

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672

6799 HOUSE HEALTH EDUCATION & SOCIAL SERVICES

HB 7 (Healthy Student Bill)
Sectional Analysis

Section 1.

Defines the purpose of the bill: to foster the development and understanding of health principles and problems and responsible personal behavior.

Section 2.

Requires that the borough school district shall establish a health education curriculum advisory committee.

Section 3.

Allows the school district to establish other advisory school boards or curriculums. The board will prescribe their manner of selection, organization, powers, and duties by regulation.

Section 4.

Requires each school district to initiate and conduct a program in comprehensive health education for K-12. Outlines the curriculum required under this program. The program must include age appropriate instruction in the following areas:

- 1) physical health
- 2) personal safety
- 3) first aid
- 4) human growth and development
- 5) mental and emotional health

The program must also include training, support groups and pertinent literature designed to assist parents and community members to participate in health and personal safety education. A district curriculum and materials must be developed in conjunction with the advisory committee. Method to notify parents about human growth and development program and option for parents to exempt child from this portion of the program.

Adds language to require the Department of Public Safety to provide assistance to school districts in the development of personal safety curriculum.

Section 5.

Defines new terms and areas covered under program:
family health, health and personal safety education,
pregnancy prevention, and reproductive health.

Section 6.

Requires each district to start development of a health
education curriculum by July 1, 1991 and have a program
in place by August 1, 1993.

Note: Current law says the program should include instruction
in physical health and personal safety including alcohol and
drug abuse; CPR; early cancer prevention and detection, dental
health, family health, environmental health; identification
and prevention of child abuse, child abduction, neglect,
sexual abuse and domestic violence; and appropriate use of
health services.

SUPPORTERS OF HB 7 - HEALTHY STUDENT BILL

Department of Education
National Education Association
Alaska Native Health Board
Alaska State School Board
Church Women United in Alaska
Department of Public Safety
Resource Center for Parents and Children
Alaska Council of School Administrators
Alaska Health Education Consortium
Medical Advisory Committee of the Anchorage School District
Action for Alaska's Children
Access Alaska
Arctic Alliance for People
American Lung Association of Alaska
North and Northwest Alaska Mayor's Conference
Bristol Bay Area Health Corporation
American Association of University Women
A.W.A.R.E., Inc.
Planned Parenthood of Alaska
Fairbanks Native Association, Inc.
Volunteers of America
Central Council, Tlingit and Haida Indian Tribes of Alaska
Sitka Teen Resource Center
Bering Sea Women's Group
Governor's Health Care Commission



NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

ANCHORAGE REGIONAL OFFICE

1411 W. 33RD AVENUE
ANCHORAGE, ALASKA 99503
(907) 274-0536
FAX: (907) 274-0551

JUNEAU OFFICE

105 MUNICIPAL WAY, SUITE 302
JUNEAU, ALASKA 99801
(907) 586-3090
FAX: (907) 586-2744

FAIRBANKS REGIONAL OFFICE

2118 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
(907) 456-4435
FAX: (907) 456-2159

February 26, 1991

To: **Representatives Carney and Lincoln, Co-Chairs
Members, House HESS Committee**

Re: **HB 7: "An Act relating to public school health and safety education."**

NEA-Alaska supports and strongly encourages your favorable consideration of HB 7. We commend the sponsor for his attention to a very critical issue.

Generally, NEA-Alaska is resistant to legislative curriculum mandates because of the potential for so many different issues to become a part of such a process.

However, effective health education is such an important part of every child's future and their potential to live full and productive lives. Therefore, it is also in the long term public interest of everyone in Alaska.

Societal problems referenced in Section 4 of the bill continue to increase each year. Our society has, and will continue to change relative to the "traditional roles" of family and church in dealing with many of these issues.

More and more young people come from dysfunctional families and/or circumstances of disadvantage which means that this kind of information will, in many instances, be totally missing in their formative years. We have an obligation to make sure they have the opportunity to know and fully understand the circumstances which impact their daily lives.

The requirement of training and provision for support groups and development of pertinent literature is an integral part of making this effective legislation. It should also be emphasized that this legislation more than adequately "protects" those parents who prefer options for their children.

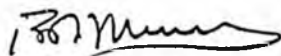
The provision for a curriculum advisory committee enhances the probability that the actual curriculum will truly reflect the attitudes and mores of the local community.

We do encourage that the Committee give some consideration to the probability that many school districts may need additional resources, human and financial, for the long term implementation of this legislation.

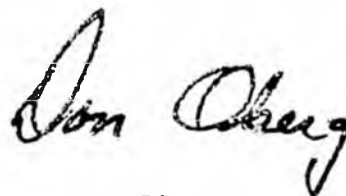
In closing, it is appropriate to emphasize that HB 7 effectively anticipates the "potential concerns" of the various interests in our society including the governmental agencies as well.

We hope that you will give it favorable consideration. Thank you for your consideration of our position.

Respectfully submitted,



Bob Manners
Executive Director



Don Oberg
President

cc: **Representative Boyer**

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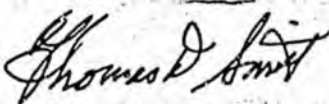
Alaskan State Legislature
House of Representatives
RE: House Bill 7

My name is Thomas D. Smith, a proud Alaskan, former high school teacher, Baptist ministers son, and living with full blown AIDS for four years. During the past year since I sat within these chambers, I have addressed countless civic, private, schools, organizations within the health care field, and even the Alaskan Correctional System regarding sexually transmitted diseases, HIV/AIDS, alcohol and drug issues regarding healthy judgements and preventative measures that can be taken immediately. House Bill Seven addresses these and other health issues at the heart of the endangered population.....our youth.

By implementing public health education within the educational system, even with no financial attachment, the principles and education to practice and learn healthy skills and the judgemental process conducive to personal well-being will result in better academic and personal self esteem performance and achievements. As a member of the Alaskan Health Consortium and through my direct personal contact I am aware of the importance and results of educated-cautious students who can enter adulthood with the facts and face the world with intelligent choices of nutrition, healthy habits and cautious behavior to the dangers provided them within our State.

We can make a difference by giving the information to process and make correct health decisions. I full heartedly support House Bill Seven and it's principles.

Thank you,



Thomas D. Smith
504 B Kennedy St.
Juneau, AK. 99801
(907) 463-5688



ALASKA ASSOCIATION OF ELEMENTARY SCHOOL PRINCIPALS
ALASKA ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS
ALASKA ASSOCIATION OF SCHOOL ADMINISTRATORS

• ALASKA COUNCIL OF SCHOOL ADMINISTRATORS •
326 Fourth St., Suite 408, Juneau, AK 99801-1101 (907) 586-9702 FAX (907) 586-5879

HOUSE BILL 7

POSITION STATEMENT

"An Act relating to public school health and personal safety education."

The Alaska Council of School Administrators is vitally concerned about mandated curriculum of this nature and therefore opposes HB 7.

School districts already have school boards and community advisory committee requirements as a result of other legislation successfully passed by previous legislatures. To begin to think about adding another mandated advisory board to an already established requirement for insuring public impute is adding a tremendous burden to the communities which are served by the schools.

Secondly, school districts have not received any increased funding for the past five years. They have received additional reporting requirements and requirements for additional inservice education for the staff and administration which are added costs to the district. We feel that if districts are to be given the responsibility to re-allocate existing resources to sustain existing programs in all areas of the curriculum, mandating an additional requirement in any area is an unfair burden districts must carry.

While the issues spoken to in the concept of health and personal safety are so important to the lives of young children, so are many other basic aspects of a child's learning. We need to concentrate on the whole child as we are designing future expectations for schools.

Alaska Health Education Consortium

Position on Comprehensive School Health Education February 1991

The Alaska Health Education Consortium is a statewide organization of over 70 individuals and agencies dedicated to creating knowledgeable choices for optimum health.

Throughout the organization's 15-year history, it has endorsed comprehensive school health education programs for all students in Alaska's public and private schools. A resolution to this effect was passed in 1984. Today, we reaffirm this position and urge the passage of statewide legislation and funding to support comprehensive school health education in Alaska.

Comprehensive school health education programs should be required in Alaska because local school districts currently have a piecemeal approach and research has shown this to be ineffective in actually promoting behavior change. This lack of an integrative approach exacerbates a wide range of preventable health and social problems in our communities. Heart disease, cancer, alcohol abuse and injuries are the leading causes of death in Alaska, many of which can be prevented. While not a panacea, a prevention approach is a far more effective and efficient use of State funds than the current "bandaid" approach.

"Comprehensive school health education" means health education in a school setting that is planned, implemented and evaluated to maintain, reinforce or enhance the health related skills, knowledge, attitudes and practices of children that are conducive to their good health. It is continued from kindergarten through grade 12 in a sequential, developmentally appropriate manner. National professional school health education organizations recognize the 10 following topical areas: alcohol/tobacco and other drug use & abuse, safety & first aid, prevention & control of disease, personal health, community & environmental health, consumer health, family life, human growth & development, nutrition, and mental & emotional health. Additionally, current research indicates that the following factors, which we support, contribute to the success of school health education programs: trained teachers, adequate time, parental and community involvement, local control and skill-based learning activities.

A sound comprehensive school health education program will help students function at optimal levels. It will help schools succeed in reaching the outcome objectives for public education, as proposed by the State Board of Education. It can effect positive changes in student knowledge, attitudes, and behavior, with longterm benefits to the individual, family, community and state.

In addition to the national support for required health education, there is broad-based support in Alaska. It is consistent with the current recommendations set forth by the Alaska State PTA, the Alaska Federation of Natives, the Alaska Children's Commission, the Alaska Adolescent Pregnancy & Parenthood Task Force and many other organizations. It is now time to act upon this recognized need in a unified, committed manner.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 7

Revision Date: _____ Department Affected: Education
 Title: Public School Health and Personal Safety Education BRU: Educational Program Support
 Component: Basic Education & Instructional Support
 Sponsor: Boyer
 Requestor: Boyer COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	71.7	75.3	75.3	75.3	75.3	75.3
TRAVEL	8.1	13.6	13.6	13.6	13.6	13.6
CONTRACTUAL	55.9	55.9	55.9	55.9	55.9	55.9
SUPPLIES	.5	.5	.5	.5	.5	.5
EQUIPMENT	8.3					
LAND & STRUCTURES						
GRANTS, CLAIMS	100.0	100.0	100.0	100.0	100.0	100.0
MISCELLANEOUS						
TOTAL OPERATING	244.5	245.3	245.3	245.3	245.3	245.3

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	244.5	245.3	245.3	245.3	245.3	245.3
FEDERAL FUNDS						
OTHER						
TOTAL	244.5	245.3	245.3	245.3	245.3	245.3

POSITIONS:

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

Estimate of current year impact: none

ANALYSIS: (Attach a separate page if necessary.)

See attached analysis.

Prepared By: Mary Hakala Phone: 465-2800
 Division: Commissioner's Office Date: 2/26/91
 Approved by Commissioner: Steve Hole, Acting Commissioner
 Agency: Education Date: 2/26/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Narrative Outline - Fiscal Note for H.B.7

YEAR 1:

100	\$71,708.	1 FTE Education Specialist II - Health Education (59,070.) .5 FTE Clerk Typist III (12,638.)
200	\$8,100.	10 trips for technical assistance & coordination
300	\$55,890.	phone/postage (2,900.) xerox (1000.) contracts: <ul style="list-style-type: none"> • Summer Institutes of 3 weeks for 20 practicing elementary teachers who would serve as building level "teacher leaders" - covers instructor fees and expenses, materials and partial scholarships for participants (17,000.) • Local school inservices - training fees and expenses for experts to provide local assistance in comprehensive health and wellness through Talent Bank (4,000.) • audioconferencing line fees (990.) • Develop and produce materials for parents and community members to encourage participation in health education (10,000.)
		Year 1 only <ul style="list-style-type: none"> • Develop and produce three Health Fair learning centers to encourage parents and other community members to participate in comprehensive school health education (20,000.)
400	\$500.	Supplies
500	\$8340.	Year 1 only: (1.5 computer workstations @ \$4560 each equals \$6840, \$1500 for desk, chair, bookshelf, phone)
700	\$100,000.	Incentive mini-grants to local school sites for revising and implementing comprehensive health education curriculum (e.g. curriculum revisions, teacher in-service.)
Total =	\$244,538.	Year 1

YEARS 2-5:

100	\$75,295	Includes 5% adjustment for merit and cost of living increases
200	\$13,600	Include Year 1 as base plus travel for other educators to provide on-site assistance (5100.)
300	\$55,580	Replaces Year 1 costs for Health Fair Parent Education Module development with additional Teacher Training Institutes at regional locations (\$20,000)
400	\$500	Same as Year 1
700	\$100,000	Same as Year 1
Total =	\$244,975	Year 2. Years 3-5 would reflect the same level of service.

