

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5814 HOUSE JUDICIARY

218

during the interim following a session in which the person worked. This section applies to legislative staff members Range 18 or higher. In this section "hazardous waste" has the meaning given in AS 46.03.900.

(Sec. 10 ch 77 SLA 1984)

Sec. 24.60.050. STATE PROGRAMS AND LOANS.

(a) It is not a conflict of interest for a person to whom this chapter applies to participate in a state program or to receive a loan from the state if the program or loan

- (1) is generally available to members of the public;
- (2) is subject to fixed eligibility standards; and
- (3) requires minimal discretion in determining qualification.

(b) The committee shall annually review state programs and state loans and publish a list of programs and loans that, in the view of the committee,

- (1) meet the standards of (a) of this section;
- (2) do not meet the standards of (a) of this section.

(c) Each February 1, each person to whom this chapter applies shall deliver to the division of legislative audit a report of each participation by the person in a state program or receipt of a state loan as of January 15 of that year for a program or loan listed in (b)(2) of this section. The division of legislative audit shall prepare an appropriate report for the presiding officer of each house that lists the name of the person and kind of program participation or loan. The lists shall be published in the supplemental journals before February 15.

(d) Each person to whom this chapter applies who begins participation in a state program or who receives a loan listed under (b)(2) of this section after January 15 of each year shall deliver a report of the program or loan to the committee within 30 days after the participation in the state program or receipt of a state loan begins. The report shall be published in the appropriate supplemental journal if received by the committee during the regular session of the legislature. Each report filed with the committee under this subsection is open to the public.

(e) Each record of a state agency relating to participation in a state program or receipt of a state loan by a person to whom this chapter applies may be disclosed to the committee and to the division of legislative audit.

(f) The committee shall annually identify the program and loans to be audited by the division of legislative audit during the following year, including the scope of the audit. The division of legislative audit shall prepare a report to the committee on the audit of the participation in state programs and the receipt of loans from the state by persons to whom this chapter applies. The report to the committee is confidential until it is released by the committee.

(g) In this section "state program" means a program in which tangible assets of the state or a right to use tangible assets of the state are transferred from the state to a person to whom this chapter applies.

(Sec. 1 ch 36 SLA 1984; am sec. 5 ch 113 SLA 1986; am sec. 2 ch 167 SLA 1988)

Sec. 24.60.060. CONFIDENTIAL INFORMATION.

It is a conflict of interest if a person to whom this chapter applies willfully discloses, or knowingly uses, for personal gain or for the personal gain of another, information that by law is not available to the public and that the person acquired in the course of official duties.

(Sec. 1 ch 36 SLA 1984)

Sec. 24.60.070. INTERESTS BETWEEN PUBLIC OFFICIALS.

A person to whom this chapter applies shall disclose in the journal of the appropriate body or if the legislature is not in session to the committee, which shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal by the fifth day of the session, the formation or maintenance of a close economic association involving a substantial financial matter with

- (1) a supervisor who is not a member of the legislature who has responsibility or authority, either directly or indirectly, over the person's employment, including preparing or reviewing performance evaluations, or granting or approving pay raises or promotions;
- (2) legislators;
- (3) a public official who is required to file a financial disclosure statement under AS 39.50 and is not an appointed municipal officer;
- (4) a registered lobbyist;
- (5) a person to whom this chapter applies who is employed by the legislative branch of government if the close economic association is with a legislator.

(Sec. 1 ch 36 SLA 1984; sec. 6 ch 113 SLA 1986)

Sec. 24.60.080. GIFTS.

(a) A person to whom this chapter applies may not solicit, accept, or receive, directly or indirectly, a gift in any amount, whether in the form of money, services, a loan, travel, entertainment, hospitality, promise, or other form under circumstances in which it could reasonably be inferred that the gift is intended to influence the performance of official duties, actions, or judgment.

(b) Except as provided in (c) of this section, the receipt of a gift worth \$50 or more by a person to whom this chapter applies is prohibited.

(c) Notwithstanding (b) of this section, it is not a violation of this section for a person to whom this chapter applies to accept

(1) hospitality, other than hospitality described in (4) of this subsection

(A) with incidental transportation at the residence of a person; or

(B) at a social event or meal;

(2) discounts that are available generally to the public or to a large class of persons to which the person belongs;

(3) food or foodstuffs indigenous to the state that are shared generally as a cultural or social norm;

(4) travel and hospitality primarily for the purpose of obtaining information on matters of legislative concern;

(5) gifts from the family of the person.

(d) A person to whom this chapter applies who accepts a gift of travel and hospitality primarily for the purpose of obtaining information on matters of legislative concern shall disclose the gift if it has a value of \$100 or more. The disclosure must include the name and occupation of the person making the gift and the approximate value of the gift. Each gift required to be disclosed under this subsection shall be disclosed within 30 days of the receipt of the gift in the journal of the appropriate body or, if the legislature is not in session, to the committee. The committee shall maintain a public record of the disclosure it receives and shall forward the disclosure to the appropriate house for inclusion in the journal by the fifth day of the next regular session.

(e) A political contribution that is reported under AS 15.13.040 is not a gift under this section.

(Sec. 1 ch 36 SLA 1984; am sec. 3 ch 167 SLA 1988)

Sec. 24.60.090. NEPOTISM.

(a) A spouse or an individual other than a spouse who is related to a member of the legislature may not be employed in the house in which the legislator is a member, by an agency of the legislature established under AS 24.20, or in either house during the interim between sessions. An individual who is related to an employee of the legislature may not be employed in a position over which the employee has supervisory authority. In this subsection, "an individual who is related to" means a child, stepchild, husband, wife, mother, father, sister, or brother.

(b) For purposes of this section an individual is not employed if no compensation is received from the state for the services provided.

(c) For purposes of this section, a legislator is not an employee of the legislature.

(Sec. 1 ch 36 SLA 1984)

Sec. 24.60.100. REPRESENTATION.

A person to whom this chapter applies who represents another person for compensation before an agency, board, or commission of the state shall disclose the name of the person represented, the subject matter of the representation, and the body before which the representation is to take place in the journal of the appropriate body or if the legislature is not in session to the committee. The committee shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal by the fifth day of the session.

(Sec. 1 ch 36 SLA 1984; sec. 7 ch 113 SLA 1986)

Sec. 24.60.110. ACTION ON A CONFLICT OF INTEREST.

A legislator who knowingly has a conflict of interest or has been notified of a conflict of interest shall immediately

- (1) resign the conflicting position;
- (2) divest the interest that has resulted in the conflict or potential conflict; or
- (3) disclose the conflict of interest in the journal of the appropriate body or if the legislature is not in session to the committee; the committee shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal by the fifth day of the session but disclosure does not remove the conflict of interest.

(Sec. 1 ch 36 SLA 1984; am sec. 8 ch 113 SLA 1986)

Sec. 24.60.120. STATE PROPERTY AND FUNDS.

A person to whom this chapter applies may not use state property, except property under lease from the state, or state funds for private gain.

(Sec. 1 ch 36 SLA 1984)

Sec. 24.60.130. SELECT COMMITTEE ON LEGISLATIVE ETHICS.

(a) There is established within the legislative branch of state government the Select Committee on Legislative Ethics.

(b) The committee consists of nine members, in two subcommittees, as follows:

(1) the senate subcommittee consists of three members of the senate, appointed by the president of the senate with the concurrence by roll call vote of two-thirds of the full membership of the senate; and

(2) the house subcommittee consists of three members of the house, appointed by the speaker of the house with the concurrence by roll call vote of two-thirds of the full membership of the house; and

(3) three public members who are selected by the Chief Justice of the Alaska Supreme Court and who are ratified by two-thirds of the full membership of the senate and two-thirds of the full membership of the house, shall serve on both the full committee and each subcommittee.

(c) No more than two legislative members of each subcommittee may be members of the same political party or the same organizational caucus.

(d) The members of each subcommittee shall elect a chair who must be a member of the legislature. The chair selected by the senate subcommittee

shall chair the full committee beginning the first day of the regular session in odd-numbered years and the chair selected by the house subcommittee shall chair the full committee beginning the first day of the regular session in even-numbered years.

(e) Except as provided in this subsection, a vacancy on the committee shall be filled under (b) of this section. An individual who is appointed to fill a vacancy that occurs during the last 10 days of the first regular session of a legislature or during the interim between regular sessions of that legislature serves without concurrence or ratification through the 10th day of the second regular session of the legislature. An individual who is appointed to fill a vacancy that occurs during the last 10 days of the second regular session of a legislature or during the interim after the second regular session without concurrence or ratification through the convening of the first regular session of the next legislature.

(f) The committee or a subcommittee may contract for professional services and may employ staff as it considers necessary.

(g) Each member serves for the duration of the legislature during which the member is appointed.

(h) A member is disqualified from participating as a member in any proceeding before the committee involving a complaint against the member or an advisory opinion requested by the member. If the legislature is in session when a legislative member is disqualified under this subsection, the presiding officer of that member's house shall, with the concurrence by roll call vote of two-thirds of the full membership of that house, appoint another member from that house to act as a member of the committee in the proceeding. If the legislature is not in session when a legislative member is disqualified, the presiding officer of the house of which the disqualified legislator is a member shall appoint another member from that house, with a recorded concurrence of a majority vote of the subcommittee of that house, to act as a member of the committee in the proceeding.

(i) A quorum of a committee established under this section consists of a majority of the members of the committee. A quorum of a subcommittee established under this section consists of a majority of the members of the subcommittee. Notwithstanding the provisions of this subsection, a committee does not have a quorum unless three legislative members are present and a subcommittee does not have a quorum unless two legislative members are present.

(Sec. 1 ch 36 SLA 1984; am secs. 9, 10 ch 113 SLA 1986; am secs. 4 - 6 ch 167 SLA 1988)

Sec. 24.60.140. AUTHORITY OF THE COMMITTEE.

(a) The senate subcommittee has authority over proceedings concerning conduct by a member or former member of the senate or a person employed by a member or a committee of the senate.

(b) The house subcommittee has authority over proceedings concerning the conduct by a member or former member of the house or a person employed by a member or a committee of the house.

(c) The full committee has authority

- (1) over proceedings concerning the conduct by an employee of an agency of the legislature;
- (2) to review any matter arising under this chapter that would result in action being required by both houses of the legislature; and
- (3) to issue advisory opinions under AS 24.60.160.

(Sec. 1 ch 36 SLA 1984)

Sec. 24.60.150. DUTIES OF THE COMMITTEE.

- (a) The committee shall
 - (1) adopt procedures to facilitate the receipt of inquiries and prompt rendition of its opinions;
 - (2) publish semi-annual summaries of decisions and advisory opinions with sufficient deletions in the summaries to prevent disclosing the identity of the persons involved in the decisions or opinions that have remained confidential.
- (b) The committee may
 - (1) recommend legislation to the legislature the committee considers desirable or necessary to promote and maintain high standards of ethical conduct in government;
 - (2) subpoena witnesses, administer oaths, and take testimony relating to matters before the committee, and may require the production for examination of any books or papers relating to any matter under investigation before the committee.

(Sec. 1 ch 36 SLA 1984; am sec. 11 ch 113 SLA 1986)

Sec. 24.60.160. ADVISORY OPINIONS.

The committee shall issue an advisory opinion within 30 days on the request of a person to whom the chapter applies or a person elected to the legislature who at the time of election is not a member of the legislature as to whether the facts and circumstances of a particular case constitute a violation of ethical standards. The 30-day period for issuing an opinion may be extended by the committee for not more than an additional 10 days if the person requesting the opinion consents. The opinion issued is binding on the committee in any subsequent proceedings concerning the facts and circumstances of the particular case unless material facts were omitted or misstated in the request for the advisory opinion. Except as provided in this chapter an advisory opinion is confidential but may be made public if a written request by the person who requested the opinion is filed with the committee.

(Sec. 1 ch 36 SLA 1984; am sec. 12 ch 113 SLA 1986)

Sec. 24.60.170. PROCEEDINGS BEFORE THE COMMITTEE.

- (a) The committee may initiate, receive and consider complaints

alleging a violation of this chapter.

