

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990
5927 HOUSE LABOR & COMMERCE

8672

331



Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE LOREN LEMAN
465-2095

Official Business

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

M E M O R A N D U M

TO: Representative Dave Donley
Chairman, House Labor and Commerce Committee

FROM: Representative Loren Leman *Loren*

DATE: March 30, 1989

SUBJ: COMPETITION IN WASTE COLLECTION/DISPOSAL

After consideration of the presentation made by the subcommittee chairman, representatives of the monopoly providers, and meeting with the Chairman of the Alaska Public Utilities Commission (APUC), I find that I do not concur with the recommendation made by a majority of the subcommittee.

There are five principal reasons for this divergence in opinion.

(1) The APUC has reviewed the situation and has come to the conclusion that this is an industry that does not require monopoly to serve the public interest.

AS 42.05.720(4F) notwithstanding, the APUC believes they have the authority to initiate the limited competition they have authorized. I agree.

(2) Allowing citizens the economic freedom to compete does not repeal or restrict health and safety regulations. I am not aware of evidence to support the contention that monopolies have a better compliance record with health and safety regulations than do competing businesses.

(3) The current monopolists largely began as "Mom & Pop" operations collecting refuse. The gate should not be shut for the "Mom & Pops" of the 1990s--those who are willing to accept the challenges of free competition.

(4) The public is better served by having the freedom to choose. With competition, the businesses will have to take the consumers into account in ways a monopolist may be able to ignore.

(5) Remote areas will be better served by competition. Competing firms have an incentive to innovate. A protected monopolist has little incentive to innovate. The presumption should be to allow the competing enterprise an opportunity to provide the service. If some areas remain unserved that the Legislature believes should be served, corrective action could be taken. The right of Alaskans to compete should be honored.



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Juneau, Alaska 99811

CONSIDERATION OF THE MAJORITY REPORT

POINT #1: "The subcommittee has concluded that current statute requires the APUC to regulate refuse utilities (AS 42.05.720(4F)). The fact that the legislature has considered and declined to change the statute affirms the prescribed public policy for the APUC to follow."

REBUTTAL: The APUC is proceeding with a form of deregulation they believe they are authorized to implement. In fact, the failure of the Legislature to pass legislation prohibiting the APUC from pursuing deregulation may actually represent tacit approval of the APUC's actions. Additionally, no legal opinions were presented that substantiated the subcommittee's interpretation of AS 42.05.720(4F).

In fact, the majority report of the subcommittee suggests the need for additional intent language.

POINT #2: "The subcommittee's conclusion in favor of strict regulation is based on traditional economic theory of regulation that holds that the public interest is best served by allowing economies of scale to accumulate for capital and operational cost recovery."

REBUTTAL: The fact that others desire to compete indicates they do not share the monopolists concerns with respect to economies of scale. The situation is that those already largely capitalized and who enjoy monopoly are asking for protection, while those seeking entry into the market without guarantees are not dissuaded by traditional economic theory.

POINT #3: "The subcommittee is persuaded that regulation of refuse utilities is necessary to protect public health and the environment."

REBUTTAL: APUC is responsible for economic and service regulation. APUC deregulation should have no effect on health and safety concerns monitored by other agencies of the state.

I concur with the recommendation of the subcommittee with respect to the second question, i.e., should the Committee sponsor legislation requiring solid waste recovery and/or recycling.



H.B.72
FILE

February 3, 1989

~~Handwritten scribble~~

The Honorable Dave Donley
Chairman
Labor and Commerce Committee
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Chairman:

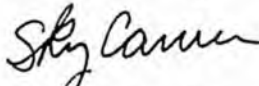
In addition to operating a refuse disposal utility on the Kenai Peninsula, I serve as President of the Alaska Refuse Utilities Association. Our Association is comprised of the state's major refuse utilities with membership in every major Alaska community.

We anticipate that the issue of deregulating refuse may come before your Committee in the near future, particularly if the sunset audit report prepared by the Division of Legislative Audit follows previous recommendations made by the Division's staff. However, until the Division's report is finalized and brought before your Committee--and the Division's recommendations are made public--it is the association's position that it is premature to take any legislative action on the refuse issue. For that reason we have not requested the Committee to address some of the legislative proposals the Association would like to see enacted into law.

We would, however, like to let you know of our interest in discussing several of the Association's legislative proposals

with either the full Committee, or a Subcommittee which has been given the responsibility of reviewing the full spectrum of public policy concerns regarding refuse disposal. We believe there are compelling policy reasons for leaving APUC regulation of refuse in place. However, we also believe there are improvements which can be made to the present statutory framework which will provide continued protection to the ratepaying consumer and to the environment, while at the same time lifting much of the current self-inflicted workload which has developed at the APUC regarding refuse dockets. Therefore, we request the opportunity to appear before the Committee to discuss refuse deregulation whenever you believe it would be appropriate. Thank you for your consideration of this request.

Sincerely,



Sky Carver
President
Alaska Refuse utilities Association

Law Offices of
B. RICHARD EDWARDS
550 WEST 7TH AVENUE
SUITE 1230
ANCHORAGE, ALASKA 99501-3564
TELEPHONE (907) 276-5552

January 16, 1989

Members

Alaska Refuse Utilities Assn., Inc.
c/o Sky Carver, President
Peninsula Sanitation Co., Inc.
P.O. Box 1209
Soldotna, AK 99669

Dear Members:

Attached to this letter is a synopsis of the hearing time expended by the Alaska Public Utility Commission on refuse matters between January 1, 1983 and December 31, 1988. These numbers were calculated using transcript times, estimations of time on matters that this office was involved in and estimating the number of Commissioners at each proceeding. Our few estimates are conservative.

An evaluation of the attached analysis shows that the Commissioners spend a total of 76 hours of hearing time on certification matters and 28 hours of hearing time on rate matters. When computing the actual number of hours spent in total by members of the commission it is necessary to multiple the number of hearing hour times the number of commission participants at the hearing. This results in 142 hearing hours total spent by all Commissioners and the Hearing Officer on certification matters and 37 hearing hours total spent by all Commissioners and the Hearing Officer on rate matters.

Left out of this analysis is the number of hours spent by staff on refuse matters, and Commissioners and Hearing Officers hearing preparation time, travel time and post hearing activity time. It is my belief that the staff has not spent much time with respect to certification matters except for the initial Mat-Su Docket U-83-8 and writing of some recommendations on other dockets. I do not believe they actually participated with counsel in any certification matter except U-83-8. The staff spends considerable time analyzing rate filings. We have not yet found a way to determine the amount of time spent by staff on rate matters. We do know that staff apparently had one person assigned to rate matters for refuse cases but we do not believe that all of his time was or should have been spent on refuse rate matters. Further analysis of this subject may be necessary to complete the picture of the time spent by the Commission on rate matters in refuse proceedings.

Law Offices of

B. RICHARD EDWARDS

Alaska Refuse Utilities Assn., Inc.

Page 2

January 16, 1989

Please note that the enclosed analysis is subject to your input. Many of you participated at these hearings and your file will indicate the accuracy of cur numbers. Thus each of you should review your files and determine whether or not our numbers are accurate.

If any of you should have any questions on this, please feel free to bring them to my attention.

Sincerely yours,



B. Richard Edwards

ALASKA PUBLIC UTILITIES COMMISSION
Hearings, 1983-1988:
Collection and Disposal of Garbage, Refuse, and Trash

I. Hearings Pertaining to Certification Matters.

<u>Docket(s)</u>	<u>Date(s) of Hearing(s)</u>	<u>Off'rs or Comm'rs Present</u>	<u>Hearing Hours</u>	<u>Off'r-Hours/Comm'r-Hours</u>
U-83-8, Valley Refuse, et al.	10/17, 19, 31/83 11/1/83 12/6, 7/83 2/1/84	Comm'rs Agi, Weatherly	49	98
U-83-60, Drake Sanitation; U-84-70, North Pole Trash Serv.; U-85-24, North Pole Trash Serv.	6/18/85	Off'r Jackson	2	2
U-88-75, Mat-Su Borough	2/24/87	Comm'rs Agi, Guess	2	4
U-86-97, Juneau Sanitation Corporation	9/15/87	Off'r Jackson	7	7
U-87-21, C & S Enterprises	5/23-24/88	Off'r Jackson	11	11
U-88-22, Alma Corporation	7/20/88	Off'r Jackson Comm'rs Agi, Sokolov, Whiteaker	½	2
U-88-22, Alma Corporation; U-88-45, All-Alaska Enterprises; U-88-56, Sutton Sanitation	10/24/88	Off'r Jackson Comm'rs Agi, Knowles, Sokolov	4½	18
		Subtotals	76	142

II. Hearings Pertaining to Rate Matters.

<u>Docket (s)</u>	<u>Date(s) of Hearing(s)</u>	<u>Off'rs or Comm'rs Present</u>	<u>Hours</u>	<u>Off'r-Hours/Comm'r-Hours</u>
U-85-36, Anchorage Refuse;	11/1/85	Off'r Jackson	5	5
U-85-44, Eagle River Refuse	11/4/85	Off'r Jackson	2	2
U-87-58, Far North Sanitation	2/29/88	Off'r Jackson	1	1
	3/1/88	Off'r Jackson	4	4
	3/1-2/88	Off'r Jackson	4	4
U-88-2, Anchorage Refuse;	6/6/88	Off'r Jackson	3	12
U-88-3, Eagle River Refuse		Comm'rs Agi, Knowles, Sokolov		
U-88-17, Interior Services;	11/1/88	Off'r Jackson	5	5
U-88-39, Interior Services;				
U-87-64, Interior Services	11/2/88	Off'r Jackson	4	4
		Subtotal:	28	37
		TOTAL:	<u>104</u>	<u>179</u>

CHANNEL CORPORATIONS

CHANNEL SANITATION CORPORATION
CHANNEL EQUIPMENT RENTAL INCORPORATED
CHANNEL LANDFILL, INC.

March 30, 1989

Representative Dave Donley
Chairman House Labor and Commerce Committee
PO Box V
Juneau, AK 99811

Dear Representative Donley:

The APUC is attempting to get through the Legislature a Bill to deregulate the garbage business. As a member of the Alaska Refuse Haulers Association, we are opposed to deregulation for several reasons.

Financially, deregulation would drastically effect the quality of service. Operators would not be able to afford to buy quality equipment nor would they be able to obtain financing for decent equipment without any guarantee of income. There certainly wouldn't be any incentive to make an investment like Channel Sanitation has made.

There would be less incentive to recycle because the market would be so divided there would be no real volumes to make it economically feasible to recycle.

As it stands now, DEC and EPA know who the haulers of all waste material are including hazardous wastes. If there were three to four times the number of haulers, they would have less control of how these wastes were being handled. More seriously, the location of where they were being dumped. Deregulation would cause a lot more illegal dumping and litter as the haulers would be trying to cut all expenses in order to compete. The litter problem would increase because there would be companies hauling in all types of vehicles that wouldn't have the capacity to contain the garbage.

-Letter to Rep. Donley
March 30, 1989
Page 2

This issue is a financial and environmental problem. If you agree, please let your opinion be known by writing to Jerry Reinwand.