CS FOR HOUSE BILL NO. 7 ()
 IN THE LEGISLATURE OF THE STATE OF ALASKA
 SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES BOYER, Brown, Ulmer, Ellis, B.Davis

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to public school health and personal safety education."

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

3 * Section 1. PURPOSE. The purpose of this Act is to

4 (1) foster the development and dissemination of educational activities and materials that
 5 will assist students, teachers, administrators, and parents in the perception, appreciation, and
 6 understanding of health principles and problems, and responsible personal behavior,

7 (2) bring the appropriate agencies of government into the process of developing and
 8 implementing health and personal safety education.

9 * Sec. 2. AS 14.08.115 is amended to read:

10 Sec. 14.08.115. ADVISORY SCHOOL BOARDS AND COMMITTEES IN REGIONAL
 11 EDUCATIONAL ATTENDANCE AREAS. (a) A regional school board shall establish advisory
 12 school boards and health education curriculum advisory committees in each community in
 13 the regional educational attendance area that has more than 50 permanent residents, and by
 14 regulation shall prescribe their manner of selection and organization, and, in a manner consistent

1 with (b) of this section, their powers and duties.

2 (b) An advisory board shall advise the regional school board on all matters concerning
3 schools in the community in which the advisory board is established. A health education
4 curriculum advisory committee shall advise the regional school board on the health
5 education curriculum at schools in the community in which the committee is established.

6 * Sec. 3. AS 14.12.035 is amended to read:

7 Sec. 14.12.035. ADVISORY SCHOOL BOARDS AND COMMITTEES IN BOROUGH
8 SCHOOL DISTRICTS. A borough school district board ~~shall establish a health education~~
9 curriculum advisory committee and may establish other advisory school boards or
10 committees, and by regulation shall prescribe their manner of selection, organization, powers,
11 and duties.

12 * Sec. 4. AS 14.30.360 is amended to read:

13 Sec. 14.30.360. CURRICULUM. (a) Each district in the state public school system shall
14 [BE ENCOURAGED TO] initiate and conduct a program in comprehensive health education for
15 kindergarten through grade 12. The program must [SHOULD] include

16 (1) age appropriate instruction in physical health and personal safety including

17 (A) alcohol and substance [DRUG] abuse and fetal alcohol syndrome
18 education;

19 (B) first aid, including cardiopulmonary resuscitation (CPR);

20 (C) human growth and development, including human sexuality,
21 reproductive health, pregnancy prevention, prevention and control of diseases,
22 including acquired immune deficiency syndrome and other sexually transmitted
23 diseases;

24 (D) mental and emotional health, including suicide prevention;

25 (E) [,] early cancer prevention and detection, nutrition, dental health,
26 family health, environmental health;

27 (F) [,] the identification and prevention of child abuse, child abduction,
28 neglect, and sexual abuse, and domestic violence; [,] and

29 (G) appropriate use of health services;

30 (2) training, support groups, and pertinent literature designed to assist
31 parents and other members of the community to participate in health and personal safety

1 education;

2 (3) a district curriculum and curriculum materials developed in conjunction
3 with the district health education curriculum advisory committee; and

4 (4) a method of notifying parents of students of the content of instructional
5 materials used in the human growth and development program and of the parents' option
6 to exempt their child from human growth and development instruction; a district shall use
7 procedures to provide that students exempted from the program are not embarrassed by
8 the exemption.

9 (b) The state board shall establish guidelines for a comprehensive health and personal
10 safety education program. Personal safety guidelines shall be developed in consultation with the
11 Council on Domestic Violence and Sexual Assault. Upon request, other agencies of state
12 government [THE DEPARTMENT OF EDUCATION, THE DEPARTMENT OF HEALTH
13 AND SOCIAL SERVICES, AND THE COUNCIL ON DOMESTIC VIOLENCE AND SEXUAL
14 ASSAULT] shall provide technical assistance to school districts in the development of personal
15 safety curricula. A school health and personal safety education specialist position shall be
16 established and funded in the department to coordinate the program statewide. Adequate funds
17 to enable curriculum and resource development, adequate consultation to school districts, and a
18 program of [TEACHER] training and periodic staff development for administrators and
19 teachers in health and personal safety education shall be provided.

20 * Sec. 5. AS 14.30.360 is amended by adding a new subsection to read:

21 (c) In this section,

22 (1) "family health" includes

23 (A) an understanding of the physical, mental, emotional, social, economic,
24 and psychological aspects of close personal relationships and an understanding of the
25 physiological, psychological, and cultural foundations of human development;

26 (B) the development of responsible personal values and behavior and the
27 establishing of a strong family life for students in the future, with emphasis on the
28 responsibilities of parenting;

29 (C) knowledge of the law relating to the sexual conduct of minors and
30 sexual abuse of minors, including criminal sexual conduct;

31 (2) "health and personal safety education" includes health education in a school

1 setting that is planned and carried out with the purpose of maintaining, reinforcing, or enhancing
2 the health, health-related skills, and health attitudes and practices of children and youth that are
3 conducive to their good health and that promote wellness, health maintenance, and disease
4 prevention; it includes age-appropriate, sequential instruction in health either as part of an
5 existing course or as a special course;

6 (3) "pregnancy prevention" includes

7 (A) abstaining from sexual activity until marriage;

8 (B) skills to enable students to resist peer pressure and abstain from sexual
9 activity;

10 (C) methods of contraception, and the risks and benefits of each method;

11 (4) "reproductive health" includes human physiology, conception, prenatal care
12 and development, fetal alcohol syndrome, childbirth, and postnatal care.

13 * Sec. 6. TRANSITION. Each district shall begin development of the comprehensive health
14 education curriculum required by this Act by July 1, 199²~~1~~, and shall have in place a program of
15 comprehensive health education required by this Act by August 1, 199⁴~~1~~.

CS FOR HOUSE BILL NO. 7 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES BOYER, Brown, Ulmer, Ellis, B.Davis

A BILL

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1 "An Act relating to public school health and personal safety education."

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

3 * Section 1. PURPOSE. The purpose of this Act is to

4 (1) foster the development and dissemination of educational activities and materials that
5 will assist students, teachers, administrators, and parents in the perception, appreciation, and
6 understanding of health principles and problems, and responsible personal behavior;

7 (2) bring the appropriate agencies of government into the process of developing and
8 implementing health and personal safety education;

9 (3) encourage the University of Alaska to add a three-credit course in health education
10 and a three-credit course in personal safety education to the core requirements for a degree in elementary
11 or secondary education.

12 * Sec. 2. AS 14.08.115 is amended to read:

13 Sec. 14.08.115. ADVISORY SCHOOL BOARDS AND COMMITTEES IN REGIONAL
14 EDUCATIONAL ATTENDANCE AREAS. (a) A regional school board shall establish advisory

1 school boards and health education curriculum advisory committees in each community in
2 the regional educational attendance area that has more than 50 permanent residents, and by
3 regulation shall prescribe their manner of selection and organization, and, in a manner consistent
4 with (b) of this section, their powers and duties.

5 (b) An advisory board shall advise the regional school board on all matters concerning
6 schools in the community in which the advisory board is established. A health education
7 curriculum advisory committee shall advise the regional school board on the health
8 education curriculum at schools in the community in which the committee is established.

9 * Sec. 3. AS 14.12.035 is amended to read:

10 Sec. 14.12.035. ADVISORY SCHOOL BOARDS AND COMMITTEES IN BOROUGH
11 SCHOOL DISTRICTS. A borough school district board shall establish a health education
12 curriculum advisory committee and may establish other advisory school boards or
13 committees, and by regulation shall prescribe their manner of selection, organization, powers,
14 and duties.

15 * Sec. 4. AS 14.30.360 is repealed and reenacted to read:

16 Sec. 14.30.360. CURRICULUM. (a) Each district in the state public school system
17 shall initiate and conduct a program in comprehensive health education for kindergarten through
18 grade 12. The program must include

- 19 (1) age appropriate instruction in physical health and personal safety including
20 (A) alcohol and substance abuse and fetal alcohol syndrome education;
21 (B) first aid, including cardiopulmonary resuscitation (CPR);
22 (C) human growth and development, including human sexuality, repro-
23 ductive health, pregnancy prevention, prevention and control of diseases, including
24 acquired immune deficiency syndrome and other sexually transmitted diseases;
25 (D) mental and emotional health, including suicide prevention;
26 (E) early cancer prevention and detection, nutrition, dental health, family
27 health, environmental health;
28 (F) the identification and prevention of child abuse, child abduction,
29 neglect, and sexual abuse, and domestic violence; and
30 (G) appropriate use of health services;
31 (2) training, support groups, and pertinent literature designed to assist parents and

1 other members of the community to participate in health and personal safety education;

2 (3) a district curriculum and curriculum materials developed in conjunction with
3 the district health education curriculum advisory committee; and

4 (4) a method of notifying parents of students of the content of instructional
5 materials used in the human growth and development program and of the parents' option to
6 exempt their child from human growth and development instruction; a district shall use proce-
7 dures to provide that students exempted from the program are not embarrassed by the exemption.

8 (b) The board shall establish guidelines for a comprehensive health and personal safety
9 education program. Upon request, agencies of state government shall provide technical assistance
10 to school districts in the development and delivery of personal safety curricula. A school health
11 and personal safety education specialist position shall be established and funded in the department
12 to coordinate the program statewide. Adequate funds to enable curriculum and resource develop-
13 ment, adequate consultation to school districts, and a program of training and periodic staff devel-
14 opment for administrators and teachers in health and personal safety education shall be provided.

15 The board shall develop

16 (1) personal safety guidelines in consultation with the Council on Domestic
17 Violence and Sexual Assault, the Department of Public Safety, the Department of Transportation
18 and Public Facilities, and other appropriate state agencies;

19 (2) health education guidelines in consultation with the Department of Education,
20 the Department of Health and Social Services, the University of Alaska, and other appropriate
21 state agencies.

22 * Sec. 5. AS 14.30.360 is amended by adding a new subsection to read:

23 (c) In this section,

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30 responsibilities of parenting;

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14 and development, fetal alcohol syndrome, childbirth, and postnatal care.

15 * Sec. 6. TRANSITION. Each school district shall begin development of the comprehensive health
16 education curriculum required by this Act by July 1, 1992, and shall have in place a program of
17 comprehensive health education required by this Act by August 1, 1994.

18 * Sec. 7. REPORT. The Legislative Research Agency shall conduct a survey of a representative
19 sample of school districts to determine the cost of implementing health and personal safety education
20 curricula in a school district. The survey shall be conducted in the fall of 1992 and be submitted to the
21 legislature by February 15, 1993.

*The DOE shall report back to the legislature
by March, 1993 on the progress each school district has made in
implementing this act.*

Letter of Intent for CSHB 7 (HESS)

It is the intent of the Legislature in requiring the creation of health education curriculum advisory committees to allow communities to decide whether to establish separate health curriculum advisory committees or to work within the confines of existing advisory school boards for the purpose of advising on matters related to health education. It is not the intent of the Legislature to discourage smaller communities with populations under 50 from developing a health curriculum, but rather those communities may work within the school system already in place.

It is further the intent of the Legislature to encourage the university system to add a course in health education and a course in public safety to the core requirements for a degree in education, at both the elementary and secondary level. Additionally, teachers applying for recertification should be encouraged to take health and personal safety courses. Teacher aides and student teachers, as part of their teaching practicum, should have to develop and participate in health and personal safety lesson plans while in the classroom.

It is further the intent of the Legislature that all appropriate departments and divisions within the State work with school districts to develop and deliver an appropriate health and personal safety curriculum for each community. The Department of Education and the Department of Health and Social Services should be consulted regularly to determine the best approach and the most current methods for teaching health and personal safety.

