSE

TO: CSSB 450 (Judiciary) am

Page 3, line 26, after "school":

Insert "or school district"

Page 3, line 28, after "school":

Insert "or school district"

Page 4, line 1, after "student":

Insert "or on the premises of a school within the district in which
the child is enrolled as a student"

A M E N D M E N T #4

OFFERED IN THE HOUSE

TO: CSSB 450 (Judiciary) am

Page 7, lines 3 - 12:

Delete all material.

Insert a new bill section to read:

"* Sec. 12. AS 47.17.050 is amended to read:

Sec. 47.17.050. IMMUNITY. Except as provided in (b) of this section, a [A] person who, in good faith, makes a report under this chapter, permits an interview under AS 47.17.027, or [WHO] participates in judicial proceedings related to the submission of reports under this chapter, is immune from [ANY] civil or criminal liability that [WHICH] might otherwise be incurred or imposed, except that a person who makes an untimely report is not immune from civil or criminal liability based on the delay in making the report."

Page 7, line 16, after "liability":

Insert "for the child abuse or neglect"

A M E N D M E N T #5

OFFERED IN THE HOUSE

TO: CSSB 450 (Judiciary) am

Page 7, line 29, through page 8, line 4:

Delete all material.

Renumber the following bill sections accordingly.

Page 9, line 9, after "welfare", through page 9, line 12:

Delete all material.

Insert ";

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

March 28, 1990

The Honorable Johnny Ellis
Alaska State Representative
P.O. Box V
Juneau, Alaska 99811

Re: Proposed Amendments to SB 450

Dear Representative Ellis:


As you know, SB 450 was drafted by the Department of Law to address a number of perceived ambiguities in the child abuse reporting statute that were brought to light as a result of the well-publicized controversy between the Anchorage School District, the Anchorage Police Department, and the Department of Law. After SB 450 passed the Senate, a grand jury investigating the Anchorage controversy issued a report making a number of recommendations for amendments to the child abuse reporting statute.

Although most of the amendments recommended by the grand jury are already included in SB 450, an additional two amendments are necessary to fully comply with the grand jury recommendations. In addition, as a result of discussing the bill with representatives of several school districts, we recommend that an additional two amendments be made to SB 450.

We look forward to working with you on SB 450, and are hopeful that the House will act expeditiously on this important piece of legislation.

Very truly yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 
Laurie H. Otto
Assistant Attorney General

Attachment

LHO:me-191

DEPARTMENT OF
PUBLIC SAFETY

BILL NO: SB 450

DATE: February 12, 1997

TITLE: An Act relating to child
abuse and neglect

CONTACT: Barbara Miklos
465-4356

The Council on Domestic Violence and Sexual Assault supports SB 450, which clarifies and strengthens the child abuse reporting statute. We believe that this legislation will be instrumental in protecting children in Alaska.

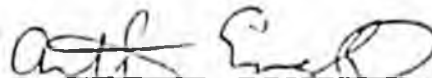
Among the provisions which the Council particularly supports is clarification that persons who report are not intended to conduct investigations prior to making reports; rather, reports are required when there is a reasonable suspicion of child abuse or neglect. This is clarified in the purpose section, as well as by changing "reasonable cause to believe" to "reasonable cause to suspect".

The Council supports adding paid employees of substance abuse treatment or prevention programs and mental health counselors to the list of mandatory reporters. There is a high correlation between substance abuse and family violence; therefore, employees of substance abuse programs are likely to have cause to suspect child abuse or neglect. Now that federal confidentiality requirements for substance abuse treatment providers have been changed to allow the reporting of child abuse or neglect, the barrier to adding them to the list of reporters has been removed.

The Council supports making all reports to the Department of Health and Social Services, and requiring the Department to refer to law enforcement agencies cases that do not involve family members, where criminal conduct is involved, or where abuse or neglect results in the need for medical treatment of the child. We know that the previous requirement that some reports be made to law enforcement officials was confusing for some people. This section also clarifies the cases that the Department of Health and Social Services must refer to law enforcement agencies for their investigation.

Another important provision of this bill is the proposed new section, "Duties of School Officials" (proposed AS 47.17.027) which requires school officials to permit the child to be interviewed at school without prior notification of, or permission from, the child's parent, guardian or custodian. We know that the lack of such authority has impeded the investigation of reports, and caused unnecessary friction between school officials and investigators.

In summary, the Council believes the proposed amendments to the Child Abuse Reporting Law strengthen and improve protections for children. We urge the passage of this bill.



Arthur English
Commissioner

FISCAL NOTE

REQUEST:

Revision Date: 2/8/90
 Title: An Act Relating to Child Abuse and Neglect
 Sponsor: Judiciary
 Requestor: _____

Agency Affected: DHSS, DFYS
 BRU: Social Service
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary) FY 90 fiscal impact is "0".
 The Division receives over 10,000 reports of harm to children each year. Many of these reports concern harm caused by persons who are not responsible for the welfare of the child victim. These are forwarded to law enforcement agencies. The precise number of these cannot be estimated nor is it possible to estimate the increased number which will result from passage of SB450. It

Prepared by: Russell Webb *Russell Webb* Phone: 465-3170
 Division: Family & Youth Services Date: 2/13/90

Approved by Commissioner: Myra M. Munson, Commissioner *Myra M. Munson* Date: 2/12/90
 Agency: Department of Health and Social Services

Distribution (by preparer):

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

Changes in CS SB 450 (JUN) have no fiscal impact. This fiscal note is appropriate.

FISCAL NOTE

ANALYSIS:

is expected that the increase will be small and can be absorbed with existing resources.

Original sponsor(s): Judiciary Committee

1 IN THE SENATE

BY THE HESS COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 450 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to reporting and investigation of
7 child abuse and neglect; relating to training of
8 persons required to report child abuse or neglect;
9 and amending the definition of 'child abuse or ne-
10 glect'."

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

12 * Section 1. AS 47.17.010 is amended to read:

13 Sec. 47.17.010. PURPOSE. In order to protect children whose
14 health and well-being may be adversely affected through the inflic-
15 tion, by other than accidental means, of harm through physical injury
16 [ABUSE] or neglect, mental injury, [OR] sexual abuse, [OR] sexual
17 exploitation, or maltreatment, the legislature requires the reporting
18 of these cases by practitioners of the healing arts and others to the
19 department. It is not the intent of the legislature that persons
20 required to report suspected child abuse or neglect under this chapter
21 investigate the suspected child abuse or neglect before they make the
22 required report to the department. Reports must be made when there is
23 a reasonable suspicion of child abuse or neglect in order to make
24 state investigative and social services available in a wider range of
25 cases at an earlier point in time, to make sure that investigations
26 regarding child abuse and neglect are conducted by trained investiga-
27 tors, and to avoid subjecting a child to multiple interviews about the
28 abuse or neglect [APPROPRIATE PUBLIC AUTHORITIES]. It is the intent
29 of the legislature that, as a result of these reports, protective

1 8services will be made available in an effort to prevent further harm
2 to the child, to safeguard and enhance the general well-being of the
3 children in this state, and to reserve family life whenever possible.

4 * Sec. 2. AS 47.17.020(a) is amended to read:

5 (a) The following persons who, in the performance of their
6 occupational duties, have reasonable cause to suspect [CAUSE TO BE-
7 LIEVE] that a child has suffered harm as a result of child abuse or
8 neglect shall immediately report the harm to the nearest office of the
9 department:

- 10 (1) practitioners of the healing arts;
11 (2) school teachers and school administrative staff members
12 of public and private schools;
13 (3) social workers;
14 (4) peace officers, and officers of the Department of
15 Corrections;
16 (5) administrative officers of institutions;
17 (6) child care providers;
18 (7) paid employees of domestic violence and sexual assault
19 programs, and crisis intervention and prevention programs as defined
20 in AS 18.66.900;
21 (8) paid employees of an organization that provides coun-
22 seling or treatment to individuals seeking to control their use of
23 drugs or alcohol.

24 * Sec. 3. AS 47.17.020(b) is amended to read:

25 (b) This section does not prohibit the named persons from re-
26 porting cases that have come to their attention in their nonoccupa-
27 tional capacities, nor does it prohibit any other person from report-
28 ing a child's harm that the person has reasonable cause to suspect
29 [CAUSE TO BELIEVE] is a result of child abuse or neglect. These

1 reports shall be made to the nearest office of the department.

2 * Sec. 4. AS 47.17.020(c) is amended to read:

3 (c) If the person making a report of harm under this section
4 cannot reasonably contact the nearest office of the department and
5 immediate action is necessary for the well-being of the child, the
6 person shall make the report to a peace officer. The peace officer
7 shall immediately take [IMMEDIATE] action to protect the child and
8 shall, at the earliest opportunity, notify the nearest office of the
9 department.

10 * Sec. 5. AS 47.17.020(e) is repealed and reenacted to read:

11 (e) The department shall immediately notify the nearest law
12 enforcement agency if the department

13 (1) concludes that the harm was caused by a person who is
14 not responsible for the child's welfare;

15 (2) is unable to determine

16 (A) who caused the harm to the child; or

17 (B) whether the person who is believed to have caused
18 the harm has responsibility for the child's welfare; or

19 (3) concludes that the report involves

20 (A) possible criminal conduct under AS 11.41.410 -
21 11.41.455; or

22 (B) abuse or neglect that results in the need for
23 medical treatment of the child.

24 * Sec. 6. AS 47.17.020 is amended by adding new subsections to read:

25 (f) If a law enforcement agency determines that a child has been
26 abused or neglected and that (1) the harm was caused by a teacher or
27 other person employed by the school or school district in which the
28 child is enrolled as a student, (2) the harm occurred during an activ-
29 ity sponsored by the school or school district in which the child is

1 enrolled as a student, or (3) the harm occurred on the premises of the
2 school in which the child is enrolled as a student or on the premises
3 of a school within the district in which the child is enrolled as a
4 student, the law enforcement agency shall notify the chief administra-
5 tive officer of the school or district in which the child is enrolled
6 immediately after the agency determines that a child has been abused
7 or neglected under the circumstances set out in this section, except
8 that if the person about whom the report has been made is the chief
9 administrative officer or a member of the chief administrative offi-
10 cer's immediate family, the law enforcement agency shall notify the
11 commissioner of education that the child has been abused or neglected
12 under the circumstances set out in this section. The notification
13 must set out the factual basis for the law enforcement agency's deter-
14 mination. If the notification involves a person in the teaching
15 profession, as defined in AS 14.20.370, the law enforcement agency
16 shall send a copy of the notification to the Professional Teaching
17 Practices Commission.