(b) The committee may investigate a violation of this chapter in a proceeding begun within two years after the alleged violation occurs and within one year after termination of state service. Nothing in this subsection bars proceedings against a person who intentionally prevents discovery of a violation of this chapter.

(c) Before the committee may exercise power authorized in this section, the committee shall by resolution supported by a majority vote of the full membership of the committee, define the nature and scope of the inquiry. The committee shall investigate all complaints on a confidential basis.

(d) A proceeding is commenced by the filing of a complaint with the committee. A complaint may be initiated by any person.

A complaint shall be in writing and signed under oath by the person making the complaint. A complaint, other than a complaint initiated by at least two-thirds of the members of the committee, may not be filed within a period of 60 days preceding a state primary or general election. Each proceeding pending before the committee on the 60th day preceding a state primary or general election is stayed until certification of the election unless the proceeding is based on a complaint initiated by at least two-thirds of the members of the committee or, on a complaint initiated by a person who is not a member of the committee, if two-thirds of the members of the committee direct the continuation of the proceeding. The committee shall notify in writing a person against whom a complaint has been filed of a stay of the proceeding. If the person objects in writing to the stay the proceedings shall continue.

(e) The committee shall notify in writing each person against whom a complaint is received and afford the person an opportunity to explain the conduct alleged to be a violation of this chapter. If the committee determines that a complaint does not contain allegations of facts sufficient, if the alleged facts are treated as true, to constitute a violation of this chapter, the committee may summarily dismiss the complaint.

(f) The committee shall investigate the charges filed under this section and issue an opinion to the person alleged to have violated a provision of this chapter.

(g) If the committee determines that a probable violation exists that may be corrected by action of the person and that does not warrant sanctions other than correction, the opinion shall recommend corrective action. The person against whom the complaint was made may comply with the opinion or may request a hearing before the committee. After the hearing the committee may amend or affirm the opinion.

(h) If the person fails to comply with the opinion or if a majority of the members of the committee determine that there is probable cause for belief that a violation of this chapter that may not be corrected under (g) of this section has occurred, the committee shall formally charge the person. The charge and statement of the alleged violation shall be personally served on the person charged. The alleged violator has 20 days after service of the charge and statement to respond in writing to the committee.

(i) The committee may set a time and place for a hearing before the committee with a minimum of 10 days notice to the complainant, if any, and to the person charged with a violation of this chapter. A representative of the

committee and the person charged with a violation of this chapter shall have an opportunity to be heard, to subpoena witnesses and require the production of books or papers relating to the proceedings, to be represented by counsel, and to have the right of cross-examination. Each witness shall testify under oath. Hearings are closed to the public unless the person charged with a violation of this chapter requests an open hearing. The committee is not bound by the rules of evidence but the committee's findings must be based upon competent and substantial evidence. Testimony taken at the hearing shall be recorded and evidence shall be maintained. The testimony and evidence are available only to the committee and its staff and to the person charged with a violation of this chapter. If the person charged with the violation of a provision of this chapter requests a copy of the transcript of testimony, the copy shall be furnished by the committee without charge.

(j) A decision of the committee shall be in writing and signed by the majority of the members of the committee. Each decision of the committee must be accompanied by a written order of the committee determining that a violation of this chapter exists or does not exist. The order is confined to this determination. This order is a public record.

(k) If the committee issues a decision finding that a member of the legislature has violated a provision of this chapter or that a legislator has declined or failed to cooperate with the committee, it shall refer the decision to the presiding officers of the legislature. The decision shall contain a statement of the facts determined to constitute the violation or the failure to cooperate and may contain recommendations concerning any penalties the legislature may lawfully impose. The committee shall make the decision public 30 days after the referral. The legislature shall act on the decision as it considers appropriate.

(l) If the majority of the members of the committee agree to a decision that a former member of the legislature or an employee or a former employee of the legislative branch of government has violated a provision of this chapter, the committee shall issue a public statement of its decision 30 days after the date of the decision. The legislature shall act on the decision as it considers appropriate. In the case of an employee the action may include suspension, demotion, or dismissal. The employee is entitled to a hearing before final action is taken.

(m) A committee member or member of the committee staff who divulges information concerning a proceeding, except as permitted by this chapter, is guilty of a class A misdemeanor.

(Sec. 1 ch 36 SLA 1984; am sec. 13 ch 113 SLA 1986; am sec. 7 ch 167 SLA 1988)

Sec. 24.60.180. COOPERATION BY STATE AGENCIES.

Each agency of the executive branch of state government shall, to the extent permitted by state or federal law, cooperate fully with the committee or a subcommittee by providing information and assistance, including disclosure of financial material and other records relating to a potential violation of this chapter.

(Sec. 1 ch 36 SLA 1984)

Sec. 24.60.190. DEFINITIONS.

In this chapter

(1) "committee" means the Select Committee on Legislative Ethics or where appropriate, the applicable subcommittee;

(2) "person employed by the legislative branch of government" means a person who is employed by

(A) an individual legislator;

(B) a legislative body, including a legislative committee; or

(C) an agency of the legislature established under AS 24.20 and AS 24.55.

(Sec. 1 ch 36 SLA 1984; am sec. 14 ch 113 SLA 1986)

Item 6

STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 27, 1990

SUBJECT: Sectional analysis of CSHB 451 ()
(Work Order 6-1634J)

TO: Representative H.A. "Red" Boucher
Chair, State Affairs Committee

FROM: John B. Gaguine *JBG*
Legislative Counsel

At your request, here is a section-by-section analysis of CSHB 451 (), Work Order 6-1634J. This is the proposed committee substitute for HB 451 (the ethics reform bill prepared by the ethics committee) that was produced by a subcommittee of the State Affairs Committee chaired by Representative Finkelstein.

Section 1 provides that legislators may not lobby the legislature for one year after they leave office.

Section 2 makes the ethics code applicable to all legislative employees at Range 16 and above, instead of the current Range 18 and above.

Section 3 gathers in one place the conflicts of interest prohibited by current law and spread throughout AS 24.60. It adds one new prohibition, found in paragraph (a)(6), that would bar the knowing use of a person's office or staff to affect a campaign for elective office. The section retains, in subsection (b), the current provision that an act is not a conflict of interest if a person's actions affected only insignificant interests or if the person's authority is far removed from any official action that could reasonably be affected by the potential conflict.

Section 4 broadens the current restriction on legislators' holding fundraisers in Juneau during the session. Such fundraisers are now permitted when the legislator is running for non-legislative office (governor, Congress, mayor); Section 4 would bar them.

Sections 5, 6, 7 and 8 modify the gift section of the ethics code. Section 5 allows gifts of up to \$100 to be accepted, rather than the current ceiling of \$50, and specifies that a person covered by the code cannot accept a series of gifts worth less than \$100 from the same person in a calendar year when the aggregate value of those gifts would exceed \$100. Section 6 permits acceptance of gifts of over \$100 when the gift has no connection with the recipient's legislative status. Under Section 7, gifts of this nature would have to be disclosed, just as gifts of travel and hospitality currently must be. Finally, Section 8 would allow acceptance of gifts worth over \$100 from a foreign government, but only if those gifts were accepted on behalf of the legislature and turned over to the legislative council for appropriate disposition.

Section 9 adds a ban on honoraria (but not on the receipt of travel and hospitality expenses) to give a speech or make an appearance. The section makes an exception where the speech or appearance is not related to the person's legislative status (for instance, where a doctor-legislator received a fee to discuss a medical subject before a medical association). An advisory opinion of the ethics committee in 1987 found that a legislator could not accept an honorarium; Section 9 codifies this opinion.

Section 10 provides that no person covered by the ethics code may represent a client for compensation before a state agency, board, or commission, or before an employee or officer of an agency, board, or commission, when the client is seeking certain objectives or the agency, board or commission is dealing with certain matters. The section provides an exception to this prohibition when the agency, board or commission is acting in a quasi-judicial capacity and the state is not a real party in interest to the proceeding. When representation is allowed, Section 10 retains the provision of current law that the representation must be disclosed.

Section 11 adds a new provision to the ethics code requiring that when legislative travel, other than to attend a committee meeting, will result in legislative business taking up less than four hours, the person travelling must obtain written approval for the trip in advance from the speaker of the house, the president of the senate, or the head of a legislative agency.

Section 12 formally establishes the ethics committee as a permanent interim committee.

Sections 13 and 14 increase the number of public members on the ethics committee and the two subcommittees from three to five, and provide that for a quorum of either the full committee or the house and senate subcommittee three public members must be present.

Section 15 provides that the Open Meetings Act, the legislative procurement rules and the legislature's Uniform Rules do not apply to the ethics committee to the limited extent that those statutes and rules would conflict with the confidentiality requirements of the ethics law.

Section 16 extends the time requirements for the ethics committee to issue advisory opinions in response to advisory opinion requests.

Section 17 overhauls the process by which the ethics committee handles complaints. It streamlines existing procedures, and makes one major change: proceedings of the ethics committee, and opinions issued by the committee, would become public after the committee as a result of its investigation into a complaint finds probable cause to believe that the subject of a complaint has violated the ethics law. (If the committee dismisses a complaint after investigation, without finding probable cause to go to a hearing, the committee would issue a public opinion explaining the dismissal.) The section also allows the committee to consider alleged violations occurring within five years before the filing of a complaint, instead of the current two years. It further requires the committee to dismiss a complaint against a legislative employee who leaves legislative service, and gives the committee discretion to dismiss a complaint against a former legislator.

Section 18 amends AS 39.50 (the conflict-of-interest initiative applicable to legislators, judges, and top executive branch officials) to clarify that the general prohibition against representation found in AS 39.50.090(c) is superseded by the representation provision of AS 24.60.100.

Section 19 repeals three sections of existing law that have been recodified elsewhere.

Item 7

6-1634Jg
Gaguine

A M E N D M E N T

TO: CSHB 451()

Page 13, following line 26:

Insert a new bill section to read:

"* Sec. 18. AS 24.60 is amended by adding a new section to read:

Sec. 24.60.175. EMPLOYMENT DISCRIMINATION GRIEVANCES. (a) A person employed or formerly employed by the legislative branch of government may file a grievance with the committee alleging a violation of AS 18.80.220 by the person's employer or former employer. The committee shall adopt procedures concerning the filing, the investigation, the mediation, and the hearing of grievances under this subsection. In adopting procedures, the committee shall consider regulations of the office of equal employment opportunity adopted under AS 44 9.443 and shall protect the confidentiality of grievances.

(b) In accordance with the procedures established under (a) of this section the committee may

- (1) provide for mediation of a grievance;
- (2) dismiss a grievance without prejudice; or
- (3) after a hearing, make appropriate recommendations concerning a grievance to the president of the senate, the speaker of the house, or the head of the legislative agency where the grievant is or was employed.

(c) This section does not diminish existing rights under state

or federal law relating to employment discrimination."

Renumber the following bill sections accordingly.

Item 8

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 1, 1990

SUBJECT: Sectional analysis of CSHB 451 (State Affairs)
TO: Representative Mike Davis
Chair, Select Committee on Legislative Ethics
FROM: John B. Gaguine *JBG*
Legislative Counsel

At your request, here is a section-by-section analysis of CSHB 451 (State Affairs). This committee substitute differs considerably from HB 451.

Section 1 provides that the spouses of legislators may not lobby the legislature and that former legislators may not lobby the legislature for one year after they leave office.

Section 2 makes the ethics code applicable to all legislative employees at Range 15 and above, instead of the current Range 18 and above.

Section 3 gathers in one place the conflicts of interest prohibited by current law and spread throughout AS 24.60. It adds one new prohibition, found in paragraph (a)(6), that would bar the knowing use of a person's office or staff to affect a candidate or a campaign for elective office. The section retains, in subsection (b), the current provision that an act is not a conflict of interest if a person's actions affected only insignificant interests or if the person's authority is far removed from any official action that could reasonably be affected by the potential conflict.

Section 4 broadens the current restriction on legislators' holding fundraisers in Juneau during the session. Such fundraisers are now permitted when the legislator is running for non-legislative office (governor, Congress, mayor); Section 4 would bar them.