Very truly,



W.R. Tonggard, Jr.
Chairman of the Board

WRT/jak

cc: House Labor & Commerce Committee Members
Rep. H. Boucher
Rep. M. Boyer
Rep. V. Collins
Rep. M. Gruenberg, Jr.
Rep. L. Leman
Rep. A. Spohnholz
File



Alaska State Legislature

✓ 8

Official Business

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

MEMORANDUM

To: Representative D. Donnelly
Chairman, Labor and Commerce Committee

From: Representative Boyer *[Signature]*

Date: February 9, 1990

Subject: Request for Committee hearing on HB499

I am writing to formally ask for a hearing in the House Labor and Commerce Committee on HB499 " An Act relating to waste collection". I believe we will have very little controversy over this bill as over the past few weeks we have narrowed the scope to include only municipal intermediate transfer stations. The certificated haulers have agreed to the proposed language with perhaps the addition of a policy plank that legislatively restricts issuance of additional certificates. I feel we can deal with that quite easily in committee. Municipalities are supportive of the proposed deregulation.

I look forward to your scheduling this bill in the very near future.



H B

5 0 8

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 26, 1990

FURTHER REFERRALS:

Date of Committee Action: _____

The LABOR & COMMERCE Committee considered:

HB 508

HOUSE BILL NO. 508 REGISTRATION OF OUT OF STATE PHARMACIES

"An Act relating to pharmacies located outside of the state."

RECOMMENDATIONS:

- be replaced with CS HB 508(HSS) 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: Labor & Commerce letter of intent

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

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

SIGNING DO PASS:

David Douley, Douley

Mark Baker, Baker

Max Muench, Muench

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>John A. Herman, Herman</u>			<input checked="" type="checkbox"/>
<u>John Collins, Collins</u>			<input checked="" type="checkbox"/>

David Douley

Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An Act relating to pharmacies
located outside of the state.
 Sponsor: Rep. Menard, Donlev, Hanley
 Requestor: House HESS

Agency Affected: Commerce & Economic Dev.
 BRU: Occupational Licensing

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

REVENUE **	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

HB 508 creates another pharmacy licensing category by registering outside pharmacies that ship, mail or deliver prescription drugs into Alaska. New funds are not required to implement the bill. **Revenues: A registration fee will be charged however, at this time we are unable to estimate revenues until the number of outside pharmacies affected by the bill is known.

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144
 Division: Occupational Licensing Date: March 20, 1990

Approved by Commissioner: Larry Merculieff Date: 3-20-90
 Agency: Commerce and Economic Development

Distribution (by preparer):

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

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892



April 3, 1990

LETTER OF INTENT TO

CS HB 508 (HESS)

It is the intent of the legislature that state contracts for pharmaceutical supplies should be granted to Alaskan pharmacies to the maximum extent permissible under state law. State contracts for health insurance and other health programs which utilize mail order drug prescription services shall not be limited to pharmacies registered under AS 08.80.158 to the exclusion of Alaskan pharmacies. All state proposals to supply health care must solicit equivalent mail order drug services from Alaska pharmacies.

A handwritten signature in cursive script that reads "Dave Donley".

Representative Dave Donley, Chair
House Labor and Commerce Committee

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES



P.O. BOX V, JUNEAU 99811
(907) 465-3759

March 23, 1990

Letter of Intent to
CSHB 508 (HESS)

It is the intent of the legislature that state contracts for health insurance and other health programs which utilize mail order drug prescription services not be limited to pharmacies registered under AS 08.80.158 to the exclusion of Alaskan pharmacies. It is the intent of the legislature that all state proposals to supply health care services be required to solicit equivalent mail order drug services from Alaskan pharmacies.

A handwritten signature in cursive script, appearing to read "Johnny Ellis".

Rep. Johnny Ellis, Chair

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 9, 1990

FURTHER REFERRALS:

LABOR & COMMERCE

Date of Committee Action: 3/23/90

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 508

HOUSE BILL NO. 508 REGISTRATION OF OUT OF STATE PHARMACIES

"An Act relating to pharmacies located outside of the state."

RECOMMENDATIONS:

- be replaced with CSHB 508 (HESS) the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: House (HESS) 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:

[Signature]
[Signature]
[Signature]

SIGNING:
(Check approp. column)

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

[Signature]
Chairman's Signature

HB508

EMENS, HURD, KEGLER & RITTER Co., L.P.A.

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March 3, 1990

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The Honorable David Donley, Chairperson
 House Labor & Commerce Committee
 Alaska State Legislature
 State Capitol Building, Room 17
 Juneau, Alaska 99801

Re: State of Alaska Pharmacy Legislation - House Bill No. 508

Dear Chairman Ellis:

I am writing this letter to you in my capacity as Regulatory Counsel for Medco Containment Services, Inc. ("Medco"), to include each of its regionally located mail service pharmacies, all of which provide safe, cost-effective prescription drug therapy to the members and beneficiaries of major corporations, unions and retiree groups, to include many that are Alaska residents. Medco respectfully submits that House Bill No. 508, to the extent it would condition licensure upon compliance, by a non-resident pharmacy, with reasonable standards of disclosure to the Alaska Board of Pharmacy and those statutory provisions presently incorporated in the bill, is a responsible exercise of a state's power to regulate given the various constitutional protections afforded businesses which are engaged in interstate commerce. For these reasons, Medco supports House Bill No. 508.

The regulation of out-of-state drug outlets, and particularly mail service pharmacies, has been the subject of frequent, and often emotional, debate over the last several years. There can be little doubt that the debate has been fueled by the rapid growth of mail service pharmacy. Medco, along with those pharmacies operated by the Veterans Administration and the AARP Pharmacy Service, have been at the forefront of this growth. The lines of debate are well-drawn: some sectors of the retail pharmacy community seek licensure restrictive in nature for the singular purpose of precluding the operation of a mail service pharmacy on an interstate basis and thereby eliminating a competitive force in the marketplace. Licensure of this nature is often argued in the guise of health and safety concerns,

EMENS, HURD, KEGLER & RITTER CO., L.P.A.

ATTORNEYS AND COUNSELORS AT LAW

The Honorable David Donley, Chairperson
March 3, 1990
Page 2

concerns which are not supported by an informed knowledge of mail service pharmacy and particularly when mail service pharmacy is evaluated in the context of total pharmacy practice. On the other hand, those engaged in the practice of mail service pharmacy, when denied the opportunity for meaningful, objective dialogue, have correctly relied upon the various constitutional arguments which preclude such restrictive licensure. These constitutional arguments are several, but revolve primarily around the Commerce Clause of the Constitution of the United States of America. The constitutional arguments become all the more meaningful in light of the extensive state and federal regulation applicable to the practice of pharmacy, to include mail service pharmacy. Moreover, in addition to licensure as a community or retail pharmacy in the state where the pharmacy is located and licensure at the federal level, mail service pharmacies have established an historical record, in terms of the public health and safety, which simply does not support the need for restrictive licensure.

On the contrary, those reports which have been published by responsible, objective reviewers over the years have found no documented, credible evidence which compromises the health and safety record of mail service pharmacy or otherwise justifies restrictive licensure. In addition to favorable reports from the Federal Trade Commission, the American Medical Association, and various state legislative studies, a December, 1989 report issued by the State of Maine is particularly relevant to House Bill No. 508. Specifically, the Joint Standing Committee on Business Legislation of the Legislature of the State of Maine conducted hearings to review, among other issues, the safety impact of mail service pharmacy. In adopting Cost Containment for Prescription Drugs (December, 1989), the Committee concluded, in pertinent part as follows:

The Committee found no evidence that there was any difference in safety between having a prescription filled by mail and through an in-state pharmacy.

To the extent a state would have the power to regulate in this area, House Bill No. 508 closely parallels the form of a California statute now adopted in a number of other states. Commonly known as the California Disclosure Legislation, this statute, supported during the legislative process by Medco and the AARP Pharmacy Service, regulates mail service pharmacy in a manner consistent with constitutional and professional practice standards. Therefore, Medco respectfully urges you to support House Bill No. 508.

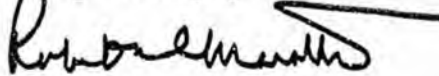
EMENS, HURD, KEGLER & RITTER Co., L.P.A.

ATTORNEYS AND COUNSELORS AT LAW

The Honorable David Donley, Chairperson
March 3, 1990
Page 3

If you have any questions relative to this matter, or desire further information, please do not hesitate to contact me.

Very truly yours,



Robert D. Marotta

RDM/trj
Attachment - California Disclosure Legislation

cc: House Labor & Commerce Committee, Members

Gordon S. Harrison, Director
Legislative Research Agency
Alaska State Legislature

Medco Containment Services, Inc.

Senate Bill No. 2213

CHAPTER 1424

An act to amend Section 4084.6 of, to add Sections 4050.1 and 4383 to, and to add and repeal Section 4350.6 of, the Business and Professions Code, relating to pharmacy, and making an appropriation therefor.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2213, Craven. Pharmacy.

Under existing law, it is unlawful for any person to, among other things, sell or dispense any prescription of a medical practitioner unless the person is a registered pharmacist under specified provisions of the Business and Professions Code. The law requires an out-of-state pharmacy which conducts the business of selling or distributing drugs in this state to be licensed by the Board of Pharmacy.

This bill would require any pharmacy, as specified, located outside this state which ships, mails, or delivers any controlled substances or dangerous drugs or devices into this state to register with the board, disclose specified information to the board, and meet other conditions.

The bill would authorize the board to deny, revoke, or suspend a nonresident pharmacy registration for failure to comply with specified provisions of California law and, until January 1, 1992, for conduct which causes serious bodily or psychological injury to a resident of this state if the regulatory agency in the state where the pharmacy is located fails to initiate an investigation into the matter within 45 days of being notified by the board.

The bill also would prohibit specified advertisements with regard to unregistered, nonresident pharmacies.

Existing provisions of the Business and Professions Code continuously appropriate the moneys in the Pharmacy Board Contingent Fund. Because this bill would increase the amount of moneys in the fund, it would constitute an appropriation.

A violation of those provisions of the Business and Professions Code constitutes a misdemeanor.

This bill would impose a state-mandated local program by creating or revising a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this

act for a specified reason.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares that the practice of pharmacy is a dynamic, patient-oriented health service that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use and drug related therapy.

(b) The Legislature recognizes that with the proliferation of alternate methods of health delivery, there has arisen among third-party payers and insurance companies the desire to control the cost and utilization of pharmacy services through a variety of mechanisms, including the use of mail order pharmacies located outside the State of California.

(c) As a result, the Legislature finds and declares that to continue to protect the California consumer-patient, all out-of-state pharmacies that provide service to California residents shall be registered with the board, disclose specific information about their services, and provide pharmacy services at a high level of protection and competence.

SEC. 2. Section 4050.1 is added to the Business and Professions Code, to read:

4050.1. (a) Any pharmacy located outside this state which ships, mails, or delivers, in any manner, controlled substances or dangerous drugs or devices into this state shall be considered a nonresident pharmacy, shall be registered with the board, and shall disclose to the board all of the following:

(1) The location, names and titles of all principal corporate officers and all pharmacists who are dispensing controlled substances or dangerous drugs or devices to residents of this state. A report containing this information shall be made on an annual basis and within 30 days after any change of office, corporate officer, or pharmacist.