18 (g) A person required to report child abuse or neglect under (a)
19 of this section who makes the report to the person's job supervisor or
20 to another individual working for the entity that employs the person
21 is not relieved of the obligation to make the report to the department
22 as required under (a) of this section.

23 * Sec. 7. AS 47.17.022 is amended to read:

24 Sec. 47.17.022. TRAINING. (a) A person employed by the state
25 or a school district who is required under this chapter to report
26 abuse or neglect of children shall receive training on the recognition
27 and reporting of child abuse and neglect.

28 (b) Each department of the state and school district that em-
29 ploys persons required to report abuse or neglect of children shall

1 provide

2 (1) initial training required by this section to each new
3 employee during the employee's first six months of employment, and to
4 any existing employee who has not received equivalent training; and

5 (2) at least once every five years, appropriate in-service
6 training required by this section as determined by the department or
7 school district.

8 (c) Each department and school district that must comply with
9 (b) of this section shall develop a training curriculum that acquaints
10 its employees with

11 (1) laws relating to child abuse and neglect;

12 (2) techniques for recognition and detection of child abuse
13 and neglect;

14 (3) agencies and organizations within the state that offer
15 aid or shelter to victims and the families of victims of child abuse
16 or neglect; [AND]

17 (4) procedures for required notification of suspected abuse
18 or neglect;

19 (5) the role of a person required to report child abuse or
20 neglect and their employing agency after the report has been made; and

21 (6) a brief description of the manner in which cases of
22 child abuse or neglect are investigated by the department and law
23 enforcement agencies after a report of suspected abuse or neglect.

24 (d) Each department and school district that must comply with
25 (b) of this section shall file a current copy of its training curricu-
26 lum and materials [,] with the Council on Domestic Violence and Sexual
27 Assault. A department or school district may seek the technical
28 assistance of the council or the Department of Health and Social
29 Services in the development of its training program.

1 * Sec. 8. AS 47.17.023 is amended to read:

2 Sec. 47.17.023. REPORTS REGARDING CHILD PORNOGRAPHY. A person
3 who, in the course of processing or producing visual or printed mat-
4 ter, either privately or commercially, has reasonable cause to suspect
5 [REASON TO BELIEVE] that the matter visually depicts a child engaged
6 in conduct described in AS 11.41.455(a) shall immediately [PROMPTLY]
7 report this to the nearest law enforcement agency, and provide the law
8 enforcement agency with all information known about the nature and
9 origin of the matter.

10 * Sec. 9. AS 47.17.025(a) is amended to read:

11 (a) A law enforcement agency shall immediately notify the de-
12 partment of the receipt of a report of harm to a child from abuse
13 committed by a person responsible for the child's welfare. Upon
14 receipt from any source of a report of harm to a child from abuse
15 committed by a person responsible for the child's welfare, the depart-
16 ment shall notify the Department of Law and investigate the report
17 and, within 72 hours of the receipt of the report, shall provide a
18 written report of its investigation of the harm to a child from abuse
19 to the Department of Law for review.

20 * Sec. 10. AS 47.17 is amended by adding a new section to read:

21 Sec. 47.17.027. DUTIES OF SCHOOL OFFICIALS. If the department
22 or a law enforcement agency provides written certification to the
23 child's school officials that (1) there is reasonable cause to suspect
24 that the child has been abused or neglected by a person responsible
25 for the child's welfare or as a result of conditions created by a
26 person responsible for the child's welfare; (2) an interview at school
27 is a necessary part of an investigation to determine whether the child
28 has been abused or neglected; and (3) the interview at school is in
29 the best interests of the child, school officials shall permit the

1 child to be interviewed at school by the department or a law enforce-
2 ment agency before notification of, or receiving permission from, the
3 child's parent, guardian, or custodian. A school official shall be
4 present during an interview at the school unless the child objects or
5 the department or law enforcement agency determines that the presence
6 of the school official will interfere with the investigation. Immedi-
7 ately after conducting an interview authorized under this section, the
8 department or agency shall make every reasonable effort to notify the
9 child's parent, guardian, or custodian that the interview occurred
10 unless it appears to the department or agency that notifying the
11 child's parent, guardian, or custodian would endanger the child.

12 * Sec. 11. AS 47.17.040(b) is amended to read:

13 (b) Investigation reports and reports of harm filed under this
14 chapter are considered confidential and are not subject to public
15 inspection and copying under AS 09.25.110 and 09.25.120. However, in
16 accordance with department regulations, investigation reports may be
17 used by appropriate governmental agencies with child-protection func-
18 tions, inside and outside the state [ALASKA], in connection with
19 investigations or judicial proceedings involving child abuse, neglect,
20 or custody. A person, not acting in accordance with department regu-
21 lations, who with criminal negligence makes public information con-
22 tained in confidential reports is guilty of a class B misdemeanor.

23 * Sec. 12. AS 47.17.050 is amended to read:

24 Sec. 47.17.050. IMMUNITY. Except as provided in (b) of this
25 section, a [A] person who, in good faith, makes a report under this
26 chapter, permits an interview under AS 47.17.027, or [WHO] partici-
27 pates in judicial proceedings related to the submission of reports
28 under this chapter, is immune from [ANY] civil or criminal liability
29 that [WHICH] might otherwise be incurred or imposed, except that a

1 person who knowingly makes an untimely report is not immune from civil
2 or criminal liability based on the delay in making the report.

3 * Sec. 13. AS 47.17.050 is amended by adding a new subsection to read:

4 (b) Notwithstanding (a) of this section, a person accused of
5 committing the child abuse or neglect is not immune from civil or
6 criminal liability for the child abuse or neglect as a result of
7 reporting the child abuse or neglect.

8 * Sec. 14. AS 47.17.064(a) is amended to read:

9 (a) The department or a practitioner of the healing arts may,
10 without the permission of the parents, guardian, or custodian, take
11 the following actions with regard to a child who the department or
12 practitioner has reasonable cause to suspect has [BELIEVED TO HAVE]
13 suffered physical harm as a result of child abuse or neglect:

14 (1) take or have taken photographs of the areas of trauma
15 visible on the child; and

16 (2) if medically indicated, have a radiological examination
17 of the child performed by a person who is licensed to administer a
18 radiological examination.

19 * Sec. 15. AS 47.17.068 is amended to read:

20 Sec. 47.17.068. PENALTY FOR FAILURE TO REPORT. A person who
21 [KNOWINGLY] fails to comply with the provisions of [OR REFUSES TO
22 REPORT AS REQUIRED UNDER] AS 47.17.020 or 47.17.023 and who knew or
23 should have known that the circumstances gave rise to the need for a
24 report, is guilty of a class B misdemeanor.

25 * Sec. 16. AS 47.17.070(2) is amended to read:

26 (2) "child abuse or neglect" means the physical injury or
27 neglect, mental injury, sexual abuse, sexual exploitation, or mal-
28 treatment of a child under the age of 18 by a person [WHO IS RESPONSI-
29 BLE FOR THE CHILD'S WELFARE] under circumstances that [WHICH] indicate

1 that the child's health or welfare is harmed or threatened thereby;

2 * Sec. 17. AS 47.17.070(3) is amended to read:

3 (3) "child care provider" means an adult individual, in-
4 cluding a fo er parent or an employee of an organization, who pro-
5 vides care and supervision to a child for compensation or reimburse-
6 ment;

7 * Sec. 18. AS 47.17.070(6) is amended to read:

8 (6) "neglect" means the failure by a person responsible for
9 the child's welfare to provide necessary food, care, clothing, shel-
10 ter, or medical attention for a child;

11 * Sec. 19. AS 47.17.070(9) is amended to read:

12 (9) "practitioner of the healing arts" includes chiroprac-
13 tors, mental health counselors, dental hygienists, dentists, health
14 aides, nurses, nurse practitioners, occupational therapists, occupa-
15 tional therapy assistants, optometrists, osteopaths, naturopaths,
16 physical therapists, physical therapy assistants, physicians, physi-
17 cian's assistants, psychiatrists, psychologists, psychological associ-
18 ates, audiologists licensed under AS 08.11, hearing aid dealers li-
19 censed under AS 08.55, religious healing practitioners, and surgeons;

20 * Sec. 20. AS 47.17.070 is amended by adding new paragraphs to read:

21 (11) "criminal negligence" has the meaning given in AS 11.-
22 81.900;

23 (12) "immediately" means as soon as is reasonably possible,
24 and no later than 24 hours;

25 (13) "maltreatment" means an act or omission that results in
26 circumstances in which a child appears to be a child in need of aid,
27 as described in AS 47.10.010(a)(2), except that, for purposes of this
28 chapter, the act or omission need not have been committed by the
29 child's parent, custodian, or guardian;

1 (14) "mental injury" means an injury to the emotional well-
2 being, or intellectual or psychological capacity of a child, as evi-
3 denced by an observable and substantial impairment in the child's
4 ability to function;

5 (15) "reasonable cause to suspect" means cause, based on all
6 the facts and circumstances know to the person, that would lead a
7 reasonable person to believe that something might be the case;

8 (16) "school district" means a city or borough school dis-
9 trict or regional educational attendance area.
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FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
 Title: An Act relating to child abuse and neglect BRU: Council on Domestic Violence and Sexual Assault
 Sponsor: Senate Judiciary Component: _____
 Requestor: Senate Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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/PROG RCPT						
TOTAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

SB 450 requires that school districts file copies of their training curricula with the Council on Domestic Violence and Sexual Assault and may seek technical assistance of the Council. The Council would be pleased to provide assistance but, without additional funding, it will have to be by mail or phone.

Prepared by: Barbara Miklos, Executive Director
 Division: Council on Domestic Violence and Sexual Assault
 Approved by Commissioner: Arthur English
 Agency: Department of Public Safety

Phone: 465-4356
 Date: 2/12/90
 Date: 2-12-90
 Page 1 of 1

changes in CS SB 450 (J40) have no fiscal impact. This fiscal note is appropriate.

Handwritten initials and date: 2/12/90

S B

4 5 3



Alaska State Legislature

SENATE

Committee on Finance

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

April 16, 1990

TO: Representative Johnny Ellis, Chairman
House Health, Education and Social Services Committee

FROM: Senator John Binkley

RE: SB 453 - An Act allowing nonprofit associations to receive grants from the Department of Public Safety for a reward program to enforce alcoholic beverage control laws

SB 453 adds nonprofit associations to eligible grantees for reward programs dealing with apprehension and conviction of persons who violate the Alcohol Local Option Laws under Title 04.