Sections 5, 6, 7 and 8 modify the gift section of the ethics code. Section 5 allows gifts of up to \$100 to be accepted,

rather than the current ceiling of \$50, and specifies that a person covered by the code cannot accept a series of gifts worth less than \$100 from the same person in a calendar year when the aggregate value of those gifts would exceed \$100. Section 6 permits acceptance of gifts of over \$100 when the gift has no connection with the recipient's legislative status. Under Section 7, gifts of this nature would have to be disclosed, just as gifts of travel and hospitality currently must be. Finally, Section 8 would allow acceptance of gifts worth over \$100 from a foreign government or from an official of a foreign government, but only if those gifts were accepted on behalf of the legislature and turned over to the legislative council for appropriate disposition.

Section 9 adds a ban on honoraria (but not on the receipt of travel and hospitality expenses) to give a speech or make an appearance. The section makes an exception where the speech or appearance is not related to the person's legislative status (for instance, where a doctor-legislator received a fee to discuss a medical subject before a medical association). An advisory opinion of the ethics committee in 1987 found that a legislator could not accept an honorarium; Section 9 codifies this opinion.

Section 10 provides that no person covered by the ethics code may represent a client for compensation before a state agency, board, or commission, or before an employee or officer of an agency, board, or commission, when the client is seeking certain objectives of the agency, board or commission is dealing with certain matters. The section provides an exception to this prohibition when the agency, board or commission is acting in a quasi-judicial capacity and the state is not a real party in interest to the proceeding. When representation is allowed, Section 10 retains the provision of current law that the representation must be disclosed.

Section 11 adds a new provision to the ethics code requiring that when legislative travel, other than to attend a committee meeting, will result in legislative business taking up less than four hours, the person travelling must obtain written approval for the trip in advance from the speaker of the house, the president of the senate, or the head of a legislative agency.

Section 12 formally establishes the ethics committee as a permanent interim committee.

Sections 13 and 14 increase the number of public members on the ethics committee and the two subcommittees from three to five, and provide that for a quorum of either the full committee or the house and senate subcommittee three public members must be present.

Section 15 provides that the Open Meetings Act, the legislative procurement rules and the legislature's Uniform Rules do not apply to the ethics committee to the limited extent that those statutes and rules would conflict with the confidentiality requirements of the ethics law.

Section 16 extends the time requirements for the ethics committee to issue advisory opinions in response to advisory opinion requests.

Section 17 overhauls the process by which the ethics committee handles complaints. It streamlines existing procedures, and makes one major change: proceedings of the ethics committee, and opinions issued by the committee, would become public after the committee as a result of its investigation into a complaint finds probable cause to believe that the subject of a complaint has violated the ethics law. (If the committee dismisses a complaint after investigation, without finding probable cause to go to a hearing, the committee would issue a public opinion explaining the dismissal.) The section also allows the committee to consider alleged violations occurring within five years before the filing of a complaint, instead of the current two years. It further requires the committee to dismiss a complaint against a legislative employee who leaves legislative service, and gives the committee discretion to dismiss a complaint against a former legislator.

Section 18 provides that an employee or former employee of a legislator, a committee or a legislative agency may bring an employment discrimination grievance to the ethics committee. The section instructs the committee to adopt procedures for the filing, investigation, mediation and hearing of such grievances. It empowers the committee, after a hearing, to make recommendations about the grievance to the appropriate official. The section does not require an employee or former employee to go to the ethics committee before filing a complaint with the Human Rights Commission or filing a lawsuit. Finally, the section provides that when the ethics committee is acting on an employment discrimination grievance, only the legislative members take part.

Representative Mike Davis

Page 4

March 1, 1990

Section 19 amends AS 39.50 (the conflict-of-interest initiative applicable to legislators, judges, and top executive branch officials) to clarify that the general prohibition against representation found in AS 39.50.090(c) is superseded by the representation provision of AS 24.60.100.

Section 20 repeals three sections of existing law that have been recodified elsewhere.

JBG:pl
WKP2/117

HB

459

HOUSE COMMITTEE REPORT

(11)

Date Referred: January 31, 1990

FURTHER REFERRALS:

FINANCE

Date of Committee Action: _____

The JUDICIARY Committee considered:

HB 459

HOUSE BILL NO. 459

APPROP: SUPPLEMENTAL/OIL & GAS LITIGATION

"An Act making supplemental appropriations to the Department of Law for oil and gas litigation; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with CS HB 459 (Jud) 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: House Judiciary 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) _____
- zero fn/analysis _____

SIGNING DO-PASS:

Peter J. ...

H. Ellis

... Davidson

... Shumberg

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>Terry Martin</u>		<input checked="" type="checkbox"/>	

Peter J. ...

... Shumberg

Chairman's Signature

Alaska State Legislature



House of Representatives House Judiciary Committee

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

LETTER OF INTENT
TO ACCOMPANY
CS HB 459 (JUD)

February 9, 1990

It is the intent of the House Judiciary Committee that the appropriation in Section 3 to the Alaska Court System for administrative support in the case of State v. Amerada Hess, et al., be used to help ensure that the trial schedule is not delayed because of lack of judicial resources. As used in Section 3, "administrative support" includes, but is not limited to, special masters, law clerks, secretaries, other personnel, services and equipment to assist the court in the adjudication of the case.

It is also the intent of the House Judiciary Committee that the State follow its normal practice and seek the pro rata payment of costs by the other parties to the litigation if special masters outside the Alaska Court System are appointed.

Rep. Max F. Gruenberg, Jr., Co-Chair

A handwritten signature in cursive script, appearing to read "Max F. Gruenberg, Jr.", written over a horizontal line.

Rep. Peter Goll, Co-Chair

A handwritten signature in cursive script, appearing to read "Peter Goll", written over a horizontal line.

Alaska State Legislature



House of Representatives House Judiciary Committee

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

M E M O R A N D U M

TO: Rep. Ron Larson
Rep. Lyman Hoffmann
Co-Chairs, House Finance Committee

FROM: Rep. Max F. Gruenberg, Jr. *MG*
Rep. Peter Goll *PG*
Co-Chairs, House Judiciary Committee

DATE: February 9, 1990

SUBJECT: House Bill 459

The House Judiciary Committee today passed out CS HB 459 (Jud). The bill appropriates funds to the Department of Law for litigation expenses in the case of State v. Amerada Hess, et al., during FY 1989 and FY 1990.

Testimony before the Judiciary Committee confirmed the need for additional funding. However, the Committee did not closely examine the funding levels requested; we defer to your judgment in that regard.

<u>Funding Information:</u>	General Fund	\$8,705,800
	Other Funds	-0-
		<u>\$8,705,800</u>

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 459 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act making supplemental appropriations to the
7 Department of Law for oil and gas litigation; making
8 an appropriation to the court system for certain
9 litigation; and providing for an effective date."

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

11 * Section 1. The sum of \$747,600 is appropriated from the general fund
12 to the Department of Law for expenses incurred in the litigation of oil and
13 gas matters for the fiscal year ending June 30, 1989.

14 * Sec 2. The sum of \$7,858,200 is appropriated from the general fund to
15 the Department of Law for expenses incurred in the litigation of oil and
16 gas matters for the fiscal year ending June 30, 1990.

17 * Sec. 3. The sum of \$100,000 is appropriated from the general fund to
18 the office of the administrative director of the court system for adminis-
19 trative support for State v. Amerada Hess, et al., No. 1JU 77-847 Civil.

20 * Sec. 4. The appropriation made by sec. 3 of this Act lapses into the
21 general fund June 30, 1991.

22 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).
23
24
25
26
27
28
29

H B

4 6 5

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 2, 1990

FURTHER REFERRALS:

Date of Committee Action: 3-30-90

The JUDICIARY Committee considered:

HB 465

HOUSE BILL NO. 465

MONITOR PHONE CALLS OF PRISONERS

"An Act relating to telephone access and monitoring inside correctional facilities."

RECOMMENDATIONS:

- [] be replaced with CSHB ⁴⁶⁵ ~~456~~ (JUD) [X] the same title
[] a new title
[] have attached amendment(s)
[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) _____
[X] zero fiscal note(s) Corrections 2/2/90
[] zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

Mike Din
J. Ellis
Bob Shunk
Pete Joe

	Do Not Pass	No Rec	Amend
<u>Mike Din</u>		✓	
<u>J. Ellis</u>		✓	
<u>Bob Shunk</u>			
<u>Pete Joe</u>			

Pete Joe
Chairman's Signature

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2

HOUSE BILL NO. 465

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 telephone access and monitoring

7

inside correctional facilities."

8

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

9

* Section 1. AS 33.30.231 is amended to read:

10

Sec. 33.30.231. TELEPHONE [ACCESS AND] MONITORING INSIDE CORREC-

11

TIONAL FACILITIES. [INSTITUTIONS. (a) EXCEPT AS PROVIDED IN (b) OF

12

THIS SECTION, A PRISONER SHALL HAVE REASONABLE ACCESS TO A TELEPHONE.

13

(b) A PRISONER WHO IS CLASSIFIED MAXIMUM CUSTODY, IS PLACED IN

14

SEGREGATION AS PUNISHMENT FOR A RULE INFRACTION, OR IS PLACED IN

15

SEGREGATION BECAUSE THE PRISONER POSES A THREAT TO OTHERS OR TO THE

16

SECURITY OF A CORRECTIONAL FACILITY MAY NOT HAVE ACCESS TO A TELEPHONE

17

EXCEPT TO COMMUNICATE WITH AN ATTORNEY, TO OTHERWISE COMMUNICATE AS

18

PROVIDED IN AS 12.25.150, OR IN AN EMERGENCY AS DETERMINED APPROPRIATE

19

BY THE COMMISSIONER.

20

(c)] Notwithstanding AS 42.20.300 and 42.20.310, in order to

21

preserve the security and orderly administration of the correctional

22

facility [INSTITUTION] and to protect the public, the commissioner may

23

authorize the use of monitoring or recording equipment to listen to a

24

telephone conversation of a prisoner convicted of a crime, if a

25

warning is posted by the telephone informing the prisoner that a call

26

may be monitored or recorded. A telephone call between an attorney

27

and a prisoner may not be monitored or recorded except when authorized

28

by a court.



State of Alaska
ombudsman

Duncan C. Fowler

Reply to:

- P O Box 102636
Anchorage AK 99510-2636
(907) 563-3673
(800) 478-2624
- P O Box W0
Juneau AK 99811-3000
(907) 465-4970
(800) 478-4970
- P O Box 74358
Fairbanks AK 99707
(907) 452-4001
(800) 478-3257

March 5, 1990

Representative Max Gruenberg, Co-Chair
House Judiciary Committee
Alaska State Legislature
Post Office Box V
Juneau, Alaska 99811-3100

RE: HB 465
Inmate telephone access

Dear Representative ~~Gruenberg~~ Gruenberg:

My office supports the passage of HB 465 but asks that you consider a modification. The proposed change would assure phone calls placed by inmates to The Office of the Ombudsman were not recorded or monitored. This is similar to the privilege granted to telephone calls to attorneys. Assuring this privilege is consistent with the legislative philosophy stated in the Ombudsman Act.

The Alaska Ombudsman Act, passed in 1975, recognizes persons in state institutions, whether correctional facilities or mental hospitals, have a great *potential* to be abused by their "keepers." It also recognizes that the state has an interest in receiving and investigating such allegations of mistreatment. The state needs to assure proper and humane treatment is given those totally in its care, custody and control.

Because of this, AS 24.55.270 LETTERS TO OR FROM THE OMBUDSMAN is included in the Alaska Ombudsman Act as a separate provision. It requires letters to persons "held in custody" from the Office of the Ombudsman be handled as privileged or legal mail. It also protects outgoing mail to the ombudsman. Other portions of the act require the ombudsman to maintain confidentiality over names of complainants, unless necessary to complete the investigation. This was done to prevent retaliation by government officials to those who needed to contact this office.

I note that in 1975, when the Alaska Ombudsman Act was passed, telephone use by inmates was rare. There would have been little reason for lawmakers to consider including such a provision then. Since then inmate access to phones has become common. That fact has made it easier and more efficient for my staff to be able to respond to inmate and patient complaints. Simply, it is easier and faster for ombudsman investigators to accept and resolve a complaint by phone than by mail.

