

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
6917 HOUSE JUDICIARY

COMPLAINTS OF ANIMAL MISTREATMENT

JURISDICTION	ESTIMATED NUMBER OF COMPLAINTS PER YEAR	ACTUAL PROSECUTIONS
Municipality of Anchorage	1,500	Average one prosecution per year.
Fairbanks Northstar Borough	155	Average five court cases per year.
City & Borough of Juneau	75	In the last four years, two prosecutions.
Kenai Peninsula Borough		
Homer	5	One prosecution last year.
Kenai	50	One prosecution in the last six years.
Soldotna	6	One prosecution last year.
Ketchikan Gateway Borough	50	No cases to court in last eight years.
Matanuska-Susitna Borough	20-25	No court cases in the last four years.
City & Borough of Sitka	15	Two pending court cases at this time.

NOTE: All complaints are investigated in each jurisdiction

SOURCES: Animal control officers from each jurisdiction.

Prepared by Legislative Research Agency, March 1991 (91.191).

**THE FOLLOWING PAGES
WERE TREATED AS A UNIT
IN THE ORIGINAL FILE**

PENAL CODE

1990 Revision (Through 1989)

Punishment of Felony Not Otherwise Prescribed.

(Pen. 18.) Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a felony, or to be punishable by imprisonment in a state prison, is punishable by imprisonment in any of the state prisons for 16 months, or two or three years; provided, however, every offense which is prescribed by any law of the state to be a felony punishable by imprisonment in any of the state prisons or by a fine, but without an alternate sentence to the county jail, may be punishable by imprisonment in the county jail not exceeding one year or by a fine, or by both. (Enacted 1931; last amended 1976.)

Punishment for Misdemeanor.

(Pen. 19.) Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars (\$1,000), or by both. (Enacted 1872; last amended 1983.)

Punishment for Infractions.

(Pen. 19c.) An infraction is not punishable by imprisonment. A person charged with an infraction shall not be entitled to a trial by jury. A person charged with an infraction shall not be entitled to have the public defender or other counsel appointed at public expense to represent him unless he is arrested and not released on his written promise to appear, his own recognizance, or a deposit of bail. (Enacted 1968.)

(Pen. 19d.) Except as otherwise provided by law, all provisions of law relating to misdemeanors shall apply to infractions, including but not limited to powers of peace officers, jurisdiction of courts, periods for commencing action and for bringing a case to trial and burden of proof. (Enacted 1968.)

Elephant Abuse Misdemeanor: Enumerated.

(Pen. 596.5.) It shall be a misdemeanor for any owner or manager of an elephant to engage in abusive behavior towards the elephant, which behavior shall include the discipline of the elephant by any of the following methods:

- (a) Deprivation of food, water, or rest.
- (b) Use of electricity.

sick, disabled, infirm, or crippled animal, except a dog or cat which shall be abandoned in any city, city and county, or judicial district, may, if after due search no owner can be found therefor, be killed by the officer; and it shall be the duty of all peace officers, an officer of such society, or officer of a pound or animal regulation department of a public agency to cause the animal to be killed on information of such abandonment. The officer may likewise take charge of any animal, including a dog or cat, that by reason of lameness, sickness, feebleness, or neglect, is unfit for the labor it is performing, or that in any other manner is being cruelly treated; and, if the animal is not then in the custody of its owner, the officer shall give notice thereof to the owner, if known, and may provide suitable care for the animal until it is deemed to be in a suitable condition to be delivered to the owner, and any necessary expenses which may be incurred for taking care of and keeping the animal shall be a lien thereon, to be paid before the animal can be lawfully recovered.

(b) It shall be the duty of all officers of pounds or humane societies, and animal regulation departments of public agencies to convey, and for police and sheriff departments, to cause to be conveyed all injured cats and dogs found without their owners in a public place directly to a veterinarian known by the officer or agency to be a veterinarian that ordinarily treats dogs and cats for a determination of whether the animal shall be immediately and humanely destroyed or shall be hospitalized under proper care and given emergency treatment.

If the owner does not redeem the animal within the locally prescribed waiting period, the veterinarian may personally perform euthanasia on the animal; or, if the animal is treated and recovers from its injuries, the veterinarian may keep the animal for purposes of adoption, provided the responsible animal control agency has first been contacted and has refused to take possession of the animal.

Whenever any animal is transferred pursuant to this subdivision to a veterinarian in a clinic, such as an emergency clinic which is not in continuous operation, the veterinarian may, in turn, transfer the animal to an appropriate facility.

If the veterinarian determines that the animal shall be hospitalized under proper care and given emergency treatment, the costs of any services which are provided pending the owner's inquiry to the agency, department, or society shall be paid from the dog license fees, fines, and fees for impounding dogs in the city, county, or city and county in which the animal was licensed or if the animal is unlicensed the jurisdiction in which the animal was found, subject to the provision that this cost be repaid by the animal's owner. No veterinarian shall be criminally or civilly liable for any decision which he or she makes or services which he or she provides pursuant to this section.

(c) An animal control agency which takes possession of an animal pursuant to subdivision (b), shall keep records of

- (c) Physical punishment resulting in damage, scarring, or breakage of skin.
- (d) Insertion of any instrument into any bodily orifice.
- (e) Use of martingales.
- (f) Use of block and tackle. (Enacted 1989.)

Crimes Against Animals—Felony or Misdemeanor.

(Pen. 597.) (a) Except as provided in subdivision (c) of this section or Section 599c, every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal, is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars (\$20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail for not more than one year, or by a fine of not more than twenty thousand dollars (\$20,000), or by both the fine and imprisonment.

(b) Except as otherwise provided in subdivision (a) or (c), every person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor, is, for every such offense, guilty of a crime punishable as a misdemeanor or as a felony or alternatively punishable as a misdemeanor or a felony and by a fine of not more than twenty thousand dollars (\$20,000).

(c) Every person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish as described in subdivision (d), is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars (\$20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail for not more than one year, by a fine of not more than twenty thousand dollars (\$20,000), or by both the fine and imprisonment.

(d) Subdivision (c) applies to any mammal, bird, reptile, amphibian, or fish which is a creature described as follows:

(1) Endangered species or threatened species as described in Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

the whereabouts of the animal for a 72-hour period from the time of possession and those records shall be available to inspection by the public upon request.

(d) Notwithstanding any other provisions of this section, any officer of a pound or animal regulation department or humane society, or any officer of a police or sheriff's department may, with the approval of his or her immediate superior, humanely destroy any abandoned animal in the field in any case where the animal is too severely injured to move or where a veterinarian is not available and it would be more humane to dispose of the animal. (Enacted 1905; last amended 1989.)

Pet Animals As Food Prohibited.

(Pen. 598b.) (a) Every person is guilty of a misdemeanor who possesses, imports into this state, sells, buys, gives away, or accepts any carcass or part of any carcass of any animal traditionally or commonly kept as a pet or companion with the sole intent of using or having another person use any part of that carcass for food.

(b) Every person is guilty of a misdemeanor who possesses, imports into this state, sells, buys, gives away, or accepts any animal traditionally or commonly kept as a pet or companion with the sole intent of killing or having another person kill that animal for the purpose of using or having another person use any part of the animal for food.

(c) This section shall not be construed to interfere with the production, marketing, or disposal of any livestock, poultry, fish, shell fish, or any other agricultural commodity produced in this state. Nor shall this section be construed to interfere with the lawful killing of wildlife, or the lawful killing of any other animal under the laws of this state pertaining to game animals. (Enacted 1989.)

(2) Fully protected birds described in Section 3511 of the Fish and Game Code.

(3) Fully protected mammals described in Chapter 8 (commencing with Section 4700) of Part 3 of Division 4 of the Fish and Game Code.

(4) Fully protected reptiles and amphibians described in Chapter 2 (commencing with Section 5050) of Division 5 of the Fish and Game Code.

(5) Fully protected fish as described in Section 5515 of the Fish and Game Code.