Recognizing that bootlegging and other violations of the Alcohol Local Option Laws are very serious offenses, the Legislature established the Alcohol Reward and Enforcement Program in 1989. Thirteen local option communities subsequently applied for and received grants to operate reward programs.

By expanding the statute to allow nonprofits to participate in the reward program the benefits could be broadened to encompass more local option communities. It would also allow existing grantees to contract with their VPSO grantee for administrative support. Eighty-nine villages in Alaska have adopted one of the Alcohol Local Option Laws. Eleven nonprofits currently operate VPSO programs.

AVCP

Association of Village Council Presidents
P.O. Box 219 • Bethel, Alaska 99559 • Phone 543-3521

TESTIMONY BY THE ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS ON SENATE BILL NO. 453

The Association of Village Council Presidents (AVCP) is a non-profit Native corporation representing the interests of 56 Native Villages in the Yukon-Kuskokwim delta region of Southwest Alaska. AVCP administers, with State funding, the Village Public Safety Officer (VPSO) program for this area of Alaska. Through AVCP, 34 Villages in the region have a resident trained public safety officer. Without their local public safety officer, these Villages would be without trained law enforcement except for a handful of State Troopers miles and hours away in Bethel.

Among the local VPSO's duties is the prevention of the sale, importation, or possession of alcohol and other drugs in Villages where such activity is illegal. The importance of this VPSO responsibility cannot be overstated; the destructive effect of alcohol abuse on the Y-K delta is painfully obvious to all.

AVCP as the administer for the VPSO's is vitally concerned that these officers have all available help in combating illegal alcohol and drug activity. One very useful tool in this help is the reward program made possible through AS 18.65.085(c). Under this statute, municipalities and established villages can apply for and receive grants to reward those providing information leading to the

apprehension and conviction of bootleggers and others who violate alcohol laws.

However as that statute now reads, only municipalities and established Villages may apply for these grants. The amendment proposed by Senate Bill No. 453 would allow non-profit organizations to also apply for the reward grants. AVCP supports this amendment with the reservation that only non-profits who administer VPSO programs should be able to apply for the grants.

It is important that non-profits that administer VPSO programs be allowed to apply for reward grants. Quite simply, AVCP is in the best position to insure that the Villages which are served by VPSO's are granted the reward money. AVCP has the administrative capability to go through the mechanics of applying for the grants, to provide the necessary information to support the grants, and to follow up on the applications. To the contrary, many of the small, isolated Villages served by the VPSO program do not have the administrative infrastructure to successfully apply for these grants. For example, only 6 villages from the AVCP region applied for these grants last year. One of these Villages was disqualified because it failed to provide necessary information. If AVCP is allowed to apply for these grants, more Villages will benefit from the reward system; and remote village Alaska needs this program.

One of AVCP's major purposes in being is to provide the kind of administrative assistance to its Villages that

is required by the reward grant system. The State trusts AVCP to administer its VPSO program in southwest Alaska because of AVCP's ability to coordinate public safety efforts between the municipal governments, Tribal governments, State and city police, and the VPSO's. The State should also allow AVCP to apply for these grants, and help provide the administration and coordination that is necessary if the reward program is to really work in our region.

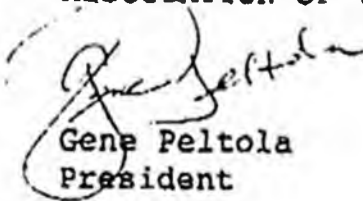
However, not all non-profits should be allowed to apply for these grants. As pointed out above, AVCP as the administrator of the VPSO program for the region is in a unique position as opposed to other non-profits to enhance the success of the rewards effort. There are 10 other non-profits in the State who also administer VPSO programs. Only these organizations should be allowed to apply for the grants along with the municipalities and Villages. Only these organizations have the experience and expertise to help administer and coordinate the reward effort.

Not only does it make no sense to open the grant process to organizations with no experience or current role in the public safety area, but to do so would create unnecessary competition with those most closely associated with local law enforcement. Also, opening the process to all non-profits would result in more applications, and an unnecessary increase in State expenditure to determine who gets the grants.

For the above reasons, AVCP urges that Senate Bill 453 be amended such that municipalities, Villages, and non-profit organizations administering VPSO programs be allowed to apply for reward grants. With such a change, AVCP strongly urges the passage of Senate Bill 453.

Respectfully submitted,

ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS



Gene Peltola
President

STATE OF ALASKA THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

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

SB 453

H. HESS

4/18/90

H HESS

4/23/90

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 9, 1990

FURTHER REFERRALS:

FINANCE

Date of Committee Action: 4/23/90

The HESS Committee considered:

SB 453

SENATE BILL NO. 453

REWARD/GRANTS FOR ALCOHOL LAW ENFORCEMENT

"An Act allowing nonprofit associations to receive grants from the Department of Public Safety for a reward program to enforce alcoholic beverage control laws."

RECOMMENDATIONS:

- be replaced with HCS SB 453 (HESS) the same title
- a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS: (Date/Dept)

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

- fiscal note(s) _____
- zero fiscal note(s) 3/16/90 AD5
- zero fn/analysis _____

SIGNING DO PASS:

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

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>[Signature]</u>			

[Signature]
Chairman's Signature

Original sponsor(s): SEN. BINKLEY, Zharoff

1 IN THE SENATE

2 HOUSE CS FOR SENATE BILL NO. 453 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act allowing nonprofit associations to receive
7 grants from the Department of Public Safety for a
8 reward program to enforce alcoholic beverage control
9 laws."

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

11 * Section 1. AS 18.65.085(c) is amended to read:

12 (c) The Department of Public Safety may establish and administer
13 a reward program, and provide grants to municipalities, [AND] estab-
14 lished villages, and at the request of a municipality or established
15 village to a nonprofit association that administers a village public
16 safety officer program, for reward programs[,] leading to the appre-
17 hension and conviction of persons who violate AS 04.11.010 by selling,
18 importing, or possessing alcoholic beverages in violation of an ordi-
19 nance adopted by a municipality or established village under AS 04.-
20 11.490 - 04.11.500.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
 Title: Reward/grants for alcohol law enforcement BRU: Alaska State Troopers
 Sponsor: Senators Binkley & Zharoff Component: Detachments
 Requestor: Senate C&RA

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact anticipated.

Prepared by: Francis C. Allan
 Division: Alaska State Troopers

Phone: 269-5691
 Date: 02/16/90

Approved by Commissioner: Arthur English
 Agency: Department of Public Safety

Date: 2-20-90
 Page 1 of 1

2/16/90

S B

4 5 5

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

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

SB 455

H. HESS

4/17/90

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 2, 1990

FURTHER REFERRALS:

STATE AFFAIRS

Date of Committee Action: 4/17/90

The HESS Committee considered:

CSSB 455 (FINANCE)

CS SB NO. 455 (Fin)

PROHIBIT ALCOHOL ADVERTISING ON RATNET

"An Act prohibiting advertising to promote the use or sale of alcoholic beverages on the satellite television project; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with HCSCS SB 455 (HESS) the same title
 have 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):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

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

- fiscal note(s) _____
 zero fiscal note(s) 3/26/90 / 5-Finance
 zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not
PASS
No Rec
Amend

[Signature]
[Signature]
Mark Boyer
[Signature]

SIGNING:	Do Not PASS	No Rec	Amend
<u>[Signature]</u>			
<u>Cheri Davis</u>		X	

[Signature]
Chairman's Signature

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSSB 455 (Finance)

Page 1, after line 9:

Insert a new bill section to read:

"* Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that

(1) alcohol abuse has taken a tremendous toll on the lives of Alaskans, interfering in a serious manner with the health, safety, rights, and privileges of Alaskans, and with the public welfare;

(2) there is a strong and unmistakable correlation between alcohol consumption and poor health, fetal damage, death, suicide, crime, family violence, family instability, and child abuse;

(3) Alaska's suicide rate is twice the national average and the rate for Alaska Natives is four times the national average; for 20 to 24 year old Alaska Natives the suicide rate is 26 times the national average; alcoholics have a 30 times greater risk of suicide than nonalcoholics; there is a detectable level of blood alcohol present in 79 percent of all Native Alaskan suicides and in 59 percent of all Alaskan suicides;

(4) Alaska Natives also have one of the highest fetal alcohol syndrome rates in the world;

(5) in order to combat the damaging effects of alcohol, many communities in the state have implemented Alaska's "local option laws" under which the communities elect to control the sale or possession of alcohol within their boundaries, yet these same communities find themselves

bombarded over the state satellite television project with advertisements for alcoholic beverages that associate an attractive and healthy image with the consumption of alcohol; and

(6) there exists a legitimate state interest in seeking to eliminate these advertisements from the state supported satellite television project.

(b) The legislature intends that the Rural Alaska Television Network Council and the Department of Administration should do everything possible to come to an agreement with broadcast companies and television networks to make it possible for advertisements promoting the use or sale of alcoholic beverages to be edited from the programming that is broadcast over the state satellite television project without losing the rights to broadcast the programming and without increasing the cost of the programming significantly."

Page 1, line 10:

Delete "Section 1"

Insert "Sec. 2"

Renumber the following bill sections accordingly.

Page 1, line 25:

Delete all material.

Insert new bill sections to read:

"* Sec. 4. NEGOTIATIONS. (a) The Department of Administration shall request that the major television networks permit the state to broadcast

programming over the state satellite television project without alcoholic advertisements and without significantly increasing the cost of the programming. The department shall invite the local television affiliates who are involved in broadcasting programs over the satellite television project to participate in the negotiations.

(b) The department shall report to the legislature by February 1, 1991, on the progress of the negotiations.

(c) If an agreement is entered into with a major television network, the department shall report to the governor and to the revisor of statutes concerning the terms of the agreement and the date on which the agreement takes effect.

* Sec. 5. Sections 1 and 4 of this Act take effect immediately under AS 01.10.070(c).

* Sec. 6. Sections 2 and 3 of this Act take effect only if, no later than January 1, 1992, an agreement is entered into with a major television network that permits the local television affiliates or other entities broadcasting programming over the state satellite television project to remove advertising that promotes the use or sale of alcoholic beverages from the programming without significantly increasing the cost of the programming to the state. If secs. 2 and 3 take effect, they take effect on the day on which the agreement first permits the editing of the programming."