Over the years we have received several valid complaints from inmates. They have included fire safety concerns, medical care, lack of access to legal materials, being held past release dates and non-responsiveness of the public

Representative Greenberg
defender. Certainly, a call to my office (and the possibility we can resolve the issue) costs the state less than a law suit filed by an aggrieved inmate.

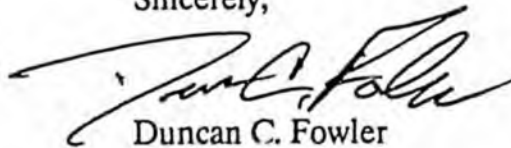
I ask that the committee consider the following change to HB 465:

(1) In line 26 after the word "attorney" insert "or the Office of the Ombudsman."

I have discussed this change with Assistant Attorney General Mike Stark and Corrections' Deputy Commissioner Frank Prewitt. They both support my proposed amendment to this bill. I was also pleased with the verbal support to this amendment by the members of the Health and Social Services Committee. They offered this amendment could best be made in the Judiciary Committee.

Please let me know if you have any questions about my suggestions. I would be happy to appear before your committee in case any of the members have any questions about this proposed amendment.

Sincerely,



Duncan C. Fowler
Ombudsman

DCF:pjc

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 1, 1990

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to access and monitoring of telephone calls in correctional facilities.

The bill repeals limitations on access to telephones by prisoners who are classified maximum custody or in segregation. The bill also repeals the authority to monitor telephone calls of prisoners who have not been convicted of a crime. It leaves intact the authority to monitor calls of convicted prisoners.

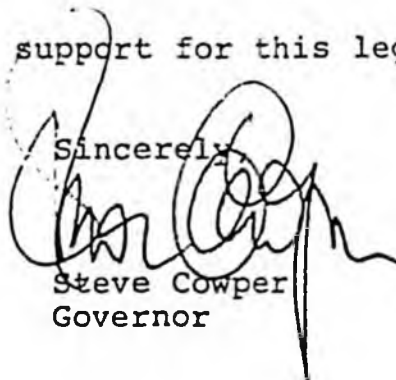
In 1983, the superior court in Cleary v. Smith signed an order granting reasonable access to telephones for all prisoners except those in punitive segregation. The order also prohibited monitoring telephone calls of pretrial detainees. In 1986, as a response to telephone abuses by a relatively small number of prisoners, the legislature passed AS 33.30.231 (sec. 6, ch. 88, SLA 1986). That statute precludes access to telephones, except to call an attorney, for inmates classified maximum custody or in segregation, and authorizes the monitoring of telephone calls of all prisoners. This bill would repeal those provisions in the statute which conflict with the court order. While the plaintiffs in Cleary have challenged the constitutionality of AS 33.30.231 in light of the 1983 court order, the state and Cleary plaintiffs have reached agreement on how to avoid this costly litigation and still afford adequate protection to the public from inmate telephone abuses.

The Department of Corrections will shortly be implementing a collect-call-only system (except to attorneys) for

prisoners, which will identify the caller as a prisoner and permit the person called an opportunity to refuse the call. This system, coupled with enactment of this bill, will protect the public from telephone abuses yet still allow the level of communication by prisoners envisioned in the 1983 court order.

I respectfully request your support for this legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the word "Sincerely,".

Steve Cowper
Governor

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Corrections
 Title: "An Act relating to telephone access inside correctional facilities." BRU: _____
 Sponsor: Rules Components: _____
 Requestor: Governor

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)

Susan E. Knighton

Prepared by: Susan E. Knighton, Director Phone: 465-3376
 Division: Administrative Services Date: 12/27/89
Susan Humphrey-Barnett
 Approved by Commissioner: _____ Date: 12/27/89
 Agency: Department of Corrections

Distribution (by preparer):

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

(7)

Date Referred: February 2, 1990

FURTHER REFERRALS:

JUDICIARY

Date of Committee Action: 3/1/90

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 465

HOUSE BILL NO. 465 MONITOR PHONE CALLS OF PRISONERS

"An Act relating to telephone access and monitoring inside correctional facilities."

RECOMMENDATIONS:

- [] be replaced with _____ [] the same title
- [] have attached amendment(s) [] a new title
- [] do pass
- [] do not pass
- [] no recommendation
- [X] 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) _____
- [X] zero fiscal note(s) 2/2/90 Correction
- [] zero fn/analysis _____

SIGNING DO PASS:

Mark Boyer w/amendment
re: OMBUDSMAN

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>[Signature]</u>		✓	
<u>Chris Davis</u>		✓	
<u>George Jones</u>			✓

[Signature]
Chairman's Signature

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

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

Mary Van Nimwegen

HOUSE HESS

MARCH 1, 1990 8:37 AM

HB 465

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 465 (Judiciary)

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 telephone access and monitoring
7 inside correctional facilities."

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

9 * Section 1. AS 33.30.231(a) is amended to read:

10 (a) A [EXCEPT AS PROVIDED IN (b) OF THIS SECTION, A] prisoner
11 shall have reasonable access to a telephone except when access is
12 suspended as punishment for conviction of a rule infraction or pending
13 a hearing for a rule infraction involving telephone abuse. A sus-
14 pension under this subsection must be reasonable in length and may not
15 prohibit telephone communication between the prisoner and an attorney
16 or between the prisoner and the office of the ombudsman.

17 * Sec. 2. AS 33.30.231(c) is amended to read:

18 (c) Notwithstanding AS 42.20.300 and 42.20.310, in order to
19 preserve the security and orderly administration of the correctional
20 facility [INSTITUTION] and to protect the public, the commissioner may
21 authorize the use of monitoring or recording equipment to listen to a
22 telephone conversation of a prisoner incarcerated following conviction
23 of a crime, if a warning is posted by the telephone informing the
24 prisoner that a call may be monitored or recorded. A recording of a
25 telephone call made under this subsection shall be kept confidential,
26 and access to the recording and its contents is limited to persons who
27 are conducting official investigations of wrongdoing or abuses by a
28 prisoner and whose access to specific recordings has been authorized
29 by the facility superintendent. A telephone call between an attorney

1 and a prisoner or between the office of the ombudsman and a prisoner
2 may not be monitored or recorded except when authorized by a court.

3 * Sec. 3. AS 33.30.231(b) is repealed.
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

H B

4 66

(7)

Date Referred: February 20, 1990

FURTHER REFERRALS:

Date of Committee Action: 3-2-90

The JUDICIARY Committee considered:

HB 466

HOUSE BILL NO. 466

RELATING TO TOBACCO AND TOBACCO PRODUCTS

"An Act relating to tobacco."

RECOMMENDATIONS:

- be replaced with CS HB 466 (JUD) 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 Law
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) Pub Safety
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

Do Not Pass
No Rec
Amend

Bob Gumbey

Hike Hillis

John Jones

Al Ellis

Mike De

SIGNING: (Check approp. column)	Do Not Pass	No Rec	Amend
<i>Terry Martin</i>		<input checked="" type="checkbox"/>	

John Jones / *Bob Gumbey*

Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to tobacco."

Agency Affected: Department of Law
BRU: Legal Services

Sponsor: Representative Gruenberg
Requestor: House Judiciary

Components: Operations

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: March 2, 1990
 Approved by Commissioner: Richard I. Pegues / FOR /
 Agency: Douglas B. Bally, Attorney General Date: March 2, 1990
Department of Law

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 466

This bill amends AS 11.76 by adding a new section that provides that a person may not provide tobacco to another person without charge or for a nominal fee, for the purpose of promoting retail sales. The bill does allow a person to provide small samples of tobacco without charge or for a nominal fee to a person 19 years of age or older for the purpose of promoting retail sales, if the samples are provided in a retail store that sells primarily tobacco, or at trade shows or conventions from which the general public is excluded, or in conjunction with a separate sale of tobacco by a retailer, manufacturer, or distributor.

There has apparently been some discussion, on the part of tobacco industry representatives, that state jurisdiction of tobacco promotions is preempted by 15 U.S.C. 1334(b), which places responsibility for regulating tobacco advertising at the federal level. It is the Department of Law's view, however, that the distribution of free samples falls under 15 U.S.C. 1332(6), which places the responsibility for the regulation of the distribution of tobacco, whether for sale or not, at the state level. If the bill is approved and is then subsequently challenged in court, the department will handle a challenge using its existing staff. Consequently, fiscal note costs are not required.

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 2, 1990

FURTHER REFERRALS:

JUDICIARY

Date of Committee Action: 2/20/90

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 466

HOUSE BILL NO. 466 RELATING TO TOBACCO AND TOBACCO PRODUCTS

"An Act relating to tobacco."

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 _____
 zero fiscal note DP5
 zero with analysis _____

- fiscal note(s) _____
 zero fiscal note(s) _____
 zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

Do Not
Pass
No Rec
Amend

J. Ellis
Ms. K. K. K.
Cheri Dauch
Peter J. J.

	Do Not Pass	No Rec	Amend
<u>Monte Beyer</u>		<input checked="" type="checkbox"/>	

J. Ellis
Chairman's Signature

State of Alaska

Committees

CO-CHAIR, HOUSE JUDICIARY
VICE-CHAIR, HOUSE LABOR AND COMMERCE
HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES



P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4712
465-4968 / 4986
(SESSION)
914 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 276-6844

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

February 20, 1990

MEMORANDUM

TO: Members of House HESS Committee
FROM: Representative Max Gruenberg *mx*
RE: HB 466, "An Act relating to tobacco"

I would very much appreciate your support for HB 466, the anti-tobacco sample bill.

Under the present law, it is legal to give adults unsolicited free samples of cigarettes and other tobacco products.

This bill prohibits giving away tobacco products in order to promote retail sales except in limited circumstances, such as in tobacco shops or conventions.

Deaths and serious illnesses from tobacco use are some of society's most serious substance abuse problems. This bill discourages tobacco use by prohibiting this type of aggressive marketing.

If you have any questions about the bill, please contact me or my staff attorney, Mark Handley, at 465-4986.

Thank you.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
 Title: Relating to tobacco and BRU: Alaska State Troopers
tobacco products
 Sponsor: Rep. Gruenberg, et al. Component: Detachments
 Requestor: House HESS

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-
---------	-----	-----	-----	-----	-----	-----

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

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: 02/08/90

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

Date: _____
 Page 1 of 1

2/8/90

February 9, 1990

MEMORANDUM

Re: H.B. 466 -- Prohibition on Tobacco
Product Sampling on Alaska

Representative Gruenberg has introduced a bill (H.B. No. 466) that, if enacted, would effectively ban the promotional distribution of free cigarette samples to adults. The bill would permit the distribution of free samples in only extremely limited circumstances: at retail stores primarily selling tobacco, closed conventions or trade shows, and in conjunction with a separate sale of tobacco. The proposed ban on sampling to adults is unwarranted and would conflict with federal law.

The purpose of cigarette sampling is not to recruit new smokers but to promote new brands or reintroduce old ones. Sampling is a promotional practice designed to secure for such unfamiliar brands a share of the existing, highly competitive cigarette market. Leading brands rarely are distributed in sample form. If the purpose of sampling were to recruit new smokers, the most popular brands would be distributed -- not the least familiar.

A sampling ban is not necessary to prevent the distribution of cigarettes to minors. Those who seek to ban cigarette sampling often claim that such a ban is the only way to keep free cigarette samples away from minors. Rarely is there any solid evidence of any significant problem in this

regard. The cigarette manufacturers insist on strict controls to prevent cigarette samples from reaching minors. Moreover, Alaska law already prohibits the distribution of tobacco products to any person under 19. Alaska Code § 11.76.100(a). The law also prohibits the purchase of tobacco by persons under 19 years of age. Id. § 11.76.105(a). Violation of either prohibition is punishable by a fine of up to \$300. Id. § 12.55.035. Enforcement of the existing law against distributing cigarettes to minors can solve any problem that may be thought to exist.

A sampling ban would violate the Federal Cigarette Labeling and Advertising Act. This is the federal law that regulates cigarette advertising and promotion. The statute contains a "preemption" provision that states as follows:

"No requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes." 15 U.S.C. § 1334(b).