(2) That it complies with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is licensed as well as with all requests for information made by the board pursuant to this section. The nonresident pharmacy shall maintain, at all times, a valid unexpired license, permit, or registration to conduct the pharmacy in compliance with the laws of the state in which it is a resident. As a prerequisite to registering with the board, the nonresident pharmacy shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which it is located.

(3) That it maintains its records of controlled substances or dangerous drugs or devices dispensed to patients in this state so that the records are readily retrievable from the records of other drugs

dispensed.

(b) Any pharmacy subject to this section shall, during its regular hours of operation, but not less than six days per week, and for a minimum of 40 hours per week, provide a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number shall be disclosed on a label affixed to each container of drugs dispensed to patients in this state.

(c) The registration fee shall be the fee specified in subdivision (a) of Section 4416.

(d) The registration requirements of this section and Sections 4350.6 and 4383, shall apply only to a nonresident pharmacy which only ships, mails, or delivers controlled substances and dangerous drugs and devices into this state pursuant to a prescription.

SEC. 3. Section 4084.6 of the Business and Professions Code is amended to read:

4084.6. No out-of-state manufacturer, wholesaler, or pharmacy doing business in this state who has not obtained a certificate, license, permit, registration, or exemption from the board and who sells or distributes drugs in this state through any person or media other than a wholesaler who has obtained a certificate, license, permit, registration, or exemption pursuant to the provisions of this chapter or through a selling or distribution outlet which is licensed as a wholesaler pursuant to the provisions of this chapter, shall conduct the business of selling or distributing drugs in this state without obtaining an out-of-state drug distributor's license from the board or registering as a nonresident pharmacy.

Applications for an out-of-state drug distributor's license or a nonresident pharmacy registration, under this section shall be made on a form furnished by the board. The board may require such information as the board deems is reasonably necessary to carry out the purposes of the section.

The board may deny, revoke, or suspend such out-of-state distributor's license for any violation of this chapter or for any violation of Division 21 (commencing with Section 26001) of the Health and Safety Code. The license or nonresident pharmacy registration shall be renewed annually on or before the first day of January of each year.

The Legislature, by enacting this section, does not intend a license or nonresident pharmacy registration issued to any out-of-state manufacturer, wholesaler, or pharmacy pursuant to this section to change or affect the tax liability imposed by Chapter 3 (commencing with Section 23501) of Part 11 of Division 2 of the Revenue and Taxation Code on any out-of-state manufacturer, wholesaler, or pharmacy.

The Legislature, by enacting this section, does not intend a license or nonresident pharmacy registration, issued to any out-of-state manufacturer, wholesaler, or pharmacy pursuant to this section to

serve as any evidence that such out-of-state manufacturer, wholesaler, or pharmacy is doing business within this state.

SEC. 4. Section 4350.6 is added to the Business and Professions Code, to read:

4350.6. (a) The board may deny, revoke, or suspend a nonresident pharmacy registration for failure to comply with any requirement of Section 4050.1 or 4383 or for any failure to comply with Section 11164 of the Health and Safety Code.

(b) The board may deny, revoke, or suspend a nonresident pharmacy registration for conduct which causes serious bodily or serious psychological injury to a resident of this state if the board has referred the matter to the regulatory or licensing agency in the state in which the pharmacy is located and the regulatory or licensing agency fails to initiate an investigation within 45 days of the referral. The board shall obtain and maintain a record of referrals pursuant to this subdivision and any action taken thereon and shall report its findings to the Legislature on or before March 31, 1991.

This section shall be operative until January 1, 1992, and as of that date, is repealed unless a later enacted statute deletes or extends that date.

SEC. 5. Section 4350.6 is added to the Business and Professions Code, to read:

4350.6. The board may deny, revoke, or suspend a nonresident pharmacy registration for failure to comply with any requirement of Section 4050.1 or 4383 or for any failure to comply with Section 11164 of the Health and Safety Code.

This section shall become operative on January 1, 1992.

SEC. 6. Section 4383 is added to the Business and Professions Code, to read:

4383. It is unlawful for any nonresident pharmacy which is not registered pursuant to Section 4050.1 to advertise its services in this state, or for any person who is a resident of this state to advertise the pharmacy services of a nonresident pharmacy which has not registered with the board, with the knowledge that the advertisement will or is likely to induce members of the public in this state to use the pharmacy to fill prescriptions.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

HB508



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

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

M E M O R A N D U M

TO: Representative David Donley
Chair - Labor and Commerce Committee

FROM: Representative Curt Menard *CDM*

DATE: March 23, 1990

RE: HB 508 - An Act relating to pharmacies located
outside of the state

A growing number of out-of-state pharmacies distribute prescription drugs to Alaska residents without any oversight of their activities. This legislation addresses that lack of consumer protection.

HB 508 passed from House HESS this morning and will be in your committee next. I respectfully request that a hearing be scheduled at your earliest possible convenience.

Thank you for your attention to my request. If you have any questions, please call Iola at 4944.

6-2018E
Gaguine
3/22/90

Original sponsor(s): REP. MENARD, Donley, Hanley, Collins, Jacko

1 IN THE HC.

BY THE HESS COMMITTEE

2 CS FOR HOUSE BILL NO. 508 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to pharmacies located outside of the
7 state."

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

9 * Section 1. AS 08.80 is amended by adding a new section to read:

10 Sec. 08.80.158. REGISTRATION OF PHARMACIES LOCATED OUTSIDE OF
11 STATE. (a) A pharmacy located outside of the state that ships,
12 mails, or delivers prescription drugs into the state shall register
13 with the board.

14 (b) A pharmacy registering with the board under (a) of this
15 section shall furnish to the board annually

16 (1) the location, names, and titles of all principal corpo-
17 rate officers and of all pharmacists who are dispensing prescription
18 drugs to residents of the state;

19 (2) a copy of a current valid license, permit, or registra-
20 tion to conduct operations in the jurisdiction in which it is located,
21 and a copy of the most recent report resulting from an inspection of
22 the pharmacy by the regulatory or licensing agency of the jurisdiction
23 in which the pharmacy is located;

24 (3) a sworn statement indicating that the pharmacy complies
25 with all lawful directions and requests for information from the
26 regulatory or licensing authority of the jurisdiction in which the
27 pharmacy is licensed; and

28 (4) proof satisfactory to the board that the pharmacy
29 maintains its records of prescription drugs dispensed to persons in

1 the state so that the records are readily retrievable from the records
2 of other prescription drugs dispensed by the pharmacy.

3 (c) A pharmacy subject to this section shall, during its regular
4 hours of operation, provide a toll-free telephone service to facili-
5 tate communication between persons in the state and a pharmacist at
6 the pharmacy who has access to records concerning the dispensing of
7 prescription drugs to persons in the state. The toll-free number and
8 the hours that the service is available shall be disclosed on a label
9 affixed to each container of drugs dispensed to persons in the state.
10 The telephone service shall be available at least 40 hours a week and
11 at least six days a week.

12 (d) The board may, after a hearing, deny, revoke, or suspend the
13 registration of a pharmacy located outside of the state if the phar-
14 macy fails to comply with the requirements of this section, AS 17.-
15 20.080 - 17.20.135, or AS 17.30.020 - 17.30.080, or if the license,
16 permit, or registration of the pharmacy is denied, revoked, or sus-
17 pended by the licensing or regulatory agency of the jurisdiction in
18 which the pharmacy is located.

19 (e) A pharmacy located outside of the state that is not regis-
20 tered with the board under this section may not ship, mail, or deliver
21 prescription drugs into the state and may not advertise its services
22 in the state.

23 (f) A pharmacy subject to this section shall appoint a regis-
24 tered agent in the state who is empowered to accept, on behalf of the
25 pharmacy, process, notice, and demand required or permitted by law to
26 be served upon the pharmacy. If the pharmacy fails to appoint an
27 agent under this subsection, if the registered agent cannot with
28 reasonable diligence be found at the registered office, or if the
29 registration of the pharmacy is suspended or revoked, the commissioner

1 of commerce and economic development is an agent upon whom process,
2 notice, or demand may be served. Service is made upon the commis-
3 sioner in the same manner as provided for corporations under AS 10.-
4 06.175(b), except that for the purposes of AS 10.06.175(b)(2)(A), the
5 address shall be the last registered address of the pharmacy as shown
6 by the records of the board.

7 * Sec. 2. AS 08.80.160 is amended by adding a new paragraph to read:

8 (14) registration of a pharmacy located outside of the
9 state.

10 * Sec. 3. AS 08.80.480 is amended by adding new paragraphs to read:

11 (19) "pharmacy located outside of the state" means a phar-
12 macy that prepares or mixes prescription drugs outside of the state,
13 regardless of the location at which those drugs may be shipped, mail-
14 ed, or delivered to the consumer;

15 (20) "prescription drug" means a drug other than a nonpre-
16 scription drug.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to pharmacies
located outside of the state.
Sponsor: Rep. Menard, Donley, Hanley
Requestor: House HESS

Agency Affected: Commerce & Economic Dev.
BRU: Occupational Licensing
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

REVENUE **	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

HB 508 creates another pharmacy licensing category by registering outside pharmacies that ship, mail or deliver prescription drugs into Alaska. New funds are not required to implement the bill. **Revenues: A registration fee will be charged however, at this time we are unable to estimate revenues until the number of outside pharmacies affected by the bill is known.

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144
Division: Occupational Licensing Date: March 20, 1990

Approved by Commissioner: Larry Mercurieff Date: 3-20-90
Agency: Commerce and Economic Development

Distribution (by preparer):

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

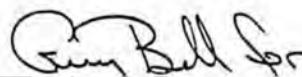
HB 508: An Act relating to pharmacies located outside of the state.

HB 508 establishes requirements for pharmacies located outside of Alaska to register with the Alaska Board of Pharmacy, if the pharmacy ships, mails, or delivers prescription drugs into the state.

The out-of-state pharmacy will be required to meet certain criteria established in the bill, including 1) registration of the names and locations of pharmacists who dispense prescription drugs to Alaska residents, 2) proof of maintenance of a current license and active pharmacy inspection in the jurisdiction in which the pharmacy is located, 3) compliance with all laws of the licensing authority within the jurisdiction where the pharmacy is located, and 4) proof that the pharmacy may readily retrieve the records of drugs prescribed to Alaska residents.

Currently, Alaska is not able to monitor or identify the out-of-state pharmacies who distribute prescription drugs to residents within the state. HB 508 will allow the Alaska Board of Pharmacy to require registration of outside pharmacies, thus providing some level of oversight -- albeit minimal -- of their activities in Alaska. The current lack of any review of outside pharmacies that mail, ship or deliver prescription drugs in Alaska raises consumer protection concerns.

Pharmacies located in Alaska are regulated by law to protect the health, safety and welfare of Alaskan consumers. Pharmacies located outside the state who service Alaska residents with prescription drugs should be subject to some degree of regulatory oversight. For this reason, the department supports HB 508.