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Prohibiting Alcohol
Advertising on RATNet
 Sponsor: Senator Binkley
 Requestor: _____

Agency Affected: Dept of Administration
 BRU: Information Services
 Components: RATNet

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Senator Rick Uehling, Co-chairman
 Division: Senate Finance Committee

Phone: 465-4821
 Date: 3/26/90

Approved by Commissioner: _____
 Agency: _____

Date: _____

Distribution (by preparer):

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

Senator John Binkley

Senate Finance Committee
P.O. Box V • Juneau, Alaska 99811 • (907) 465-4985

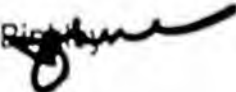


Finance Committee
Co-Chairman

MEMORANDUM

April 16, 1990

TO: Representative Johnny Ellis, Chairman
House Health, Education and Social Services Committee

FROM: Senator John Binkley 

RE: SB 455, prohibiting advertising to promote the use or sale of alcoholic beverages on the satellite television project

Thank you for scheduling the above-referenced bill. Under current law, the RATNet Council is the sole decision maker as to what programs will be broadcast on the state's network. SB 455 amends the statutes to state that the Council may not broadcast nor accept for broadcast any programming which contains advertising promoting the use or sale of alcoholic beverages. I do not feel it is appropriate for the state to subsidize these kinds of commercials when on the other hand, we spend hundreds of millions of dollars to combat the effects of alcohol abuse.

I've enclosed for the committee members' files copies of RATNet schedules, a memo prepared for my office by the Legislative Research Agency on this issue and a copy of a section of KTUU's affiliate agreement with NBC on editing network programs.

I am also offering an amendment to this bill for the committee's consideration. It sets forth Legislative Findings which show that the state does have a legitimate interest in seeing these advertisements removed from RATNet. It also gives clearer direction to the Department of Administration that it is to negotiate with the broadcast companies an agreement which will allow the local affiliates to edit alcohol advertisements prior to showing the programs on RATNet and to report to the legislature on the progress of the negotiations. The prohibition would only take effect if an agreement is reached with at least one broadcast company by January 1, 1992.

TABLE I
 BAINET PROGRAMMING SCHEDULES FOR SAMPLE WEEKS

MON/TUE/ 20, 1988	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
5:30	20 Minute Workout	20 Minute Workout	20 Minute Workout	20 Minute Workout	20 Minute Workout	All Night Programming 2-4 am	All Night Programming 2-4:30 a.m.
6:00	ABC World News	ABC World News	ABC World News	ABC World News	ABC World News	Cartoons	
6:30							Sunday Today
7:00	Good Morning America	Good Morning America	Good Morning America	Good Morning America	Good Morning America		
7:30							Cartoons
8:00							Sesame Street
8:30							
9:00	Wheel of Fortune	Wheel of Fortune	Wheel of Fortune	Wheel of Fortune	Wheel of Fortune		
9:30	Sally Jessy Raphael	Sally Jessy Raphael	Sally Jessy Raphael	Sally Jessy Raphael	Sally Jessy Raphael		
10:00	Muppet Babies	Mighty Mouse	Flintstones	Fraggle Rock	Flintstones	College Basketball	College Basketball
10:30	Muppet Babies	NASA Launch Vehicle Prep	Mighty Mouse	The New Archies	Sho Ra		
11:00	Sesame Street		Sesame Street	ID/Sesame Street	Sesame Street		
11:30		Dennis the Menace					
12:00	All My Children	All My Children	All My Children	All My Children	All My Children	College Basketball	
12:30							
1:00	The Price is Right	The Price is Right	The Price is Right	The Price is Right	The Price is Right		
1:30							
2:00	General Hospital	General Hospital	General Hospital	General Hospital	General Hospital	College Basketball	
2:30							
3:00	Mr. Rogers	Mr. Rogers	Mr. Rogers	Mr. Rogers	Mr. Rogers		
3:30	Governor's Window	Governor's Window	Governor's Window	Governor's Window	Governor's Window		
4:00	3-2-1 Contact	3-2-1 Contact	AK Delegation Report	3-2-1 Contact	3-2-1 Contact		
4:30	News Clips	News Clips	News Clips	News Clips	News Clips		
5:00	Capital '88	Capital '88	Capital '88	Capital '88	Capital '88	Star Trek: The Next Generation	Lorna Greene's Wilderness 1987 Native Musical
5:30	Brainiac	Mr. President	Growing Pains	Full House	227		
6:00	NBC News Nightly	NBC News Nightly	NBC News Nightly	NBC News Nightly	NBC News Nightly	NBC News Nightly	NBC News Nightly
6:30	UNMO News 12	Channel 2 News	Channel 2 News	UNMO News	UNMO News	Channel 2 News	Channel 2 News
7:00	Alaska Weather	Alaska Weather	Alaska Weather	Alaska Weather	Alaska Weather	Dolly	Sixty Minutes
7:30	A Different World	Hangman	All	Movie	Conky Show		
8:00	Superman's 50th Birthday	Arctic Winter Games	Arctic Winter Games		Dallas	Day By Day	Arctic Winter Games
8:30		Out Mouse, Pt. 1	Idolized Finish			Arctic Winter Games	Day By Day
9:00	Idolized Update/Movie				20/20	MacGyver	Movie
9:30		Cheers	Arctic Games/Arctic				
10:00		Idolized Update/Moonlighting	Dynasty	Arctic Winter Games	Arctic Winter Games	L.A. Law	
10:30					North America's Sled Dog Race		
11:00	Channel 2 News	Channel 2 News	Channel 2 News	Channel 2 News	Channel 2 News	N Amer Sled Dog Race	N Amer Sled Dog Race
11:30	Alaska	ABC Nightline	Perfect Strangers	Mama's Family	Miami Vice	Boys Will Be Boys	She's the Sheriff
12:00		Married With Children	Stop Maxwell	Thirtysomething		St. Elmo's Fire	Hunter
12:30	Spanner, for Pete	Sony Span	Late Night Space Hunter		Friday Night Videos		
1:00				Tracey Ullman		Night Court	Warren
1:30	ID and Disclaimer	ID and Disclaimer	ID and Disclaimer	ID and Disclaimer		ID & Alcohol Disclaimer	ID & Disclaimer
2:00	UAA TAPE FEED		UAA TAPE FEED	All Night Programming	All Night Programming	All Night Programming	

TABLE 1 (Continued)
 RATNEI PROGRAMMING SCHEDULES FOR SAMPLE WEEKS

October 16, 1988	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
5:30	20 Minute Workout	20 Minute Workout	20 Minute Workout	20 Minute Workout	20 Minute Workout	All Night Programming 2-4 am	All Night Programming 2-4:00 a.m.
6:00	ABC World News	ABC World News	ABC World News	ABC World News	ABC World News	Concours: Heavy & Cool	Concours: Heavy & Cool
6:30	Business This Morning	Business This Morning	Business This Morning	Business This Morning	Business This Morning	Wonders the Front	Wonders the Front
7:00	Good Morning America	Good Morning America	Good Morning America	Good Morning America	Good Morning America	The Real Ghostbusters	The Real Ghostbusters
7:30							
8:00	NFL League Baseball	NFL League Baseball	NFL League Baseball	NFL League Baseball	NFL League Baseball		
8:30							
9:00	General Hospital	General Hospital	General Hospital	General Hospital	General Hospital	Concours: Gorbald	Concours: Gorbald
9:30						Mr. Rogers	Mr. Rogers
10:00	Concours: Kyrby	Concours: Kyrby	Concours: Kyrby	Concours: Kyrby	Concours: Kyrby	Mr. Veron, It's Ernie!	Mr. Veron, It's Ernie!
10:30	Flintstones	Flintstones	Flintstones	Flintstones	Flintstones	Mr. Veron, It's Ernie!	Mr. Veron, It's Ernie!
11:00	Growing Pains (Home KMO Sub)	Growing Pains (Home KMO Sub)	Growing Pains (Home KMO Sub)	Growing Pains (Home KMO Sub)	Growing Pains (Home KMO Sub)	Mr. Veron, It's Ernie!	Mr. Veron, It's Ernie!
11:30	For Close to Combat	For Close to Combat	For Close to Combat	For Close to Combat	For Close to Combat	Mr. Veron, It's Ernie!	Mr. Veron, It's Ernie!
12:00	The Price is Right	The Price is Right	The Price is Right	The Price is Right	The Price is Right	World Series Baseball	World Series Baseball
12:30	General Hospital	General Hospital	General Hospital	General Hospital	General Hospital		
1:00	Mr. Rogers	Mr. Rogers	Mr. Rogers	Mr. Rogers	Mr. Rogers		
1:30	Governor's Window	Governor's Window	Governor's Window	Governor's Window	Governor's Window		
2:00	3-2-1 Contact	3-2-1 Contact	3-2-1 Contact	3-2-1 Contact	3-2-1 Contact		
2:30	Andy Galka	Andy Galka	Andy Galka	Andy Galka	Andy Galka		
3:00	Twilight Zone	Twilight Zone	Twilight Zone	Twilight Zone	Twilight Zone		
3:30	Beantubed	Beantubed	Beantubed	Beantubed	Beantubed		
4:00							
4:30							
5:00							
5:30							
6:00	KMO Statewide News	KMO Statewide News	KMO Statewide News	KMO Statewide News	KMO Statewide News		
6:30	NBC News Nightly	NBC News Nightly	NBC News Nightly	NBC News Nightly	NBC News Nightly		
7:00	NFL Football	NFL Football	NFL Football	NFL Football	NFL Football		
7:30							
8:00							
8:30							
9:00							
9:30							
10:00	The Hogan Family	The Hogan Family	The Hogan Family	The Hogan Family	The Hogan Family		
10:30	Parish Strangers	Parish Strangers	Parish Strangers	Parish Strangers	Parish Strangers		
11:00							
11:30	Channel 2 News	Channel 2 News	Channel 2 News	Channel 2 News	Channel 2 News		
12:00	Carey Music Awards Special	Carey Music Awards Special	Carey Music Awards Special	Carey Music Awards Special	Carey Music Awards Special		
12:30							
1:00	Q and Disclaimer	Q and Disclaimer	Q and Disclaimer	Q and Disclaimer	Q and Disclaimer		
1:30							
2:00							

Note: Actual programming occasionally varies due to sports or news events running over their allotted times.
 Source: Department of Administration/Division of Telecommunications programming log.
 Prepared by the Legislative Research Agency, November 1989 [90-032A.B.C.]

Alaska State Legislature

Legislative Research Agency



P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 183-3991
Fax: (907) 183-3351

January 8, 1989

MEMORANDUM

TO: Senator John Binkley

ATTN: Janice Adair

FROM: Sheila F. Helgath *SH*
Legislative Analyst

RE: Alcohol Advertising on RATNET
Research Request 90.052

You requested this agency to investigate the possibility of removing alcohol advertisements from programming broadcast by Rural Alaska Television Network (RATNET). Also you requested that a House Research Agency memorandum to Representative Clocksin on liquor advertising be updated. Finally, you wanted to know the arguments that are made for and against alcohol advertising.