It is further the intent of the Legislature that the transitional period included in HB 7 provide for time to develop this curriculum.

Finally, it is the intent of the Legislature to conduct a review of the costs associated with providing comprehensive health and personal safety education and to make recommendations to the appropriate committees regarding the impact of the curriculum on the educational instructional unit.

7-LS0169D

Ford

3/11/91

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IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

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13 Sec. 14.08.115. ADVISORY SCHOOL BOARDS AND COMMITTEES IN REGIONAL
14 EDUCATIONAL ATTENDANCE AREAS. (a) A regional school board shall establish advisory

1 school boards and health education curriculum advisory committees in each community in
2 the regional educational attendance area that has more than 50 permanent residents, and by
3 regulation shall prescribe their manner of selection and organization, and, in a manner consistent
4 with (b) of this section, their powers and duties.

5 (b) An advisory board shall advise the regional school board on all matters concerning
6 schools in the community in which the advisory board is established. A health education
7 curriculum advisory committee shall advise the regional school board on the health
8 education curriculum at schools in the community in which the committee is established.

9 * Sec. 3. AS 14.12.035 is amended to read:

10 Sec. 14.12.035. ADVISORY SCHOOL BOARDS AND COMMITTEES IN BOROUGH
11 SCHOOL DISTRICTS. A borough school district board shall establish a health education
12 curriculum advisory committee and may establish other advisory school boards or
13 committees, and by regulation shall prescribe their manner of selection, organization, powers,
14 and duties.

15 * Sec. 4. AS 14.30.360 is repealed and reenacted to read:

16 Sec. 14.30.360. CURRICULUM. (a) Each district in the state public school system
17 shall initiate and conduct a program in comprehensive health education for kindergarten through
18 grade 12. The program must include

- 19 (1) age appropriate instruction in physical health and personal safety including
20 (A) alcohol and substance abuse and fetal alcohol syndrome education;
21 (B) first aid, including cardiopulmonary resuscitation (CPR);
22 (C) human growth and development, including human sexuality, repro-
23 ductive health, pregnancy prevention, prevention and control of diseases, including
24 acquired immune deficiency syndrome and other sexually transmitted diseases;
25 (D) mental and emotional health, including suicide prevention;
26 (E) early cancer prevention and detection, nutrition, dental health, family
27 health, environmental health;
28 (F) the identification and prevention of child abuse, child abduction,
29 neglect, and sexual abuse, and domestic violence; and
30 (G) appropriate use of health services;

31 (2) training, support groups, and pertinent literature designed to assist parents and

1 other members of the community to participate in health and personal safety education;
2 (3) a district curriculum and curriculum materials developed in conjunction with
3 the district health education curriculum advisory committee; and

4 (4) a method of notifying parents of students of the content of instructional
5 materials used in the human growth and development program and of the parents' option to
6 exempt their child from human growth and development instruction; a district shall use proce-
7 dures to provide that students exempted from the program are not embarrassed by the exemption.

8 (b) The board shall establish guidelines for a comprehensive health and personal safety
9 education program. Upon request, agencies of state government shall provide technical assistance
10 to school districts in the development and delivery of ^{health and} personal safety curricula. A school health
11 and personal safety education specialist position shall be established and funded in the department
12 to coordinate the program statewide. Adequate funds to enable curriculum and resource develop-
13 ment, adequate consultation to school districts, and a program of training and periodic staff devel-
14 opment for administrators and teachers in health and personal safety education shall be provided.
15 The board shall develop

16 (1) personal safety guidelines in consultation with the Council on Domestic
17 Violence and Sexual Assault, the Department of Public Safety, the Department of Transportation
18 and Public Facilities, and other appropriate state agencies;

19 (2) health education guidelines in consultation with the Department of Education,
20 the Department of Health and Social Services, the University of Alaska, and other appropriate
21 state agencies.

22 * Sec. 5. AS 14.30.360 is amended by adding a new subsection to read:

23 (c) In this section,

24 (1) "family health" includes

25 (A) an understanding of the physical, mental, emotional, social, economic,
26 and psychological aspects of close personal relationships and an understanding of the
27 physiological, psychological, and cultural foundations of human development;

28 (B) the development of responsible personal values and behavior and the
29 establishing of a strong family life for students in the future, with emphasis on the
30 responsibilities of parenting;

31 (C) knowledge of the law relating to the sexual conduct of minors and

- 1 sexual abuse of minors, including criminal sexual conduct;
- 2 (2) "health and personal safety education" includes health education in a school
- 3 setting that is planned and carried out with the purpose of maintaining, reinforcing, or enhancing
- 4 the health, health-related skills, and health attitudes and practices of children and youth that are
- 5 conducive to their good health and that promote wellness, health maintenance, and disease
- 6 prevention; it includes age-appropriate, sequential instruction in health either as part of an
- 7 existing course or as a special course;
- 8 (3) "pregnancy prevention" includes
- 9 (A) abstaining from sexual activity until marriage;
- 10 (B) skills to enable students to resist peer pressure and abstain from sexual
- 11 activity;
- 12 (C) methods of contraception, and the risks and benefits of each method;
- 13 (4) "reproductive health" includes human physiology, conception, prenatal care
- 14 and development, fetal alcohol syndrome, childbirth, and postnatal care.
- 15 * Sec. 6. TRANSITION. Each school district shall begin development of the comprehensive health
- 16 education curriculum required by this Act by July 1, 1992, and shall have in place a program of
- 17 comprehensive health education required by this Act by August 1, 1994.
- 18 * Sec. 7. REPORT; SURVEY. The Department of Education shall report back to the legislature by
- 19 March 1, 1993, on the progress each district has made in implementing this Act. The Legislative
- 20 Research Agency shall conduct a survey of a representative sample of school districts to determine the
- 21 cost of implementing health and personal safety education curricula in a school district. The survey shall
- 22 be conducted in the fall of 1992 and be submitted to the legislature by February 15, 1993.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CSHB 7 (HESS)

Revision Date: _____ Department Affected: Education
 Title: Public School Health and Personal Safety Education BRU: Educational Program Support
 Component: Basic Education & Instructional Support
 Sponsor: Boyer
 Requestor: Boyer COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	71.7	75.3	75.3	75.3	75.3	75.3
TRAVEL	8.1	13.6	13.6	13.6	13.6	13.6
CONTRACTUAL	55.9	55.9	55.9	55.9	55.9	55.9
SUPPLIES	.5	.5	.5	.5	.5	.5
EQUIPMENT	8.3					
LAND & STRUCTURES						
GRANTS, CLAIMS	100.0	100.0	100.0	100.0	100.0	100.0
MISCELLANEOUS						
TOTAL OPERATING	244.5	245.3	245.3	245.3	245.3	245.3

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	244.5	245.3	245.3	245.3	245.3	245.3
FEDERAL FUNDS						
OTHER						
TOTAL	244.5	245.3	245.3	245.3	245.3	245.3

POSITIONS:

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

Estimate of current year impact: none

ANALYSIS: (Attach a separate page if necessary.)

See attached analysis.

Prepared By: Mary Hakala Phone: 465-2800
 Division: Commissioner's Office Date: 3/12/91
 Approved by Commissioner: Steve Hole, Acting Commissioner
 Agency: Education Date: 3/12/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Narrative Outline - Fiscal Note for CSHB 7 (HESS)

YEAR 1:

100	\$71,708.	1 FTE Education Specialist II - Health Education (59,070.) .5 FTE Clerk Typist III (12,638.)
200	\$8,100.	10 trips for technical assistance & coordination
300	\$55,890.	phone/postage (2,900.) xerox (1000.) contracts: <ul style="list-style-type: none"> • Summer Institutes of 3 weeks for 20 practicing elementary teachers who would serve as building level "teacher leaders" - covers instructor fees and expenses, materials and partial scholarships for participants (17,000.) • Local school inservices - training fees and expenses for experts to provide local assistance in comprehensive health and wellness through Talent Bank (4,000.) • audioconferencing line fees (990.) • Develop and produce materials for parents and community members to encourage participation in health education (10,000.)
		Year 1 only <ul style="list-style-type: none"> • Develop and produce three Health Fair learning centers to encourage parents and other community members to participate in comprehensive school health education (20,000.)
400	\$500.	Supplies
500	\$8340.	Year 1 only: (1.5 computer workstations @ \$4560 each equals \$6840, \$1500 for desk, chair, bookshelf, phone)
700	\$100,000.	Incentive mini-grants to local school sites for revising and implementing comprehensive health education curriculum (e.g. curriculum revisions, teacher in-service.)
Total =	\$244,538.	Year 1

YEARS 2-5:

100	\$75,295	cludes 5% adjustment for merit and cost of living increases
200	\$13,600	clude Year 1 as base plus travel for other educators to provide on-site assistance (5100.)
300	\$55,580	Replaces Year 1 costs for Health Fair Parent Education Module development with additional Teacher Training Institutes at regional locations (\$20,000)
400	\$500	Same as Year 1
700	\$100,000	Same as Year 1
Total =	\$244,975	Year 2. Years 3-5 would reflect the same level of service.

HB

9

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 9

Revision Date: _____
Title: An Act Relating to Tobacco

Department Affected: Public Safety
BRU: Alaska State Troopers
Component: Detachments

Sponsor: Rep. Gruenberg
Requestor: H. JUD

COMPONENT SERIAL NO.

	7	9	9
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EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year impact No fiscal impact anticipated.

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact anticipated.

Prepared by: Gayle A. Horetski, Dep. Commissioner Phone: 465-4322
Division: Commissioner's Office Date: 1/25/91
Approved by Commissioner: Gayle A. Horetski Richard L. Burton
Agency: Department of Public Safety Date: 1/25/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FN -0- Public Safety

FISCAL NOTE

STATE OF ALASKA
LEGISLATIVE SESSION

BILL NO. HB 9

Revision Date: _____ Department Affected: Department of Law
 Title: "An Act relating to tobacco." BRU: Legal Services
 Component: Operations

Sponsor: Representative Gruenberg
 Requestor: Representative Gruenberg COMPONENT SERIAL NO.

		9	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: January 24, 1991
 Approved by Commissioner: Richard I. Pegues
Charles E. Cole, Attorney General
 Agency: Department of Law Date: January 24, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 9

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

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

HOUSE COMMITTEE REPORT

(7)
Date Referred: February 6, 1991

FURTHER REFERRALS:

Date of Committee Action: 3-5-91

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 9

HOUSE BILL NO. 9

LIMIT FREE SAMPLES OF TOBACCO PRODUCTS

"An Act relating to tobacco."

RECOMMENDATIONS:

be replaced with CS HB 9 (HES)

the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) D.O.L. & D.P.S.

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not Pass	No Rec	Amend
<i>[Signature]</i>				
<i>[Signature]</i>				
<i>[Signature]</i>				
<i>Bettye Davis</i>				
<i>[Signature]</i>			X	
<i>Mary Miller</i>				
<i>Cheri Davis</i>				

[Signature]
Chairman's Signature

State of Alaska

Committees

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



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

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

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

MEMORANDUM

DATE: January 28, 1991
TO: Representative Max Gruenberg
FROM: Mark Handley *MH*
RE: Sectional Analysis of HB 9, "An Act relating to Tobacco"

Section 1

AS 11.76.100 (a) amends statutes prohibiting sales of tobacco to persons under the age of 19 by changing the definition of tobacco to that used in the state revenue statutes.

Section 2

AS 11.76.105 (a) amends the statute prohibiting possession of tobacco by a person under 19 by changing the definition of tobacco to that used in the revenue statutes.

Section 3

AS 11.76.108 prohibits giving away free samples of tobacco for the purpose of promoting retail sales except under certain circumstances.

Section 4

AS 11.81.90 (b) (58) defines tobacco in all of title 11 as "cigarette" or "tobacco product" as defined in the revenue statutes.

Sectional Analysis -

§ 11.73.099

§ 11.76.100

CRIMINAL LAW

§ 11.76.100

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(C) whether the substance is packaged in a manner normally used for controlled substances;

(D) evasive tactics or actions used by the owner or person in control of the substance to avoid detection by law enforcement authorities;

(E) the storage, packaging, presentation, display of, or reference to a controlled substance with, near, or in connection with the activity involving the imitation controlled substance.