Larry Meredieff, Commissioner
Department of Commerce and
Economic Development

Date: 3-20-90

LLM/RPB/JS/wfd2162W
32090a

EMENS, HURD, KEGLER & RITTER Co., L.P.A.

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March 3, 1990

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The Honorable Johnny Ellis, Chairperson
House Health Education & Social Services Committee
Alaska State Legislature
State Capitol Building, Room 106
Juneau, Alaska 99801

Re: State of Alaska Pharmacy Legislation - House Bill No. 508

Dear Chairman Ellis:

I am writing this letter to you in my capacity as Regulatory Counsel for Medco Containment Services, Inc. ("Medco"), to include each of its regionally located mail service pharmacies, all of which provide safe, cost-effective prescription drug therapy to the members and beneficiaries of major corporations, unions and retiree groups, to include many that are Alaska residents. Medco respectfully submits that House Bill No. 508, to the extent it would condition licensure upon compliance, by a non-resident pharmacy, with reasonable standards of disclosure to the Alaska Board of Pharmacy and those statutory provisions presently incorporated in the bill, is a responsible exercise of a state's power to regulate given the various constitutional protections afforded businesses which are engaged in interstate commerce. For these reasons, Medco supports House Bill No. 508.

The regulation of out-of-state drug outlets, and particularly mail service pharmacies, has been the subject of frequent, and often emotional, debate over the last several years. There can be little doubt that the debate has been fueled by the rapid growth of mail service pharmacy. Medco, along with those pharmacies operated by the Veterans Administration and the AARP Pharmacy Service, have been at the forefront of this growth. The lines of debate are well-drawn: some sectors of the retail pharmacy community seek licensure restrictive in nature for the singular purpose of precluding the operation of a mail service pharmacy on an interstate basis and thereby eliminating a competitive force in the marketplace. Licensure of this nature is often argued in the guise of health and safety concerns,

REC'D MAR 7 1990

Jim

EMENS, HURD, KEGLER & RITTER Co., L.P.A.

ATTORNEYS AND COUNSELORS AT LAW

The Honorable Johnny Ellis, Chairperson

March 3, 1990

Page 2

concerns which are not supported by an informed knowledge of mail service pharmacy and particularly when mail service pharmacy is evaluated in the context of total pharmacy practice. On the other hand, those engaged in the practice of mail service pharmacy, when denied the opportunity for meaningful, objective dialogue, have correctly relied upon the various constitutional arguments which preclude such restrictive licensure. These constitutional arguments are several, but revolve primarily around the Commerce Clause of the Constitution of the United States of America. The constitutional arguments become all the more meaningful in light of the extensive state and federal regulation applicable to the practice of pharmacy, to include mail service pharmacy. Moreover, in addition to licensure as a community or retail pharmacy in the state where the pharmacy is located and licensure at the federal level, mail service pharmacies have established an historical record, in terms of the public health and safety, which simply does not support the need for restrictive licensure.

On the contrary, those reports which have been published by responsible, objective reviewers over the years have found no documented, credible evidence which compromises the health and safety record of mail service pharmacy or otherwise justifies restrictive licensure. In addition to favorable reports from the Federal Trade Commission, the American Medical Association, and various state legislative studies, a December, 1989 report issued by the State of Maine is particularly relevant to House Bill No. 508. Specifically, the Joint Standing Committee on Business Legislation of the Legislature of the State of Maine conducted hearings to review, among other issues, the safety impact of mail service pharmacy. In adopting Cost Containment for Prescription Drugs (December, 1989), the Committee concluded, in pertinent part as follows:

The Committee found no evidence that there was any difference in safety between having a prescription filled by mail and through an in-state pharmacy.

To the extent a state would have the power to regulate in this area, House Bill No. 508 closely parallels the form of a California statute now adopted in a number of other states. Commonly known as the California Disclosure Legislation, this statute, supported during the legislative process by Medco and the AARP Pharmacy Service, regulates mail service pharmacy in a manner consistent with constitutional and professional practice standards. Therefore, Medco respectfully urges you to support House Bill No. 508.

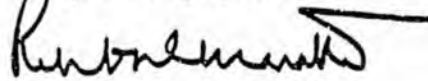
EMENS, HURD, KEGLER & RITTER Co., L.P.A.

ATTORNEYS AND COUNSELORS AT LAW

The Honorable Johnny Ellis, Chairperson
March 3, 1990
Page 3

If you have any questions relative to this matter, or desire further information, please do not hesitate to contact me.

Very truly yours,



Robert D. Marotta

RDM/trj

Attachment - California Disclosure Legislation

cc: House Health Education & Social Services Committee, Members

Gordon S. Harrison, Director
Legislative Research Agency
Alaska State Legislature

Medco Containment Services, Inc.

Senate Bill No. 2213

CHAPTER 1424

An act to amend Section 4084.6 of, to add Sections 4050.1 and 4383 to, and to add and repeal Section 4350.6 of, the Business and Professions Code, relating to pharmacy, and making an appropriation therefor.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2213, Craven. Pharmacy.

Under existing law, it is unlawful for any person to, among other things, sell or dispense any prescription of a medical practitioner unless the person is a registered pharmacist under specified provisions of the Business and Professions Code. The law requires an out-of-state pharmacy which conducts the business of selling or distributing drugs in this state to be licensed by the Board of Pharmacy.

This bill would require any pharmacy, as specified, located outside this state which ships, mails, or delivers any controlled substances or dangerous drugs or devices into this state to register with the board, disclose specified information to the board, and meet other conditions.

The bill would authorize the board to deny, revoke, or suspend a nonresident pharmacy registration for failure to comply with specified provisions of California law and, until January 1, 1992, for conduct which causes serious bodily or psychological injury to a resident of this state if the regulatory agency in the state where the pharmacy is located fails to initiate an investigation into the matter within 45 days of being notified by the board.

The bill also would prohibit specified advertisements with regard to unregistered, nonresident pharmacies.

Existing provisions of the Business and Professions Code continuously appropriate the moneys in the Pharmacy Board Contingent Fund. Because this bill would increase the amount of moneys in the fund, it would constitute an appropriation.

A violation of those provisions of the Business and Professions Code constitutes a misdemeanor.

This bill would impose a state-mandated local program by creating or revising a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this

dispensed.

(b) Any pharmacy subject to this section shall, during its regular hours of operation, but not less than six days per week, and for a minimum of 40 hours per week, provide a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number shall be disclosed on a label affixed to each container of drugs dispensed to patients in this state.

(c) The registration fee shall be the fee specified in subdivision (a) of Section 4416.

(d) The registration requirements of this section and Sections 4350.6 and 4383, shall apply only to a nonresident pharmacy which only ships, mails, or delivers controlled substances and dangerous drugs and devices into this state pursuant to a prescription.

SEC. 3. Section 4084.6 of the Business and Professions Code is amended to read:

4084.6. No out-of-state manufacturer, wholesaler, or pharmacy doing business in this state who has not obtained a certificate, license, permit, registration, or exemption from the board and who sells or distributes drugs in this state through any person or media other than a wholesaler who has obtained a certificate, license, permit, registration, or exemption pursuant to the provisions of this chapter or through a selling or distribution outlet which is licensed as a wholesaler pursuant to the provisions of this chapter, shall conduct the business of selling or distributing drugs in this state without obtaining an out-of-state drug distributor's license from the board or registering as a nonresident pharmacy.

Applications for an out-of-state drug distributor's license or a nonresident pharmacy registration, under this section shall be made on a form furnished by the board. The board may require such information as the board deems is reasonably necessary to carry out the purposes of the section.

The board may deny, revoke, or suspend such out-of-state distributor's license for any violation of this chapter or for any violation of Division 21 (commencing with Section 26001) of the Health and Safety Code. The license or nonresident pharmacy registration shall be renewed annually on or before the first day of January of each year.

The Legislature, by enacting this section, does not intend a license or nonresident pharmacy registration issued to any out-of-state manufacturer, wholesaler, or pharmacy pursuant to this section to change or affect the tax liability imposed by Chapter 3 (commencing with Section 23501) of Part 11 of Division 2 of the Revenue and Taxation Code on any out-of-state manufacturer, wholesaler, or pharmacy.

The Legislature, by enacting this section, does not intend a license or nonresident pharmacy registration, issued to any out-of-state manufacturer, wholesaler, or pharmacy pursuant to this section to

Island Pharmacy

3235 Tongass Avenue
Ketchikan, Alaska 99901
225-6186

February 19, 1990

Representative Curt Menard
P.O. BOX V
Juneau, Ak 99811

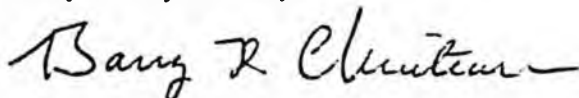
Dear Representative Menard,

Thank you for sending me a copy of the proposed legislation on regulating pharmacies outside the state of Alaska. Additionally, I would like to thank you for taking the time and effort to propose such legislation. In looking over the draft I see no major flaws and it appears to be pretty straight forward. It should be something that any mail order pharmacy should be able to comply with if they wish to do business in Alaska.

If it is possible I would like to be informed of the Bill number when you introduce it into the house so that I may contact the elected officials in my district to urge their support of this viable piece of legislation.

Thank you again for your efforts and Thanks for supporting your family pharmacist.

Very Truly Yours,



Barry D. Christensen
Pharmacist

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

Senate Bill No. 2213

CHAPTER 1424

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Under existing law, it is unlawful for any person to, among other things, sell or dispense any prescription of a medical practitioner unless the person is a registered pharmacist under specified provisions of the Business and Professions Code. The law requires an out-of-state pharmacy which conducts the business of selling or distributing drugs in this state to be licensed by the Board of Pharmacy.

This bill would require any pharmacy, as specified, located outside this state which ships, mails, or delivers any controlled substances or dangerous drugs or devices into this state to register with the board, disclose specified information to the board, and meet other conditions.

The bill would authorize the board to deny, revoke, or suspend a nonresident pharmacy registration for failure to comply with specified provisions of California law and, until January 1, 1992, for conduct which causes serious bodily or psychological injury to a resident of this state if the regulatory agency in the state where the pharmacy is located fails to initiate an investigation into the matter within 45 days of being notified by the board.

The bill also would prohibit specified advertisements with regard to unregistered, nonresident pharmacies.

Existing provisions of the Business and Professions Code continuously appropriate the moneys in the Pharmacy Board Contingent Fund. Because this bill would increase the amount of moneys in the fund, it would constitute an appropriation.

A violation of those provisions of the Business and Professions Code constitutes a misdemeanor.

This bill would impose a state-mandated local program by creating or revising a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this

act for a specified reason.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares that the practice of pharmacy is a dynamic, patient-oriented health service that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use and drug related therapy.

(b) The Legislature recognizes that with the proliferation of alternate methods of health delivery, there has arisen among third-party payers and insurance companies the desire to control the cost and utilization of pharmacy services through a variety of mechanisms, including the use of mail order pharmacies located outside the State of California.

(c) As a result, the Legislature finds and declares that to continue to protect the California consumer-patient, all out-of-state pharmacies that provide service to California residents shall be registered with the board, disclose specific information about their services, and provide pharmacy services at a high level of protection and competence.