Three arguments have been advanced by RATNET staff and representatives of local television stations (network affiliates) against the removal of alcohol advertising from RATNET: (1) a contract between the state of Alaska and the networks and separate contracts between affiliates and the networks prohibit removal; (2) Alaska state law and Federal Communications Commission (FCC) regulations prohibit removal of advertising in programming; and (3) the technical feasibility of removing all the advertisements would make the costs prohibitive. Each argument is discussed below. They may be surmountable if the state of Alaska desires to remove alcohol advertising from RATNET.

RATNET BROADCAST TECHNOLOGY AND THE "CONTRACTS"

RATNET staff and network affiliates say that two sets of contracts exist which prohibit the removal of advertising from RATNET programming. The first is a verbal agreement between the ^{SP} of Alaska, the affiliates and the networks. The second is a set of operating agreements between the affiliates and the networks. The origin of these contracts and changes in technology and corporate structure affecting them are explained below.

RATNET is the state-subsidized television system which transmits programs to areas of Alaska that do not receive commercial television. Programs are obtained from the networks (ABC, CBS, and NBC) through their local affiliates (stations) in Anchorage. At present, programs are transmitted from the networks' television satellite to the RATNET center located in Anchorage. These transmissions are redirected to receivers in rural Alaska.

Senator John Binkley
January 8, 1990
Page 2

Satellite transmissions did not exist in 1977 when the of Alaska agreed to buy tapes of network news programs and some sporting events. These tapes were then broadcast in urban areas by the affiliate network stations and in rural Alaska by RATNET. In return, the networks gave other programming free of charge to the of Alaska for use on the RATNET system. There was a "gentlemen's agreement" that the ~~state~~ would accept the programming from beginning to end, or "credit to credit", including the advertising. This verbal agreement was reached in 1977 among state personnel, representatives of local affiliates and representatives of the networks at a meeting in New York.

I have made repeated requests for copies of any written material which would confirm that a verbal agreement existed. Staff of neither RATNET or the affiliates were able to provide written documentation. However, both RATNET and affiliate staff affirm that a "gentleman's agreement" existed that bound the state to use programming "credit to credit." After 1984, when direct satellite transmission became available to the affiliates, it was no longer necessary to use and therefore purchase tapes. The continuing validity of this verbal agreement, with the passage of time and many changes in technology since it was made, should be carefully analyzed by legal staff.

The other set of contracts that may inhibit the affiliates' cooperation in the removal of alcohol advertisements is between the affiliates and the networks. The affiliates argue that in their contracts with the networks they have agreed to protect the programs from credit to credit, including advertising. Recent corporate changes at the networks have given the affiliates greater freedom to control programming. According to a New York-based network executive, who requested anonymity, the affiliates have considerable latitude in this area. Because these are contracts between private parties, copies of the contracts were not made available to verify these assertions.

RATNET officials and affiliate management also argue that "common practices exist in broadcasting" which prohibit using part of a program without presenting all of the program including advertising. Some of the broadcasters at the Anchorage stations implied that if the advertising were removed, the networks might be inclined to revoke permission for the to use any of their programming. I was unable to obtain written documentation that the networks would respond in this manner or to otherwise verify this possibility.

ALASKA LAW AND FCC REGULATIONS

Alaska State Statutes and Federal Communication Commission Regulations have been advanced as reasons why the state can not prohibit alcohol advertising on RATNET.

Alaska Statutes

John Morrone, Deputy Director for the Division of Telecommunications, stated that Alaska law would prevent removal of advertising from RATNET, even if there were no contract obligations, unless the RATNET Council agrees. He referred to AS 44.21.320 (c) and (d) which state:

(c) Decisions and policies relating to programming under the satellite television project, including scheduling and allocation policies, may not be made by the department, but may only be made by a network that is representative of participating rural television users, by commercial broadcast users or by other affected participating user groups and entities under procedures provided by statute or, if no statute applies, then by agreement of the affected user networks or groups. The department shall assist users in preparing agreements that may be required under this subsection.

(d) The department may not engage in any activity which interferes with a contract or program right relating to commercial television programming, including but not limited to any right protected by copyright.

According to Mr. Morrone, Subsection (c) means that only the RATNET Council has the authority to control programming subject to any agreements that have been made with affected networks or groups. The issue of removing alcohol advertisements was brought before the RATNET Council on February 19, 1988. The council heard from Mr. Morrone who presented the three arguments stated earlier in this memorandum against removal of advertisements. No action was taken by the council. However, attorneys at both the Attorney General's Office and Legislative Legal Services have indicated that the legislature could specifically direct the RATNET Council to prohibit alcohol advertising with a simple amendment to this subsection.

Subsection (c) refers to contracts and program rights which have the potential to affect removal of alcohol advertisements. As suggested earlier, the validity of a twelve-year-old verbal agreement may be questionable. Similarly subsection (d) hinges on whether a valid contract between the state and network exists and what is implied in programming rights. Legislative Legal Services might be requested for an opinion on the validity of the verbal contract and how subsection (d) relates.

Federal Communication Commission (FCC) Regulations

Transmissions across state boundaries are regulated FCC. Several of the broadcast affiliates, RATNET personnel, and House Research memoranda have asserted that FCC regulations exist which prohibit removal of advertisements.

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January 8, 1990
Page 4

I have asked the above parties to identify the regulation, but no one can cite the reference. Louise Stewart, Public Affairs Specialist for the FCC in Anchorage, said that FCC regulations would not prohibit the state of Alaska from removing liquor advertisements. The FCC considers what happens to programming to be a transaction between "private parties"--in other words it is an unregulated agreement between the state of Alaska, the affiliates and the networks. I also spoke with staff in Senator Glenn's office. Senator Glenn is chair of the Governmental Affairs Committee which has oversight of the FCC. It was their opinion that there is nothing in the FCC law that prevents the state from removing alcohol advertising.

TECHNICAL FEASIBILITY AND COST

The final case against removing liquor advertising from RATNET is the technical difficulty and expense of doing so.

Technically, there are two ways to eliminate alcohol advertising from RATNET. The most expensive means is to "tape delay" the programming. The station would tape all the programs coming off the satellite and then edit it and remove alcohol advertisements. It is the most effective way to insure all of the targeted advertising is removed. RATNET staff object to this approach because they are trying to bring current programming, such as live football and news telecasts, to rural residents.

*no news
telecasts
would have
alcohol ads*

The other way to remove the advertising is to have an engineer at the RATNET Alaska receiving station remove the advertisements as they are being transmitted from the satellite to the other stations. RATNET staff object to this approach because it would leave gaps in the programming which would be difficult and expensive to fill. RATNET officials say it would be difficult to toggle 100 percent of the advertisements since they do not know when alcohol advertisements will come through in the programming. Nancy Long, Production Manager for KTOO, offered this suggestion. RATNET staff could target evenings, weekends, and sports events. This method would require additional equipment such as a tape machine, time base corrector, and switches, costing about \$100,000 and an engineer to toggle the switches and put the replacement tapes on the air. RATNET memoranda state that it would require five AV Technicians I and two editing bays for a cost of \$255,440 the first year (see attached memorandum). Selective targeting of weekend sports and evening programming might reduce these costs and get the majority of the advertisements out of the programs.

Other technical and cost reduction possibilities exist and could be explored. Senator Glenn's staff told of a barcoding mechanism which would warn the receivers ahead of time when alcohol advertisements were being transmitted. Beer marketing executives said they had mechanisms (used to test the effectiveness of commercials) which selectively send and receive

Senator, John Binkley
January 8, 1990
Page 5

advertisements. These are some of the technological possibilities available to RATNET staff to remove the majority of alcohol advertisements from programming. Federal grant money might be used to reduce the cost of alternative programming. The Center for Science in the Public Interest has identified federal funding for anti-drinking public service announcements that target minority groups. RATNET or another entity in the state might be able to use grant funds to produce public service announcements. Use of federal grant money would lower the cost of filling the gaps left by eliminating alcohol advertisements.

PRO ALCOHOL ADVERTISING POSITIONS

The primary lobbying position of the alcohol industry is that it self-regulates its advertising and therefore government should not. The spirits industry allows coolers (6% or less alcohol in content) and beer to be advertised in the broadcast media. The industry is very concerned about any legislation that might set a precedent. Therefore they oppose limiting alcohol advertising in areas that are "dry" such as rural Alaska.¹ Industry spokesmen claim that there is no scientific evidence showing that advertising promotes drinking to "excess." It is their claim that they are advertising only for a market share of people who already drink.

The industry maintains that controlling advertising violates free speech. The industry has aggressively challenged attempts to control limitations on free speech through court challenges. Attached is the "briefing book" obtained from the Anheuser Busch lobbyist which documents the industry positions and includes a list of the court cases that have been favorable to its position. The state of Alaska could expect a court challenge by the industry to any efforts to remove advertising. Issues in such a challenge might include the following: Is the removal of advertisements from a state subsidized television broadcast an inhibition of an individual's right to free speech or control of commercial speech? Does the state's right to protect the welfare and health of its citizenry counterbalance the free speech issue? Does the local options law which allows communities to control the sale and possession of alcohol affect this issue?

ANTI-ALCOHOL ADVERTISING PERSPECTIVE

Those who oppose any form of alcohol advertising on television believe that alcohol advertising is targeted at non-drinkers, light drinkers, ethnic

¹The Beer Institute is the lobbying group that represents the pro-alcohol advertising stance. I was directed by institute staff to contact the Anheuser Busch company which is the largest beer advertiser.

minorities, women and youth. Those targeted have traditionally had low per capita consumption. The Center for Science in the Public Interest (CSPI) has written a short but pointed book titled The Booze Merchants: The Inebriating of America which details the advertising strategies of the alcohol industry². Excerpts from this book are attached. The authors stress the use of marketing which promotes the use of alcohol to obtain a glamorous lifestyle. Researchers identify patterns of values, norms, and behaviors in a sub-group of the population which marketing specialists then tie to their product through advertising. For example, if a young person wanted to be successful with friends and the opposite sex, the car or a beverage being sold is associated with a party.