(4) "manufacture" means the production, preparation, compounding, processing, encapsulating, packaging or repackaging, labeling or relabeling, of an imitation controlled substance. (§ 1 ch 41 SLA 1983; am § 11 ch 76 SLA 1990)

Effect of amendments. — The 1990 amendments" for "or by representations" in amendment substituted "and by represen- paragraph (3).

Chapter 76. Miscellaneous Offenses.

Section

100. Selling or giving tobacco to a minor

105. Possession of tobacco by a minor

Sec. 11.76.100. Selling or giving tobacco to a minor. (a) Except as provided in (f) of this section, a person commits the offense of selling or giving tobacco to a minor if the person is 19 years of age or older and

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

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

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

(1) the vending machine is in a location that is generally supervised by a person who maintains the vending machine, or an employee of the person, during the hours the machine is accessible;

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

(3) the vending machine is in a location where a person under 19 years of age is not allowed entry by policy of the owner of the premises unless accompanied by a person 19 years of age or older.

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

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

AS 11.76.100 — .105

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(e) The court shall forward a record of each person convicted under this section who holds a business license endorsement under AS 43.70.075, or who is an employee or agent of a person who holds a license endorsement under AS 43.70.075 to the Department of Commerce and Economic Development.

(f) The provisions of (a) of this section do not apply to a person who sells or gives tobacco to a minor, if the minor is a prisoner at an adult correctional facility. (§ 9 ch 166 SLA 1978; am § 2 ch 125 SLA 1988; am §§ 1, 2 ch 125 SLA 1990)

Effect of amendments. — The 1990 amendment added the exception at the beginning of subsection (a) and added subsections (e) and (f).

Sec. 11.76.105. Possession of tobacco by a minor. (a) A person under 19 years of age may not knowingly possess a cigarette, a cigar, tobacco, or a product containing tobacco in this state. This subsection does not apply to a person who is a prisoner at an adult correctional facility.

(b) Possession of tobacco by a minor is a violation. (§ 3 ch 125 SLA 1988; am § 3 ch 125 SLA 1990)

Effect of amendments. — The 1990 amendment, in subsection (a), substituted "knowingly possess" for "purchase" and added the second sentence, and substituted "Possession" for "Purchase" at the beginning of subsection (b).

Chapter 81. General Provisions.

Article

- 4. General Principles of Justification (§ 11.81.335)
- 6. Definitions (§ 11.81.900)

Article 4. General Principles of Justification.

Section

- 335. Justification: Use of deadly force in defense of self

Sec. 11.81.320. Justification: Necessity.

NOTES TO DECISIONS

Defense unavailable. — In accord with Municipality of Anchorage, 787 P.2d 119 1st paragraph of original. See Bird v. (Alaska Ct. App. 1990).

§ 11.

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

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

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

NOTES TO DECISIONS

Distribution to particular recipients not required. — There is no express requirement in this section that school fund proceeds be distributed to any particular recipient and, in the view of the Alaska

Supreme Court, there are no grounds for implying such a requirement. *Southwest Region School Dist. v. Department of Educ.*, 123 P.2d 536 (Alaska 1986).

Sec. 43.50.150. Administration. (a) The department shall

(1) administer this chapter; and

(2) collect, supervise, and enforce the collection of taxes due under this chapter and penalties as provided in AS 43.05.

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

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

Sec. 43.50.170. Definitions. In AS 43.50.010 — 43.50.190, unless the context otherwise requires,

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

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

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

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

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

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

~~Sec. 43.50.370. Regulations. The department shall adopt under the Administrative Procedure Act (AS 44.62) reasonable regulations that it considers necessary to carry out the provisions of AS 43.50.300 — 43.50.390. (§ 4 ch 125 SLA 1988)~~

Sec. 43.50.390. Definitions. In AS 43.50.300 — 43.50.390

(1) "distributor" means a person who

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

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

(C) ships or transports a tobacco product to a retailer in the state for sale by the retailer;

(2) "licensee" means a distributor who is

(A) licensed under AS 43.50.320; or

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

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

(4) "tobacco product" means

(A) a cigar;

(B) a cheroot;

(C) a stogie;

(D) a perique;

(E) snuff and snuff flour;

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

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

(H) an article or product made of tobacco or a tobacco substitute, but not including a cigarette as defined in AS 43.50.170;

(5) "wholesale price" means the established price for which a manufacturer sells a tobacco product to a distributor, after deduction of a discount or other reduction received by the distributor for quantity or cash. (§ 4 ch 125 SLA 1988)

~~Chapter 55. Oil and Gas Production Taxes and Oil Surcharge.~~

Article

1. Oil and Gas Properties Production Taxes (§§ 43.55.011 — 43.55.150)
2. Conservation Surcharge on Oil (§§ 43.55.200 — 43.55.240)
3. General Provisions (§ 43.55.900)

State of Alaska

Committees

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



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

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

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

MEMORANDUM

TO: Representative Georgianna Lincoln
Co-Chair, House HESS Committee

FROM: Representative Max Gruenberg *MG*

DATE: February 7, 1991

SUBJECT: Scheduling of HB 9, the Anti-Tobacco Sample Bill

I would very much appreciate it if you would schedule HB 9, the Anti-Tobacco Sample Bill, for a hearing as soon as it is possible.

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

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

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

This is the same bill that passed the House last year by a vote of 29-4 as HB 466.

If you have any questions, please call me or Mark Handley, my Legislative Assistant at ext. 4968.

Thank you.

SPONSOR STMT

Alaska State Legislature



House of Representatives House Judiciary Committee

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

January 28, 1991

Charles E. Cole
Attorney General
P.O. Box K
Juneau, Alaska 99811

Re: HB 9 -- Prohibiting the free distribution or sampling of tobacco products

Dear Attorney General Cole:

Last year the Attorney General concluded that HB 466 was not preempted by federal statute (opinion attached). The Judiciary Committee would like an opinion from you as to whether HB 9, which is substantially identical to last year's HB 466, is preempted by federal statute.

Thank you for your attention to this request.

Very truly yours,

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

Dave Donley, Chair

DD:lho

D.O.L. Opinion

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 2, 1990

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

STEVE COWPER, GOVERNOR

REPLY TO:

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

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

Dear Representative Gruenberg:

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

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

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

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

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

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

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

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

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

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

The Hon. Max Gruenberg
Alaska State Legislature

March 2, 1990
Page 3

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

Sincerely yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By:

Elizabeth J. Kerttula
Elizabeth J. Kerttula

Assistant Attorney General

EJK:jf



SITKA MEDICAL CENTER

700 KATLIAN STREET, SUITE E • SITKA, ALASKA 99835 • (907) 747-5861
AFTER HOURS (907) 747-3241

February 7, 1990

Representative Max F. Gruenberg, Jr.
Alaska State Legislature
P. O. Box V (MS 3100)
Juneau, AK 99811

Dear Representative Gruenberg:

Thank you for introducing House Bill 466 prohibiting the distribution of free samples of cigarettes, cigars, snuff, and other tobacco products in Alaska. As a physician I am well aware of the detrimental health effects of tobacco products. Passage of your bill will lend a hand in the battle improving the health of all Alaskans.

Sincerely yours,

Donald R. Lehmann, M.D., A.B.F.P.

DRL:bj

Letters OF SUPPORT

~~RODNEY K. VAUGHN, M.D.~~
FAMILY PRACTICE

ROBERT C. HUNTER, M.D.
INTERNAL MEDICINE
GENERAL PRACTICE

DONALD R. LEHMANN, M.D.
FAMILY PRACTICE

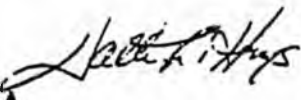
MISC. SUPPORT

AMERICAN LUNG ASSOCIATION of ALASKA

Dedicated to the prevention and control of lung disease

DATE: FEBRUARY 27, 1990

TO: MEMBERS OF THE HOUSE JUDICIARY COMMITTEE
ALASKA STATE LEGISLATURE

FROM: WALTER L. HAYS, EXECUTIVE DIRECTOR 
AMERICAN LUNG ASSOCIATION OF ALASKA

RE: HB 466

I am writing in support of HB 466 currently under review by your committee.

There is an increasing awareness in our society about the health hazards of tobacco use. The National report by former Surgeon General Koop that categorically defines tobacco as an addictive substance, the recent federal bill that bans smoking on 99% of all domestic airlines flights and the recent statements by Health and Welfare Secretary Sullivan regarding the target marketing of tobacco products to specific populations are all indications of the growing public awareness of the issues related to smoking and health.

The prohibition of the distribution of most tobacco samples would be a positive step forward for Alaska. Currently, Minnesota and Utah have enacted such laws. Similar legislation has been introduced in New York and Washington. In 1989, Nebraska banned the distribution of smokeless tobacco products.

Additionally, sixteen (16) major metropolitan areas have laws restricting the distribution of tobacco product samples. These cities include: Austin, Texas; Cambridge, Mass; Cincinnati, Ohio; Atlanta, Georgia; Amherst, Mass; and St. Paul, Minn.

The simple documented fact is that access does impact consumption. We have current report of rural Alaskan communities where 60-70% of older teens are regular smokers.

This act will be a positive step forward for all Alaskans in the regulation of an addictive and potential harmful product and the promotion of better community health.

Gruenberg

Local Address: P.O. Box 1285, Kotzebue, Alaska 99752

AMERICAN  LUNG ASSOCIATION of ALASKA
Dedicated to the prevention and control of lung disease

27 February 1990

Representative Max F. Gruenberg, Jr., Co-Chair
House Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Representative Gruenberg:

We have a serious drug problem in Kotzebue that your committee can help us fix. As you may know, tobacco products kill more Americans than all the other recreational drugs combined—nearly 400,000 people die a year from tobacco-related illnesses.

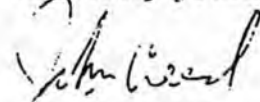
Most Alaskans addicted to nicotine get hooked at an early age, and that is how you can help with your support of HB 141, which would license the sale of tobacco products.

We have a problem in Kotzebue with one store in particular that routinely sells tobacco products to children. While most local store owners are responsible people who do not sell tobacco to children, this one store may be helping to addict a whole new generation of children to nicotine. If that store needed a license to sell tobacco products, the police would have a license to revoke if it broke the law.

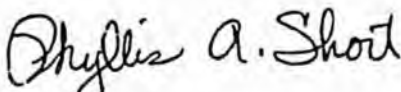
We also support HB 466, which deals with the distribution of tobacco products, as well as SB 222 (and its counterpoint in the House), which would further restrict smoking in public places.

Attitudes have changed dramatically about tobacco use in our society in the past few years. Alaska has always been on the forefront of this movement, and your support of this legislation would demonstrate your commitment to the anti-drug campaign in America. Thank you.

Sincerely yours,



John Creed, Kotzebue Facilitator
American Lung Association of Alaska



Phyllis Short, Board Member, Kotzebue
American Lung Association of Alaska

cc: Walter Hays
Senator Al Adams
Representative Eileen MacLean

KETCHIKAN MEDICAL CLINIC, INC.

3612 Tongass
Ketchikan, Alaska 99901

H.J. Henrickson, M.D., F.A.A.F.P.
D.E. Johnson, M.D., F.A.A.P.

Phone 225-5144

March 13, 1990

The Honorable Max F. Gruenberg, Jr.
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Representative Gruenberg:

Thank you for your letter of March 7, and for sending me a copy of House Bill 466. At risk of burdening you with information you can't use, I have taken the liberty of enclosing quite a packet. It is not as overwhelming as it might look, and I will explain the sequence of things and what they are.

The first item is self explanatory. The second item is a set of statistics from the Wall Street Journal that showed that cigarette companies are increasing their inflation adjusted prices, not simply their consumer price. Cigarettes generated approximately 31 billion dollars for the tobacco companies in 1982, and netted the tobacco companies 38 billion dollars in 1989! Excise taxing has not kept pace.

Next in this packet are several first sheets on articles from the Journal of the American Medical Association of January 1989. Starting smoking is decreasing among young men, while it is remaining about the same or increasing slightly among young women. Smoking prevalence is declining in all educational groups, but is declining more among the higher educated. Projections to the year 2000 suggest that at current rates at least 30% of those who have a high school education or less will be smokers, whereas less than 10% of those who graduate from college will smoke. Approximately 1.3 million people per year stop smoking, but about 1 million start smoking, most of them young people.