SEC. 2. Section 4050.1 is added to the Business and Professions Code, to read:

4050.1. (a) Any pharmacy located outside this state which ships, mails, or delivers, in any manner, controlled substances or dangerous drugs or devices into this state shall be considered a nonresident pharmacy, shall be registered with the board, and shall disclose to the board all of the following:

(1) The location, names and titles of all principal corporate officers and all pharmacists who are dispensing controlled substances or dangerous drugs or devices to residents of this state. A report containing this information shall be made on an annual basis and within 30 days after any change of office, corporate officer, or pharmacist.

(2) That it complies with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is licensed as well as with all requests for information made by the board pursuant to this section. The nonresident pharmacy shall maintain, at all times, a valid unexpired license, permit, or registration to conduct the pharmacy in compliance with the laws of the state in which it is a resident. As a prerequisite to registering with the board, the nonresident pharmacy shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which it is located.

(3) That it maintains its records of controlled substances or dangerous drugs or devices dispensed to patients in this state so that the records are readily retrievable from the records of other drugs

dispensed.

(b) Any pharmacy subject to this section shall, during its regular hours of operation, but not less than six days per week, and for a minimum of 40 hours per week, provide a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number shall be disclosed on a label affixed to each container of drugs dispensed to patients in this state.

(c) The registration fee shall be the fee specified in subdivision (a) of Section 4416.

(d) The registration requirements of this section and Sections 4350.6 and 4383, shall apply only to a nonresident pharmacy which only ships, mails, or delivers controlled substances and dangerous drugs and devices into this state pursuant to a prescription.

SEC. 3. Section 4084.6 of the Business and Professions Code is amended to read:

4084.6. No out-of-state manufacturer, wholesaler, or pharmacy doing business in this state who has not obtained a certificate, license, permit, registration, or exemption from the board and who sells or distributes drugs in this state through any person or media other than a wholesaler who has obtained a certificate, license, permit, registration, or exemption pursuant to the provisions of this chapter or through a selling or distribution outlet which is licensed as a wholesaler pursuant to the provisions of this chapter, shall conduct the business of selling or distributing drugs in this state without obtaining an out-of-state drug distributor's license from the board or registering as a nonresident pharmacy.

Applications for an out-of-state drug distributor's license or a nonresident pharmacy registration, under this section shall be made on a form furnished by the board. The board may require such information as the board deems is reasonably necessary to carry out the purposes of the section.

The board may deny, revoke, or suspend such out-of-state distributor's license for any violation of this chapter or for any violation of Division 21 (commencing with Section 26001) of the Health and Safety Code. The license or nonresident pharmacy registration shall be renewed annually on or before the first day of January of each year.

The Legislature, by enacting this section, does not intend a license or nonresident pharmacy registration issued to any out-of-state manufacturer, wholesaler, or pharmacy pursuant to this section to change or affect the tax liability imposed by Chapter 3 (commencing with Section 23501) of Part 11 of Division 2 of the Revenue and Taxation Code on any out-of-state manufacturer, wholesaler, or pharmacy.

The Legislature, by enacting this section, does not intend a license or nonresident pharmacy registration, issued to any out-of-state manufacturer, wholesaler, or pharmacy pursuant to this section to

serve as any evidence that such out-of-state manufacturer, wholesaler, or pharmacy is doing business within this state.

SEC. 4. Section 4350.6 is added to the Business and Professions Code, to read:

4350.6. (a) The board may deny, revoke, or suspend a nonresident pharmacy registration for failure to comply with any requirement of Section 4050.1 or 4383 or for any failure to comply with Section 11164 of the Health and Safety Code.

(b) The board may deny, revoke, or suspend a nonresident pharmacy registration for conduct which causes serious bodily or serious psychological injury to a resident of this state if the board has referred the matter to the regulatory or licensing agency in the state in which the pharmacy is located and the regulatory or licensing agency fails to initiate an investigation within 45 days of the referral. The board shall obtain and maintain a record of referrals pursuant to this subdivision and any action taken thereon and shall report its findings to the Legislature on or before March 31, 1991.

This section shall be operative until January 1, 1992, and as of that date, is repealed unless a later enacted statute deletes or extends that date.

SEC. 5. Section 4350.6 is added to the Business and Professions Code, to read:

4350.6. The board may deny, revoke, or suspend a nonresident pharmacy registration for failure to comply with any requirement of Section 4050.1 or 4383 or for any failure to comply with Section 11164 of the Health and Safety Code.

This section shall become operative on January 1, 1992.

SEC. 6. Section 4383 is added to the Business and Professions Code, to read:

4383. It is unlawful for any nonresident pharmacy which is not registered pursuant to Section 4050.1 to advertise its services in this state, or for any person who is a resident of this state to advertise the pharmacy services of a nonresident pharmacy which has not registered with the board, with the knowledge that the advertisement will or is likely to induce members of the public in this state to use the pharmacy to fill prescriptions.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

Island Pharmacy

3235 Tongass Avenue
Ketchikan, Alaska 99901
225-6186

February 19, 1990

Representative Curt Menard
P.O. BOX V
Juneau, Ak 99811


Dear Representative Menard,

Thank you for sending me a copy of the proposed legislation on regulating pharmacies outside the state of Alaska. Additionally, I would like to thank you for taking the time and effort to propose such legislation. In looking over the draft I see no major flaws and it appears to be pretty straight forward. It should be something that any mail order pharmacy should be able to comply with if they wish to do business in Alaska.

If it is possible I would like to be informed of the Bill number when you introduce it into the house so that I may contact the elected officials in my district to urge their support of this viable piece of legislation.

Thank you again for your efforts and Thanks for supporting your family pharmacist.

Very Truly Yours,



Barry D. Christensen
Pharmacist



ALASKA STATE LEGISLATURE

REPRESENTATIVE CURT MENARD

165 E. Parks Hwy.
Wasilla, Alaska 99687
(907) 373-2878

P.O. Box V
Juneau, Alaska 99811
(907) 465-2679



TO: Members of the House Health, Education
and Social Services Committee

FROM: Representative Curt Menard *Curt*

DATE: March 20, 1990

RE: HB 508: "An Act relating to pharmacies located
outside of the state."

A significant consumer protection problem was recently brought to my attention--the growing number of mail order pharmacies doing business in the state who are not fully accountable to their Alaskan customers. To address this problem, and provide some type of reassurance to Alaskan who rely on those services, I have introduced HB 508.

This legislation requires any pharmacy located outside of the state that ships, mails, or delivers prescription drugs into Alaska to register with the Alaska State Board of Pharmacy.

One very important requirement to be met in order to be registered, is the provision requiring the out of state pharmacy to provide a toll free telephone service at least 40 hours per week and at least six days a week. When questions or problems resulting from prescription medication arise, it is imperative that the customer be able to contact the dispensing pharmacist.

This legislation will provide important measures to protect the health, safety and welfare of Alaskan consumers. Your support is greatly appreciated. Thank you.

Representing the
Matanuska-Susitna Borough



Co-Chair
House Resources Committee
Member
Special Committee on Tourism
State Affairs Committee

FRANK G. PRATT, R. Ph.
7446 East 20th Avenue
Anchorage, Alaska 99504
(907) 333-8212
5 February 1990

Rep. Curt Menard
P.O. Box V
Juneau, AK 99811

Dear Curt:

I have received and reviewed your draft of proposed legislation to control mail order pharmacies doing business with customers in the State of Alaska.

I commend you on your actions, Curt. It is far past time that this type of legislation was enacted to protect the citizens of Our Great Land.

I have some misgivings about the Board's ability to actively enforce such legislation with the manpower currently available; but, one step at a time!

Very sincerely,

A handwritten signature in cursive script, appearing to read "Frank G. Pratt", with a horizontal line extending from the end of the signature.

Public Employees Retirement System
Teachers Retirement System
Judicial Retirement System
Elected Public Officers Retirement System
National Guard Retirement System
Territorial Retirement System
Retirees Voluntary Dental-Vision-Audio Plan
Supplemental Benefits System
Group Health/Life Insurance Benefits
Deferred Compensation Plan
Public Employers Social Security Contributions

DEPARTMENT OF ADMINISTRATION

DIVISION OF RETIREMENT & BENEFITS

PLEASE REPLY TO:

P.O. BOX CR
JUNEAU, ALASKA 99811-0203
PHONE: (907)465-4460

701 EAST TUDOR ROAD, SUITE 240
ANCHORAGE, ALASKA 99503-7445
PHONE: (907) 563-5885

Fax# 465-3086

STEVE COWPER, GOVERNOR

March 19, 1990

The Honorable Curt Menard
Alaska House of Representatives
P.O. Box V
Juneau, AK 99811

Dear Representative Menard:

Your staff requested an analysis from this division of the impact HB 508 would have on the health insurance plan for State of Alaska employees.

The health insurance plan that was negotiated last summer by the Alaska State Employees Association (ASEA) includes a provision for prescription drugs to be obtained through the mail. I have reviewed HB 508 and do not see any provisions that would be at cross purposes with the current negotiated agreement with ASEA or increase the cost of health insurance premiums.

The mail order prescription drug plan is provided by National Pharmacies, Inc. through a subcontract with Aetna, our health insurance carrier. I have also discussed the bill's requirements with Aetna and have been informed that National Pharmacies would currently be able to satisfy these requirements.

Sincerely,



Michael B. Coughlin
Deputy Director

MBC/ksl

cc: Sally Smith
Director
Division of Retirement and Benefits

Lynn Withrow
Aetna Life Insurance
Seattle, WA 98111

Representative Curt Menard
March 19, 1990
Page 2

cc: (continued)

Frank S. Baxter, CPA
Commissioner
Department of Administration

Gary Bader
Deputy Commissioner
Services to State Agencies
Department of Administration

Sioux Plummer
Special Assistant
Department of Administration

RB90-017

STATE OF ALASKA
THE LEGISLATURE

POUCH STATE CAPITOL
BUREAU ALASKA 99500
707 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 6, 1990

SUBJECT: Pharmacy licensing requirements in other
states (Work Order No. 6-2115)

TO: Representative Curt Menard
Attn: Iola

FROM: John B. Gaguine ^{JBG}
Legislative Counsel

Per your request, I have been looking at the pharmacy licensing requirements in some of the other Western states. In all of the statutes I have examined, a pharmacy can be licensed if it complies with the pharmacy laws, which is essentially the same requirement as is found in AS 18.-80.157. (Sometimes there are minor additional requirements, such as the North Dakota requirement that a pharmacy must possess the standard pharmaceutical reference book to get licensed.) However, the majority of the other statutes I looked at regulate pharmaceutical practices considerably more closely than do Alaska's laws and regulations, and all of them regulate at least as closely as Alaska. For your interest I am enclosing some of the statutes of Nevada (since that is the location of the mail-order pharmacy under the revised state employee health care program) and Washington (since Seattle pharmacies can logically be expected to enter the mail-order prescription drug business).