Other alcohol advertisements encourage people who already drink to drink on a daily basis and at times other than the "normal" times such as weekends, parties, or special events. These advertisements are designed to encourage people to drink every day and promote the idea that alcohol beverages are like soft drinks, fruit juice and similar beverages. The Booze Merchant authors also pointedly suggest that advertisements are targeted at heavy drinkers to convince them to continue drinking. If heavy drinking were eliminated, a 40% drop in sales would occur. In short, CSPI refutes the claims made by the industry that advertising is for a market share. CSPI asserts that alcohol advertising is for market expansion.

The free speech arguments seem the least troubling to anti-alcohol advertising advocates. A precedent has been set nationally with the removal of cigarette advertisements from broadcast media. CSPI staff suggested that the argument about free speech might be countered with an argument for the state's right to protect the health and safety of the public. Further they argue that two recent Supreme Court Cases clearly delineate the right to control commercial speech versus the right of individual speech. These cases are Posadas de Puerto Rico Association vs. Tourism Company Puerto Rico 478 US 328 1986 and Board of Trustees of University vs. Fox 57 USLW 5015 (June 29, 1989)³.

²The Center for Science in the Public Interest is the lead lobbying group nationally against alcohol advertising. CSPI is a non-profit health advocacy group with ties to the American Medical Association, National Council on Alcoholism, the National Parent Teachers Association, the American Academy of Pediatrics and others.

³Legislative Research Agency is in the process of obtaining an analysis of these two cases.

Senator, John Binkley
January 8, 1990
Page 7

SUGGESTIONS FOR FURTHER ACTION

Arguments advanced against the legality and practicality of removing liquor advertisements, although forcefully made, may not be definitive in the opinion of some knowledgeable people with whom I spoke.

If further investigation of this matter is pursued, it might include:

- . legal research into the nature of contractual agreements between the of Alaska and the networks, and between the networks and affiliates;
- . legal interpretation and possible amendment to AS 44.21.320;
- . analysis of the fiscal impact on RATNET of editing transmissions.

PERSONAL COMMUNICATIONS

Bramstedt Jr., Al, Channel 2 Anchorage Broadcaster, Telephone Conversation September 9, 1989.

Hiebert, Augie, Channel 11 Anchorage Broadcaster, Telephone Conversation, September 9, 1989.

Cramer, Terry, Legal Services Lawyer, Legislative Affairs Agency, Telephone Conversation, December 26, 1989.

Lauber, Richard, Lobbyist, Anheuser Busch Inc., Interview and Telephone Conversations, September-December, 1989.

Long, Nancy, KTOO Production Manager, Telephone Conversation, September 1989.

Morrone, John, Deputy Director Division of Telecommunications, Interview about RATNET on September 9, 1989.

Randelett, B. J., Channel 13 Anchorage Broadcaster, Telephone Conversation September 12, 1989.

Stewart, Louise, Public Affairs Specialist, Federal Communications Commission, September 9, 1989.

Taylor, Pat, Director, Alcohol Policies Project, Center For Science in the Public Interest, Telephone Conversations, September-December, 1989.

Wagner, Tom, Assistant Attorney General, Alaska Attorney General's Office, Telephone Conversation, December 25, 1989.



NBC

- (e) Compensation for a program which was interrupted may be adjusted.
- (f) NBC reserves the right to change at any time the Network Station Rate of the station. If NBC increases the Network Station Rate, such increased rate shall be used in computing the compensation due you on business actually sold by NBC at such increased rate. If NBC decreases the Network Station Rate, and if such decrease is part of a general rate revision on the NBC Television Network, such decreased rate shall be used in computing the compensation due you provided NBC has given you at least ninety (90) days' written notice of its intention so to decrease such rate.

In the event of such decrease you may terminate this agreement as of the effective date of such decrease by giving NBC written notice within thirty (30) days after the receipt of NBC's notice to you of such reduction; provided, however, you shall not be entitled to terminate this agreement pursuant to this provision if the general rate decrease is attributable to substantially adverse increase(s) in the network's music performance rights payment.

6. From time to time NBC will offer to Station commercial positions within network programs available for local sale. If Station sells any such positions, it will pay NBC the cooperative program charges quoted Station in NBC's offer of the positions.

7. You shall not be obligated to continue to broadcast nor shall NBC be obligated to continue to furnish, subsequent to the termination of this agreement, any programs which NBC may have offered and which you may have accepted during the term hereof.

8. Your broadcast of NBC Television Network programs hereunder shall be subject to the following terms and conditions:

- (a) you will not without NBC's prior written authorization make any deletions from or additions to any program furnished to you hereunder, or broadcast any commercial or other announcements during any such program. ←

For purposes of identification of Station with NBC programs, and until written notice to the contrary is given by NBC, Station may superimpose on various NBC entertainment programs, where designated by NBC, a single line of type, not to exceed 50 video lines in height

S B

4 6 4

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Requiring new public schools
 built in certain communities...
 Sponsor: Zharoff
 Requestor: Senate HESS

Agency Affected: Education
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Changes in CSSB 464 (HESS) have no fiscal impact. This fiscal note is appropriate. Projections of no fiscal impact would continue through 1996.

DCM - S - HESS

Prepared by: Mary Hakala Phone: 465-2800
 Division: Commissioner's Office Date: 3/5/90
 Approved by Commissioner: William G. Demmert Date: 3/5/90
 Agency: Education

Distribution (by preparer):

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

Changes in CSSB 464 (Fin) have no fiscal impact. This fiscal note is appropriate. *3/21/90*

SB

510

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Sex education and the teaching
of abstinence in sex education
Sponsor: Senate HESS
Requestor: Senate HESS

Agency Affected: Education
BRU: Educational Program Support
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Changes in CS SB 510 HESS
have no fiscal impact. This
fiscal note is appropriate.
Projections of no fiscal impact
would continue through 1996.

DCM - S - HESS

Prepared by: Mary Hakala
Division: Commissioner's Office
Approved by Commissioner: William G. Denmark
Agency: Education

Phone: 365-2800
Date: 3/14/90
Date: 3/14/90

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

S B

5 2 4

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 25, 1990

FURTHER REFERRALS:

Date of Committee Action: 4/30/90

The HESS Committee considered:

CSSB 524 (JUDICIARY)

CS SB NO. 524 (Jud)

EMERGENCY MEDICAL & AMBULANCE SERVICES

"An Act relating to ambulance and emergency medical services provided by municipalities, nonprofit medical service corporations, or nonprofit associations."

RECOMMENDATIONS:

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

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:
(Date/Dept)

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

- [] fiscal note(s) _____
- 2 [X] zero fiscal note(s) 3/30/90 (DCB) / 4/25/90 (CDB)
- [] zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

Do Not Pass No Rec Amend

J. Ellis

W. Larnace

Arthur...

Cheri...

Mark...

J. Ellis

Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: 3/14/90 Agency Affected: Health and Social Services
 Title: SB 524, Ambulance & Emergency Medical Services BRU: State Health Services
 Sponsor: Judiciary Components: EMS Training and Licensure
 Requester: Labor & Commerce Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
----------------	------------	------------	------------	------------	------------	------------

REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
----------------	------------	------------	------------	------------	------------	------------

FUNDING: (Thousands of Dollars)

General Funds						
Federal Funds						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary						

ANALYSIS: (attach a separate page if necessary)
 No fiscal impact in FY 90.

Prepared By: Kati Kelley, Dr. P. H.
 Division: Public Health
 Approved By Commissioner: Myra Munson
 Agency: Health and Social Services

Phone: 465-3090
 Date: 04/09/90
 Date: 4/17/90

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Economic Dev.
 Title: An Act relating to ambulance and emergency medical services provided by municipalities . . . BRU: Insurance
 Sponsor: Labor & Commerce Committee Components: _____
 Requestor: Senate Judiciary Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

No impact in FY 90

Prepared by: Joan Brown, Administrative Officer Phone: 465-2597
 Division: Insurance Date: 3/27/90

Approved by Commissioner: Larry Merculieff Date: 3/27/90
 Agency: Department of Commerce & Economic Development

Distribution (by preparer):

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

JB/dg165980
32790a

Changes in CS SB 524 (Jud) have no fiscal impact. This fiscal note is appropriate. Projections of no fiscal impact page 1 of 1 would continue through 1996.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Economic Dev.
 Title: An Act relating to ambulance and emergency medical services provided by municipalities BRJ: Insurance
 Sponsor: Senate Labor & Commerce Comm. Components: _____
 Requestor: House C&RA Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

No impact in FY 90

Prepared by: Joan Brown, Administrative Officer Phone: 465-2597
 Division: Insurance Date: 4/24/90

Approved by Commissioner: *Early Mercurieff* Date: 4-25-90
 Agency: Department of Commerce & Economic Development

Distribution (by preparer):

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

JB/dg165980/042590b

Position Paper

Senate Bill No. 524

For an Act entitled: "An Act relating to ambulance and emergency medical services provided by municipalities, nonprofit medical service corporations, or nonprofit associations."

SB 524 would exempt municipal and nonprofit emergency medical services from the provision of AS 21.87, which requires that any organization which provides health care services on a prepaid basis must be incorporated as a nonprofit medical or hospital service corporation, and must apply annually for a certificate of authority and pay a fee of \$1,000.

Background

The reason for the amendment under SB 524 is that at least two ambulance services in Alaska have established membership programs that, in exchange for a fixed annual fee, cover the uninsured portion of the ambulance bill. The Division of Insurance has ruled that these programs fall under the requirements of AS 21.87. This requirement places an undue hardship on volunteer ambulance services in paperwork and financial outlay. For example, the Ninilchick Community Ambulance Association sold memberships to 90 households at \$50.00 each for a total income of \$4,500. The \$1,000 fee alone would take 22% of the revenue from this program. The intent of AS 21.87 is to provide consumer protection for the subscribers of health maintenance organizations (HMO's) and preferred provider organizations. In those cases, the risk to the consumer can be considerable. However, with an ambulance service, the service is always provided whether or not the person can pay for it. The EMS Section in the Department of Health and Social Services, through the regional EMS grantee agencies, provides some financial support to small volunteer ambulance services, but most funding for these services comes from fees for service, and local subsidies or fund raising efforts.

The benefit of a membership program to ambulance services is to provide an injection of cash, provide some prior information on insurance coverage of members, and to provide the community with an opportunity to support the local ambulance service. Similar programs have worked successfully in other states.

Position Paper

Senate Bill No. 524

For an Act entitled: "An Act relating to ambulance and emergency medical services provided by municipalities, nonprofit medical service corporations, or nonprofit associations."

SB 524 would exempt municipal and nonprofit emergency medical services from the provision of AS 21.87, which requires that any organization which provides health care services on a prepaid basis must be incorporated as a nonprofit medical or hospital service corporation, and must apply annually for a certificate of authority and pay a fee of \$1,000.