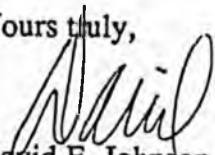
Pregnant women smoked only 70% as much as non-pregnant women, mostly because pregnant women were more likely to have quit smoking than non-pregnant women. "However, unmarried pregnant white women were 40% more likely to smoke than their non-pregnant counterparts."

Even with a program that reduced illegal over-the-counter sale of cigarettes to minors, sales to minors from vending machines were not reduced at all. An eye-tracking study showed that the commercial artists employed by tobacco companies are very skillful at keeping the warnings out of perception. Bill board advertising also effectively excludes the surgeon general's warnings from readability, and for comparison, I have attached a headline from the Seattle Post Intelligencer that grabs attention much more effectively.

The packet of articles that follows is four of the articles whose first sheets I sent, and an editorial on smoking from JAMA. Please contact me or Rick Urion if you need any further information. The Health Sciences Library in the University of Alaska Anchorage can help you with getting articles from the list of references.

Thank you again for your efforts in this area.

Yours truly,


David E. Johnson, M.D.

DEJ:bjh

cc: Representative Cheri Davis

KETCHIKAN MEDICAL CLINIC, C.
3612 Tongass
Ketchikan, Alaska 99901

H.J. Henrickson, M.D., F.A.A.F.P.
D.E. Johnson, M.D., F.A.A.P.

Phone 225-5144

February 22, 1990

The Honorable Max Gruenberg
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Representative Gruenberg:

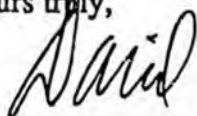
I am writing to follow-up our visit of last week, and to thank you for taking the time to meet with us. I appreciated the candor in our discussions, even when we do not always agree. I am going to send letters on separate issues, so that things not get needlessly complicated for your staff. In this letter I would like to address one of the issues that we did not have the opportunity to discuss, and on which I believe that we have considerable agreement.

I am very appreciative for your efforts in discouraging tobacco use by everyone, particularly by young people. Tobacco is clearly the primary "gateway" drug to other addictions. I am outraged that the tobacco industry can spend two billion dollars a year to recruit the one million new smokers necessary to replace the 350,000 or so who die and the 650,000 or so who quit each year. Sadly, they are recruiting these new tobacco users from those under 20 years old almost exclusively. It is a hard-headed business decision that is worth \$2000 per new smoker to these megacorporations.

The article I have attached is "A Parting Shot at Tobacco" from the past Surgeon General of the USPHS, C. Everett Koop, M.D. His references at the end of the article cite several useful studies. Further, the individual that he cites at the end, Ronald M. Davis, M.D., is an outstanding physician who could provide considerable information on the subject. He is the director of the Office on Smoking and Health at CDC listed on the front page of the article.

Please feel free to contact me personally, or the Alaska State Medical Association, if we can provide any information or assistance. I appreciate your willingness to be out in front on this issue that clearly must be addressed responsibly and well.

Yours truly,



David E. Johnson, M.D.

DEJ:bjh

Enclosure

A Parting Shot at Tobacco

ON SEPTEMBER 13, 1989, I made my last appearance as Surgeon General before the US Congress. I used the occasion to address the one issue with which previous Surgeons General and I have become most closely associated: tobacco and health. In testimony before the Subcommittee on Transportation and Hazardous Substances, Committee on Energy and Commerce, US House of Representatives, I focused my remarks on two topics that this subcommittee had considered in previous hearings: tobacco advertising and children's access to tobacco products. The purpose of this article is to share with a wider audience the comments I made at that hearing.

Tobacco Advertising

The bill introduced by Subcommittee Chairman Thomas A. Luken (D, Ohio), HR 1250, would eliminate all image-based tobacco advertising (allowing only so-called tombstone advertising). On several occasions during my tenure as Surgeon General, I endorsed proposals that would ban all tobacco advertising and promotion. I certainly support the proposal to restrict tobacco advertising as a reasonable compromise, although I would continue to endorse a total advertising ban as a long-term goal.

It is a curious public policy that we, as a society, allow the most important preventable cause of death to be one of the most heavily advertised consumer products. I know that First Amendment concerns have been expressed about tobacco advertising restrictions. Opponents of these restrictions argue that if a product is legal to sell, it should be legal to advertise. That argument, expressed in a different way, says that if Congress wants to ban the advertising of a product, it first has to ban the sale of that product.

I do not believe our Founding Fathers would have endorsed such a narrow and inflexible range of options for Congress to consider. An advertising ban seems to me to be a reasonable middle ground between the status quo and a total prohibition of tobacco use, which no one seriously proposes.

While I am not a legal scholar, I understand that Congress has the clear authority to prohibit *deceptive* advertising.¹ In my opinion, much of today's advertising for tobacco products is deceptive. Many advertisements portray smoking as a safe, if not healthful, activity, and no advertisements disclose many of the serious and extensive health effects of smoking, such as stroke and nicotine addiction.

One of the more outrageous advertisements (for Newport cigarettes) has used, for at least a decade, the slogan "Alive

With Pleasure." This is clearly a message designed to undermine the Surgeon General's warning. If one considers smokers who suffer from lung cancer, emphysema, or stroke caused by smoking, truth in advertising would demand use of the slogan "Dying in Agony" instead of "Alive With Pleasure."

Two advertisements in particular strike me as highly objectionable. An advertisement for Kool cigarettes clearly targets young people; it shows a young-looking couple in teenage attire, with macho antiestablishment facial expressions, standing next to a motorcycle.² A recent Camel advertisement suggests violence against women. It describes and graphically depicts the following "smooth dating move": "Run into the water, grab someone and drag her back to the shore, as if you've saved her from drowning. The more she kicks and screams, the better" (*Washington Post*, July 26, 1989:C1, C10). It is interesting that Philip Morris associates Virginia Slims with women's liberation ("You've Come a Long Way, Baby"), whereas RJ Reynolds, in the Camel advertisement, treats women as if it were still the Age of Dinosaurs.

I also object to the promotional placement of cigarettes in movies, to which Congressman Luken³ has appropriately drawn attention. Cigarette promotions placed in movies such as *Superman II*⁴ expose large numbers of children and adolescents to these messages. When these movies are shown on television, the ban on broadcast cigarette advertising is circumvented.

A Rebuttal to the Advertising Industry

Since release of the 1989 Surgeon General's report, *Reducing the Health Consequences of Smoking: 25 Years of Progress*,⁵ advertising industry trade associations and publications have taken quotations from the report grossly out of context. I would like to cite three examples and then set the record straight.

In a written statement to the Subcommittee on Transportation and Hazardous Substances for its July 25, 1989, hearing, the president of the Point-of-Purchase Advertising Institute argued against tobacco advertising restrictions by quoting from the report^{6,7}:

In the Surgeon General's 1989 Report, it states that "THE MOST DIRECT APPROACH TO ASSESSING THE RELATIONSHIP BETWEEN ADVERTISING AND CIGARETTE CONSUMPTION HAS BEEN TO ASK CHILDREN OR ADULTS ABOUT FACTORS THAT INFLUENCED THEM TO SMOKE. THESE STUDIES TYPICALLY FIND THAT ADVERTISING IS RANKED QUITE LOW ON THE LIST OF RELEVANT FACTORS (capitalization added by the Point-of-Purchase Advertising Institute)."

The witness conveniently omitted the next three sentences, which are as follows^{8,9}:

Dr Koop recently left his position as Surgeon General of the US Public Health Service, Department of Health and Human Services. He now resides in Bethesda, Md. Reprint requests to the Director, Office on Smoking and Health, Centers for Disease Control, Park Bldg, Room 1-10, 5600 Fishers Ln, Rockville, MD 20857.

Marketing experts have questioned the validity of this approach because conscious response to advertising is deemed to be a poor index of actual response (Bergler 1981; Chapman 1986). As such, studies with a similar method and opposite findings also offer little insight into the actual effects of advertising. An example is a study by Fisher and Magnus (1981), which found that most children believe that cigarette ads encourage children to smoke.

Also in written testimony submitted to the subcommittee for the July hearing, the American Advertising Federation stated:

Even the Surgeon General's 1989 report, "Reducing the Health Consequences of Smoking," admits, "There is no scientifically rigorous study available to the public that provides a definitive answer to the basic question of whether advertising and promotion increase the level of tobacco consumption."

Similarly, an article in *Advertising Age* (January 16, 1989) quoted the report as follows: "The extent of influence of advertising and promotion on the level of consumption is unknown and possibly unknowable," the report said."

The entire excerpt, including these statements taken out of context, is as follows (omitted portions italicized)^{1989:14-17}:

There is no scientifically rigorous study available to the public that provides a definitive answer to the basic question of whether advertising and promotion increase the level of tobacco consumption. Given the complexity of the issue, none is likely to be forthcoming in the foreseeable future. The most comprehensive review of both the direct and indirect mechanisms [whereby advertising may affect consumption] concluded that the collective empirical, experiential, and logical evidence makes it more likely than not that advertising and promotional activities do stimulate cigarette consumption. However, that analysis also concluded that the extent of influence of advertising and promotion on the level of consumption is unknown and possibly unknowable (Warner 1986b).

The major point being made in this paragraph of the report is that a perfectly designed study to prove that cigarette advertising increases cigarette consumption will probably never be performed because of the complexity of this issue. I would emphasize that absolute scientific proof is rarely available when studying human behavior. Humans do not behave like the laws of physics. In medicine and in public health, we rarely await, and we would be foolish to await, definitive proof before taking appropriate action.

In the 1850s, John Snow ended an epidemic of cholera in London by removing the handle of the Broad Street pump, 30 years before the bacterium that causes cholera was first identified. Fortunately, there was no Cholera Institute that lobbied against removal of the pump handle until it could be proved that the water from that pump was causing cholera.

In my opinion, the burden of proof should be on the tobacco and advertising industries to show that advertising does not increase cigarette consumption. In the absence of such evidence, advertising should not be allowed. This shifting of the burden of proof would represent prudent public health policy for a product that kills 390 000 Americans each year, when used exactly as intended.

Children's Access to Tobacco Products

In May 1988, I released the Surgeon General's report, *The Health Consequences of Smoking: Nicotine Addiction*.² In the preface to that report, I raised a number of important policy questions concerning the sale and distribution of tobacco products^{3,4,5}:

We as citizens, in consultation with our elected officials, civic leaders, and public health officers, should establish appropriate public policies for how tobacco products are sold and distributed in our society. With the evidence that tobacco is addicting, is it appropriate for tobacco products to be sold through vending machines, which are easily accessible to children? Is it appropriate for free samples of tobacco products to be sent through the mail or distributed on public property, where verification of age is difficult if not impossible? Should the sale of tobacco be treated less seriously than the sale of alcoholic beverages, for which a specific license is required (and revoked for repeated sales to minors)?

My answer to each of these three questions is "No." There is no logical reason why we should have a double standard for controlling the sale of tobacco and alcohol, the two major legal addicting drugs used in our society. Would we tolerate the sale of alcoholic beverages through vending machines? Would we allow free samples of alcoholic beverages to be sent through the mail or passed out on public property? Of course not. Why, then, should we be so permissive with the sale of tobacco, when 43 states have laws that prohibit the sale of tobacco to minors?

The issue of whether it is appropriate to sell tobacco products through vending machines is important for two reasons. First, vending machines are a powerful symbol that we do not take seriously the problem of cigarette sales to minors. Second, they allow children to have easy access to cigarettes. At the subcommittee's July 1989 hearing, a representative of the National Automatic Merchandising Association testified that, "About 8 out of 10 cigarette vending machines are located where teenagers are not allowed or rarely frequent." Even if true—and I am not convinced it is—this is a poor argument against banning vending machine sales of cigarettes. Even 20% of the 374 000 cigarette vending machines in the United States (National Automatic Merchandising Association estimate) represents a huge number of sites (75 000) from which teenagers can readily obtain cigarettes . . . illegally.