The federal law assures uniformity in the advertising and promotion of a nationally marketed product and thereby "protect[s] the interests of the national economy." *Cipollone v. Liggett Group, Inc.*, 789 F.2d 181, 187 (3d Cir. 1986), cert. denied, 479 U.S. 1043 (1987). A sampling ban obviously would frustrate that purpose.

Antismoking advocates themselves recognize that state and local sampling bans are preempted by the federal law. The legislative history of the law clearly shows that Congress viewed sampling a form of cigarette "advertising or

promotion" within the meaning of the federal law. The Coalition on Smoking OR Health and the American Medical Association have urged Congress to repeal the "preemption" provision of the federal law precisely because of the obstacle it presents to state and local action in this area. The AMA stated that repeal of the "preemption" provision is --

"essential to enable state and local jurisdictions, that have been precluded from taking certain regulatory actions on tobacco products, to act responsibly and regulate prohibitions on the advertising or promotion of tobacco products based on public health concerns."

Finally, a sampling ban would violate the equal protection guaranty of the Fourteenth Amendment which requires that state laws must be "rational" -- that is, they must have some hope of accomplishing their stated purpose. A sampling ban would not reduce cigarette consumption among either adults or minors, and thus would not be "rational." In 1986, a federal district court in Oklahoma invalidated a ban on liquor advertising as "irrational" because the evidence did not establish that the ban would accomplish its stated purpose -- curtailing liquor consumption in the state. *Oklahoma Broadcasters Ass'n v. Crisp*, 636 F. Supp. 978, 992 (W.D. Okla. 1986). H.B. 466 would suffer from the same infirmity.

* * *

For the foregoing reasons, H.B. No. 466 should be rejected by the Alaska House of Representatives.

COVINGTON & BURLING



ALASKA DIVISION, INC.

RECEIVED
FEB 1 1990

February 28, 1990

Members of the House Judiciary Committee
Alaska State Legislature

RE: HB466

Tobacco is the nation's leading preventable cause of death and disease, responsible for roughly 30% of all cancer deaths, including 90% of lung cancers, 75% of cancers of the mouth, larynx and esophagus, and 50% of bladder and pancreas cancer.

Smoking is only superficially a matter of individual choice; it is more fundamentally, the product of social and economic forces, especially the advertising, marketing, and public relations practices of the tobacco industry.

There are appropriate, achievable, and effective public health policies that can significantly reduce the toll taken by tobacco. The primary obstacle to implementing these policies is the propaganda and political opposition of the tobacco industry.

Tobacco use is not a simple matter of free individual choice. Tobacco use is drug addiction comparable to cocaine and heroin addiction. Tobacco use is a major health issue that must be addressed by appropriate public health policies.

Last year tobacco killed more Americans than heroin, cocaine, alcohol, AIDS, fires, homicide, suicide and automobile accidents combined. Alaskans have the opportunity to lead the way in tobacco control legislation. Unfortunately, we already lead the U.S. in male lung cancer death.

This is not the time for the tobacco industry to be telling us that we're discriminating against smokers. Nor is it time to let up in our efforts to control a substance that, if it were an artificial sweetener, would never have made it to market.

Sincerely,

A handwritten signature in cursive script, appearing to read "A. H. Koenig".

A. H. Koenig

Director of Public Issues

Alaska Division, American Cancer Society

February 26, 1990

MEMORANDUM

Re: Federal Preemption of Proposed
Tobacco Product Sampling Ban

House Bill 466, which generally would prohibit the promotional distribution of cigarettes and other tobacco products in the State of Alaska -- to adults as well as to minors -- would be preempted by the Federal Cigarette Labeling and Advertising Act and would violate equal protection.

1. Federal Preemption. The Federal Cigarette Labeling and Advertising Act provides in pertinent part:

"(b) No requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes." 15 U.S.C. § 1334(b)

Antismoking advocates have been urging Congress to repeal this preemption provision precisely because of the obstacle it presents to state and local action in this area. The Coalition on Smoking OR Health has urged repeal of the preemption provision on this ground.^{1/} Similarly, the American Medical Association, has stated:

"The repeal of the state preemption [provision] would allow states to regulate the advertising, labeling and promotion of cigarettes within their borders. * * * The proposed preemption repeal is essential to enable state and local jurisdictions, that have been precluded from taking certain

^{1/} See Hearing on H.R. 4543 before the Subcomm. on Transportation, Tourism and Hazardous Materials of the House Comm. on Energy and Commerce, 100th Cong., 2d Sess. 319-20 (1988) (statement of the Coalition on Smoking OR Health).

regulatory actions on tobacco products, to act responsibly and regulate prohibitions on the advertising or promotion of tobacco products based on public health concerns."^{2/}

Proponents of H.B. 466 would be in an awkward position if they asserted that the preemption provision does not stand in the way of the proposed sampling ban while at the same time the antismoking lobby is telling Congress that it does.

The Federal Cigarette Labeling and Advertising Act represents "a carefully drawn balance" between providing the public with information about smoking and health -- through mandated health warnings and otherwise -- "and protecting the interests of the national economy." Cipollone v. Liggett Group, Inc., 789 F.2d 181, 187 (3d Cir. 1986), cert. denied, 107 S. Ct. 906 (1987).^{3/} Congress adopted the preemption provision so that "commerce and the national economy" would not be "impeded by diverse [and] nonuniform * * * advertising regulations" (see 15 U.S.C. § 1331(2)) based on smoking and health. The preemption provision was specifically drafted to

^{2/} Id. at 355 (statement of the American Medical Association).

^{3/} Three other federal Courts of Appeal have reached the same conclusion. Stephen v. American Brands, Inc., 825 F.2d 312, 313 (11th Cir. 1987) (per curiam); Palmer v. Liggett Group, Inc., 825 F.2d 620, 622, 626, 629 (1st Cir. 1987); Roysden v. R.J. Reynolds Tobacco Co., 849 F.2d 230 (6th Cir. 1988).

prevent state or local bans or restrictions on cigarette advertising or promotion.

That cigarette "advertising or promotion" includes sampling is clear both from the interpretation of the statutory language given by the Federal Trade Commission and from the legislative history of the statute itself. In the federal statute, Congress directed the Federal Trade Commission to report annually to Congress on "current practices and methods of cigarette advertising and promotion," and to make appropriate legislative recommendations. 15 U.S.C. § 1337(b). Sampling consistently has been treated as a form of "advertising or promotion" by the FTC.

In 1978, for example, the FTC discussed "the use of other forms of current cigarette advertising and promotion," including "advertising of special events [and] free samples." FTC Report to Congress Pursuant to the Public Health Cigarette Smoking Act for the Year 1978, p. 4. In 1977, the FTC noted that, in addition to promotion through the print media and outdoor advertising, "the cigarette companies in 1977 increased the distribution of free samples to encourage smokers to try a particular brand." FTC Report to Congress Pursuant to the Public Health Cigarette Smoking Act for the Year 1977, p. 7. A 1981 FTC staff report referred to sampling as a "promotional technique" and a "form of advertising." An FTC Staff Report in 1981 on the Cigarette Advertising Investigation, p. 2-6.

He left out
"likely" in
HRS ORAC
presentation

Courts would likely give considerable weight to the FTC view that sampling is a form of cigarette advertising and promotion. Apart from the strong deference normally given to an administrative agency's interpretation of a statute that it is directed to implement, the courts frequently have characterized brand sampling as a form of advertising or promotion. See, e.g., Indian Coffee Corp. v. Proctor & Gamble Co., 482 F. Supp. 1104, 1106 (W.D. Pa. 1980) ("Consumer promotions were aimed directly at the consumer, and included free samples, refunds, premium offers, and * * * consumer coupons.").

The FTC's interpretation of the statutory language is firmly supported by the legislative history of the statute. That sampling is a form of cigarette advertising or promotion was taken for granted during the hearings on the 1969 legislation. For example, in opposing a broadcast advertising ban, the President of the National Association of Broadcasters observed that sampling was a form of "promotion" to which the broadcast advertising ban would not apply.^{4/} Congressman Harvey stressed that the tobacco companies "advertise[d] not only in the communications field, on radio and on television,

^{4/} Cigarette Advertising and Labeling: Hearing on H.R. 6543 before the Consumer Subcomm. of the Senate Commerce Comm., 91st Cong., 1st Sess. 146 (1969) ("Senate Subcommittee Hearing") (letter of Oct. 8, 1969, from Vincent T. Wasilewski to Chairman Moss). See also 115 Cong. Rec. 38,738 (1969) (remarks of Sen. Goodell).

but they do extensive advertising in newspapers, on billboards, by direct mail, [and] by other media of all kinds."^{5/}

At the same time, others recommended that Congress not limit itself to banning broadcast advertising but impose restrictions on all cigarette advertising, including sampling. Arthur De Moss, President, National Liberty Life Insurance Company, urged "[e]ffective legislation to restrict all cigarette advertising * * *. This would include written as well as visual advertising, and would prohibit as well the giving of free samples of cigarettes to anyone, regardless of age."^{6/} Congress, of course, rejected this advice.

The cigarette industry resisted more severe advertising restrictions by pointing to its voluntary Cigarette Advertising Code. Under Article IV, concerning "Advertising Standards," Section 1 provides:

"All cigarette advertising and promotional activities shall be subject to the following:

* * *

(b) Sample cigarettes shall not be distributed to persons under twenty-one years of age.

(c) No sample cigarettes shall be distributed or promotional efforts

^{5/} Cigarette Advertising and Labeling: Hearing before the House Comm. on Interstate and Foreign Commerce, 91st Cong., 1st Sess. 209 (1969) (emphasis added). See also id. at 343 (remarks of Rep. Kuykendall).

^{6/} Id. at 1351.

conducted on school, college, or university campuses * * *."7/

The cigarette industry repeatedly represented that schools and colleges were to be "put absolutely off limits to cigarette advertising and other promotions like the distribution of free samples. Sampling to persons under 21 was ruled out in any event."8/ Industry representatives repeatedly cited the distribution of sample cigarettes as one type of "cigarette advertising in other media."9/ The Senate report on the 1969 legislation noted the industry's position that,

"with respect to all other advertising [than broadcast advertising], they would avoid advertising directed to young persons, and would continue to abstain from advertising in school and college publications, would continue not to distribute sample cigarettes or engage in promotional activities on school and college campuses * * *."10/

Some sampling ban proponents have nevertheless asserted that the preemption provision in the 1969 law was

7/ Id. at 1313.

8/ Id. at 1285 (statement of Robert B. Meyner, Administrator of the Cigarette Advertising Code) (emphasis added).

9/ Senate Subcommittee Hearing at 79 (statement of Joseph F. Cullman III, Chairman, Philip Morris, Inc.).

10/ S. Rep. No. 566, 91st Cong., 1st Sess. 9 (1969). See also Senate Subcommittee Hearing at 121 (statement of Senator Goodell characterizing distribution of sample cigarettes as a type of cigarette advertising); id. at 87 (letter of July 28, 1969, from Mr. Cullman to Chairman Moss, to the same effect); id. at 144 (letter of Sept. 2, 1969, from Mr. Cullman to Chairman Moss, to the same effect).

intended only to prohibit state requirements concerning the content of cigarette advertising. However, Congress in 1969 considered and rejected a version of Section 1334(b) that might have supported this interpretation of the provision.

H.R. 6543, as passed by the House, provided in Section 5(b):

"No statement relating to smoking and health shall be required in the advertising of any cigarettes the packages of which are labeled in conformity with the provisions of this Act." 115 Cong. Rec. 16,275 (1969) (emphasis added).

As passed by the Senate and approved by the Conference Committee, however, Section 5(b) provided:

"No other requirement or prohibition based on smoking and health shall be imposed by any state statute or regulation with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this Act." H.R. Rep. No. 897, 91st Cong., 2d Sess. 1, 5 (1970) (emphasis added).