This subdivision does not supersede or affect any provisions of law relating to taking of the described species, including, but not limited to, Section 12008 of the Fish and Game Code.

(e) For the purposes of subdivision (c), each act of malicious and intentional maiming, mutilating, or torturing a separate specimen of a creature described in subdivision (d) is a separate offense. If any person is charged with a violation of subdivision (c), the proceedings shall be subject to Section 12157 of the Fish and Game Code.

(f) Upon the conviction of a person charged with a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, all animals lawfully seized and impounded with respect to the violation by a peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall be adjudged by the court to be forfeited and shall thereupon be awarded to the impounding officer for proper disposition. A person convicted of a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, shall be liable to the impounding officer for all costs of impoundment from the time of seizure to the time of proper disposition.

Mandatory seizure or impoundment shall not apply to animals in properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university of this state. (Enacted 1872; last amended 1988.)

Permitting Animals to Go Without Care: Veterinary Care for Injured Cats and Dogs.

(Pen. 597f.) (a) Every owner, driver, or possessor of any animal, who permits the animal to be in any building, enclosure, lane, street, square, or lot, of any city, city and county, or judicial district, without proper care and attention, shall, on conviction, be deemed guilty of a misdemeanor. And it shall be the duty of any peace officer, officer of the humane society or officer of a pound or animal regulation department of a public agency, to take possession of the animal so abandoned or neglected and care for the animal until it is redeemed by the owner or claimant, and the cost of caring for the animal shall be a lien on the animal until the charges are paid. Every

GUIDELINES FOR

GENERAL

ANIMAL CRUELTY STATUTES



The Humane Society of the United States
2100 L St. N.W., Washington, DC 20037

or both, of good quality, distribution and duration as appropriate for the species involved. Lighting of primary enclosures shall be designed to protect the animals from excessive illumination. Such lighting shall be uniformly distributed and of sufficient intensity to permit routine inspection and cleaning.

- (4) **OUTDOOR SHELTER.** Natural or artificial shelter appropriate to the local climate conditions for the species concerned shall be provided for all animals kept outdoors to afford them protection and to prevent discomfort of such animals. When sunlight is likely to cause overheating or discomfort of the animals, sufficient shade by natural or artificial means shall be provided to allow all animals kept outdoors to protect themselves from direct sunlight. A suitable method of drainage shall be provided to rapidly eliminate excess water. The method of drainage shall comply with applicable federal, state and local laws and regulations relating to Pollution control or the protection of the environment. Every person having custody of dogs or horses which are kept outdoors or in an unheated enclosure shall provide such animal with the following minimum standards of shelter: (a) The shelter for a dog shall include a moistureproof and windproof structure of suitable size to accommodate the dog and allow retention of body heat and shall be made of durable material, with a solid floor raised at least two inches from the ground and with the entrance covered by a flexible windproof material or a self-closing swinging door. Such structure shall be provided with a sufficient quantity of suitable bedding material, consisting of hay, straw, cedar shavings or the equivalent, to provide insulation and protection against cold and dampness and promote retention of body heat. (b) The shelter for a horse shall be at least a three-sided, roofed, moistureproof and windproof structure made of durable material. The opening shall face away from the prevailing winds.
- (5) **SANITATION.** Both indoor and outdoor enclosures shall receive periodic cleanings to remove excreta and other waste materials, dirt and trash so as to minimize disease hazards and to reduce odors.
- (6) **SPACE REQUIREMENTS.** Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement to maintain physical condition.

Inadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress or abnormal behavior patterns.

- (7) CARE. Normal and accepted grooming, bathing and veterinary treatment shall be provided. Preventive medicine, where warranted, shall be provided and treatment for illness or injuries shall be provided.

Section 1.02

This Act shall not prevent an owner or tenant of land from killing any animal which has caused or is presenting an imminent threat to life, limb or property nor shall it be interpreted as controverting any state or federal law relating to the taking of game animals provided, however, that any person who injures an animal while hunting or protecting his property shall make a reasonable effort to track and dispatch or assist such animal and failure to comply with this provision shall constitute a violation of this act.

Section 1.03

A violation of this act shall be punishable by a fine of not more than \$1,000 or by imprisonment for not more than one year, or both. Conviction under this section shall result in confiscation of cruelly treated animals belonging to the person convicted.

Section 1.04 Investigation of Cruelty Complaints

Any person who has reason to believe that a violation of this chapter has taken place or is taking place may apply to any court having jurisdiction over actions alleging such violation for a search warrant and for investigation. The court shall examine under oath the person so applying and any witnesses he may produce and shall take his sworn affidavit or their sworn affidavits in writing. The affidavit shall set forth the facts tending to establish the grounds for believing a violation of this chapter has occurred or is occurring, or probable cause to believe that such grounds exist. If the court is satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence, it shall issue a search warrant and order for investigation to a peace officer in the county, commanding him to proceed immediately to the location of the alleged violation, retaining in his custody subject to the order of the court such property or things as are specified in the warrant, including any animal if the warrant so specifies. The warrant shall be executed and returned to the court which issued the warrant.

Page Four

Section 1.05 Expenses of Investigation

The expenses of investigation authorized by s. 1.04 including the fee of the doctor of veterinary medicine, the expenses of keeping or disposing of any animal taken into custody pursuant to such investigation shall be assessed against the person alleged to have violated this chapter if the Person is found guilty of such violation.

Reference:

Oregon 167.740
California 597
Wisconsin 948.14 (proposed)

The Humane Society of the United States
2100 L Street, N.W.
Washington, D.C. 20037

Note: This draft is not presented as an absolute model but rather is intended as a reference from which a statute appropriate to the needs of a particular state can be developed. Upon request, The HSUS will provide a copy of suggested municipal ordinances for use at the local level.

The Farm

In 1989, HAHS took a giant step forward when it purchased a 22 acre farm in Woodstock, Illinois, which included a small barn and administrative office. The farm has already proven effective by decreasing the time and expense of rehabilitating horses critical from starvation. However, foster care is still frequently used because the HAHS barn is not large enough to accommodate the number of cases the Society handles.

Most animal abuse stems from owner ignorance about animals' needs. Educational and training opportunities are offered at the farm for first-hand learning about proper animal care. These local programs are widely publicized to breeders, school groups, animal interest groups, 4-H groups, Girl and Boy Scout groups, as well as novice, first-time horse owners.

On a national level, HAHS conducts seminars to train horse people from throughout the United States in the areas of large animal inspection, the care and treatment of malnourished horses and how to update antiquated humane laws in their respective states.

Visiting Hours: Interested parties are invited to tour the facility. Please call the HAHS office for times (815-337-5563).

Rehabilitation Educational Center

The current objective of HAHS is to build an enlarged barn and a Rehabilitation/Educational Center on the farm property.

In addition to a hospital unit, the barn will include a wash rack to bathe the impounded animals, eradicate harmful parasites and treat their sores and wounds. Animals too weak to stand will undergo this process supported by a sling on a moveable track. After medical attention, the animals will be transferred to a stall area with a viewing room for around-the-clock monitoring.

The educational center will accommodate large groups of people. Classroom training will be conducted by experienced, HAHS approved teachers, utilizing visual aids and offering hands-on training with animals in the Society's care.

The Future

HAHS's long-term goals are two-fold:

First, to establish a Rehabilitation/Educational Center.

Secondly, to serve as a national headquarters to assist other states in establishing credible hooved animal humane societies.

Let's Work Together

The Hooved Animal Humane Society receives no Federal or State support.

They are entirely dependent on contributions from people like you, who care about the fate of abused, neglected and forgotten hooved animals. Their volunteer work force has rescued thousand of horses, as well as cattle, sheep and goats from unspeakable conditions. Pitiful, starved horses with ribs and hip bones grotesquely protruding -- some too weak to stand without the aid of a sling -- have been restored to beautiful, useful animals. Abused horses being ridden, despite open wounds and crippled joints, have been offered a safe haven. Dead horses -- buried in such a hurry that body parts were still exposed -- have been given a voice to cry out against those who allowed them to die in agony. But they can't do it alone.