I agree with past statements by the Department of Health and Human Services that controlling the sale of tobacco to minors is a potentially effective strategy to prevent the initiation of tobacco use among young people. It is disappointing that states have made so little effort to enforce existing laws banning the sale of tobacco to minors. As long as states take no action to enforce these laws, I support federal efforts to prevent the sale of tobacco to minors.

C. Everett Koop, MD, ScD

I gratefully acknowledge Ronald M. Davis, MD, for his assistance in the preparation of this statement.

1. Blasi V, Monaghan HP. The first amendment and cigarette advertising. *JAMA*. 1986;256:502-509.
2. Davis RM. Current cigarette advertising trends in the United States. In: Aoki M, Haseguchi S, Tomiyaga S, eds. *Smoking and Health 1987: Proceedings of the 6th World Conference on Smoking and Health*, Tokyo, 9-18 November 1987. New York, NY: Excerpta Medica; 1988:435-440.
3. Luken TA. Luken seeks criminal probe by Department of Justice of cigarette advertising in new James Bond movie and other films. Press release, March 20, 1989, Congressman Thomas A. Luken, US House of Representatives, Washington, DC.
4. Magnus P. Superman and the Marlboro woman: the lungs of Lois Lane. *NY State J Med* 1986;85:342-343.
5. *Reducing the Health Consequences of Smoking: 25 Years of Progress*. Rockville, Md: Centers for Disease Control, Office on Smoking and Health; 1989. A report of the Surgeon General, DHHS publication (CDC) 89-8411.
6. *The Health Consequences of Smoking: Nicotine Addiction*. Rockville, Md: Centers for Disease Control, Office on Smoking and Health; 1988. A report of the Surgeon General, DHHS publication (CDC) 88-8406.



Tanana Chiefs Conference, Inc.



122 First Avenue
Fairbanks, Alaska 99701-4897
(907) 452-8251
Fax (907) 451-8936

March 29, 1990

Representative Ben Grussendorf
Chairman, Rules Committee
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau AK 99811

Dear Chairman Grussendorf:

Tanana Chiefs Conference, Inc. (TCC) supports HB 466, a bill prohibiting distribution of free tobacco samples.

We are all aware of the health effects of tobacco consumption. There exists a need to restrict free distribution of these products especially to young people. The tobacco industry depends on young people as the new generation of addicts. Studies show 18% to 21% of all high school students are smokers. Teenagers spend over one billion dollars a year on tobacco. It is much more difficult to start smoking as an adult than it is to start as a young teenager.

The tobacco industry aims much of their marketing techniques at the teenager population - it is their guarantee that a steady stream of customers are insured. A large amount of the marketing monies are used to give away free samples. These samples are given away at sporting and music events, events that are often frequented by young people. Distribution of free samples makes it much easier for our youth and others to pick up that cigarette for the first time and smoke.

Tanana Chiefs wants to make it difficult to learn to smoke by supporting legislation that prohibits this activity, that prohibits smoking in educational and health facilities, that increases taxes on tobacco products, and to penalize those entrepreneurs who sell tobacco products to our youth.

COPY

Your Committee is the last Committee to review this bill in the House. Your earliest consideration to scheduling this bill would be much appreciated. Thank you.

Sincerely,

TANANA CHIEFS CONFERENCE, INC.

Michael Graf

Michael Graf, Director
Community Health Services

LAC/de

cc: House Rules Committee Members

Anchorage Daily News

Gerald E. Grilly
Publisher



Howard Weaver
Editor

Michael Carey, Editorial Page Editor

Patrick Dougherty, Managing Editor

Katherine Penning, Editor and Publisher 1971 to 1983
Lawrence Penning, Editor and Publisher 1967 to 1971

Founded in 1940 by Norman C. Brown

No smoking

Industry message to kids isn't enough

Pardon us if we're not bowled over by the Tobacco Institute's promise it'll launch a campaign to discourage underage children from smoking.

It's not that we question the industry's motives. Cynics might say the campaign is just a cheap way to spruce up the industry's image and head off calls for higher tobacco taxes and tighter restrictions on tobacco ads, sales and use. If you were really cynical, you might even worry that the campaign could increase appeal of smoking among more rebellious youth, by highlighting the idea that it's an adults-only activity.

But we'll give the industry the benefit of the doubt. It's probably sincere in wanting to discourage kids from starting smoking — when they're kids. The tobacco industry would probably be just as happy if kids wait to start smoking as soon as they're grown up.

We just wonder how effective the new campaign can possibly be. The industry already spends billions of dollars a year on ads that make smoking look like a glamorous, danger-free pastime. Any "Don't smoke" ads aimed at youth will have as much effect as going down to the beach and hollering at a hurricane to stop.

So let's not rely on the Tobacco Institute's modest campaign to do the job alone. Some steps Alaska has taken offer a good blueprint for other states and Congress:

Raise the smoking age to 19. Make vendors keep cigarette machines in places off limits to kids. Raise cigarette taxes enough to discourage young users.

Other steps would help, too. Free samples should be banned. Tobacco is powerfully addictive. If people are going to risk getting hooked, they should have to put their own money on the line.

Tobacco vendors should be licensed. If they habitually sell to minors, they should have their licenses yanked, just as offending liquor outlets do.

And then there's the matter of neutralizing the industry's relentless parade of pro-smoking ads. California offers a novel approach. It devotes a sizable chunk of cigarette tax proceeds to a no-holds-barred ad campaign that portrays smoking in all its disgusting, deathly glory.

If our society took all these steps, it would really send kids a message. It would tell them we're serious when we say cigarettes are hazardous to their health.

12-18-90

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 21, 1991

FURTHER REFERRALS:

Finance

Date of Committee Action: 1-30-91

The JUDICIARY Committee considered:

HB 9

HOUSE BILL NO. 9

LIMIT FREE SAMPLES OF TOBACCO PRODUCTS

"An Act relating to tobacco."

RECOMMENDATIONS: [] the same title
be replaced with [] a new title

[] have attached amendments(s)

[] do pass

[] do not pass

[X] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[] fiscal impact _____

[] fiscal note(s) _____

[X] zero fiscal note LAW, Public Safety

[] zero fiscal note(s) _____

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Signature	Check appropriate column:	Do Not	No Rec	Amend
		Pass		
<i>Daniel Donley</i>				
<i>Terry Mastus</i>			✓	
<i>Mark Stanley</i>			✓	
<i>James Paul Pungell</i>			✓	
<i>Michael W. Hill</i>			✓	

Daniel Donley
Chairman's Signature

H B

//

STATE OF ALASKA
1991 LEGISLATIVE SESSION

FISCAL NOTE

No. 1
Bill Version: CSHB 11(STA)
(H) Publish Date: 4/12/91

Revision Date: March 8, 1991

Title: An Act relating to qualifications for Longevity Bonus payments.

Department Affected: Administration

BRU: Division of Pioneers' Benefits

Component: Longevity Bonus Program

Sponsor: Representative Boyer

Requestor: Representative Boyer

COMPONENT SERIAL NO. 2 5 1

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY
PERSONAL SERVICES	0	0	0	0	0	
TRAVEL	0	0	0	0	0	
CONTRACTUAL	0	0	0	0	0	
SUPPLIES	0	0	0	0	0	
EQUIPMENT	0	0	0	0	0	
LAND & STRUCTURES	0	0	0	0	0	
GRANTS, CLAIMS	165.0	180.0	177.0	177.0	174.0	17
MISCELLANEOUS	0	0	0	0	0	
TOTAL OPERATING	165.0	180.0	177.0	177.0	174.0	17

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

GENERAL FUND	165.0	180.0	177.0	177.0	174.0	174
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	165.0	180.0	177.0	177.0	174.0	174

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.) Cost is based on 40 new admissions over 65 years of age per month to Nursing Homes. 50% of these residents will qualify under this bill in FY 92, decreasing each year thereafter. The number eligible in the future is self limiting under this bill (in 2028 eligible residents will be at 100 years old).

Prepared by: Barbara Bathory *Barbara Bathory*
Division: Pioneers' Benefits

Phone: 465-4400

Date: 3/8/91

Approved by Commissioner: Mifett Keffe *Mifett Keffe*
Agency: Administration

Date: 3/21/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

STATE OF ALASKA
1991 LEGISLATIVE SESSION

No. 2
Bill Version: CSHB 11(STA)
(H) Publish Date: 4/12/91

Revision Date: _____ Department Affected: Health & Social Services
Title: "An Act relating to qualification for longevity bonus payments." BRU: Assistance Payments
Component: Alaska Longevity Bonus - Hold Harmless

Sponsor: Boyer
Requestor: _____

COMPONENT SERIAL NO.

0	2	2	2
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

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

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

There will be a small fiscal impact on a few OAA-ALB Hold Harmless cases, but the amount is too small to forecast.

Prepared By: Jan L. Hansen *Jan Hansen* Phone: 465-3347
Division: Division of Public Assistance Date: 2/21/91
Approved by Commissioner: Theodore A. Mala, MD. *Theodore A. Mala*
Agency: Department of Health and Social Services Date: 2/25/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

HOUSE COMMITTEE REPORT

(7) Date Referred: April 11, 1991 FURTHER REFERRALS: Finance

Date of Committee Action: 4-17-91

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: HB 11

HOUSE BILL NO. 11 LONGEVITY BONUS;NURSING HOME RESIDENTS

"An Act relating to qualifications for longevity bonus payments; and providing for an effective date."

RECOMMENDATIONS: [] the same title
 be replaced with _____ [] a new title
 have attached amendments(s)
 do pass
 do not pass
 no recommendations
 individual recommendations
 additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)
 fiscal impact DHSS(medicaid) fiscal note(s) DOA 4/12
 zero fiscal note _____ zero fiscal note(s) DASS 4/12

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Cheri Davis</i>	✓				
<i>Mary Miller</i>	✓				
		<i>Mark Rowley</i>		✓	
<i>J. B. ...</i>	✓				
<i>Walter ...</i>	✓				
<i>...</i>	✓				


CO-CHAIRMAN'S SIGNATURE

Committee Substitute for House Bill 11

"An Act relating to qualifications for longevity bonus payments; and providing for an effective date."

Current state law prohibits the payment of Longevity Bonus payments to persons who live in nursing homes. This bill allows Longevity Bonus payments to be made to nursing home residents, if they qualified for and received Longevity Bonus payments before October 1, 1985, meet the other federal criteria which exempt the bonus from being counted in the determination of Medicaid eligibility, and are likely to need nursing home care for only 90 days or less.

Recently, the federal laws governing federal assistance payments to nursing home residents were revised in a somewhat similar fashion. The Supplemental Security Income (SSI) program now makes full payment to short-term nursing home residents if they must maintain a home to return to, rather than reducing their payments to a minimal amount for incidental needs. This change in federal law was in response to the same need that CS HB No 11 appears to recognize: that short-term patients still have ongoing expenses of home maintenance, utility bills, etc, and it is not to their benefit to deprive them of the financial ability to maintain the residence that they will return to when their recovery is accomplished.

There are two separate parts to the determination of Medicaid nursing home eligibility that are relevant to this bill:

1. Financial Eligibility Determination. Each applicant must meet rigid asset and income limits in order to qualify for Medicaid. Many elderly Alaskans have retirement income substantial enough to place their income within \$250 of the state and federal income limits. Anyone in this group who receives a federally-exempt bonus preserves their Medicaid eligibility because the exempt bonus is not added to their other income; it is disregarded.

Under state law, the "ALB Hold Harmless" program preserves the Medical Assistance eligibility of anyone who receives the countable (post- 1985) bonus, and who, without this payment, would otherwise be qualified for Medicaid. This program offers the same coverage as Medicaid by simply substituting state funds for the 50% federal matching funds of the Medicaid program.

Since private nursing home care in Alaska averages \$5555 per month, it is obviously to Alaska's financial advantage to avoid, wherever possible, removing recipients from Medicaid and placing them under the Hold Harmless program. By paying only federally-exempt bonuses to nursing home residents, CS HB 11 would have no effect on the Hold Harmless program.

2. "Post Eligibility" Treatment of Income

Once a nursing home resident is found eligible for Medicaid, a separate determination is made of how much of the patient's income must be applied to his or her cost of care. Federal rules governing this determination require that even income which is not counted in the eligibility process must be contributed to the cost of care.