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HOUSE COMMITTEE REPORT

(5)

Date Referred: April 5, 1990,

FURTHER REFERRALS:

HESS

Date of Committee Action: 4/24/90

The COMMUNITY & REGIONAL AFFAIRS Committee considered: CSSB 524 (JUD)

CS SB NO. 524 (Jud)

EMERGENCY MEDICAL & AMBULANCE SERVICES

"An Act relating to ambulance and emergency medical services provided by municipalities, nonprofit medical service corporations, or nonprofit associations."

RECOMMENDATIONS:

- be replaced with _____ the same title
- have 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): _____
(Dept)

APPROVES PREVIOUS: _____
(Date/Dept)

- fiscal impact _____ fiscal note(s) _____
- zero fiscal note Commerce & Econ. Dev. zero fiscal note(s) _____
- zero with analysis _____ zero fn/analysis _____

SIGNING DO PASS:

Eileen S. Mackey

Eugene G. Kubina

SIGNING:
(Check approp. column)

	Do Not PASS	No Rec	Amend
<i>Cheri Davis</i>	x		

E.P. Mackey

 Chairman's Signature

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POSITION PAPER/Department of Health & Social Services

Position

The Department of Health and Social Services supports SP 524.

Recommended by: *Katherine A. Kelley*

Katherine A. Kelley, Dr. P.H.
Director
Division of Public Health

Date: April 19 1990

Approved by: *Myra M. Munson*

Myra M. Munson
Commissioner
Department of Health and Social Services

Date: April 19 1990

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Recommended by: *Katherine A. Kelley*

Katherine A. Kelley, Dr. P.H.
Director
Division of Public Health

Date: April 19 1990

Approved by: *Myra M. Munson*

Myra M. Munson
Commissioner
Department of Health and Social Services

Date: April 19 1990

HOUSE COMMITTEE REPORT

(5)

Date Referred: April 5, 1990.

FURTHER REFERRALS:

HESS

Date of Committee Action: 4/24/90

The COMMUNITY & REGIONAL AFFAIRS Committee considered: CSSB 524(JUD)

CS SB NO. 524 (Jud)

EMERGENCY MEDICAL & AMBULANCE SERVICES

"An Act relating to ambulance and emergency medical services provided by municipalities, nonprofit medical service corporations, or nonprofit associations."

RECOMMENDATIONS:

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ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- fiscal impact _____ fiscal note(s) _____
- zero fiscal note Commerce & Econ Dev. zero fiscal note(s) _____
- zero with analysis _____ zero fn/analysis _____

SIGNING DO PASS:

Eileen S. Mackey
Eugene G. Kubisa

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>Cheri Davis</u>	x		

E.P. Mackey
Chairman's Signature

Southern Region
EMERGENCY
Medical Services Council, Inc.

December 11, 1989

Jim Jordan, Acting Director
Division of Insurance
3301 C Street, Suite 740
Anchorage, AK 99503-5990

Dear Mr. Jordan:

I would like to get the Division's opinion whether or not ambulance service membership programs are in compliance with the State's insurance laws and regulations. Specifically, I would like your opinion regarding the attached contract to be used by the Ninilchik Community Ambulance Association.

An ambulance service membership program, also known as a subscription program, has the following characteristics:

1. Member pays an annual fee, e.g. \$50.00 per family.
2. Fee covers out-of-pocket expenses for medically necessary ambulance service.
3. The ambulance service bills all third party payors who provide coverage to member.
4. Contract clearly states that this is not an insurance contract.

These type programs are rapidly expanding throughout the lower 48. There is increasing interest in them here in Alaska. Ambulance services have been heavily subsidized by local and state government. With the decline in support from those quarters they now see the need to begin charging their patients the real cost of providing the service. They want to be able to offer an option to the members in the community that mitigates the impact of increasing fees.

For your information I have enclosed a Medicare letter ruling on membership programs and the section from the Medicare manual dealing with these programs. I have also enclosed an article on the programs by Jack Stout, a leading national consultant on implementing these programs.

Other states where these programs currently operate include Arizona, Oregon, Texas, Oklahoma, and Michigan.

The Ninilchik Community Ambulance Association intends to begin selling memberships on January 1, 1990. The contract is modeled on the contract used by Medstar in Fort Worth, Texas. They have agreed to refund all of the

EMS letter 12/11/89
to Div. of Insurance



6325 Security Boulevard
Baltimore, MD 21207

JUN 3 1986

Mr. David M. Werfel
1320 Stony Brook Road
Suite 213
Stony Brook, New York 11790

Dear Mr. Werfel:

This is in reply to your recent letter asking whether an ambulance company commits a criminal violation of the bribe, kickback and rebate provisions of section 1877(b) of the Social Security Act if it furnishes services under an annual subscription agreement, accepts assignment for all Medicare covered services furnished to agreement subscribers, and routinely does not bill the subscribers for applicable deductible and coinsurance amounts.

Services furnished by an ambulance company under a subscription agreement calling for payment of an annual membership fee may be covered under Medicare only if the agreement explicitly or by clear implication authorizes the company to charge, except for applicable deductible and coinsurance, to the extent of the available Medicare or other coverage of the services. Under this type of agreement, the subscription fees for subscribers who have Medicare or other coverage become, in effect, premiums for coverage by the ambulance company of deductible and coinsurance amounts. Thus, the actual charge and customary charge reductions imposed under Medicare Carriers Manual section 5220 for routine waiver of deductible and coinsurance do not apply. There is no requirement, moreover, that subscription fees be uniform for all subscribers nor is there any requirement that fees be different for those subscribers who have Medicare or other insurance than for those subscribers who have no insurance.

In accepting Medicare assignments from subscribers and treating annual fees under subscription agreements as premiums for deductible and coinsurance coverage, ambulance companies function in a manner similar to group practice prepayment plans.

We have discussed above the Medicare reimbursement implications of ambulance company subscription agreements. These civil implications of the agreements under the Social Security Act are in the jurisdiction of the Health Care Financing Administration. The question of whether these agreements involve any criminal

Jack Stout

INTERFACE

Why Subscription Programs?

Several weeks ago I was discussing with my philosophical arch-rival, Dennis Murphy, author of *jems*' "Public Forum" column, the legal subtleties of ambulance subscription programs. At the end of our discussion, Dennis suggested that, because this issue is so deceptively complex and poorly understood, I should devote an "Interface" column to subscription programs. Here it is.

What Are They? Ambulance subscription programs fall into two major categories: those which involve the actual sale of ambulance services on a prepaid basis (i.e., for purposes of this discussion, Type I programs); and those which allow subscribers to fix-price and prepay the uninsured portions of ambulance bills (i.e., Type II programs). Legally and financially, these two types of programs are profoundly different.

If the subscription agreement (sometimes called a "membership agreement") entitles the subscriber to "free ambulance services" for a defined period of time in exchange for a subscription or membership fee, then the program involves the actual sale of ambulance services on a prepaid basis and is, therefore, a Type I program. But if the subscription agreement merely allows the subscriber to prepay at a fixed price set by the company the uninsured portions of ambulance bills, then the

contract is *not* for the sale of ambulance services, but is instead an agreement between the customer and the provider to alter the method of payment of uninsured portions of ambulance bills—i.e., a Type II program.

The most important difference between Type I and Type II subscription programs is that, under a Type II program, the provider may (with certain restrictions) collect and retain third party reimbursements for services rendered to subscribers. Under a Type I program, monies collected from third party payors technically belong to the subscriber, and in some cases, it may be unlawful for third party bills to exceed the amount of annual subscription fee.

In practice, subscription agreements and promotional materials are often so poorly drafted that it is impossible to determine what is actually being sold—ambulance services versus an altered method of paying uninsured costs. That uncertainty carries great financial risk for the provider who bills third party payors, especially Medicare, for services received by subscribers.

Why Subscription Programs? For most providers, public and private, a subscription program is primarily a political safety value. If it didn't raise a dollar, the program would still be worth having for some providers.

Since about 1970 the ambulance industry has experienced tremendous clinical and technological progress. In about half of our communities, this progress has been heavily financed by local tax subsidies, with user fees remaining at token levels a fraction of production costs. But in other

communities, progress has either been limited or financed through substantial increases in user fees. In addition, many local governments which were able to afford large ambulance subsidies in the easy-money fiscal years of the 1970s must now choose between higher user fees versus allowing a deterioration in quality of ambulance services.

For reasons detailed in depth in previous "Interface" articles, poor EMS at any price is false economy, and there are serious disadvantages to local tax financing of health care services, including EMS. Thus, assuming reasonable levels of efficiency, it is good public policy to finance quality ambulance services by raising ambulance fees to cover full production costs. It's good public policy, but it can also sting.

When ambulance rates go up dramatically, either to finance better service or to offset a subsidy reduction, the wisdom of the action may be less than widely recognized by the public at large. Here's why.

In some insurance policies, the level of maximum reimbursement for ambulance service was established back when teenaged ambulance jockeys roared through the streets in barely modified Cadillac hearses loosely called ambulances. Furthermore, Medicare's method of changing its "allowable charges" for ambulance services incorporates an 18-month delay from the time the rates are raised. And if your community is surrounded by heavily subsidized providers, your neighbor's token rates will, because of Medicare's method, forever depress your own reimbursement levels.

The bottom line: When you raise

*Jack Stout has been at the forefront of innovations in the design and implementation of EMS systems for the past dozen years. If you have a question, a problem, or a solution related to the public/private interface in prehospital care, address your letter to "Interface" *jems*, P.O. Box 1026, Solana Beach, CA 92075*

subscriber because, under a Type I subscription plan, he has already paid you for services in advance.

The solution to this problem is simple: If you intend to collect moneys from third party payors for services rendered to subscribers, just be sure your subscription contract and promotional materials make it very clear that yours is a Type II subscription program.

Deductibles and Coinsurance. Even for Type II subscription programs, there have remained questions regarding whether the subscription fees can count toward the subscriber's deductible, and whether the provider is at risk for failing to attempt to collect "coinsurance" amounts as required by Medicare law.