The Hooved Animal Humane Society needs your help to continue to speak for those who can't.

Please become a member today and help bring hope to suffering animals.

Hooved Animal Humane Society
P.O. Box 1099
Woodstock, Illinois 60098-1099
(815) 337-5563

Membership Categories:

Life \$1000
Sustaining 500
Contributing..... 150
Club Membership..... 100
Adult..... 25
Junior (under 18 yrs.) 10
Family..... 40

Please send me:

Basics of Horse Care (free)
 HAHS Decal (free)
 Misuse of Drugs in Horse Racing (hardcover, \$18; softcover, \$10)
 Hoofprints (members receive 1 year subscription to Hoofprints)

A contribution of any amount is welcomed.

Name _____ Phone _____

Address _____ City _____ State _____ Zip _____

Membership fees enclosed (Includes Hoofprints subscription)

Donation enclosed

Hooved Animal Humane Society Fact Sheet

The Beginning

In 1971, Donna Ewing was looking for a horse for her daughter. What she found was shocking -- broodmares and foals starving in dirty stalls. When she approached the authorities, everyone from the local police to the Anti-Cruelty Society, there was simply no one with the authority or the ability to do anything about it.

Al Olson had a similar experience. He watched six horses freeze to death at a farm across the road from his northern Illinois home. Despite Olson's complaints, no one could intervene. Al contacted Donna, and together they applied for a charter and formed the Hooved Animal Humane Society (HAHS), and waited for the appropriate time to launch what has turned into a lifetime mission.

Lynne Thomas was, in some ways, luckier. She lived in McHenry, Illinois, where the laws were somewhat broader and enforced more effectively. Her complaint about some mistreated horses reached the County Health Department. In a precedent-setting decision, Lynne was awarded custody of the animals. The only problem was that Lynne had nowhere to go with the horses. What had begun as a mission of mercy, turned into a mess.

Donna Ewing contacted Al Olson and decided the time had come for action.

The Hooved Animal Humane Society charter was put to use. Their intention was to find a way of dealing with the kinds of cases they had all witnessed. For the past 18 years, the Hooved Animal Humane Society has remained under Donna Ewing's capable leadership.

Since its founding in 1971, the Hooved Animal Humane Society (HAHS) has responded to almost 7,000 calls to assist hooved animals who were in dire need of medical care. Neglected, abused or often suffering from both, each year the work of this volunteer organization has truly been the lifeline for hundreds of animals. Marshaling the expertise of over 60 state licensed or trained apprentice investigators, in 1989 alone, over 600 animals were under

the supervised care the HAHS, with a survival rate of 95 percent.

The Humane Animal Act

The successes of the Society have had far-reaching effects in Illinois and nationwide. Eighteen years ago, the HAHS was begun by a small group of concerned citizens with the goal to promote humane treatment of hooved animals through education, investigation, and if necessary, legal intervention.

At one point, after receiving a call in the middle of the night about a starved horse which had collapsed and was now being circled by Doberman Pinschers, Donna awakened a prominent veterinarian to accompany her to the site. They arrived to find an emaciated filly lying in the middle of a small paddock where it had dropped from starvation three days before. A stallion stood feebly nearby and an emaciated mare was near the gate. The filly was still barely alive, but her ears and tail had been chewed off by dogs. The need for new laws became abundantly clear.

In just two years, the Society was the driving force behind the passage of the Illinois Humane Care for Animals Act. It was a difficult job to enact such laws, but Donna Ewing had the determination and commitment to cut through the red tape. This landmark legislation set, for the first time, a state-wide standard of care for large animals, while providing authorization to state-qualified humane society investigators to enter private property if animal abuse is suspected. This important legislation is the doctrine through which legal status is given to the Society and other Illinois humane groups, and has set a precedent in animal protection legislation after which other states are attempting to pattern their laws.

Current Programs

To fulfill its goal of creating an environment for educated, humane treatment of hooved animals, the Society maintains three programs.

Investigators Program:

Within 24 hours of receiving a complaint one of the Society's 60

trained investigators visits the alleged site and determines the proper course of action. One of three routes can be taken. In cases of owner ignorance, the investigator "educates" the owner on proper care and nutrition, provides written material for the owner's guidance in daily care of the animal and makes periodic observation visits to insure the proper care of the animal. In more serious cases, a veterinarian is called in for consultation. Critical cases require emergency veterinary treatment and sometimes even removal of the animal on a temporary or permanent basis. Dr. David Bromwell, of the Illinois Department of Agriculture, is the veterinary advisor to the Society.

Humane Care:

When necessary, and under state guidelines, the Society will assume the care for abused or neglected animals and nurse them back to health for adoption or purchase by responsible owners. The Society pays and arranges for transportation, temporary shelter, veterinarian care, medicine, special feed and supplements necessary to restore impounded animals to good health. In addition, the Society also provides horse slings and other equipment to treat horses too weak from starvation to stand alone. These slings are also used on horses with spinal injuries or broken bones, at the request of attending veterinarians.

Publications:

The Society continues to expand its offerings of educational publications:

The Misuse of Drugs in Horse Racing (HAHS's book), helped spur the introduction of major reforms into a variety of the 22 racing states' legislation, and has been requested by leading universities all over the world.

The Basics of Horse Care is a pamphlet available to aid owners in providing proper care for their animals.

Hoolprints is the Humane Society Newsletter. It is published quarterly and deals with current cases and activities of the Humane Society.

OVER PLEASE

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

**ILLINOIS
HUMANE CARE FOR ANIMALS ACT
With Regulations**



**Administered by the
STATE OF ILLINOIS
DEPARTMENT OF AGRICULTURE**

Division of Animal Industries

Printed by authority of the State of Illinois
200 copies/10-89

HUMANE CARE FOR ANIMALS ACT
(Illinois Revised Statutes, ch. 8, par. 701 et seq.)

AN ACT in relation to the humane care and treatment of animals and to provide penalties for violations thereof. P.A. 78-905, approved Sept. 21, 1973, eff. Oct. 1, 1973.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

701. Short title

§ 1. This Act shall be known and may be cited as the "Humane Care for Animals Act".

702. Definitions

§ 2. As used in this Act, unless the context otherwise requires, the terms specified in Sections 2.01 through 2.07¹ have the meanings ascribed to them in those Sections.

¹ Paragraph 702.1 through 702.7 of this chapter.

702.01. Animal

§ 2.01. "Animal" means every living creature, domestic or wild, but does not include man.

702.02. Department

§ 2.02. "Department" means the Department of Agriculture.

702.03. Department Investigator—Approved humane investigator

§ 2.03. "Department investigator" or "approved humane investigator" means a person employed by or approved by the Department to determine whether there has been a violation of this Act.

702.04. Director

§ 2.04. "Director" means the Director of Agriculture, or his duly appointed representative.

702.05. Humane society

§ 2.05. "Humane society" means any chartered, not for profit organization authorized to do business in this State and organized for the purpose of preventing cruelty to animals and promoting humane care and treatment of animals.

702.05a. Livestock management facility

§ 2.05a. "Livestock management facility" means any on-farm animal feeding operation, on-farm livestock shelter, or on-farm milking and accompanying milk handling area.

Added by P.A. 83-140, § 1, eff. Jan. 1, 1984.

702.06. Owner

§ 2.06. "Owner" means any person who (a) has a right of property in an animal, (b) keeps or harbors an animal, (c) has an animal in his care, or (d) acts as custodian of an animal.

702.07. Person

§ 2.07. "Person" means any individual, firm, corporation, partnership, other business unit, society, association or other legal entity, any public or private institution, the State of Illinois, or any municipal corporation or political subdivision of the State.

703. Owner's duties

§ 3. Each owner shall provide for each of his animals:

(a) sufficient quantity of good quality, wholesome food and water;

- (b) adequate shelter and protection from the weather;
- (c) veterinary care when needed to prevent suffering; and
- (d) humane care and treatment.

703.01. Cruel treatment

§ 3.01. No person or owner may beat, cruelly treat, torment, starve, overwork or otherwise abuse any animal.