It was this broadened version of the preemption provision that Congress enacted in 1969, replacing a narrower version that had been enacted in 1965. Moreover, when Congress subsequently considered the legislation ultimately enacted as the Comprehensive Smoking Education Act of 1984, it squarely rejected an attempt to narrow the reach of Section 1334(b) to prohibit only state or local labeling requirements.^{11/} The Supreme Court has stated that it would be

^{11/} Compare H.R. 3979, § 6(c), as introduced, with H.R. 3979, (footnote cont'd)

"improper * * * to give a reading to [a statute] that Congress considered and rejected." Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Comm'n, 461 U.S. 190, 194 (1983).

Thus, it is clear that sampling is a form of cigarette "advertising or promotion" shielded from state and local regulation by Section 1334(b) of the Federal Cigarette Labeling and Advertising Act. Congress intended Section 1334(b) to reach state and local restrictions on this and all other forms of cigarette "advertising or promotion." The sampling ban proposed for Alaska would be invalid under that preemption provision.

2. Equal Protection. Because the proposed sampling ban would be so clearly invalid under the Federal Cigarette Labeling and Advertising Act, it is unlikely that a court would find it necessary to consider the constitutional questions presented by H.B. 466. However, it should be noted that a federal District Court in Oklahoma has invalidated a state ban on liquor advertising as "irrational," and therefore impermissible under the Equal Protection Clause, because the evidence did not establish that the ban would accomplish its stated purpose -- curtailing liquor consumption in the state.

(footnote cont'd)

as reported by the House Energy and Commerce Committee. H.R. Rep. No. 805, 98th Cong., 2d Sess. 27 (1984).

Oklahoma Broadcasters Ass'n v. Crisp, 636 F. Supp. 978, 992
(W.D. Okla. 1986). The proposed ordinance banning cigarette
sampling in Alaska would suffer from the same infirmity.

COVINGTON & BURLING

Original sponsor(s): REP. GRUENBERG, Navarre, Ellis, Brown, C.Davis, M.Davis, Donley, Finkelstein, Goll, Hanley, Hudson, Jacko, Koponen, Kubina, Menard, Ulmer

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 466 (Judiciary)

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 tobacco."

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

8 * Section 1. AS 11.76.100(a) is amended to read:

9 (a) A person commits the offense of selling or giving tobacco to
10 a minor if the person is 19 years of age or older and

11 (1) knowingly sells, exchanges, or gives [A CIGARETTE, A
12 CIGAR, TOBACCO, OR A PRODUCT CONTAINING] tobacco to a person under 19
13 years of age; or

14 (2) maintains a vending machine that dispenses [CIGARETTES,
15 CIGARS, TOBACCO, OR PRODUCTS CONTAINING] tobacco and that is accessi-
16 ble to persons under 19 years of age.

17 * Sec. 2. AS 11.76.105(a) is amended to read:

18 (a) A person under 19 years of age may not purchase [A CIGA-
19 RETTE, A CIGAR, TOBACCO, OR A PRODUCT CONTAINING] tobacco in this
20 state.

21 * Sec. 3. AS 11.76 is amended by adding a new section to read:

22 Sec. 11.76.108. RETAIL PROMOTION OF TOBACCO. (a) Except as
23 provided in (b) of this section, a person may not provide tobacco to
24 another person without charge or for a nominal fee, for the purpose of
25 promoting retail sales.

26 (b) A person may provide small samples of tobacco without charge
27 or for a nominal fee to a person 19 years of age or older for the
28 purpose of promoting retail sales, if the samples are provided

29 (1) in a retail store that sells primarily tobacco;

1 (2) at a trade show or convention from which the general
2 public is excluded; or

3 (3) in conjunction with a separate sale of tobacco by a
4 retailer, manufacturer, or distributor.

5 (c) A person who provides tobacco in violation of this section
6 is guilty of a violation.

7 * Sec. 4. AS 11.81.900(b) is amended by adding a new paragraph to read:

8 (58) "tobacco" means a cigarette as defined in AS 43.50.170
9 or tobacco product as defined in AS 43.50.390.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

76-10-110. Violations — Classification of offenses.

- (1) It shall be an infraction for any person to violate Section 76-10-106
- (2) It shall be an infraction for any person to violate Section 76-10-108 or 76-10-109.
- (3) The executive director of the Department of Health or local health departments may institute an action, in a court of appropriate jurisdiction, to enjoin repeated violations of Section 76-10-108 or 76-10-109.

History: C. 1953, 76-10-110, enacted by L. 1976, ch. 10, § 5; 1986, ch. 78, § 5.
 Compiler's Notes. — The 1986 amendment substituted "an infraction" for "a class C misdemeanor" and "or" for "and" in Subsection (2); and in Subsection (3) substituted "The execu-

tive director of the Department of Health or local" for "Local boards of," inserted "departments" after "Health or local," and substituted ", in a court of appropriate" for "in any court with," and "or" for "and"

76-10-111. Prohibition of gift or free distribution of smokeless tobacco.

- (1) The Legislature finds that smokeless tobacco, or chewing tobacco, is harmful to the health of individuals who use those products because research indicates that they may cause mouth or oral cancers; that the use of smokeless tobacco among juveniles in this state is increasing rapidly; and that it is necessary to restrict the gift of these products in the interest of the health of the citizens of this state.
- (2) It is unlawful for a manufacturer, wholesaler, and retailer to give or distribute without charge any smokeless tobacco or chewing tobacco in this state. Any person who violates this section is guilty of a class C misdemeanor for the first offense, and is guilty of a class B misdemeanor for any subsequent offense.

History: C. 1953, 76-10-111, enacted by L. 1986, ch. 66, § 2.

Effective Dates. — Laws 1986, ch. 66, § 3 makes the act effective on July 1, 1986.

76-10-112. Prohibition of distribution of cigarettes or other tobacco products — Exceptions.

- (1) Except as provided in Subsection (2), it is unlawful for a manufacturer, wholesaler, or retailer to give or distribute cigarettes or other tobacco products in this state without charge. Any person who violates this subsection is guilty of a class C misdemeanor for the first offense and a class B misdemeanor for any subsequent offense.
- (2) Cigarettes and other tobacco products may be distributed to adults without charge at professional conventions where the general public is excluded.
- (3) The prohibition described in Subsection (1) does not apply to retailers, manufacturers, or distributors who give cigarettes or other tobacco products to persons of legal age upon their purchase of cigarettes or other tobacco products.

History: C. 1953, 76-10-112, enacted by L. 1989, ch. 193, § 1.
 Effective Dates. — Laws 1989, Chapter 193

became effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

DISTRIBUTION OF TOBACCO PRODUCTS

325F.76 DEFINITIONS.

Subdivision 1. **Terms.** For the purposes of sections 325F.76 to 325F.78, the terms defined in this section have the meanings given them.

Subd. 2. **Chewing tobacco.** "Chewing tobacco" means loose tobacco or a flat compressed cake of tobacco that is inserted into the mouth.

Subd. 3. **Distribute.** "Distribute" means to give products to the general public at no cost or at nominal cost for product promotional purposes.

Subd. 4. **Package.** "Package" means a pack, box, or container of any kind in which a smokeless tobacco product is offered for sale, sold, or otherwise distributed.

Subd. 5. **Person.** "Person" means any individual, partnership, corporation, or other business or legal entity.

Subd. 6. **Smokeless tobacco.** "Smokeless tobacco" means chewing tobacco or tobacco snuff.

Subd. 7. **Tobacco snuff.** "Tobacco snuff" means a small amount of shredded, powdered, or pulverized tobacco that may be inhaled through the nostrils, chewed, or held in the mouth of an individual user.

History: 1986 c 352 s 1

325F.77 PROMOTIONAL DISTRIBUTION.

Subdivision 1. [Repealed, 1987 c 395 s 5]

Subd. 2. [Repealed, 1987 c 399 s 5]

Subd. 3. **Legislative intent.** Because the state prohibits both the use of tobacco products by minors and the furnishing of tobacco products to minors, and because the enforcement of an age-related restriction on the promotional distribution of tobacco products is impractical and ineffective, it is the intent of the legislature to control the distribution of these products and discourage illegal activity by prohibiting all promotional distribution, except as allowed in this section.

Subd. 4. **Prohibition.** No person shall distribute smokeless tobacco products or cigarettes, cigars, pipe tobacco, or other tobacco products suitable for smoking, except that single serving samples of tobacco may be distributed in tobacco stores.

History: 1986 c 352 s 2; 1987 c 399 s 3,4

325F.78 REMEDIES.

The attorney general may institute a civil action in the name of the state of Minnesota in the district court for an injunction prohibiting any violation of section 325F.77. The court, upon notice to the defendant of not less than five days, and upon proof that defendant has engaged in the practice prohibited by section 325F.77, may enjoin the future commission of the practice. The court may impose a civil penalty in an amount not to exceed \$5,000 for each violation. The attorney general may recover costs and disbursements, including costs of investigation and reasonable attorneys fees.

History: 1986 c 352 s 3

ARE STATE AND LOCAL GOVERNMENTS PREEMPTED
FROM BANNING THE FREE DISTRIBUTION
OR SAMPLING OF TOBACCO PRODUCTS?

While representatives of the tobacco industry are likely to argue that any ban on the free distribution of cigarettes and other tobacco products, or "sampling," by state or local governments is preempted by federal law, a careful reading of the applicable laws and legal principles leads to the conclusion that the enactment of such a ban is permissible and is not preempted by federal law.

1. What are the federal laws that must be examined to determine whether a state or local government may lawfully ban the free distribution or sampling of tobacco products?

There are only two federal laws that address these issues. They are the Federal Cigarette Labeling and Advertising Act, as amended by the Comprehensive Smoking Education Act of 1984, 15 U.S.C. Sections 1331-1340, and the Comprehensive Smokeless Tobacco Education Act of 1986, 15 U.S.C. Sections 4401-4406.

The text of the relevant provisions of these acts is as follows:

The Federal Cigarette Labeling and Advertising Act: 15
U.S.C. Section 1334

- (a) No statement relating to smoking and health, other than the statement required by Section 1331 of the Title, shall be required on any cigarette package.
- (b) No requirement or prohibition based on smoking and health shall be imposed under state law with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this Chapter.

The Comprehensive Smokeless Tobacco Education Act: 15
U.S.C. Section 4406

- (b) No statement relating to the use of smokeless tobacco products and health, other than the statement required by Section 4402 of this Title, shall be required by any state or local statute or regulation to be included on

any package or in any advertisement (unless the advertisement is an outdoor billboard advertisement) of a smokeless tobacco product.

2. Why doesn't the Federal Cigarette Labeling and Advertising Act prohibit a state or local government from banning the free distribution of cigarette products?

There are three main reasons why the Federal statute does not preempt state or local action in this area. They are:

- A. A ban on free sampling is a restriction on the distribution, not the promotion of cigarettes. While the Federal Cigarette Labeling and Advertising Act preempts efforts to restrict "the promotion" of cigarettes, it does not preempt state or local efforts to limit or restrict the "distribution" of cigarettes. A state or local government remains free to restrict when and where and to whom cigarettes may be sold. A ban on the free sampling or free distribution of cigarettes is a restriction on the "distribution" of cigarettes, not on the "promotion" of cigarettes. This conclusion is confirmed by Section 1332 of the Act, which defines the terms "sale or distribution" as including "sampling or other distribution not for sale." Thus, just as a state or local government remains free to restrict the sale of cigarettes to minors or to prohibit the sale of cigarettes in schools or other facilities populated largely by minors, a state or local government remains free to limit the "distribution" of cigarettes by banning their free distribution and sampling.
- B. A ban on free sampling is consistent with the goals and purposes of the Federal Act. The preemption provision in the Federal Cigarette Labeling and Advertising Act must be examined in the context of the declared Congressional policy and purpose of the Act. The preemption provision was enacted to insure that state and local governments did not take actions which were inconsistent with the purposes of the Act.

15 U.S.C. Section 1331 states that Congress had two goals in the enactment of the Federal Cigarette Labeling and Advertising Act. First, Congress wished to inform the public about the hazards of cigarettes. Second, Congress did not want to unnecessarily impede the cigarette manufacturer's ability to sell cigarettes "by diverse, non-uniform, and confusing cigarette labeling and advertising regulations with respect to any relationship between smoking and health." 15 U.S.C. Section 1331(2).