Incidentally, I found that Wyoming has adopted an out-of-state pharmacy law that is also apparently based on the California statute on which I modeled W.O. 6-2018A. North Dakota, on the other hand, takes a different approach, requiring out-of-state pharmacies doing mail-order business in that state to get a license from the North Dakota board. I am enclosing a copy of the North Dakota statute. I think that the approach taken by the California law is better, since I do not think that the Alaska board (or the North Dakota board, for that matter) would be able to effectively

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 26, 1990

SUBJECT: Out-of-state pharmacies and licensing requirements (Work Order No. 6-2018)

TO: Representative Curt Menard
Attn: Iola Young

FROM: John B. Gaguine *JBG*
Legislative Counsel

You have asked for a bill that would require out-of-state pharmacies doing business within the state (primarily out-of-state pharmacies soliciting and filling mail orders) to meet the requirements of licensing for in-state pharmacies. I am writing this memo to explain that there are essentially no requirements for in-state pharmacies, and that control of out-of-state mail order pharmacies can probably be better achieved through a different bill.

Under AS 08.80, the Board of Pharmacy regulates and licenses both pharmacies and pharmacists. Unlike the stringent requirements for issuance of a pharmacist license, however, there are virtually no requirements for a pharmacy license. AS 08.80.157 provides:

(a) If an applicant furnishes proof satisfactory to the board that the applicant is equipped with land, facilities, and equipment, in fee or leased, necessary to carry on the business described in the application and the applicant complies with this chapter, applicable regulations adopted by the board, and pays fees provided for under AS 08.80.160, the board may issue

(1) a wholesale drug dealer license to an applicant who manufactures or distributes noncontrolled legend drugs to licensed retail pharmacists, dentists, physicians, surgeons, or veterinarians, who may legally purchase noncontrolled legend drugs at a wholesale level, or to government

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

STATE OF ALASKA
THE LEGISLATURE

FOUCHY STATE CAPITOL
JULINEAU ALASKA 998
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 6, 1990

SUBJECT: Pharmacy licensing requirements in other
states (Work Order No. 6-2115)

TO: Representative Curt Menard
Attn: Iola

FROM: John B. Gaguine ^{JBG}
Legislative Counsel

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Representative Curt Menard
Page 2
February 6, 1990

regulate an out-of-state pharmacy. Hence requiring it to get an Alaska license would not, in my opinion, accomplish much.

If I may be of further assistance, please advise.

JBG:lmb
L9/095

Enclosures

STATE OF ALASKA
THE LEGISLATURE

ALASKA STATE CAPITAL
SHELDON ALASKA 99509
907 455 1211

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 26, 1990

SUBJECT: Out-of-state pharmacies and licensing requirements (Work Order No. 6-2018)

TO: Representative Curt Menard
Attn: Iola Young

FROM: John B. Gaguine ~~JBG~~
Legislative Counsel

You have asked for a bill that would require out-of-state pharmacies doing business within the state (primarily out-of-state pharmacies soliciting and filling mail orders) to meet the requirements of licensing for in-state pharmacies. I am writing this memo to explain that there are essentially no requirements for in-state pharmacies, and that control of out-of-state mail order pharmacies can probably be better achieved through a different bill.

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(1) a wholesale drug dealer license to an applicant who manufactures or distributes noncontrolled legend drugs to licensed retail pharmacists, dentists, physicians, surgeons, or veterinarians, who may legally purchase noncontrolled legend drugs at a wholesale level, or to government

agencies which may legally purchase noncontrolled legend drugs at a wholesale level;

(2) a wholesale drug dealer license to a qualified applicant who is in compliance with the Federal Controlled Substance Act of 1969 as amended;

(3) a license to a retail pharmacy.

(b) A license under this section may not be issued to a person who has been convicted of a wilful violation of a federal law or a law of any state relating to a drug or controlled substance, or who is addicted to a drug or controlled substance. A license may not be issued to a corporation with a managing officer who has been convicted of a wilful violation of a federal law or a law of any state relating to a drug or controlled substance, or who is addicted to a drug or controlled substance.

The specific requirements listed in subsection (a) - land, facilities, and equipment - obviously would be met by any out-of-state pharmacy capable of filling orders in Alaska. The "no conviction" provision of (b) is likely equally meaningless, as such a provision is likely found in virtually all state licensing acts. (I examined the pharmacy licensing statutes of several states, and they all had such a provision.) The other provisions in AS 08.80 concerning pharmacies, rather than pharmacists, are so vague as to be useless in regulating out-of-state pharmacies; see, e.g., AS 08.80.230 (pharmacy must have proper sanitary appliances and maintain orderly and sanitary premises). Most important, the Board of Pharmacy, which could issue regulations giving some meaning to these vague provisions; has to date not done so, likely because there have been major problems with duty pharmacies.

I would suggest instead an approach along the line of California's, which requires the out-of-state pharmacy to submit proof of compliance with the licensing laws of the pharmacy's state of residence, and also allows the California board to request information. I am enclosing

Representative Curt Menard
Page 3
January 26, 1990

copies of the relevant California statutes. If this approach appeals to you, I can draft a bill based on those statutes (but likely far simpler). Or I can draft a bill along the lines of your request, that an out-of-state pharmacy must meet Alaska qualifications, in the hope that the Board of Pharmacy will someday issue the necessary regulations.

JBG:gc
G13/071

Enclosure

HOMER PROFESSIONAL PHARMACY, INC.

309 W. FAIRVIEW AVE.
Homer, Alaska 99603



PHONE (907) 235-8393

2/9/90

Representative Cert in encad:

Sir,

I am very much in favor of your proposed bill relating to pharmacies located outside the state of Alaska.

Not only do we need to support those businesses that are located in the state of Alaska, but I almost every day have a patient talk to me with questions about medication filled by a mail order pharmacy which I cannot help them with. Often the tablets are of a different size or color than they are used to and they have no way to verify if it is the correct medication.

I will be glad to assist your effort in any way I can.

Sincerely
Richard L. Sturdy, RPh.

QUALITY CENTERS

1341 Fairbanks Street

Anchorage, Alaska 99501

Office Number (907) 277-6639

Fax Number (907) 257-8229

TELECOPY TRANSMITTAL COVER SHEET

DATE: 3-24-90

PLEASE DELIVER TO: Fola

Curt Menards office

THIS TELECOPY IS BEING SENT BY: Bill LARSON

NUMBER OF PAGES (INCLUDING THIS COVER SHEET): 4

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL THE CARRS MAIN OFFICE.

MESSAGE: This is a copy of my testimony on HR 508
on Wed March 23, 1990

BILL LARSON
Pharmacy Director

CARRS
QUALITY CENTERS
SUPER FOOD SUPER DRUG

1341 Fairbanks Street
ANCHORAGE, Alaska 99501
(907) 277-6639

My name is Bill Larson, I'm Pharmacy Director for Carrs Quality Centers, an Alaskan owned chain of 14 supermarkets operating pharmacies in Anchorage, Eagle River, Palmer, Wasilla, Kenai, Seward and Fairbanks. I'm also chairman of the Alaska Board of Pharmacy but my comments today are representing myself and Carrs Quality Centers and not necessarily those of the Board. Mail order pharmacy is a difficult and complex issue and I applaud this committee for undertaking the controversial task of trying to regulate the industry.

The idea of sending prescriptions through the mail raises many questions which affect all Alaskans. The State is always looking at ways to create jobs, promote Alaskan industry and local hire yet the Alaska State employees are being encouraged by Union and State officials to have their prescriptions filled out of state taking jobs from Alaskan pharmacists and dollars away from Alaskan businesses. As you are all aware, the costs of doing business are higher in Alaska because of our unique climate conditions, transportation costs and higher wages due to the higher costs of living. In fact, in most State contracts, Alaskan business is allowed a 5% bid preference, yet when the State employees chose mail order pharmacy, Alaskan pharmacies were not even given the chance to bid on the prescription package, much less given a 5% bid preference.

The reasons cited by mail order pharmacy for lower prices are as follows:

1. Mail order is able to buy drugs more inexpensively because of volume purchasing.
2. Mail order uses more low cost generics.
3. Mail order fills with larger quantities and thereby, reduces the number of claims and dispensing fees paid.

Although these are legitimate claims, the fact remains that mail order is not necessarily cheaper and you don't automatically save money using mail order.

1. Chains, cooperatives and independent buying groups are able to purchase in large volume and are able to negotiate discounts with manufacturers and wholesalers, equivalent to the discounts offered mail order pharmacies.
2. All states now have generic substitution laws which govern the dispensing of generics in the respective states. These laws allow pharmacists to substitute generics for the more expensive Brand name drugs. Many instances of mail order savings of 40-60% are the comparison of mail order generics and local Brand name prescriptions, or really comparing apples and oranges.

3. The fact that a mail order pharmacy fills prescriptions for larger quantities, usually 3-6 month supplies, doesn't automatically save money. To get a mail order prescription takes 2-3 weeks to be filled and returned. The usual procedure is to have a 30 day supply filled locally and then the larger quantity filled via mail order. This results in a double dispensing fee and large quantities of drugs being purchased that may be discontinued or changed and ultimately wasted.

Acute medications, antibiotics and pain drugs, etc. need to be filled immediately to begin therapy. The patient can't wait for mail order to deliver his prescriptions and must have them filled locally or risk discomfort, or worse, hospitalization.

I am not convinced that mail order pharmacy significantly reduces prescription prices to patients or third party providers but am concerned that these perceived savings will come from inferior drugs or inadequate patient care.

I support HB 508 and agree with the sponsors that mail order pharmacy should be required to register with the Alaska Board of Pharmacy and be held accountable for their practice of pharmacy. It would insure the quality of all drugs imported into Alaska and insure they were dispensed legally by licensed pharmacists.

In the past 6 months, the FDA (Food and Drug Administration) has come under fire for its practice of rating generically equivalent drugs, test results were questioned, drugs withdrawn and companies forced out of business by these questionable practices. The Alaskan Legislature considers quality generic drugs so important they passed Statute 08.80.295 in 1972 and have amended it 4 times since.

HB 508 would require toll free phone service 40 hours per week on at least 6 days. This requirement is excellent and would provide customers a chance to obtain additional medical information and get questions answered. But this doesn't go far enough. Local pharmacists provide personal consultation during all business hours. At Carrs, a pharmacist is available 24 hours a day, 7 days a week. They are constantly asked questions about their prescriptions received through the mail. Because of the time difference between Alaska and the continental U.S., the bill should specify the hours the line would be operational, for example, from 10 A.M. to 6 P.M. Monday - Saturday and insure that the person they talk to is a pharmacist.

Another problem I have with HB 508 is if out of state mail order pharmacies are required to register with the Alaska Board of mail prescriptions into Alaska, would that also require the occasional or casual pharmacy to register. For example, Carrs has many customers who winter in Palm Springs or Arizona etc. and we mail their prescriptions to them during the winter. Perhaps we could add a definition to the bill to define who must register or define "mail order pharmacy" to exclude occasional mailed prescriptions.

I've gone on long enough and there are others interested in testifying on this Bill, so I'll conclude by saying I think HB 508 is a definite step in the right direction allowing the State to gain a small

level of control over the mail order industry and insuring the quality of drugs and patient care provided and insuring that everyone plays by the same rules.

Thank you

H B

5 1 2

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 9, 1990

FURTHER REFERRALS:
LABOR & COMMERCE

Date of Committee Action: 3/29/90

The COMMUNITY & REGIONAL AFFAIRS Committee considered: HB 512

HOUSE BILL NO. 512

"An Act relating to the retail sale of pull-tabs, tickets, and cards for charitable gaming activities."