No owner may abandon any animal where it may become a public charge or may suffer injury, hunger or exposure.

Added by P.A. 84-466, § 1, eff. Jan. 1, 1986.

704. Prohibited acts

§ 4. No person may sell, offer for sale, barter, or give away as a pet or a novelty any rabbit or any baby chick, duckling or other fowl which has been dyed, colored, or otherwise treated to impart an artificial color thereto. Baby chicks or ducklings shall not be sold, offered for sale, bartered, or given away as pets or novelties. Rabbits, ducklings or baby chicks shall not be awarded as prizes in any game of chance.

Amended by P.A. 86-172, § 1, eff. Jan. 1, 1990.

704.01. Animals for use in entertainment—Prohibited acts

§ 4.01. (a) No person may own, capture, breed, train, or lease any animal which he or she knows or should know is intended for use in any show, exhibition, program, or other activity featuring or otherwise involving a fight between such animal and any other animal or the intentional killing of any animal for the purpose of sport, wagering, or entertainment.

(b) No person shall promote, conduct, carry on, advertise, collect money for or in any other manner assist or aid in the presentation for purposes of sport, wagering, or entertainment, any show, exhibition, program, or other activity involving a fight between two or more animals or the intentional killing of any animal.

(c) No person shall sell or offer for sale, ship, transport, or otherwise move, or deliver or receive any animal which he or she knows or should know has been captured, bred, or trained, or will be used, to fight another animal or be intentionally killed, for the purpose of sport, wagering, or entertainment.

(d) No person shall manufacture for sale, shipment, transportation or delivery any device or equipment which that person knows or should know is intended for use in any show, exhibition, program, or other activity featuring or otherwise involving a fight between two or more animals or the intentional killing of any animal for purposes of sport, wagering or entertainment.

(e) No person shall own, possess, sell or offer for sale, ship, transport, or otherwise move any equipment or device which such person knows or should know is intended for use in connection with any show, exhibition, program, or activity featuring or otherwise involving a fight between two or more animals or the intentional killing of any animal for purposes of sport, wagering or entertainment. (f)

No person shall make available any site, structure, or facility, whether enclosed or not, which he or she knows or should know is intended to be used for the purpose of conducting any show, exhibition, program, or other activity involving a fight between two or more animals or the intentional killing of any animal.

(g) No person shall attend or otherwise patronize any show, exhibition, program, or other activity featuring or otherwise involving a fight between two or more animals or the intentional killing of any animal for the purposes of sport, wagering or entertainment.

(h) No person shall tie or attach or fasten any live animal to any machine or device propelled by any power for the purpose of causing such animal to be pursued by a dog or dogs. This subsection (h) shall apply only when such dog is intended to be used in a dog fight.

Amended by P.A. 84-723, § 1, eff. Jan. 1, 1986.

704.02. Arrests—Possession of dogs, paraphernalia, implements, etc. —Veterinarian's report

§ 4.02. (a) Any law enforcement officer making an arrest for an offense involving one or more dogs under Section 4.01 of this Act shall lawfully take possession of all dogs and all paraphernalia, implements, or other property or things used or employed, or about to be employed in the violation of any of the provisions of Section 4.01 of this Act.¹ Such officer, after taking possession of such dogs, paraphernalia, implements or other property or things, shall file with the court before whom the complaint is made against any person so arrested an affidavit containing therein the name of the person charged in such complaint, a description of the property so taken and the time and place of the taking thereof together with the name of the person from whom the same was taken and name of the person who claims to own such property, if known, and that the affiant has reason to believe and does believe, stating the ground of such belief, that the property so taken was used or employed, or was about to be used or employed, in such violation of Section 4.01 of this Act. He shall thereupon deliver the property so taken to the court, which shall, by order, place the same in custody of an officer or other proper person named and designated in such order, to be kept by him until the conviction or final discharge of such person complained against, and shall send a copy of such order without delay to the State's attorney of the county and the Department. The officer or person so named and designated in such order shall immediately thereupon assume the custody of such property and shall retain the same, subject to the order of the court before which such person so complained against may be required to appear for trial. Upon the conviction of the person so charged, all property so seized shall be adjudged by the court to be forfeited and shall thereupon be destroyed or otherwise disposed of as the court may order. In the event of the acquittal or final discharge without conviction of the person so charged such court shall, on demand, direct the delivery of such property so held in custody to the owner thereof.

(b) Any veterinarian in this State who is presented with an animal for treatment of injuries or wounds resulting from fighting where there is a reasonable possibility that the animal was engaged in or utilized for a fighting event shall file a report with the Department and cooperate by furnishing the owners' names, dates and descriptions of the animal or animals involved. Any veterinarian who in good faith makes a report, as required by this subsection (b), shall have immunity from any liability, civil, criminal or that otherwise might result by reason of such actions. For the purposes of any proceedings, civil or criminal, the good faith of any such veterinarian shall be presumed.

Added by P.A. 84-723, § 1, eff. Jan. 1, 1986.

¹ Paragraph 704.01 of this chapter.

704.03. Teasing, striking or tampering with police dogs prohibited

§ 4.03. Teasing, striking or tampering with Police Dogs Prohibited. It shall be unlawful for any person to willfully and maliciously taunt, torment, tease, beat, strike, or administer or subject any desensitizing drugs, chemicals or substance to any dog used by a law enforcement officer in the performance of his functions or duties, or when placed in a kennel off duty; or to interfere or meddle with any such dog used by a law enforcement department or agency or any handler thereof in the performance of the functions or duties of said department or agency.

Added by P.A. 85-800, §1, eff. Jan. 1, 1980.

704.04. Injury or killing police dogs prohibited

§ 4.04. Injury or Killing Police Dogs Prohibited. It shall be unlawful for any person to willfully or maliciously torture, mutilate, injure, disable, poison or kill any dog used by a law enforcement department or agency in the performance of the functions or duties of such department or when placed in a kennel off duty. However, a police officer or veterinarian may perform euthanasia in emergency situations when delay would cause the dog undue suffering and pain.

Added by P.A. 85-800, §1, eff. Jan. 1, 1988.

705. Horses—Acts prohibited

§ 5. No person shall sell, offer to sell, lead, ride, transport, or drive on any public way any horse

which, because of debility, disease, lameness or any other cause, could not be worked in this State without violating this Act. Such a horse may be conveyed to a proper place for medical or surgical treatment or for humane keeping or euthanasia.

706. Poisoning dogs or other domestic animals prohibited—Exception

§ 6. No person may knowingly poison or cause to be poisoned any dog or other domestic animal. The only exception will be by written permit from the Department for the purpose of controlling diseases transmissible to humans or other animals and only when all other methods and means have been exhausted. Such a written permit shall name the person or persons conducting the poisoning, specify the products to be used, give the boundaries of the area involved, and specify the precautionary measures to be employed to insure the safety of humans and other animals. Any drug used for euthanasia shall be by or under the direction of a licensed veterinarian.

707. Transportation of animals

§ 7. No owner, railroad or other common carrier may, when transporting any animal, allow that animal to be confined in any type of conveyance more than 28 consecutive hours without being exercised as necessary for that particular type of animal and without being properly rested, fed and watered; except that a reasonable extension of this time limit shall be granted when a storm or accident causes a delay. In the case of default of the owner or consignee, the company transporting the animal shall exercise the animal, when necessary for the particular type of animal and for the proper resting, feeding, watering and sheltering of such animal, and shall have a lien upon the animal until all expenses resulting therefrom have been paid.

708. Administration of Act—Rules and regulations

§ 8. The Department shall administer this Act and shall promulgate such rules and regulations as are necessary to effectuate the purposes of this Act. Such rules and regulations are subject to the approval of the Advisory Board of Livestock Commissioners.

The Director may, in formulating rules and regulations pursuant to this Act, seek the advice and recommendations of humane societies in this State.