Thus, a federally-exempt bonus will generally be applied toward a Medicaid patient's cost of care. A \$250 state-funded bonus payment can reduce the net nursing home bill which Medicaid must pay by \$250. This is not to Alaska's advantage, since it reduces by \$125 per month the federal Medicaid funds coming to the state and replaces it with state general fund (Longevity Bonus) monies.


The federal Medicaid rules do, however, allow for certain deductions from the gross income which is initially considered available. Up to \$756 per month may be deducted for anyone who has a physician's certification that he or she is likely to return home within six months, and who is maintaining a home to return to.

This provision means that some of the lowest-income Medicaid nursing home residents will be allowed to keep the new bonus payments and apply them to home maintenance costs. Higher-income Medicaid residents will have to apply all of their new bonus payments to their cost of care. Depending on how much other income they have, they will be benefited less (or even not at all) by CS HB 11.

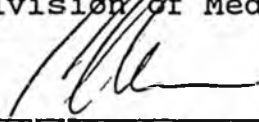
The bonus payments made under this bill will produce a net savings to the Medicaid program, which will be illusory savings, since what is saved in Medicaid, with its 50% federal funding, will be paid with 100% state-funded Longevity Bonus payments. (See attached fiscal note for Medicaid.)

Position:

The department is sensitive to the long-standing objections Alaska's senior citizens have had to losing their bonus payments upon entering a nursing facility. Clearly, federal Medicaid law and regulations are the sole cause of this problem. We have unsuccessfully searched for innovative alternative solutions to this problem, both in the mid-1980s and again with the development of CS HB 11, and we are convinced there is no affordable alternative that would completely eliminate objections. However, CS HB 11, from our perspective, is a workable and reasonable compromise which goes as far as Alaska can afford to go toward continuing bonus payments to nursing home residents.



Kimberly B. Busch, Acting Director
Division of Medical Assistance

 ACTING FOR

Jan L. Hansen, Director
Division of Public Assistance

Theodore A. Mala, MD, MPH
Commissioner

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CS HB 11

Revision Date: 3/15/91 Department Affected: Health & Social Services
 Title: An Act relating to qualifications BRU: Medicaid
for longevity bonus payment Component: Medicaid Facility
 Sponsor: Royer Illmer
 Requestor: _____ COMPONENT SERIAL NO. 0 2 3 0

Expenditures/Revenues: Thousands of Dollars

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS CLAIMS	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)

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

GENERAL FUND	(2.5)	(2.5)	(2.5)	(2.5)	(2.5)	(2.5)
FEDERAL FUNDS	(2.5)	(2.5)	(2.5)	(2.5)	(2.5)	(2.5)
OTHER	0	0	0	0	0	0
TOTAL	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

See attached analysis

Prepared By: Kimberly A. Buser Phone: 465-3355

Division: Division of Medical Assistance Date: 4-16-91

Approved by Commissioner: _____

Agency: Health and Social Services Date: _____

CS HB 11

Reliable data that would identify the potential Alaska longevity bonus status (federally-exempt or not) of individual private nursing home patients who receive Medicaid benefits does not exist.

However, from the case data we do have, we believe that it is reasonable to assume that an average of only 5 recipients per month will meet all the following criteria:

- 1) Eligible to receive a federally-exempt bonus payment by having an open assistance case and bonus recipient status prior to 1985, and
- 2) Physician-certified in a timely fashion as likely to return home within 90 days; and
- 3) Possessing other income high enough so that their total bonus payment will be applied to their cost of care, rather than being available in whole or in part to be used for home maintenance via the federal Medicaid maximum deduction for that purpose.

(It is likely that more recipients than these 5 may receive exempt bonus payments, but we assume for purposes of this cost estimate that all of these additional recipients will have a low total monthly income and a home to return to, so that they will be able to use their bonus payments as part of their maintenance deduction. Therefore, no part of their bonus payments will be applied to their cost of care.)

The bonus payment system recently began applying its retrospective eligibility rules to all its recipients. The effect of this change is that most bonus recipients who enter a nursing home will receive two months of bonus payments after admission. With this change, CS HB 11 will add only one month of new bonus payments to be contributed to the cost of care.

The FY92 cost savings to Medicaid are \$5000: 5 recipients/month x 12 months x \$250/month ÷ 3 = \$5000; \$2,500 federal, \$2,500 state funds. For FY93 and following, we assume that the number of affected recipients will remain constant, and that the amount of the bonus will remain at \$250 per month. Therefore, the savings will remain constant in future years.

[Note: There was a fiscal note, dated 2/25/91, showing that HB 11 had a significant fiscal effect on the Medical Assistance BRU, ALB Hold-Harmless component (0231). The changes made in this CS remove all effects on the ALB Hold Harmless program.]

Alaska State Legislature

Lincoln

REPRESENTATIVE
MARK BOYER

HOUSE FINANCE COMMITTEE



FAIRBANKS
1098 LAKEVIEW TERRACE
FAIRBANKS, ALASKA 99701
(907) 456-6473

JUNEAU
P.O. BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3466

House of Representatives

MEMORANDUM

DATE: April 16, 1991
TO: House HESS Committee Members
FROM: Representative Mark Boyer *MB*
RE: CSHB 11 (State Affairs)

You will have CSHB 11 (State Affairs) before you tomorrow in the House HESS Committee and I wanted to brief you on the issue, since it is a complicated one. There should be sufficient back-up in your bill file, so I won't duplicate it here. CSHB 11 (SA) would allow nursing home residents to qualify for a longevity bonus payment.

In qualifying for the longevity bonus payment, senior citizens must have met a number of requirements and criteria, at both the state and federal level. Receipt of the longevity bonus causes some problems for many elderly in meeting the federal determination of income eligibilty under the Supplemental Security Income section, which is part of the Federal Social Security Act.

Prior to 1984, the longevity bonus was exempt from the determination of income eligibility at the federal level. But the federal law changed in the fall of 1984 to include the bonus as income. This put many seniors in nursing homes over the income limit allowable to qualify for Medicaid. Currently the Medicaid facility budget exceeds \$138 million and provides funding for many seniors needing nursing care. After extensive debate the Legislature decided that a blanket disqualification of all nursing home residents was needed to comply with the new federal law.

Since 1985, the Department of Administration has received frequent complaints from seniors about the loss of the bonus upon entering a nursing home. Approximately 600 people are affected by this law each year. Although, federal law allows those seniors who were on the program prior to 1985 to exclude the bonus from income calculations, when the state changed the law, few apparently realized that this exemption existed. The state failed to acknowledge that seniors who had received a

Sponsor Statement

Page Two
CSHB 11 (State Affairs)

bonus prior to 1985 actually were eligible to continue receiving the payment. The Department of Administration now feels that those seniors should indeed receive the bonus and that the Legislature should consider this change this session.

CSHB 11 (State Affairs) would allow seniors to continue to receive a bonus for up to 3 months (90 days) after entering a nursing home. The majority of elderly entering a nursing home stay for less than 3 months. For example, a 67-year-old man may have broken his hip and been moved from the residential side of the Pioneer Home to the nursing home wing. However, this man will only be in the nursing home wing until his leg mends and then he will return to the residential wing of the home. Upon entering the nursing home wing his bonus payments stop.

Recognizing that the average stay in a nursing home was three months, the federal government recently changed the federal law to allow seniors to retain their bonus without being disqualified for other federal programs. The language in the State Affairs CS would bring our law into conformity with the federal statute. Both the Department of Administration and the Department of Health and Social Services are in agreement that CSHB 11 (State Affairs) is the best route to take.

I would appreciate your support of this legislation. I firmly believe that the small number of seniors affected by this change are among the most needy and fragile of our seniors and that we have the opportunity to rectify a wrong inadvertently committed against this group.

If you have additional questions, please contact me or Alexis Miller of my staff at 465-3467.

MEMORANDUM State of Alaska



TO: Frank S. Baxter
Commissioner
Department of Administration

DATE: August 29, 1990

FILE NO:

THRU: James J. Fox
Deputy Commissioner

TELEPHONE: 465-4400

SUBJECT: Statute Revisions

Barbara Bathony, Director
Division of Pioneers' Benefits

FROM: David Teal *Teal*
Deputy Director
Division of Pioneers' Benefits
Department of Administration

Given the restrictive language and time frame of your memorandum regarding legislative proposals, I hesitate to submit the attached package. In my opinion, there is no "vital need" for change, but that judgment is for you to make. The package is not current and is not ready to submit to the Governor's office, but I will do all I can to meet the standards and the deadline if you believe the proposals merit consideration. I will need several days notice in order to prepare an acceptable package.

There are additional housekeeping changes which would ease the transition to proposed regulations and two additional policy changes that should be incorporated into the February 2 suggestions. The major changes are discussed below.

- 1) AS 47.45.140 states that a person who makes a false statement to receive a bonus shall be disqualified from and make restitution to the Longevity bonus program upon conviction of a misdemeanor. The program routinely disqualifies people and collects from them without prosecution. Approximately 50 recipients could be affected annually, with annual costs--in the form of foregone collections if no change is made--of as much as \$250,000. Proposal: adopt language similar to that governing Permanent Fund Dividend operations, which allows a hearing and appeal to the court, but does not require criminal prosecution.
- 2) Recipients lose the bonus upon entering a nursing home. This situation is a source of frequent complaints from about 600 affected recipients. Federal law allows those who were on the program prior to 1985 to exclude the bonus from income calculations for medical and other social benefits. Proposal: pay the bonus to nursing home residents who were on the program prior to 1985. No cost estimates have been prepared, but much of the cost can be recovered as program receipts to the Pioneers' Homes. The fiscal impact of the entire package should be positive.

D.O.A. Pioneer Benefits Correspondence

EXPLANATION OF DISQUALIFICATION OF LONGEVITY BONUS RECIPIENTS WHO RESIDE IN NURSING HOMES

The law was amended during the 1985 session of the Alaska Legislature to make the Longevity Bonus unavailable to nursing home residents.

Following is the explanation for the passage of the law as provided in a letter dated June 21, 1985, to all nursing home residents from Joyce Munson, Director of the Division of Pioneers' Benefits:

As you may know, the legislature passed legislation this year that results in the discontinuation of the Alaska Longevity Bonus to residents of nursing homes. This exclusion applies both to residents of private nursing homes and to residents of the nursing home wings of the Pioneers' Homes. Our records show that you are such a resident; as a result, we will be unable to continue sending you bonus payments.

The decision to exclude nursing home residents from receipt of the bonus was a difficult one for the legislature, and we thought we should explain as fully as possible the reasons for this decision. The nursing home exclusion appeared to be the most equitable solution to a very difficult problem--the lesser of a number of potential evils.

Due to a special exemption in federal law, the original longevity bonus was not counted as income when determining eligibility for assistance programs such as Supplemental Social Security (SSI), Old Age Assistance (OAA) and medicaid. As a result, when needy persons received the bonus, they would not lose these other protections. After the original bonus program was found unconstitutional, federal law was changed so that the bonus must now be counted as income for these programs. This change in federal law presented an extremely dangerous problem for certain nursing home residents: If receipt of the bonus made them ineligible for medicaid, they would be unable to remain in nursing homes, but receipt of the bonus would not be nearly enough to pay for the care they needed. To aggravate the problem, the federal government determined that even if an individual eligible for the bonus chose not to apply for it, he or she nonetheless would be deemed to have received it and would therefore be ineligible for medicaid. Thus, the bonus would harm these individuals severely.

The State Special Committee on the Alaska Longevity Bonus and the legislature sought a solution to this difficult problem which would be the least harmful all the way around, but there was no perfect solution. The legislature recognized that by and large residents of nursing homes receive substantial State assistance for their care, either through State participation in medicaid in private nursing homes, or through direct support in the Pioneers' Homes. The cost of care for each recipient in these homes is between \$40,000 and \$50,000 per year. The loss of federal participation for medicaid recipients is an expense greater than the State could afford. While the legislature recognized that some individuals contribute to these expenses (these Pioneer Home residents who are able to contribute to their care), the legislature recognized that the loss of federal participation for medicaid recipients would be a significant financial burden on the State.

monthly rent), these contributions do not approach the full cost of care. Thus, State support of nursing home residents is high, even without the bonus.