RECOMMENDATIONS:

- be replaced with CS HB 512 (CERA) ~~the same title~~ a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

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

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

SIGNING DO PASS:

Eileen P. Mahan
Richard J. Jolley "NO"

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend

_____ on Amend's 3+4+6			
<u>Cheri Davis</u>	X		X

Eileen P. Mahan
Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to the retail sale of pull-tabs, tickets, and cards.
Sponsor: Rep. Boucher
Requestor: House C&RA

Agency Affected: Commerce & Econ. Dev.
BRU: Occupational Licensing

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	50.3	50.3	50.3	50.3	50.3	50.3
TRAVEL	8.0	8.0	8.0	8.0	8.0	8.0
CONTRACTUAL	3.0	3.0	3.0	3.0	3.0	3.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	9.9					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	72.2	62.3	62.3	62.3	62.3	62.3

CAPITAL	0	0	0	0	0	0
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REVENUE	100.0	100.0	100.0	100.0	100.0	100.0
---------	-------	-------	-------	-------	-------	-------

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS *						
OTHER	72.2	62.3	62.3	62.3	62.3	62.3
TOTAL	72.2	62.3	62.3	62.3	62.3	62.3

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

(SEE ATTACHED)

Prepared by: Jennifer Strickler, Admin. Officer Phone: 465-2144
Division: Occupational Licensing Date: 3/29/90

Approved by Commissioner: Larry Merculieff, Commissioner Date: 3/29/90
Agency: Department of Commerce and Economic Development

Distribution (by preparer):

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

* Funding Source is General Fund/Program Receipts

CONTINUATION OF FISCAL NOTE ANALYSIS
HB 512 (C&RA)

The bill authorizes a person other than a permittee or operator to sell the pull-tabs necessary to conduct a charitable gaming activity under AS 05.15.100 provided the vendor is registered with the department and complies with the provisions of the bill.

Charitable gaming activity in Alaska is a rapidly growing industry and the enforcement of the Gaming Reform Act of 1988 is becoming more difficult in light of increased gaming activity. Presently, the number of gaming investigators (just two) is inadequate to support statewide enforcement of the gaming program and gaming enforcement is therefore not as timely and as efficient as necessary to fully protect the playing public or the permitted charitable organizations.

The recognition of vendors in HB 512, as well as our ability under HB 512 to take enforcement action in the face of vendor noncompliance, will increase the investigatory burden. (Until now, the division has taken complaints regarding vendor actions but has had no authority to take action to correct or otherwise enforce compliance.) We are therefore submitting a fiscal note requesting funding for an additional investigator.

The new vendor registration will affect a significant number of businesses and charitable organizations throughout the state. We have seen unlawful activity within the gaming industry. The investigator position requested by this fiscal note will greatly assist the division in beefing-up its current gaming enforcement and will promote compliance with gaming laws in the state.

The \$72.2 required includes \$8.0 in travel, to fund the cost of widespread travel to various communities, and a one-time equipment charge of \$9.9.

With a vendor registration fee of \$50, we estimate that regulation of vendors will bring in approximately \$100.0 in program receipts (\$50 x 2,000 vendors).

STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 22, 1990

SUBJECT: Sectional analysis of CSHB 512 (C&RA)
TO: Representative Eileen MacLean
Chair, House C&RA Committee
FROM: John B. Gaguine *JBG*
Legislative Counsel

You have requested a sectional analysis of the draft of CSHB 512 (C&RA).—

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 rewrites current AS 05.15.170 to achieve three goals: to expand it to include suspension or revocation of the registration of a vendor; to enumerate the grounds on which a permit, license or registration can be suspended or revoked; and to correct possible due process flaws in the existing law.

Section 2 allows a permittee to award a maximum of \$1,000,000 in prizes annually as part of charitable gaming activity whether or not the permittee has contracted with an operator. Currently only a permittee who has not contracted with an operator may award \$1,000,000; if an operator is involved, the maximum is \$500,000. The section retains the provision of existing law that the maximum does not apply to bingo.

Section 3 makes it clear that a pull-tab distributor may not deal directly with a vendor, but must go through an operator or a permittee.

Section 4 provides that the owner, manager or employee of any entity regulated under AS 05.15 may not purchase pull-

tabs from a series manufactured, distributed or sold by the entity. The prohibition extends to volunteers working for an entity.

Section 5 provides for registering of pull-tab vendors. It describes the mechanics of registration and permit display; sets a registration fee of \$50 per year per vendor location; requires a written contract between the vendor and the operator or permittee; places a ceiling on the compensation that a vendor may receive for selling a pull-tab series; requires the vendor to make an up-front payment to the permittee or operator within 30 days of the date that the series is delivered to the vendor; and restricts some members of charitable organizations and some municipal officials and employees from acting as vendors for compensation.

Sections 6 and 7 relate to the charitable gaming surety fund that is proposed by another bill before the legislature. If the legislature establishes such a fund, vendors will be required to make an annual contribution to the fund, not to exceed \$100.

Section 8 provides a mechanism for the Department of Commerce and Economic Development to administratively enjoin violations of AS 05.15 and the department's regulations. It includes a provision for emergency orders issued before a hearing is held; such orders would be limited to 60 days duration.

Section 9 expands the criminal sanctions for submitting false information in an application to the department to encompass applications for licenses and vendor registrations, and not just permits.

Section 10 defines some new terms. Most importantly, it defines a vendor eligible for registration as a retail establishment, an eating establishment, or any establishment with a license of any sort issued by the Alcoholic Beverage Control Board.

Section 11 makes Section 6 and 7 effective on the effective date of an Act establishing the charitable gaming surety fund.

Section 12 makes the rest of the Act effective immediately.

6-2127E
Gaguine
3/22/90

Original sponsor(s): REP. BOUCHER, Boyer, Shultz, Zawacki

1 IN THE HOUSE

BY THE C&RA COMMITTEE

2 CS FOR HOUSE BILL NO. 512 (C&RA)

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 charitable gaming; and providing
7 for an effective date."

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

9 * Section 1. AS 05.15.170 is repealed and reenacted to read:

10 Sec. 05.15.170. SUSPENSION OR REVOCATION OF PERMIT, LICENSE, OR
11 VENDOR REGISTRATION. (a) The commission may suspend or revoke a
12 permit, license, or vendor registration, after giving notice to and an
13 opportunity to be heard by the permittee, licensee, or vendor, if the
14 permittee, licensee, or vendor

15 (1) violates or fails to comply with a requirement of this
16 chapter or of a regulation adopted under this chapter;

17 (2) breaches a contractual agreement with a permittee,
18 licensee, or registered vendor;

19 (3) is convicted of a felony, of a crime involving theft or
20 dishonesty, or of a violation of a municipal, state, or federal gam-
21 bling law; for the purposes of this paragraph, a permittee, licensee,
22 or registered vendor that is not a natural person is considered con-
23 victed if an owner or manager of the permittee, licensee, or vendor is
24 convicted; or

25 (4) knowingly submits false information to the department
26 or, in the case of a registered vendor, to a permittee or operator
27 when the vendor knows that the false information will be submitted to
28 the department as part of an application for registration.

29 (b) If the department revokes a permit, license, or vendor

1 registration under this section, it may prohibit the permittee, li-
2 censee, or vendor from reapplying for a permit, license, or vendor
3 registration for a period of up to five years.

4 * Sec. 2. AS 05.15.180(g) is amended to read:

5 (g) A permittee [MUNICIPALITY OR A QUALIFIED ORGANIZATION] may
6 award a maximum of \$1,000,000 in prizes each year in activities au-
7 thorized under this chapter [; HOWEVER, IF A MUNICIPALITY OR A QUALI-
8 FIED ORGANIZATION CONTRACTS WITH AN OPERATOR TO CONDUCT ON ITS BEHALF
9 ACTIVITIES AUTHORIZED UNDER THIS CHAPTER, THE MUNICIPALITY OR QUALI-
0 FIED ORGANIZATION MAY AWARD A MAXIMUM OF \$500,000 IN PRIZES EACH
11 YEAR]. In this subsection, "activities authorized under this chapter"
12 means all activities subject to this chapter other than bingo.

13 * Sec. 3. AS 05.15.183 is amended by adding a new subsection to read:

14 (e) A distributor may not

15 (1) take an order for the purchase of a pull-tab series
16 from a vendor;

17 (2) sell a pull-tab series to a vendor; or

18 (3) deliver a pull-tab series to a vendor location.

19 * Sec. 4. AS 05.15.187 is amended by adding a new subsection to read:

20 (h) An owner, manager, or employee of a person holding a permit
21 or license under this chapter, or registered under this chapter as a
22 vendor, may not purchase a pull-tab from any pull-tab series manu-
23 factured, distributed, or sold by the permittee, licensee, or regis-
24 tered vendor. In this subsection, "employee" includes a person work-
25 ing without compensation.

26 * Sec. 5. AS 05.15 is amended by adding a new section to article 2 to
27 read:

28 Sec. 05.15.188. PULL-TAB SALES BY VENDORS ON BEHALF OF PERMIT-
29 TEES AND OPERATORS; VENDOR REGISTRATION. (a) A permittee or operator

1 may contract with a vendor to sell pull-tabs on behalf of the permit-
2 tee or operator, if the permittee or operator first registers the
3 vendor with the department by applying for registration on a form pre-
4 scribed by the department and by submitting the registration fee of
5 \$50 for each location at which the vendor will sell pull-tabs.

6 (b) The department shall approve or disapprove an initial vendor
7 registration request within 10 working days of receipt of the regis-
8 tration form from a permittee or operator.

9 (c) Upon approval of the vendor registration, the department
10 shall issue an endorsement to the permittee's permit or the operator's
11 license that authorizes the conduct of pull-tab sales at that vendor
12 location.

13 (d) The endorsement issued under (c) of this section is an
14 extension of the permittee's or operator's privilege under AS 05.15.-
15 100 to conduct pull-tab sales in this state. A vendor may not sell a
16 pull-tab series until the permit or license containing the endorsement
17 for the new vendor location has been posted by the permittee or opera-
18 tor in the registered vendor establishment. The endorsed permit or
19 license must be clearly visible to the gaming public.

20 (e) A separate endorsement shall be issued for each vendor
21 location. The permittee or operator shall inform the department when
22 a vendor with whom the permittee or operator is contracting changes
23 the physical location at which pull-tabs are sold, and shall return to
24 the department the endorsed permit or license of a vendor that is no
25 longer selling pull-tabs on behalf of the permittee or operator.
26 Failure to inform the department of a change in vendor location, or to
27 return the endorsed permit or license to the department after a vendor
28 change, may constitute grounds for the suspension or revocation of a
29 permittee's permit or an operator's license.

1 (f) At the time that a permittee or operator annually renews its
2 permit or license, it shall also renew the registration of all loca-
3 tions where a vendor is selling pull-tabs on the permittee's or opera-
4 tor's behalf and shall pay a registration fee of \$50 for each vendor
5 location.