709. Qualifications for approved humane investigators—Listing of Investigators

§ 9. The Department shall, by rule or regulation, establish reasonable qualifications for approved humane investigators and shall maintain a current listing of all approved humane investigators which shall be available for public inspection. Such qualifications shall include, but need not be limited to, a knowledge of the provisions of this Act and of the rules and regulations adopted pursuant thereto and expertise in the investigation of complaints relating to the care and treatment of animals.

Employees of the Department may be assigned as Department investigators.

710. Entry upon premises for investigation of complaints—Exemption—Assistance of State's Attorneys and law enforcement officials

§ 10. Upon receiving a complaint of a suspected violation of this Act, a Department investigator any law enforcement official, or an approved humane investigator may, for the purpose of investigating the allegations of the complaint, enter during normal business hours upon any premises where the animal or animals described in the complaint are housed or kept, provided such entry shall not be made into any building which is a person's residence, except by search warrant or court order. Institutions operating under federal license to conduct laboratory experimentation utilizing animals for research or medical purposes are, however, exempt from the provisions of this Section. State's Attorneys and law enforcement officials shall provide such assistance as may be required in the conduct of such investigations. Any such investigation requiring legal procedures shall be immediately reported to the Department. No employee or representative of the Department shall enter a livestock management facility unless sanitized footwear is used, or unless the owner or operator of the facility waives this:

requirement. The employee or representative must also use any other reasonable disease prevention procedures or equipment provided by the owner or operator of the facility.
Amended by P.A. 83-1362, Art. II, § 5, eff. Sept. 11, 1984.

Article II of P.A. 83-1362, the First 83rd General Assembly Combining Revisory Act, resolved multiple actions in the 83rd General Assembly.

711. Notification to violator—Impoundment upon refusal or failure to take corrective action

§ 11. (a) If an investigation under Section 10¹ discloses that a violation of this Act has been committed, the approved humane investigator shall furnish the violator, if known, with a notice of violation, and state what action is necessary to come into compliance with this Act and that a maximum of 48 hours may be granted in which to take corrective action.

(b) If the violator fails or refuses to take corrective action necessary for compliance or if the violator is still unknown after an attempt to identify ownership, the humane investigator shall contact the Department and request authorization to impound the animal or animals. The Department will authorize impoundment if a review of facts gathered by the humane investigator indicates a violation of Section 3 of this Act² has occurred and the violator, if known, has failed or refused to take corrective action necessary for compliance.

This Section shall not apply to violations committed under Section 4.01 of this Act.³
Amended by P.A. 83-649, § 1, eff. Jan. 1, 1984.

¹ Paragraph 710 of this chapter.

² Paragraph 703 of this chapter.

³ Paragraph 704.01 of this chapter.

712. Impounding animals—Notice of impoundment—Lien for expense— Sale or disposition of animal

§ 12. (a) When an approved humane investigator, a Department investigator or a veterinarian finds that a violation of this Act has rendered an animal in such a condition that no remedy or corrective action by the owner is possible or the violator fails or refuses to take corrective action necessary for compliance pursuant to Section 11 of this Act,¹ the Department may authorize a humane society to impound the animal in a facility which will provide the elements of good care as set forth in Section 3 of this Act,² where such animals shall be examined by a licensed veterinarian.

(b) A notice of impoundment shall be given by the humane investigator to the violator, if known, in person or sent by certified or registered mail. A copy of the notice shall be retained by the humane investigator and a copy forwarded immediately to the Department. The notice of impoundment shall include the following:

(1) A number assigned by the Department which will also be given to the humane society accepting the responsibility of the animal or animals.

(2) Listing of deficiencies noted.

(3) An accurate description of the animal or animals involved.

(4) Date on which the animal or animals were impounded.

(5) Signature of the humane investigator.

(6) A statement that: "The violator may request a hearing to appeal the impoundment. A person desiring a hearing shall contact the Department of Agriculture within 7 days from the date of impoundment" and the Department will hold an administrative hearing within 7 days after receiving a request to appeal the impoundment. If the hearing cannot be held prior to the expiration of the 7-day impoundment period, the Department shall notify the humane society that it cannot sell, offer for adoption or dispose of the animal or animals until a final decision is rendered and all of the appeal processes have expired.

Any expense incurred in such impoundment becomes a lien on the animal impounded and must be discharged before the animal is released from the facility. When the animal is not claimed by its owner and all impoundment costs satisfied within 7 days, it may be sold at public or private sale for fair

consideration to a person capable of providing care consistent with this Act, with the proceeds of that sale applied first to discharge the lien and any balance to be paid over to the owner. If no purchaser is found, the animal may be offered for adoption or disposed of in a manner not inconsistent with this or any other Act.

Amended by P.A. 87-649, § 1, eff. Jan. 1, 1984.

¹ Paragraph 711 of this chapter.

² Paragraph 703 of this chapter.

713. Normal husbandry practices—Construction with other Acts

§ 13. Nothing in this Act affects normal, good husbandry practices utilized by any person in the production of food, companion or work animals, or in the extermination of undesirable pests. In case of any alleged conflict between this Act, or regulations adopted hereunder, and the "Wildlife Code of Illinois"¹ or "An Act to define and require the use of humane methods in the handling, preparation for slaughter, and slaughter of livestock for meat or meat products to be offered for sale", approved July 26, 1967, as amended,² the provisions of those Acts shall prevail.

Amended by P.A. 81-359, § 4, eff. Jan. 1, 1980.

¹ Chapter 61, § 1.1 et seq.

² Paragraph 229.51 et seq. of this chapter.

714. Review under Administrative Review Law—Certification of record

§ 14. Any person affected by a final administrative decision of the Department may have such decision reviewed judicially by the circuit court of the county wherein the person resides, or in the case of a corporation, the county where its registered office is located. If the plaintiff in the review proceeding is not a resident of this State, the venue shall be in Sangamon County. The Administrative Review Law, and all amendments and modifications thereof,¹ and the rules adopted pursuant thereto, apply to and govern all proceedings for the judicial review of final administrative decisions of the Department hereunder. The term "administrative decision" is defined in Section 3-101 of the Code of Civil Procedure.

The Department may not be required to certify the record of the proceeding unless the plaintiff in the review proceedings first pays the sum of 75¢ per page of such record. Exhibits shall be certified without cost.²

Amended by P.A. 82-783, Art. XI, § 15, eff. July 13, 1982.

¹ Chapter 110, § 3-101 et seq.

² Chapter 110, § 3-101.

715. Effect of Invalid provision or application of Act

§ 15. If any provision of this Act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, by a court of competent jurisdiction, the constitutionality of the remainder of this Act and the applicability thereof to other persons and circumstances shall not be affected thereby.

716. Violations—Punishment—Injunctions

§ 16. (a) Any person convicted of violating Sections 5 or 6 of this Act¹ or any rule, regulation, or order of the Department pursuant thereto, is guilty of a Class C misdemeanor.

(b)(1) This subsection (b) does not apply where the only animals involved in the violation are dogs.

(2) Any person convicted of violating subsection (a), (b), (c) or (h) of Section 4.01 of this Act² or any rule, regulation, or order of the Department pursuant thereto, is guilty of a Class A misdemeanor.

(3) A second or subsequent offense involving the violation of subsection (a), (b) or (c) of Section 4.01 of this Act or any rule, regulation, or order of the Department pursuant thereto is a Class 4 felony.

(4) Any person convicted of violating subsection (d), (e) or (f) of Section 4.01 of this Act or any rule, regulation, or order of the Department pursuant thereto, is guilty of a Class B misdemeanor.

(5) Any person convicted of violating subsection (g) of Section 4.01 of this Act or any rule, regulation, or order of the Department pursuant thereto is guilty of a Class C misdemeanor.

(c)(1) This subsection (c) applies exclusively where the only animals involved in the violation are dogs. (2) Any person convicted of violating subsection (a), (b) or (c) of Section 4.01 of this Act or any rule, regulation or order of the Department pursuant thereto is guilty of a Class 4 felony and may be fined an amount not to exceed \$50,000.