Attorney David Werfel, consultant to the American Ambulance Association, recently succeeded in obtaining from the Health Care Financing Administration (HCFA) clarification of policy regarding these issues. Quoting from HCFA's June 3, 1986 response to Mr. Werfel's letter:

"Services furnished by an ambulance company under a subscription agreement calling for payment of an annual membership fee may be covered under Medicare only if the agreement explicitly or by clear implication authorizes the company to charge, except for applicable deductible and coinsurance, to the extent of the available Medicare or other coverages of the services. Under this type of agreement, the subscription fees for subscribers who have Medicare or other coverage become, in effect, premiums for coverage by the ambulance company of deductible and coinsurance amounts. Thus, the actual charge and customary charge reductions imposed under Medicare Carriers Manual section 5220 for routine waiver of deductible and coinsurance do not apply. There is no requirement, moreover, that subscription fees be uniform for all subscribers nor is there any requirement that fees be different for those subscribers who have Medicare or other insurance than for those subscribers who have no insurance."

That's about as clear-cut a statement of policy as you'll ever get out of HCFA, and what's more, it's a policy our industry and our customers can live with. This happy outcome is, I believe, partly the result of Mr. Werfel's careful drafting of the letter requesting the opinion. (How you ask a question can greatly affect the answer you get.) Mr. Werfel is clearly earning his fee.

The Plot Thickens. Mr. Werfel's letter also asked for an opinion on whether subscription programs might

violate the anti-kickback provisions of the Social Security Act—i.e., Section 1877(b). He didn't get it.

HCFA's response: "The question of whether these (subscription) agreements involve any criminal conduct under section 1877(b) of the Social Security Act is in the jurisdiction of the Department's Office of Inspector General (OIG). . . . We understand that the OIG does not give advisory opinions on the effect of criminal statutes." Thus, we seem to be left, for the moment, in a sort of awkward situation.

Pricing Subscription Fees. Most subscription programs employ a uniform price per "household." However, you may wish to consider setting the subscription fee for Medicare subscribers separately. Here's why.

When you accept assignment, as you will do for all Medicare-eligible subscribers, you agree to accept Medicare's reimbursement as payment in full for the balance which would otherwise be owed by the customer. The subscription fee already paid by the subscriber satisfies the customer's obligation to pay any deductible and coinsurance which would otherwise be owed. Okay so far.

But what if, at the end of a fiscal year, it turns out that your revenues from subscription fees paid by Medicare-eligible subscribers, when added to the Medicare payments received for services rendered to those same patients, exceeds the combined "allowable charges" for all of those services? You could be found guilty of overcharging for services to Medicare patients on whom you have accepted assignment.

Readers already familiar with how Medicare works will immediately see the problem. For the rest of you (whose lives are obviously filled with more interesting stuff to think about), just understand that when you "accept assignment" on a Medicare patient, you are agreeing to charge Medicare no more than 80% of its "allowable charge" for that service (which may be far less than your standard rate), and you are agreeing to collect from the patient the remaining 20% and not one cent more. That's the law.

Steve Williamson, Executive Director of the Tulsa system, and manager of an unusually successful urban subscription program, has a solution to this problem that should satisfy the law. Every year, before setting the following year's subscription fees, Steve compiles

TWELVE IMPECCABLE EXCUSES FOR NOT GIVING BLOOD.

1. I think I have lumbago.
2. I'm type Z negative.
3. I'm on the grapefruit diet.
4. I gave six months ago.
5. I just got back from Monaco.
6. The lines are thirteen blocks long.
7. My mother won't let me.
8. I didn't sign up.
9. I'm going out of town.
10. Asthma runs in my family.
11. I forgot to eat this morning.
12. I'm allergic to flowering magnolia.



Each one's a doozy,
but we're hoping you
won't use any of them.
Give blood through the
American Red Cross.
Please, don't chicken out.
**EXCUSES DON'T SAVE LIVES.
BLOOD DOES.**

American
Red Cross



**NINILCHIK COMMUNITY AMBULANCE ASSOCIATION (NCAA)
MEMBERSHIP APPLICATION AND CONTRACT**

Description of Membership and Fee: I understand the annual fee for my Ninilchik Community Ambulance Association, hereinafter known as NCAA, Membership limits my out-of-pocket expenses for the uninsured portion of bill(s) for ambulance services provided by NCAA for medically necessary ambulance transportation originating and terminating in NCAA's Primary Service Area and to or from a medical facility. This year's fee is \$50 for NCAA Primary Service Area residents.

Who Is Eligible for NCAA Membership?: NCAA Membership is available to legal residents of NCAA's Primary Service Area, which includes: Mile 121 to mile 145 of the Sterling Highway and the roads which are connected to the Sterling Highway between those mile markers. NCAA does not solicit memberships from Medicaid eligible recipients and such membership constitutes a voluntary contribution only.

Who In My Home Is Covered by This Program?: The NCAA Membership covers a husband and wife, or single parent, and their children 18 years and younger living at the same address, or a single individual in a household.

Where am I Covered: The NCAA Membership is good throughout NCAA's Primary Service Area. The Membership does not cover ambulance service outside the Primary Service Area, or services provided by companies other than NCAA.

What Is Medically Necessary?: I understand that NCAA Membership ambulance services are restricted to the "medically necessary", defined as the specific need for ambulance service transportation to or from a health care facility (hospital, nursing home, etc.) where use of alternative forms of transportation (private car, taxi, etc.) would be medically inappropriate given the patient's condition. NCAA reserves the right to require physician certification of medical necessity in cases of suspected abuse. If abuse is found to exist, then I understand my membership can be terminated. If my insurance company denies my NCAA claim on grounds that my transport by ambulance was not medically necessary, I will be responsible to NCAA for the full amount of the bill.

If I Have Insurance*, Who Receives Claim Payments?: I understand that my NCAA Membership is not insurance and that NCAA will receive payments from my insurer or third party agency (e.g. Medicare, Blue Cross, etc.). To help process authorized claims, I authorize release of any medical information necessary to process a claim to both my insurer and to NCAA, and I further authorize such payment to be made directly to NCAA. I further agree to forward to NCAA any payments made by my insurer to me for services provided by NCAA.

*Note: I understand that if it is the policy of my insurance company that my NCAA Membership voids its responsibility for payment of claims, this contract may be cancelled and full amount of my membership fee refunded to me.

Effective Dates: I understand that my membership is effective upon receipt of full payment and signed membership application and contract, through December 31, 1990.

Signature _____ Date _____

Spouse's Signature _____ Date _____

Membership contract must be signed by the Insurance Policy Holder or Authorized Person if uninsured.
Membership is non-transferable and non-refundable except as described above.

If you have questions or have trouble understanding this contract, please call 567-3342.

When you have completed the Member Information and signed the Contract, please mail it to:

NCAA Membership Program
P.O. Box 39351
Ninilchik, AK 99639

If you are paying by check or money order, please make it payable to:
Ninilchik Community Ambulance Association

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

STEVE COWPER, GOVERNOR

7th FLOOR FRONTIER BLDG
3601 C STREET, SUITE 740
ANCHORAGE, ALASKA 99503-5934
PHONE: (907) 562-3628

January 4, 1990

Southern Region Emergency
Medical Services Council
6130 Tuttle Place, Suite 2
Anchorage, Alaska 99507-2041

Dear Mr. Scott:

Acting Director Jordan has asked me to respond to your letter of December 11, 1989 in which you requested this Division's opinion as to compliance with Title 21 of Alaska Statutes dealing with insurance of your proposed ambulance service membership program.

Based upon review of the information provided in your letter and follow up package, it is the opinion of the Division that your organization's ambulance service membership program would be required to comply with Chapter 87 of the Alaskan insurance statutes. Specifically, AS 21.87.010 requires any organization "...engaging... in the provision of all or a part of a health care service as defined in AS 21.87.330, for its subscribers in exchange for periodic prepayments in identifiable amount by or as to subscribers" to adhere to AS 21.87.

Accordingly, your attention is directed to the enclosures and in particular AS 21.87.070 to .090 for the procedures you should follow in applying for a certificate of authority. Our licensing officer, Jan Clemetson, who is located in Juneau can be contacted for the necessary forms and further information.

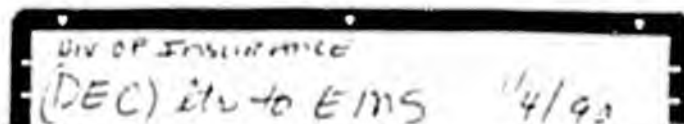
Very truly yours,



Eugene W. Furman, CPA
Insurance Financial Examiner

Enclosures

EF/sh
2661R



Southern Region
EMERGENCY
Medical Services Council, Inc.

February 5, 1990

Honorable Pat Rodey
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Dear Pat:

A problem has come up which we need the legislature's help on. I would like to get your advice about how best to solve the problem.

On January 1, 1990 Ninilchik Community Ambulance Association, the volunteer ambulance service in Ninilchik, raised their rates from \$50 per call to \$200 per call. At the same time they offered the residents of this unincorporated area the option of purchasing a membership for \$50 per year. The membership covers the uninsured portion of the ambulance bill for the member and his family.

The Association started this membership program to help offset hard feelings in the community about such a dramatic rate increase. At the same time the rate increase is needed so that the association can continue to offer ambulance service. The annual Memorial Day Pancake Feed and \$50 for 40 ambulance calls per year does not cover the cost of training, equipment, insurance, heated storage, gasoline and maintenance.

I assisted Ninilchik with formulating their program so that it would meet the insurance company requirements. I also asked the Division of Insurance to review the contract to assure that it complied with Alaska law. Unfortunately, the Division pointed out that the services provided by Ninilchik fall within the definition of prepaid health care services and therefore must comply with the requirements of AS 21.87.

In reading this statute it is clear that the intent of the Legislature was to regulate prepaid health care that is comprehensive in nature, e.g. health maintenance organizations and preferred provider organizations. The need to offer protection to the consumer is that these services are both expensive to the customer and represent a very large contingent liability for the provider. I think you will agree that these ambulance service membership programs bear little resemblance to these types of plans in terms of cost, contingent liability of the provider and even basic structure.

The following language is intended to exempt municipal and non-profit ambulance services which choose to provide any form of prepaid ambulance service from regulation under the state insurance statutes.

The assumption is that only Section 21.87 applies. It has not been determined if any other portion of the insurance statutes would apply to such schemes. If so, we would like to see language included that would exempt them from that as well.

Section 21.87.010 (b) is amended by adding the following:

(5) municipalities, fire service areas, emergency medical service areas and private non-profit corporations which provide emergency medical services certified by the Department of Health and Social Services under AS 27.08.080 that either individually or jointly accept prepayment from persons within their service areas for ambulance and emergency medical services, but not for other health services.

This statute would also allow two or more providers to join together to provide such services. This would be useful where adjacent service areas want to conduct a joint marketing campaign, so that if their members are hurt in the neighboring jurisdiction that they are covered.

This is modeled on the Oregon statute, which is attached.