6 (g) A permittee or operator that uses a vendor to sell pull-tabs
7 on its behalf shall enter into a written contract with that vendor.
8 The department may inspect this contract. If the contract contains
9 provisions that violate this chapter or the regulations adopted under
10 it, the department may declare the contract void, and may suspend or
11 revoke the registration of the vendor and the license of the operator
12 or the permit of the permittee.

13 (h) A person, other than a permittee's member-in-charge or an
14 operator, may not directly supply a pull-tab series to a registered
15 vendor for sale by that vendor on behalf of the permittee or operator.
16 A vendor may not acquire a series from a licensed distributor.

17 (i) A permittee or operator may not compensate a vendor for
18 selling a series of pull-tabs on the permittee's or operator's behalf
19 in an amount greater than ¹⁵30 percent of the ideal net.

20 (j) An amount equal to the ideal net less the compensation paid
21 to the vendor shall be paid by the vendor within 30 days of the date
22 that the member in charge or operator delivers a pull-tab series to
23 the vendor for sale. The amount required to be paid by the vendor
24 under this subsection must be paid by check and shall be deposited by
25 the permittee or operator directly into its gaming checking account.

26 (k) A vendor may not enter into a contract with a permittee to
27 sell pull-tabs for compensation if

28 (l) the permittee is a qualified organization, and the
29 owner or manager of the vendor is a member of the governing body of

1 the organization, or is the organization's designated member in charge
2 under AS 05.15.112; or

3 (2) the permittee is a municipality, and the owner or
4 manager of the vendor is an elected official of the municipality or is
5 employed by the municipality in a managerial position.

6 * Sec. 6. AS 05.15.188(g) is repealed and reenacted to read:

7 (g) At the time that a permittee or operator annually renews its
8 permit or license, it shall also renew the registration of all loca-
9 tions where a vendor is selling pull-tabs on the permittee's or opera-
10 tor's behalf and shall pay a registration fee of \$50 for each vendor
11 location. The permittee or operator shall also forward, with each
12 vendor registration renewal, that vendor's annual payment of the
13 assessment to the charitable gaming surety fund.

14 * Sec. 7. AS 05.15.188 is amended by adding a new subsection to read:

15 (m) The vendor registration required by (a) of this section
16 shall be accompanied by payment of the vendor's assessment to the
17 charitable gaming surety fund under AS 05.15.230. The assessment
18 amount shall be set by the department by regulation and may not exceed
19 \$100. The payment shall be drawn on the checking account of the
20 vendor and may not be paid by the permittee or operator on the ven-
21 dor's behalf.

22 * Sec. 8. AS 05.15 is amended by adding a new section to read:

23 Sec. 05.15.195. ORDER PROHIBITING ACTION IN VIOLATION OF CHAP-
24 TER. (a) If the commissioner determines that a person has engaged in
25 an act or practice in violation of this chapter or a regulation
26 adopted under this chapter, the commissioner may, after giving reason-
27 able notice to the person and an opportunity for the person to be
28 heard, issue an order prohibiting the violation by the person. The
29 order remains in effect until the person has submitted evidence

1 acceptable to the commissioner showing that the violation has been
2 corrected.

3 (b) If the public interest requires, the commissioner may issue
4 an emergency order prohibiting an act or practice in violation of this
5 chapter or a regulation adopted under this chapter without notice to
6 or an opportunity to be heard by the person affected by the order.
7 The commissioner shall immediately serve the person with a copy of the
8 emergency order. An emergency order expires 60 days after the date it
9 is issued, if the person affected by the order requests a hearing
10 within 15 days of receipt of the order. If the person does not re-
11 quest a hearing within 15 days of receipt of the emergency order, the
12 order becomes permanent. Following a hearing, the commissioner may
13 rescind, modify, or make permanent the emergency order.

14 * Sec. 9. AS 05.15.200(b) is amended to read:

15 (b) A person who, with the intent to mislead a public servant in
16 the performance of the public servant's duty, submits a false state-
17 ment in an application for a permit, license, or vendor registration
18 under this chapter [,] is guilty of unsworn falsification.

19 * Sec. 10. AS 05.15.210 is amended by adding new paragraphs to read:

20 (35) "ideal net" means an amount equal to the total amount
21 of receipts that would be received if every individual pull-tab ticket
22 in a series were sold at face value, less the prizes to be awarded for
23 that series;

24 (36) "permittee" means a municipality or a qualified orga-
25 nization that holds a valid permit under AS 05.15.100;

26 (37) "vendor" means a business whose primary activity is not
27 regulated by this chapter but that is engaged in the sale of pull-tabs
28 on behalf of a permittee or operator, holds a business license under
29 AS 43.70, and is

- 1 (A) a retail establishment;
- 2 (B) an eating establishment; or
- 3 (C) an establishment licensed under AS 04.11.

4 * Sec. 11. Sections 6 and 7 of this Act take effect on the effective
5 date of an Act establishing a charitable gaming surety fund that is enacted
6 by the Sixteenth Alaska State Legislature.

7 * Sec. 12. Except for secs. 6 and 7, this Act takes effect immediately
8 under AS 01.10.070(c).

#1

6-2127Ea ✓
Gaguine

A M E N D M E N T

OFFERED IN THE HOUSE

BY REP. MACLEAN

TO: CSHB 512(C&RA)

Page 1, following line 8:

Insert a new bill section to read:

"* Section 1. AS 05.15.060 is amended to read:

Sec. 05.15.060. REGULATIONS. The department shall adopt regulations under the Administrative Procedure Act (AS 44.62) necessary to carry out this chapter covering, but not limited to,

(1) the issuance, renewal, and revocation of permits, [AND] licenses, and vendor registrations;

(2) a method of ascertaining net proceeds, the determination of items of expense that may be incurred or paid, and the limitation of the amount of the items of expense to prevent the proceeds from the activity permitted from being diverted to noncharitable, noneducational, nonreligious, or profit-making organizations, individuals, or groups;

(3) the immediate revocation of permits, [AND] licenses, and vendor registrations authorized under this chapter if this chapter or regulations adopted under it are violated;

(4) the requiring of detailed, sworn, financial reports of operations from permittees and licensees including detailed statements of receipts and payments;

(5) the investigation of permittees, licensees, registered

vendors, and their employees, including the fingerprinting of those permittees, licensees, registered vendors, and employees whom the commissioner considers it advisable to fingerprint;

(6) exclusion from participation as a permittee, licensee, registered vendor, or employee of a permittee [OR] licensee, or registered vendor, of a person convicted of, in prison for, or on parole for a felony within the preceding five years, or convicted of a crime involving theft or dishonesty or of a violation of a municipal, state, or federal gambling law;

(7) the method and manner of conducting authorized activities and awarding of prizes or awards, and the equipment that may be used;

(8) the number of activities that may be held, operated, or conducted under a permit during a specified period; however, the department may not allow more than 14 bingo sessions a month and 35 bingo games a session to be conducted under a permit;

(9) a method of accounting for receipts and disbursements by operators, including the keeping of records and requirements for the deposit of all receipts in a bank;

(10) the disposition of funds in possession of a permittee, [OR] a person, municipality, or qualified organization that possesses an operator's license, or a registered vendor at the time a permit, [OR] a license, or a vendor registration is surrendered, revoked, or invalidated;

(11) restrictions on the participation by employees of the Department of Fish and Game in salmon classics;

(12) other matters the commissioner considers necessary to carry out this chapter or protect the best interest of the public."

Page 1, line 9:

Delete "Section 1"

Insert "Sec. 2"

Renumber the following bill sections accordingly.

Page 7, line 4:

Delete "6 and 7"

Insert "7 and 8"

Page 7, line 7:

Delete "6 and 7"

Insert "7 and 8"

#2

C-212720
Gaguine

A M E N D M E N T

OFFERED IN THE HOUSE

BY REP. MACLEAN

TO: CSHB 512(C&RA)

Page 1, following line 8:

Insert a new bill section to read:

"* Section 1. AS 05.15.070 is amended to read:

Sec. 05.15.070. EXAMINATION OF BOOKS AND RECORDS. The commis-
sioner may examine or have examined the books and records of a per-
mittee, an operator, a registered vendor, or a person licensed to
manufacture or to distribute pull-tab games in the state. The commis-
sioner may issue subpoenas for the attendance of witnesses and the
production of books, records, and other documents."

Page 1, line 9:

Delete "Section 1"

Insert "Sec. 2"

Renumber the following bill sections accordingly.

Page 7, line 4:

Delete "6 and 7"

Insert "7 and 8"

Page 7, line 7:

11

Delete "6 and 7"

Insert "7 and 8"

A M E N D M E N T

OFFERED IN THE HOUSE

BY REP. MACLEAN

TO: CSHB 512(C&RA)

Page 1, following line 8:

Insert a new bill section to read:

"* Section 1. AS 05.15.115(b) is amended to read:

(b) The contract between an authorizing permittee and an operator must include the amount and form of compensation to be paid to the operator, the term of the contract, the activities to be conducted by the operator on behalf of the permittee, the location where the activities are to be conducted, the name and address of the member in charge, and other provisions the department may require. The contract must provide that an operator conducting pull-tab games on behalf of a permittee shall return no less than 40 percent of the ideal net to the permittee."

Page 1, line 9:

Delete "Section 1"

Insert "Sec. 2"

Renumber the following bill sections accordingly.

Page 7, line 4:

Delete "6 and 7"

Insert "7 and 8"

Page 7, line 7:

Delete "6 and 7"

Insert "7 and 8"

A M E N D M E N T

OFFERED IN THE HOUSE

BY REP. MACLEAN

TO: CSHB 512(C&RA)

Page 1, following line 8:

Insert a new bill section to read:

"* Section 1. AS 05.15.128(a) is amended to read:

(a) The department shall revoke the license of an operator who does not

(1) report an adjusted gross income of at least 15 percent of gross income for two consecutive quarters based on the total operation of the operator; [OR]

(2) pay to each authorizing permittee for two consecutive quarters at least 15 percent of the adjusted gross income, as determined under (1) of this subsection, received from activities other than pull-tab games conducted on behalf of the authorizing permittee; or

(3) pay to each authorizing permittee for two consecutive quarters at least 40 percent of the ideal net received from pull-tab games conducted on behalf of the authorizing permittee."

Page 1, line 9:

Delete "Section 1"

Insert "Sec. 2"

15

Renumber the following bill sections accordingly.

Page 7, line 4:

Delete "6 and 7"

Insert "7 and 8"

Page 7, line 7:

Delete "6 and 7"

Insert "7 and 8"

A M E N D M E N T

OFFERED IN THE HOUSE

BY REP. MACLEAN

TO: CSHB 512 (C&RA)

Page 2, line 26:

Delete "a new section"

Insert "new sections"

Page 5, following line 5:

Insert a new section to read:

"Sec. 05.15.189. JAR TICKETS PROHIBITED. Jar tickets may not be manufactured, distributed, or sold in the state. The department shall adopt regulations establishing which pull-tabs are jar tickets."

A M E N D M E N T

OFFERED IN THE HOUSE

BY REP. MACLEAN

TO: CSHB 512 (C&RA)

Page 2, line 17:

Delete "or"

Page 2, line 18, following "location":

Insert "; or

(4) hold a permit or an operator's license under this chapter"