(3) Any person convicted of violating subsection (d), (e) or (f) of Section 4.01 of this Act or any rule, regulation or order of the Department pursuant thereto is guilty of Class A misdemeanor, if such person knew or should have known that the device or equipment under subsection (d) or (e) of that Section or the site, structure or facility under subsection (f) of that Section was to be used to carry out a violation where the only animals involved were dogs. Where such person did not know or should not reasonably have been expected to know that the only animals involved in the violation were dogs, the penalty shall be same as that provided for in paragraph (4) of subsection (b).

(4) Any person convicted of violating subsection (g) of Section 4.01 of this Act or any rule, regulation or order of the Department pursuant thereto is guilty of a Class C misdemeanor.

(5) A second or subsequent violation of subsection (a), (b) or (c) of Section 4.01 of this Act or any rule, regulation or order of the Department pursuant thereto is a Class 3 felony. A second or subsequent violation of subsection (d), (e) or (f) of Section 4.01 of this Act or any rule, regulation or order of the Department adopted pursuant thereto is a Class 3 felony, if in each violation the person knew or should have known that the device or equipment under subsection (d) or (e) of that Section or the site, structure or facility under subsection (f) of that Section was to be used to carry out a violation where the only animals involved were dogs. Where such person did not know or should not reasonably have been expected to know that the only animals involved in the violation were dogs, a second or subsequent violation of subsection (d), (e) or (f) of Section 4.01 of this Act or any rule, regulation or order of the Department adopted pursuant thereto is a Class A misdemeanor. A second or subsequent violation of subsection (g) is a Class B misdemeanor.

(6) Any person convicted of violating Section 3.01 of this Act³ is guilty of a Class C misdemeanor. A second conviction for a violation of Section 3.01 is a Class B misdemeanor. A third or subsequent conviction for a violation of Section 3.01 is a Class A misdemeanor.

(7) Any person convicted of violating Section 4.03⁴ is guilty of a Class B misdemeanor.

(8) Any person convicted of violating Section 4.04⁵ is guilty of a Class A misdemeanor where the dog is not killed or totally disabled, but if the dog is killed or totally disabled such person shall be guilty of a Class 4 felony.

(9) Any person convicted of violating any other provision of this Act, or any rule, regulation, or order of the Department pursuant thereto, is guilty of a petty offense.

The Department may enjoin a person from a continuing violation of this Act.

Amended by P.A. 84-1308, Art. II, § 7, eff. Aug. 25, 1986; P.A. 85-800, §1, eff. Jan. 1, 1988.

¹ Paragraph 705 or 706 of this chapter.

² Paragraph 704.01 of this chapter.

³ Paragraph 703.01 of this chapter.

⁴ Paragraph 704.03 of this chapter.

⁵ Paragraph 704.04 of this chapter.

Article II of P.A. 84-1308, the First 84th General Assembly Combining Revisory Act, resolved multiple actions in the 84th General Assembly and made certain technical corrections.

TITLE 8: AGRICULTURE AND ANIMALS
CHAPTER 1: DEPARTMENT OF AGRICULTURE
SUBCHAPTER b: ANIMALS AND ANIMAL PRODUCTS (EXCEPT MEAT
AND POULTRY INSPECTION ACT REGULATIONS)

PART 35
HUMANE CARE FOR ANIMALS ACT

Section

- 35.10 Approved Humane Investigator; Qualifications; Requirements; Termination; Reports; Appointment Period
35.20 Notice of Violation; Impoundment Procedure (Repealed)
35.30 Administrative Hearings

AUTHORITY: Implementing and authorized by the Humane Care for Animals Act (Ill. Rev. Stat. 1983, ch. 8, par. 701 et seq.).

SOURCE: Rules and Regulations relating to Humane Care for Animals, filed December 14, 1973, effective December 24, 1973; codified at 5 Ill. Reg. 10441; amended at 7 Ill. Reg. 865, effective January 10, 1983; amended at 8 Ill. Reg. 5936, effective April 23, 1984; amended at 9 Ill. Reg. 4498, effective March 22, 1985.

Section 35.10 Approved Humane Investigator; Qualifications; Requirements; Termination; Reports; Appointment Period

Persons, when submitting an application for appointment as an Approved Humane Investigator, will furnish the following information: name, address, telephone number; name and address of the Humane Society with whom they are affiliated, and a brief resume of their experience and education, both practical and formal, relative to the humane care of animals.

a) Qualifications for appointment as an Approved Humane Investigator shall include:

- 1) Membership in or employment by a humane society, as defined in Section 2.05 of the Act, or other individual so designated by official action of that particular humane society's board of directors;
- 2) Responsibility to his or her organization, but in compliance with all administrative rules issued by the Department;
- 3) Demonstration of satisfactory knowledge of this Act and its applications by oral and written examination to be given by the Department at times to be designated and as needed by the Department.
 - A) Knowledge of how to conduct and complete an investigation, including legally guided knowledge of how to file charges if required.
 - B) Applicant shall have a high school diploma or its equivalent and two years experience raising, caring for or breeding the particular species of animal being investigated.

- b) The Department shall require additional consultation and training when the applicant does not have experience in caring for certain animals that could reasonably be encountered in the performance of his/her duties or has no experience in conducting investigations and the proceedings that accompany such investigations.
- c) An Approved Humane Investigator shall comply with the following:
 - 1) Cooperation, whenever possible, with other Approved Humane Investigators or law enforcement authorities, if requested, to aid in an investigation of complaints relative to the care and treatment of animals;
 - 2) Except when so authorized by the Department, no Approved Humane Investigator shall represent himself/herself, at any stage in the conduct of an investigation, as acting directly in behalf of or as an agent of the Department.
- d) All hearings for termination of approval as a Humane Investigator will be conducted in accordance with 8 Ill. Adm. Code 35.30. The appointment as an Approved Humane Investigator will be terminated following a hearing for:
 - 1) Material misstatement in the original application;
 - 2) Wilful disregard or violation of this Act or rules issued pursuant thereto;
 - 3) Pursuing a continued course of misrepresentation or false statements regarding investigations relative to humane care of animals after a warning letter is given;
 - 4) Failure to perform his/her investigational duties and enforcement of the Humane Care for Animals Act or rules issued pursuant thereto;
 - 5) Loss of membership in or employment by a humane society as defined in 8 Ill. Adm. Code 35.10(a)(1) or on written request by their board of directors.
- e) All Approved Humane Investigators shall prepare and submit to the Department an annual report on forms furnished by the Department. It shall contain the species and number of animals involved, and total number of investigations performed that calendar year. The annual report shall be filed by September 1 for the preceding calendar year's activity.
- f) The appointment as an Approved Humane Investigator shall be for 2 years or for any portion thereof and shall be renewable on January 1 of even numbered years. The reappointment procedure shall be the same procedure used for the original appointment as set forth in this Section. Qualifications for reappointment as an Approved Humane Investigator shall be as set forth in Section 35.10(a).

(Source: Amended at 9 Ill. Reg. 4498, effective March 22, 1985)

Section 35.20 Notice of Violation; Impoundment Procedure (Repealed)

(Source: Repealed at 8 Ill. Reg. 5936, effective April 23, 1984)

Section 35.30 Administrative Hearings

All decisions and actions of the Department are subject to the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1001 et seq.) and the Department's Administrative Rules (8 Ill. Adm. Code 1) which pertain to administrative hearings, petitions, contested cases, declaratory rulings and availability of Department files for public access. Administrative hearings are governed by the Illinois Administrative Procedure Act and Subpart B of the Department's Administrative Rules, except that, in the case of impoundment, a petition for reconsideration or stay must be filed with the Director within 48 hours from the date the decision is rendered by the hearing officer. The final administrative decision (See 8 Ill. Adm. Code 1.75(k) and 1.350) shall be subject to Section 14 of the Humane Care for Animals Act.