The legislature was also aware that the bonus has historically been unavailable to certain individuals who are not living independently: those in mental institutions, and those who are incarcerated. Part of the reason for these exclusions is that the State is already contributing to the cost of supporting these individuals; another part is that the bonus is intended to assist senior Alaskans in living independently. The nursing home exclusion is an extension of these ideas.

As a result of all these considerations, the legislature concluded that the most equitable solution would be to exclude nursing home residents from receipt of the bonus. For equal protection reasons, the legislature concluded that it must deny the bonus to all nursing home residents, whether they received medicaid or not. As a result of the exclusion, the bonus cannot have the effect of disqualifying individuals from critical medical care.

We recognize that loss of the bonus may seem harsh to those of you who have received it in the past, and we regret that we are unable to continue sending it to you. However, the primary motivation of the legislature was to ensure that no one lost medical care that was critical to survival. Exclusion from the bonus program does not alter the State's dedication to ensure that each senior Alaskan is provided with the basic necessities of life. If loss of the bonus means that you are no longer able to pay the monthly rent at a Pioneers' Home, the home manager will adjust the rate with you.

If your bonus is terminated and if you are not a resident of a nursing home, please contact the program immediately.

The members of the staff of the Longevity Bonus Program have enjoyed our association and contact with you in the past. If you have questions regarding your eligibility please feel free to contact our office at 465-4416. Please let us know if your circumstances change in the future, and you again become eligible for the bonus.

Sincerely,

Division of Pioneers' Benefits

Nursing ID

August 30, 1989

The Honorable Dick Eliason
Alaska State Senator
P.O. Box V, MS 3100
Juneau, AK 99811
Attn: Ms. Sandy Perry-Provost

Dear Ms. Perry-Provost:

As you requested, what follows is a written version of my telephone response to your query.

In 1985 the Longevity Bonus legislation was amended to exempt nursing home residents from receiving the Longevity Bonus. The reasons for this action goes back to the fact that the federal government now counts the bonus as available income to all Alaska residents who are at least 65 years of age when determining eligibility for assistance programs. This occurs whether or not the bonus has been applied for and resulted in the loss or reduction of certain federal benefits to some persons in need. Additionally, the "hold harmless" provision in the 1985 amendment meant that the State would pay the difference in lost or reduced Supplemental Social Security benefits, Old Age Assistance and Medicaid to persons not living in nursing homes.

The loss of Medicaid to persons in nursing homes presented a larger problem because the amount of the bonus placed recipients over the income limit for receiving Medicaid, and meant that because of cost, they would be unable to remain in the nursing home and receive the care they required.

The cost of assuming the loss of federal participation for Medicaid recipients in nursing homes was greater than the State could afford. It was therefore necessary to determine a method of precluding the federal government from counting the bonus as available income. For that reason the legislature had to make the bonus unavailable to Medicaid recipients in nursing homes. The constitutional requirement for equal protection made it necessary to exclude all people who reside in nursing homes.

wrong.
only part
8/31

Senator Dick Eliason, August 30, 1989, Page 2

The members of the legislature recognized that this was not the perfect solution to this difficult problem, but also recognized that residents of nursing homes generally receive substantial State assistance for their care, either by State participation in Medicaid in private nursing homes or through direct support in the Pioneers' Homes.

The legislature in the end determined that the removal of the bonus to all nursing home residents was the least harmful and most equitable solution. ~~This decision has been questioned in each session of the legislature since it was enacted, but no other effective solution has yet come forth.~~

I hope this answers your question. Though it referred specifically to Ms. Thelma Boddy, the answer pertains to Ms. Boddy and all others who are similarly situated.

Contact me if you have further concerns.

Sincerely,

James H. Chase
Administrator
Longevity Bonus Program

*per Debra Vogt, they
never thought of the
loophole.*

(A) In determining the income of an individual (and his eligible spouse) there shall be excluded—

(1) subject to limitations (as to amount or otherwise) prescribed by the Secretary, if such individual is a child who is, as determined by the Secretary, a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare him for gainful employment, the earned income of such individual;

(2)(A) the first \$240 per year (or proportionately smaller amounts for shorter periods) of income (whether earned or unearned) other than income which is paid on the basis of the need of the eligible individual, and

(B) monthly (or other periodic) payments received by any individual, under a program established prior to July 1, 1973 (or any program established prior to such date but subsequently amended so as to conform to State or Federal constitutional standards), if (i) such payments are made by the State of which the individual receiving such payments is a resident, (ii) eligibility of any individual for such payments is not based on need and is based solely on attainment of age 65 or any other age set by

P.L. 81-171, "Housing Act of 1949", §521(a)(1)(B), (C), and (E), Vol. II, p. 325; and

P.L. 89-117, "Housing and Urban Development Act of 1965", §101, Vol. II, p. 546.

See P.L. 95-433, [Yakima Indian Nation or Apache Tribe of the Mescalero Reservation], §2, with

respect to exclusion from income and resources of certain judgment funds; Vol. II, p. 694.

See P.L. 95-498, [Pueblo of Santa Ana Indians, New Mexico], §6, with respect to an income and

resources exclusion applicable to the Pueblo of Santa Ana Indians, New Mexico; Vol. II, p. 695.

See P.L. 95-499, [Pueblo of Zia, New Mexico Indians], §6, with respect to an income and resources

exclusion applicable to the Pueblo of Zia Indians, New Mexico; Vol. II, p. 696.

See P.L. 95-557, "Housing and Community Development Amendments of 1978", §410(b), Vol. II,

p. 695, with respect to exclusion from income of services (but not of wages) provided to a public

housing resident or to a resident of a housing project assisted under the "Housing Act of 1959"

[P.L. 86-372, §202; Vol. II, p. 473].

See P.L. 97-35, Title XXVI, "Low-Income Home Energy Assistance Act of 1981", §2605(d), with

respect to exclusion from income and resources of home energy assistance payments or allowances;

Vol. II, p. 730.

See P.L. 98-432, "Shoalwater Bay Indian Tribe—Dexter-by-the-Sea Claim Settlement Act", §5(e),

with respect to exclusion from income and resources of certain judgment funds; Vol. II, p. 783.

See P.L. 98-500, "Old Age Assistance Claims Settlement Act", §8, with respect to exclusion from

income and resources of certain judgment funds; Vol. II, p. 784.

See P.L. 98-602, Title I, [Wyandotte Tribe of Oklahoma], §106(d), with respect to exclusion from

income and resources of certain funds distributed per capita; Vol. II, p. 785.

See P.L. 99-130, [Mdewakanton and Wahpekute Eastern or Mississippi Sioux], §8, with respect to

exclusion from income and resources of certain funds; Vol. II, p. 786.

See P.L. 99-146, [Chippewas of Lake Superior], §6(b), with respect to exclusion from income and

resources of certain funds; Vol. II, p. 786.

See P.L. 99-264, "White Earth Reservation Land Settlement Act of 1985", §16, with respect to

exclusion from income and resources of certain judgment funds; Vol. II, p. 793.

See P.L. 99-346, "Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds

Act", §6(b), with respect to exclusion from income and resources of certain judgment funds; Vol. II,

p. 813.

See P.L. 99-377, [Chippewas of the Mississippi], §4(b), with respect to exclusion from income and

resources of certain judgment funds; Vol. II, p. 814.

See P.L. 100-139, "Cow Creek Band of Umpqua Tribe of Indian Distribution of Judgment Funds

Act of 1987", §4(h)(6), with respect to exclusion of benefits as basis for denial of eligibility; Vol. II, p.

842.

See P.L. 100-383, [An Act to implement recommendations of the Commission on Wartime

Relocation and Internment of Civilians], §§105(f)(2) and 206(d)(2), with respect to exclusion from

income and resources of certain payments to certain individuals; Vol. II, p. 901.

See 31 U.S.C. 3803(c)(2)(C), with respect to benefits not affected by P.L. 100-383; Vol. II, p. 167.

See P.L. 100-407, "Technology-Related Assistance for Individuals with Disabilities Act of 1988",

105, with respect to the effect of financial assistance under that Act; Vol. II, p. 902.

See P.L. 100-409, "Federal Land Exchange Facilitation Act of 1988", §5, with respect to the effect

of this Act on P.L. 92-203 or P.L. 96-487; Vol. II, p. 904.

See P.L. 100-411, [Land Claims of Coushatta Tribe of Louisiana], §2(d)(3)(B), with respect to the

effect of per capita payments; Vol. II, p. 904.

See P.L. 100-581, [Indian Reorganization Act Amendments], §§501, 502(b)(1), and 503, with respect

to exclusion from income and resources of certain judgment funds; Vol. II, p. 918.

the State and residency in such State by such individual, and (iii) on or before September 30, 1985, such individual (I) first becomes an eligible individual or an eligible spouse under this title, and (II) satisfies the twenty-five-year residency requirement of such program as such program was in effect prior to January 1, 1983;

(3)(A) the total unearned income of such individual (and such spouse, if any) in a month which, as determined in accordance with criteria prescribed by the Secretary, is received too infrequently or irregularly to be included, if such income so received does not exceed \$20 in such month, and (B) the total earned income of such individual (and such spouse, if any) in a month which, as determined in accordance with such criteria, is received too infrequently or irregularly to be included, if such income so received does not exceed \$10 in such month;

(4)(A) if such individual (or such spouse) is blind (and has not attained age 65, or received benefits under this title (or aid under a State plan approved under section 1002 or 1602) for the month before the month in which he attained age 65), (i) the first \$780 per year (or proportionately smaller amounts for shorter periods) of earned income not excluded by the preceding paragraphs of this subsection, plus one-half of the remainder thereof, (ii) an amount equal to any expenses reasonably attributable to the earning of any income, and (iii) such additional amounts of other income, where such individual has a plan for achieving self-support approved by the Secretary, as may be necessary for the fulfillment of such plan,

(B) if such individual (or such spouse) is disabled but not blind (and has not attained age 65, or received benefits under this title (or aid under a State plan approved under section 1402 or 1602) for the month before the month in which he attained age 65), (i) the first \$780 per year (or proportionately smaller amounts for shorter periods) of earned income not excluded by the preceding paragraphs of this subsection, (ii) such additional amounts of earned income of such individual (for purposes of determining the amount of his or her benefits under this title and of determining his or her eligibility for such benefits for consecutive months of eligibility after the initial month of such eligibility), if such individual's disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, as may be necessary to pay the costs (to such individual) of attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Secretary in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions, except that the amounts to be excluded shall be subject to such reasonable limits as the Secretary may prescribe, (iii) one-half of the amount of earned income not excluded after the application of the preceding provisions of this subparagraph, and (iv) such additional amounts of other income, where such individual has a plan for achieving self-support approved by the Secretary, as may be necessary for the fulfillment of such plan, or

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HOUSE COMMITTEE REPORT

4/12/91

(7)

Date Referred: January 21, 1991

FURTHER REFERRALS: Health, Education and Social Services

HES

Finance

Date of Committee Action: 4-10-91

The STATE AFFAIRS Committee considered:

HB 11

HOUSE BILL NO. 11

LONGEVITY BONUS; NURSING HOME RESIDENTS

"An Act relating to qualifications for longevity bonus payments; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 11 (STA)

the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact Admin.

fiscal note(s) _____

zero fiscal note H&SS

zero fiscal note(s) _____

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not Pass	No Rec	Amend
Mr. [Signature]	[Signature]		<input checked="" type="checkbox"/>	
Choguel [Signature]	Mike Miller		<input checked="" type="checkbox"/>	
Kubi [Signature]	[Signature]			

Gene Kubera
STA Comm. Report Chairman's Signature



Alaska State Legislature
House of Representatives
 COMMITTEE ON HEALTH, EDUCATION
 AND SOCIAL SERVICES

DATE: April 17, 1991

PLACE: Capitol Room 106

SUBJECT OF MEETING:
 HB11 LONGEVITY BONUS: NURSING HOME RESI.

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
✓ GORDON LANDES	Div. of MEDICAL ASSISTANCE	PO BOX 4-07, JUNEAU 99801			465-3355	<input checked="" type="radio"/>	<input type="radio"/>	AB 11
Barbara Bathony	Div. Pensions	P.O. Box CL 99811			465-4400	<input type="radio"/>	<input checked="" type="radio"/>	HB 11
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
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