A ban on the free sampling and free distribution of cigarette products is not inconsistent with the policy and purposes of the Federal Cigarette Labeling and Advertising Act, nor does it set up conflicting and confusing requirements that will otherwise impede the ability of cigarette manufacturers to market their products. The preemption provision was enacted to prohibit state and local restrictions on advertising and promotion that would make it difficult or impossible for a manufacturer to conduct a national advertising and promotional campaign. A ban on the free distribution of cigarette products within a particular jurisdiction does not conflict with this goal.

- C. A ban on free sampling may be enacted for reasons other than smoking and health. Even if the federal statute is considered to preempt an effort to ban the free sampling of cigarettes when such a prohibition is "based on smoking and health" considerations, a state and local government is free to enact such a ban if it does so to avoid congestion on its streets, to control or reduce litter, to protect pedestrians from annoyance and invasion of their privacy, or to avoid facilitating the availability of cigarettes and other tobacco products to minors. The preemption provision is limited to laws enacted based on "smoking and health" considerations only.

3. Does the Federal Cigarette Labeling and Advertising Act provision that says "No Requirement or Prohibition Based on Smoking or Health Shall be Imposed Under State Law with Respect to the Advertising and Promotion" of cigarettes preempt a state or local government from banning the free distribution of cigarettes?

Probably not. The tobacco industry argues that a ban on the free distribution of cigarettes amounts to a prohibition on its promotional efforts and, therefore, is preempted by the federal statute. No court has explicitly addressed this issue yet. Nonetheless, there are sound reasons for concluding that the Federal Cigarette Labeling and Advertising Act does not preempt a state or local government from banning the free distribution, or sampling, of cigarettes.

4. Does the Comprehensive Smokeless Tobacco Health Education Act of 1986 preempt state or local governments from banning the free distribution, or sampling, of smokeless tobacco products?

No. The preemption provision in the Smokeless Tobacco Act is careful and narrowly limited. It only prevents a state or local government from enacting a statute that requires a different warning label required by the federal statute. State and local governments remain free otherwise to limit or restrict the advertisement of these products and to limit or prohibit any promotional efforts for smokeless tobacco products that take place within their jurisdiction.

Compiled by the Coalition on Smoking or Health, a public policy project supported by the American Cancer Society, the American Heart Association, and the American Lung Association, Washington, D.C.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 2, 1990

The Hon. Max Gruenberg
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: HB 466 -- (prohibition on the
free distribution or sampling
of tobacco products)

Dear Representative Gruenberg:

You have asked us if the state is preempted by federal law from enacting a prohibition on the free distribution or sampling of tobacco products. There is a prohibition against providing free tobacco in HB 466.

Because of the short period of time in which our response has been requested, we have not done an extensive analysis of this issue. However, our initial review leads us to believe that while it may be a close question, there is a legitimate argument that the state is not preempted by federal law from enacting a prohibition against the free distribution or sampling of tobacco products.

Under the supremacy clause of the United States Constitution, Article VI, cl. 2, Congress can pass laws that will completely govern an area, thus preempting any state action in that area. However, in determining whether state action is preempted in any particular area we must analyze whether there is an actual conflict between state and federal legislation and whether there was an intent behind the federal legislation to preclude state action. See Florida Lime & Avocado Growers v. Paul, 373 U.S. 132 (1962).

House Bill 466 states (with certain exceptions for tobacco stores and trade conventions), "A person may not provide tobacco to another person without charge or for a nominal fee, for the purpose of promoting retail sales." HB 466, p. 1, lines 23-25. Federal statute provides that "no requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes [when the packages are properly labelled]." 15 U.S.C.A. 1334(b) (1970).

STEVE COWPER, GOVERNOR

REPLY TO:

- 1031 W 4th AVENUE SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697
- 1st NATIONAL CENTER
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317
- P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

The key question is whether or not giving away tobacco is "advertising or promotion." While giving away tobacco could be considered part of a promotional scheme, it is not "advertising" in the traditional sense. Furthermore, under 15 U.S.C.A. 1332(6) (1970), Congress defined the term "sale or distribution" as "including sampling or any other distribution not for sale." If Congress had meant to preempt state action in this area it arguably would have used the same terms ("sale or distribution") in 15 U.S.C.A. 1334(b) and would have clearly stated that states cannot interfere with the sale or distribution of tobacco. By not doing so, even though Congress has obviously taken action in this field, states do not appear to be explicitly forbidden from enacting legislation limiting the distribution of tobacco.

This analysis is further supported by the rule of statutory construction that states:

Where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but if there is any conflict, the latter will prevail, regardless of whether it was passed prior to the general statute, unless it appears that the legislature intended to make the general act controlling.

2A C. Sands, Sutherland Statutory Construction 51.05, at 315 (4th ed. 1973) (footnotes omitted), cited in State v. Green, 586 P.2d 595, 602 (Alaska 1978).

House Bill 466 and federal law can be read in harmony with one another. Promotion is a general term, and does not necessarily cover the distribution of an item. Furthermore, even if the two laws did conflict, prohibiting the distribution of tobacco could be found to simply specify in a "more detailed manner" something that is not allowed under the general ambit of "promotion."

Finally, Congress's statement of intent in 15 U.S.C.A. 1331 does not specifically preclude states from limiting distribution of tobacco. Rather, it precludes the states from enacting "diverse, nonuniform, and confusing cigarette labeling and advertising regulations with respect to any relationship between smoking and health." Id. At least three other states have enacted statutes similar to the one proposed by HB 466. As we have noted,

The Hon. Max Gruenberg
Alaska State Legislature

March 2, 1990
Page 3

although it may be a close issue, we believe the better view is that states are not automatically preempted from enacting a restriction on the free distribution of tobacco.

Sincerely yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: *Elizabeth J. Kerttula*
Elizabeth J. Kerttula
Assistant Attorney General

EJK:jf

State of Alaska

Committees

CO-CHAIR, HOUSE JUDICIARY
VICE-CHAIR, HOUSE LABOR AND COMMERCE
HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES



P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4712
465-4968/4986
(SESSION)

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

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

February 28, 1990

MEMORANDUM

TO: Members of the House Judiciary Committee

FROM: Representative Max Gruenberg, *MFG*

RE: HB 466, "An Act relating to tobacco."

I would very much appreciate your support for HB 466, the anti-tobacco sample bill.

Under the present law, it is legal to give adults unsolicited free samples of cigarettes and other tobacco products.

This bill prohibits giving away tobacco products in order to promote retail sales except in limited circumstances, such as in tobacco shops or conventions.

Deaths and serious illnesses from tobacco use are some of society's most serious substance abuse problems. This bill discourages tobacco use by prohibiting this type of aggressive marketing.

If you have any questions about the bill, please contact me or my staff attorney, Mark Handley, at 465-4986.

Thank you.

Anch Daily News 2/20/90

Smoking costs U.S. \$52 billion

Alaska lowest — \$82 million yearly

By MARLENE CIMONS
Los Angeles Times

WASHINGTON — Health care expenses and productivity losses associated with smoking-related disease cost the United States more than \$52 billion every year, according to a government report released Tuesday.

The Department of Health and Human Services, in a national status report to Congress, estimated that illness caused by smoking imposes an average economic burden of \$1 billion per state, although some states run much higher tabs than others.

California, the most populated state, has the highest estimated cost of \$5.8 billion, the report said. Alaska was lowest, with \$82 million annually. Following California, in order, were New York, Texas, Pennsylvania, Illinois, Ohio and Michigan.

Annual expenses related to smoking-related disease average \$221 for every man, woman and child in the nation, ranging from a low of \$56 a person in Utah to \$284 per capita in Rhode Island, the report said.

Most of the costs identified by the study are related to health care. It said that the expenses are borne indirectly by all Americans in the form of higher private and public insurance premi-

ums and the increased burden on publicly supported health care facilities and personnel.

"Each and every American, including those who don't even smoke, is paying a hidden tax ... for the consequences of smoking," Louis W. Sullivan, the secretary of Health and Human Services, said in testimony before a Senate committee considering anti-smoking legislation.

"My view," Sullivan said, "is straightforward and simple: No smoking."

The report was immediately assailed by the Tobacco Institute, which said that "to assume that smokers impose a cost on society is a misapplication of a valid economic theory."

Brennan Dawson, a spokeswoman for the industry group, said that "smokers pay their own (insurance) premiums, so they cover their own costs."

Further, she said, "if people are less productive, that's not a cost to society — they bear the burden through lower pay, less frequent job promotions, or getting fired."

The report said that smoking causes more premature deaths than cocaine, heroin, alcohol, fire, automobile accidents, homicide and suicide combined.

POSITION PAPER
House Bill 466

"An Act relating to tobacco."

BACKGROUND

This bill would restrict the availability of tobacco, especially to minors, and place limits on methods of distributing tobacco. It would make it a violation to sell or give tobacco to a person under 19 years of age (herein called a minor), or to allow access of such persons to vending machines dispensing tobacco. It also defines the class of products so restricted more generally than earlier versions of the bill, as "tobacco," rather than naming examples of tobacco products. In addition, it defines as a violation the distribution of tobacco to any person without charge or at nominal cost for the purpose of promoting retail tobacco sales, with some exceptions involving sales of tobacco to adults, or at promotional conventions and trade shows not open to the public.

ANALYSIS

The following statistical and research data was obtained from two principle sources: a 1989 report of the Surgeon General to Congress, "Reducing the Health Consequences of Smoking, 25 Years of Progress" (SGR), and a report dated February 20, 1990 to Congress by the Center for Disease Control's Office on Smoking and Health, "Smoking and Health, A National Status Report, 2nd Edition" (OSH).

Limiting access of minors to tobacco is an important public health measure for the following reasons:

1. Virtually all adult smokers began using tobacco before age 20. Research indicates that if persons do not begin smoking by age 20, they rarely do so later. Those who begin smoking early in life have more trouble quitting, smoke more heavily, and have a higher risk of developing smoking related disease. Delaying the onset of smoking behavior, therefore, will likely have the effect of reducing both the incidence of new smokers and the prevalence of smoking and the associated adverse health effects. Limiting access of minors to tobacco as a means of reducing prevalence is supported by numerous health organizations, including the World Health Organization and the American Medical Association. it is

believed to be one of the best means available to prevent minors from beginning to smoke (SGR).

2. The Surgeon General's report states that retailers are the primary source of tobacco used by minors. Vending machines and free samples are both cited as sources of tobacco for the youngest children, possibly due to refusal by retailers to sell to them directly because of statutory restrictions. Therefore, this bill may be particularly effective in preventing tobacco use by this group, which is arguably the least able to make informed judgments about using tobacco and is at the greatest risk for adverse health effects if they begin using tobacco.

3. Tobacco use has clearly been shown to cause, or increase the risk of, some of the leading causes of mortality in the United States, including cancer, heart disease, and stroke. In fact, smoking causes more premature deaths than cocaine, heroine, alcohol, fire, automobile accidents, homicide, and suicide combined (OSH).

4. Smoking is an especially serious health problem in Alaska, which has the highest rate of both smoking and lung cancer mortality in the country. The OSH report states, based on 1985 data, that while the national smoking prevalence rate is 26.5 percent, in Alaska the rate for persons over 20 is 43.4 percent for males and 28.9 percent for females. A recent survey of Alaska adolescents' health-related behavior suggest that smoking prevalence in this group may be much higher, particularly in rural areas. The OSH report states that the direct and indirect costs of smoking-related adverse health effects to Alaska residents is \$82.3 million annually, and that the smoking-attributable years of potential life lost for Alaskans is 4,762 years.

The right of states to restrict tobacco use has a long, legal history in the United States, dating to a Supreme Court decision in 1900. In general, the federal government has not restricted the distribution of tobacco, leaving this to the states (SGR). Forty-three states and the District of Columbia have laws that restrict minors' access to tobacco, and in 29 of those states the age is 18 or older. Twelve states and at least 12 municipalities have laws restricting the distribution of samples of tobacco products.

The SGR enumerates three policies to restrict use of tobacco by minors, and they are just those contained in this

bill: 1) restrict sale and distribution of free tobacco to minors; 2) ban use or possession by minors; and 3) restrict access by minors to vending machines.