(Source: Added at 7 Ill. Reg. 865, January 10, 1983)

133.310 Authority of officer to arrest without warrant. (1) A peace officer may arrest a person without a warrant if the officer has probable cause to believe that the person has committed any of the following:

- (a) A felony.
- (b) A Class A misdemeanor.
- (c) An unclassified offense for which the maximum penalty allowed by law is equal to or greater than the maximum penalty allowed for a Class A misdemeanor.
- (d) Reckless driving under ORS 811.140.
- (e) Driving while under the influence of intoxicants under ORS 813.010.
- (f) Failure to perform the duties of a driver under ORS 811.700 or 811.705.
- (g) Criminal driving while suspended or revoked or in violation of a hardship or probationary permit under ORS 811.182.
- (h) Fleeing or attempting to elude a police officer under ORS 811.540.
- (i) Driving after being declared a habitual offender under ORS 811.185.
- (j) Any other offense in the officer's presence except traffic infractions as defined in ORS 153.505 and violations as defined in ORS 161.565.

(2) A peace officer may arrest a person without a warrant when the peace officer is notified by telegraph, telephone, radio or other mode of communication by another peace officer of any state that there exists a duly issued warrant for the arrest of a person within the other peace officer's jurisdiction.

(3) A peace officer shall arrest and take into custody a person without a warrant when the peace officer has probable cause to believe that:

- (a) There exists an order issued pursuant to ORS 107.095 (1)(c) or (d), 107.716 or 107.718 restraining the person;
- (b) A true copy of the order and proof of service on the person has been filed as required in ORS 107.720; and
- (c) The person to be arrested has violated the terms of that order. [Amended by 1963 c.448 §1; 1973 c.836 §72; 1974 s.s. c.42 §2; 1977 c.845 §2; 1979 c.522 §2; 1981 c.780 §8; 1981 c.818 §2; 1983 c.338 §887; 1983 c.661 §7; 1987 c.730 §4a; 1989 c.171 §15]

133.315 Liability of peace officer making arrest. No peace officer shall be held criminally or civilly liable for making an arrest pursuant to ORS 133.055 (2) or 133.310 (3) provided the peace officer acts in good faith and without malice. [1977 c.845 §9]

133.320 [Repealed by 1973 c.836 §358]
133.330 [Repealed by 1973 c.836 §358]

133.340 Authority to order arrest for crime committed in presence of magistrate. When a crime is committed in the presence of a magistrate, the magistrate may, by a verbal or written order, command any person to arrest the offender and may thereupon proceed as if the offender had been brought before the magistrate upon a warrant of arrest. [Amended by 1973 c.836 §73; 1983 c.661 §8]

133.350 [Repealed by 1973 c.836 §358]

133.360 Arrests on warrant or order transmitted by telegraph. Whenever any person has been indicted or accused on oath of any public offense, or thereof convicted, and a warrant of arrest has been issued, the magistrate issuing the warrant, or any judge of the Supreme Court, or of the Court of Appeals, or of a circuit or county court, may indorse thereon an order signed by the magistrate or judge authorizing the service thereof by telegraph. Thereupon the warrant and order may be sent by telegraph to any marshal, sheriff, constable or policeman and, on receipt of the telegraphic copy thereof, as defined in ORS 165.840, by any such officer, the officer shall have the same authority and be under the same obligations to arrest, take into custody and detain the person as if the original warrant of arrest with the proper direction for its service duly indorsed thereon had been placed in the hands of the officer. The telegraphic copy shall be entitled to full faith and credit and shall have the same force and effect in all courts and places as the original. Prior to indictment or conviction, no such order shall be made by any officer unless in the judgment of the officer there is probable cause to believe the accused person guilty of the offense charged, but the making of such order by any officer is prima facie evidence of the regularity thereof and of all proceedings prior thereto. The original warrant and order, or a copy thereof certified by the officer making the order, shall be preserved in the telegraph office from which the same is sent and in telegraphing the same, the original or the certified copy may be used. [Amended by 1969 c.198 §61]

133.370 [Repealed by 1971 c.743 §432]

133.375 Definitions for ORS 133.375 to 133.381. As used in ORS 133.375 to 133.381 and 156.705:

(1) "Animal" has the meaning provided in ORS 167.310.

(2) "Owner" or "person" includes corporations as well as individuals. [Formerly 770.210; 1985 c.662 §11]

133.377 Arrest of persons for cruelty to animals; immunity of peace officer providing care for animal. (1) Any person violating ORS 167.315 to 167.330 and 167.340

may be arrested and held without warrant, in the same manner as in the case of persons found breaking the peace.

(2) The person making the arrest, with or without warrant, shall use reasonable diligence to give notice thereof to the owners of the animals found in the charge of the person arrested, and shall properly care and provide for such animals until the owners or their duly authorized agents take charge of them; provided, such owners or agents shall claim and take charge of the animals within 60 days from the date of said notice.

(3) The person making such arrest shall have a lien upon the animals for the expense of such care and provisions.

(4) Any peace officer who cares or provides for an animal pursuant to this section and any person into whose care an animal is delivered by a peace officer acting under this section shall be immune from civil or criminal liability based upon an allegation that such care was negligently provided. [Formerly 770.230; 1983 c.648 §2; 1985 c.662 §12]

133.379 Duty of peace officer to arrest and prosecute violators of cruelty to animals laws; disposition of fines. (1) It shall be the duty of any peace officer to arrest and prosecute any violator of ORS 167.315 to 167.330 and 167.340 for any violation which comes to the knowledge or notice of the officer.

(2) All fines and forfeitures collected for violations of ORS 167.315 to 167.330 and 167.340, except for forfeitures of the animal as provided under ORS 167.350, shall be paid into the county treasury of the county in which it is collected, and placed to the credit of the county school fund. [Formerly 770.240; 1983 c.648 §3; 1985 c.662 §13]

133.380 [Repealed by 1971 c.743 §432]

133.381 Procedure in arrests for violation of certain restraining orders; arrest of person not in county where order or warrant issued. (1) When a peace officer arrests a person pursuant to ORS 133.310 (3) or pursuant to a warrant issued under ORS 33.040 by a court or judicial officer for the arrest of a person charged with contempt for violating an order issued under ORS 107.095 (1)(c) or (d), 107.716 or 107.718, if the person is arrested in a county other than that in which the warrant or order was originally issued, the peace officer shall take the person before a magistrate as provided in ORS 133.450. If it becomes necessary to take the arrested person to the county in which the warrant or order was originally issued, the costs of such transportation shall be paid by that county.

(2) If a person arrested for the reasons described in subsection (1) of this section is

subsequently found guilty of contempt, the court, in addition to any other sentence it may impose, may order the person to repay a county all costs of transportation incurred by the county pursuant to subsection (1) of this section. [1979 c.162 §2; 1981 c.780 §9]

UNIFORM ACT ON FRESH PURSUIT

133.410 Short title. ORS 133.410 to 133.440 may be cited as the Uniform Act on Fresh Pursuit.

133.420 Definitions for ORS 133.410 to 133.440. As used in ORS 133.410 to 133.440:

(1) "Fresh pursuit" includes fresh pursuit as defined by the common law; the pursuit of a person who has committed a felony or who reasonably is suspected of having committed a felony; and the pursuit of a person suspected of having committed a felony; though no felony actually has been committed, if there is reasonable ground for believing that a felony has been committed. It does not necessarily imply instant pursuit, but pursuit without unreasonable delay.

(2) "State" includes the District of Columbia.

133.430 Authority of officers of other states to make arrest. (1) Any member of a duly organized state, county or municipal peace unit of another state of the United States who enters this state in fresh pursuit, and continues within this state in such fresh pursuit, of a person in order to arrest the person on the ground that the person is believed to have committed a felony in the other state has the same authority to arrest and hold such person in custody as has any member of any duly organized state, county or municipal peace unit of this state to arrest and hold in custody a person on the ground that the person is believed to have committed a felony in this state.

(2) This section shall not be construed to make unlawful any arrest in this state which otherwise would be lawful.