The likely effect of this bill would be to discourage tobacco use. In particular, it would tend to prevent young people from beginning to smoke, or limit the amount they smoke, by limiting their access to tobacco. It would not limit the activities of adults who already choose to use tobacco except in the area of making gifts or sales of tobacco to minors.

POSITION

The Department of Health and Social Services strongly supports this bill.

Recommended by:

Sally Mead
Sally Mead, Coordinator
Office of Prevention

Date:

3/6/90

Approved by:

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

Date:

3/4/90

Original sponsor(s): REP. GRUENBERG, Navarre, Ellis, Brown, C.Davis,
M.Davis, Donley, Finkelstein, Goll, Hanley, Hudson, Jacko, Koponen, Kubina,
Menard, Ulmer

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 466 (Judiciary)

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 tobacco."

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

8 * Section 1. AS 11.76.100(a) is amended to read:

9 (a) A person commits the offense of selling or giving tobacco to
10 a minor if the person is 19 years of age or older and

11 (1) knowingly sells, exchanges, or gives [A CIGARETTE, A
12 CIGAR, TOBACCO, OR A PRODUCT CONTAINING] tobacco to a person under 19
13 years of age; or

14 (2) maintains a vending machine that dispenses [CIGARETTES,
15 CIGARS, TOBACCO, OR PRODUCTS CONTAINING] tobacco and that is accessi-
16 ble to persons under 19 years of age.

17 * Sec. 2. AS 11.76.105(a) is amended to read:

18 (a) A person under 19 years of age may not purchase [A CIGA-
19 RETTE, A CIGAR, TOBACCO, OR A PRODUCT CONTAINING] tobacco in this
20 state.

21 * Sec. 3. AS 11.76 is amended by adding a new section to read:

22 Sec. 11.76.108. RETAIL PROMOTION OF TOBACCO. (a) Except as
23 provided in (b) of this section, a person may not provide tobacco to
24 another person without charge or for a nominal fee, for the purpose of
25 promoting retail sales.

26 (b) A person may provide small samples of tobacco without charge
27 or for a nominal fee to a person 19 years of age or older for the
28 purpose of promoting retail sales, if the samples are provided

29 (1) in a retail store that sells primarily tobacco;

1 (2) at a trade show or convention from which the general
2 public is excluded; or

3 (3) in conjunction with a separate sale of tobacco by a
4 retailer, manufacturer, or distributor.

5 (c) A person who provides tobacco in violation of this section
6 is guilty of a violation.

7 * Sec. 4. AS 11.81.900(b) is amended by adding a new paragraph to read:

8 (58) "tobacco" means a cigarette as defined in AS 43.50.170
9 or tobacco product as defined in AS 43.50.390.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

HB

472

HOUSE COMMITTEE REPORT

4/19

B

(7)
Date Referred: February 6, 1990

FURTHER REFERRALS:

JUDICIARY
FINANCE

Date of Committee Action: 4/17/90

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 472

HOUSE BILL NO. 472 CHILD SUPPORT GUIDELINES

"An Act relating to the Child Support Guideline Review Commission and to child support guidelines; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with CS HB 472 (HESS) the same title
- a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the Finance Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Date/Dept)

- 2 fiscal impact 2AA-Court fiscal note(s) _____
- zero fiscal note _____ zero fiscal note(s) _____
- zero with analysis _____ zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

Do Not
Pass
No Rec
Amend

SIGNING DO PASS:	SIGNING:	Do Not Pass	No Rec	Amend
<u>Mr. Gruenberg</u> GRUENBERG				
	<u>Cheri Davis</u> C. DAVIS	X		
	<u>Mark Boyer</u> BOYER	X		
	<u>John Ellis</u> ELLIS	X		

John Ellis
Chairman's Signature

FISCAL NOTE

CL

REQUEST:

Revision Date: _____ Agency Affected: Alaska Judicial Council
 Title: An Act relating to Child Support BRU: _____
Guidelines Review Commission...
 Sponsor: Gruenberg Components: _____
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services						
Travel						
Contractual		200.0				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	200.0	0.0	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)

General Funds	0.0	200.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
TOTAL	0.0	200.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: William T. Cotton, Executive Director
 Division: Alaska Judicial Council

Phone: 279-2526
 Date: 02/20/90

Approved by: William T. Cotton, Executive Director
 Agency: Alaska Judicial Council

Date: 02/20/90

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

CSED

ALASKA JUDICIAL COUNCIL
FISCAL ANALYSIS: HB472

Sec. 12 of HB472 requires the Alaska Judicial Council to "complete a comprehensive economic study of the costs of raising children in the state and submit a report with its findings to the legislature...." Council staff have discussed the cost of such a study with several persons. While estimates ranged as high as two million dollars, the Institute of Social and Economic Research (ISER) believed that the study could be done for \$200,000. It is this rough estimate that is the basis of this fiscal note.

FISCAL NOTE

cc

REQUEST:

Revision Date: _____
Title: An Act relating to the Child
Support Guideline Review Commission...
Sponsor: Rep. Gruenberg
Requestor: Rep. Gruenberg

Affected Agency: Legislative Affairs Agency
BRU: Legislative Council
Components: Council & Subcommittees

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY91	FY92	FY93	FY94	FY95	FY96
Personal Services	0	0	0	0	0	0
Travel	5.5	11.0	11.0	11.0	11.0	11.0
Contractual	3.0	3.0	3.0	3.0	3.0	3.0
Supplies	0	0	0	0	0	0
Equipment	0	0	0	0	0	0
Land & Structures	0	0	0	0	0	0
Grants, Claims	0	0	0	0	0	0
Miscellaneous	0	0	0	0	0	0
TOTAL OPERATING	8.5	14.0	14.0	14.0	14.0	14.0

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

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

FUNDING: (THOUSANDS OF DOLLARS)

General Fund	8.5	14.0	14.0	14.0	14.0	14.0
Federal Fund	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	8.5	14.0	14.0	14.0	14.0	14.0

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)

HB 472 establishes the Child Support Guideline Review Commission under the Legislative Branch. Administrative and legal services of the Legislative Affairs Agency shall be made available to the Commission. The following is requested to adequately support the Commission:

Prepared By: Pamela A. Stoops, Director
Division: Administrative Services

Pamela A. Stoops

Phone: 465-3850
Date: 4/17/90

Approved By: Warren Endicott, Executive Director
Agency: Legislative Affairs Agency

Warren Endicott

Date: 4/17/90

DISTRIBUTION (BY PREPARER)
LEGISLATIVE FINANCE
LEGISLATIVE SPONSOR

REQUESTOR
OFFICE OF MANAGEMENT & BUDGET
AGENCY (IES)

CONTINUATION OF FISCAL NOTE: HB 472

Staff: Staff will be absorbed within existing Agency and legislative staff to support the Commission.

Travel: It is anticipated there will be 2 meetings of the Commission in FY 91 and four meetings in FY 92, etc. It is assumed that travel expenses of the 4 legislators will be absorbed within the existing Legislative Budget and the representatives from the Executive Branch and Judicial Branch will be absorbed within their respective budgets.

2 meetings x 5 public members at 2 days each

airfare - 2 meetings x 5 members = 10 airfares

10 airfares x \$390 = \$3,900

per diem - 2 meetings x 5 members = 10

10 x 2 days per diem = 20

20 x \$80 =

\$1,600

\$5,500

Contractual: Advertising - advertising in local newspapers for public notices of meetings - \$3,000

Supplies, equipment, etc. will be absorbed withing the existing Legislative Budget.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Revenue
 Title: Child Support Review Commission and BRU: Child Support Enforcement Division
child support guidelines
 Sponsor: Rep. Gruenberg Components: _____
 Requestor: House Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
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	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 for analysis.

Prepared By: Ardith Lynch Phone: 451-2830
 Division: Child Support Enforcement Division Date: April 17, 1990

Approved by Commissioner: Hugh Malone Date: 4/19/90
 Agency: Department of Revenue

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

State of Alaska

Committees

CO-CHAIR, HOUSE JUDICIARY
VICE-CHAIR, HOUSE LABOR AND COMMERCE
HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES



P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4712
465-4968/4986
(SESSION)
914 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 276-6844

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

MEMORANDUM

TO: Rep. Peter Goll, House HESS Committee
FROM: Rep. Max F. Gruenberg, Jr.
DATE: March 23, 1990
SUBJECT: HB 472: Policy Issues and Background

On Monday the HESS Committee will be considering HB 472, "An Act relating to the Child Support Guidelines Review Commission and to child support guidelines; and providing for an effective date." I have previously provided a sectional analysis of the bill and copies of the recommendations it is based on. I've attached a memorandum explaining some of the history leading up to the introduction of HB 472, and discussing the reasons why I think it is important for the legislature to act on this subject now.

HB 472: POLICY ISSUES AND BACKGROUND

Introduction

Alaska currently has a child support guideline that is used to compute child support levels in judicial and administrative cases. The guideline was adopted and made applicable to judicial child support cases by the Alaska Supreme Court in 1987, as Civil Rule 90.3.

HB 472 would enact a legislative child support guideline. The guideline in the bill as introduced is identical to Civil Rule 90.3, with the single exception of child care expenses. (Under the bill, the judge is to consider both parents' child care expenses; the rule provides that only the non-custodial parent's expenses are a factor.) In addition, HB 472 creates a Child Support Commission to review the guideline, as is required by federal law, every four years. The bill also calls for an economic study of the costs of raising children in Alaska.

I. History of Alaska's Guideline

A. Development and Adoption of Civil Rule 90.3

The adoption of a child support guideline by the Alaska Supreme Court was prompted by federal legislation. The Child Support Enforcement Amendments of 1984 required each state to adopt, prior to October 1, 1987, a child support guideline to be used in setting child support awards. The law stated that the guideline could be established "by law or by judicial or administrative action"; it required that the guideline "be made available to all judges and other officials who have the power to determine child support awards..., but need not be binding...".

The 1984 Amendments also required each state to form a commission to study the state's child support system. Governor Sheffield appointed a 13-member Alaska Commission on Child Support Enforcement [the Sheffield Commission], chaired by the commissioner of revenue. The Commission included representatives of a broad spectrum of interested parties,

B. Events Since Promulgation of Civil Rule 90.3

1. Family Support Act of 1988

The federal Family Support Act of 1988 mandated that a single, uniform state child support guideline be presumptively applied in all judicial and administrative proceedings, and that the guideline be reviewed at least once every four years.

The new federal law raised a question as to whether Alaska law was in conformity with the new federal requirements. Although Civil Rule 90.3 was already presumptively applicable in all judicial proceedings, Alaska law at that time did not provide for use of a single, uniform guideline in both judicial and administrative support proceedings. (Although CSED, acting independently, had adopted a guideline similar to Civil Rule 90.3) Furthermore, there is no provision in Alaska law for the periodic review of the guideline used.

2. SB 54

The first Alaska legislation specifically addressing the issue of child support guidelines was introduced by Senator Uehling at the beginning of the 1989 session. SB 54 would have assured compliance with federal law by giving the Alaska Supreme Court specific statutory authority to promulgate a child support guideline by court rule which was presumptively applicable in all judicial and administrative child support proceedings, and by requiring the court to undertake a review of the rule at least once every four years. However, the bill remains in the first committee of referral, and no further hearings on it are planned.

3. Revisions to Civil Rule 90.3

In the meantime, after a year of experience with Civil Rule 90.3, the Chief Justice in late 1988 appointed a five member committee to review the rule. The committee was chaired by a family law attorney in private practice, and included a superior court judge, a family law master, and representatives of the Division of Child Support Enforcement and the Department of Law. The committee solicited written testimony regarding Civil Rule 90.3 and held two well publicized public oral comment sessions, teleconferenced statewide. The committee forwarded its recommendations for amendments to Civil Rule 90.3 to the Supreme Court on August 15, 1989, along with a proposed commentary to the rule.

On October 5, the Supreme Court adopted revisions to Civil Rule 90.3 effective January 15, 1990. The commentary to the rule was not approved or adopted by the court, but was published as an aid to users of the rule. Subsequently, the Division of Child Support Enforcement has by regulation adopted Civil Rule 90.3 as the child support guideline for administrative cases.