133.440 Proceedings following arrest by officer of other state. If an arrest is made in this state by an officer of another state in accordance with ORS 133.430, the officer shall without unnecessary delay take the person arrested before a magistrate of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the magistrate determines that the arrest was lawful, the magistrate shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the Governor of this state. If the magistrate determines that the arrest was

of arrest, the defendant shall be continued in the custody of the officer or, if the court is held in the vicinity of the county jail, committed to jail, to answer the action, as the justice may direct. [Amended by 1973 c.836 §336]

156.450 Form of commitment. The commitment shall be signed by the justice with the name of office of the justice and may be substantially as follows:

JUSTICE'S COURT FOR
THE DISTRICT OF _____
State of Oregon, County of _____
IN THE NAME OF
THE STATE OF OREGON

To the sheriff of the county aforesaid:

An order having this day been made by me that A. B. be committed for trial in a criminal action against A. B. for the crime of (designating it generally), you hereby are commanded to receive A. B. into your custody and detain A. B. accordingly or until A. B. is otherwise legally discharged.

Dated at _____, this ____ day of _____, 19__.

C. D., Justice of the Peace

156.460 How commitment is executed. When committed, the defendant shall be delivered to the custody of the proper officer by any peace officer to whom the justice may deliver the commitment, first indorsing thereon, substantially, as follows: "I hereby authorize and command E. F. to deliver this commitment, together with the defendant therein named, to the custody of the sheriff of the County of _____."

**MISCELLANEOUS PROVISIONS
RELATING TO JUSTICES' COURTS**

156.510 Proceeding when crime is not within jurisdiction of justice. If in the course of the trial it appears to the justice that the defendant has committed a crime

not within the jurisdiction of a justice's court, the justice shall dismiss the action, state in the entry the reasons therefor, hold the defendant upon the warrant of arrest and proceed to examine the charge as upon an information of the commission of crime.

156.520 Function of district attorney in justice's court. The district attorney may prosecute an action and if requested by the court shall prosecute an action in a justice's court and attend an examination before a magistrate, either in person or by someone appointed by the district attorney for that purpose, and in any case the district attorney shall control the proceedings on behalf of the state. [Amended by 1981 c.863 §1]

156.530 Disposition of money paid on judgment. (1) Any money paid to the justice upon a judgment in a criminal action shall first be applied to the costs of the action. The remainder shall be paid by the justice to the treasurer of the county, to be appropriated as provided by law.

(2) Money paid pursuant to subsection (1) of this section shall be delivered by the justice to the treasurer within 30 days from the receipt thereof, or the same may be recovered from the justice, with 20 percent additional, by a civil action in the name of the county.

156.610 [Amended by 1969 c.619 §14; repealed by 1977 c.876 §9 (46.800 enacted in lieu of 156.610)]

156.620 [Amended by 1973 c.836 §337; repealed by 1977 c.876 §9 (46.800 enacted in lieu of 156.620)]

156.630 [Repealed by 1975 c.611 §24]

156.640 [Amended by 1965 c.510 §23; repealed by 1977 c.876 §9 (46.800 enacted in lieu of 156.640)]

156.650 [1959 c.559 §1; 1971 c.186 §1; repealed by 1977 c.876 §9 (46.800 enacted in lieu of 156.650)]

**CONCURRENT JURISDICTION OF
JUSTICE AND DISTRICT COURTS**

156.705 Jurisdiction over offenses against animals. Justices of the peace and police judges shall have concurrent jurisdiction over all offenses committed under ORS 167.315 to 167.330 and 167.340. [Formerly 770.260; 1985 c.662 §14]

mation that controlled substances are being unlawfully transported or possessed in any boat, vehicle or other conveyance, may search the same without warrant and without an affidavit being filed. If controlled substances are found in or upon such conveyance, the district attorney or peace officer may seize them, arrest any person in charge of the conveyance and as soon as possible take the arrested person and the seized controlled substances before any court in the county in which the seizure is made. The district attorney or peace officer shall also, without delay, make and file a complaint for any crime justified by the evidence obtained. [1939 c.791 §17]

167.245 [Amended by 1955 c.504 §1; 1959 c.322 §1; repealed by 1971 c.743 §432]

167.247 Search, seizure and forfeiture of conveyance in which drugs unlawfully transported or possessed. (1) A district attorney or peace officer charged with the enforcement of ORS 167.212 and 167.222, having personal knowledge or reasonable information that controlled substances are being unlawfully transported or possessed in any boat, vehicle or other conveyance, may search the same without warrant and without an affidavit being filed. If controlled substances are found in or upon such conveyance, the district attorney or peace officer may seize them, arrest any person in charge of the conveyance and as soon as possible take the arrested person and the seized controlled substances before any court in the county in which the seizure is made. The district attorney or peace officer shall also, without delay, make and file a complaint for any crime justified by the evidence obtained.

(2) Any boat, vehicle or other conveyance used by or with the knowledge of the owner, operator or person in charge thereof for the unlawful transportation or concealment of controlled substances shall be forfeited to the state in the same manner and with like effect as provided in ORS 471.660 and 471.665. However, a conveyance is not subject to forfeiture for a violation of ORS 475.992 (3).

(3) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of ORS 475.005 to 475.285, 475.295 and 475.940 to 475.995.

(4) No conveyance is subject to forfeiture under this section by reason of any act or omission committed or omitted without the knowledge or consent of the owner. [1971 c.743 §281; 1977 c.745 §38]

Note: See note under 167.242.

167.250 [Amended by 1959 c.322 §2; repealed by 1971 c.743 §432]

167.252 Acquittal or conviction under federal law as precluding state prosecution. No person shall be prosecuted under

ORS 167.203 to 167.222 if the person has been acquitted or convicted under the federal narcotic laws of the same act or omission which it is alleged constitutes a violation of ORS 167.203 to 167.222. [1971 c.743 §282]

167.255 [Repealed by 1959 c.322 §3]

167.260 [Repealed by 1959 c.322 §3]

167.265 [Repealed by 1959 c.322 §3]

167.270 [Repealed by 1959 c.322 §3]

167.275 [Repealed by 1959 c.322 §3]

167.280 [Repealed by 1959 c.322 §3]

167.285 [Repealed by 1959 c.322 §3]

167.290 [Repealed by 1959 c.322 §3]

167.295 [Amended by 1963 c.314 §1; repealed by 1971 c.743 §432]

167.300 [Repealed by 1971 c.743 §432]

OFFENSES AGAINST ANIMALS

167.310 Definitions for ORS 167.310 to 167.340. (1) As used in ORS 167.310 to 167.340.

(a) "Animal" means any nonhuman mammal, bird, reptile, amphibian or fish.

(b) "Good animal husbandry" includes, but is not limited to the dehorning of cattle, the docking of horses, sheep or swine, and the castration or neutering of livestock, according to accepted practices of veterinary medicine or animal husbandry.

(c) "Livestock" means any horse, mule, burro, dairy or beef animal, goat, sheep, swine or rabbit, regardless of age.

(d) "Pet or domestic animal" means any animal that is owned or possessed by a person, other than livestock or poultry.

(e) "Physical injury" has the meaning provided in ORS 161.015.

(f) "Possess" has the meaning provided in ORS 161.015.

(g) "Serious physical injury" has the meaning provided in ORS 161.015.

(2) As used in ORS 167.325 and 167.330, "minimum care" means care sufficient to preserve the health and well-being of an animal and, except for emergencies or circumstances beyond the reasonable control of the owner, includes, but is not limited to, the following requirements:

(a) Food of sufficient quantity and quality to allow for normal growth or maintenance of body weight.

(b) Open or adequate access to potable water in sufficient quantity to satisfy the animal's needs. Snow or ice is not an adequate water source.

(c) In the case of pet or domestic animals, access to a barn, dog house or other inclosed structure sufficient to protect the animal from wind, rain, snow or sun and

which has adequate bedding to protect against cold and dampness.

(d) Veterinary care deemed necessary by a reasonably prudent person to relieve distress from injury, neglect or disease.

(e) Pet or domestic animals shall not be confined to an area without adequate space for exercise necessary for the health of the animal or which does not allow access to a dry place for the animal to rest. The air temperature in a confinement area must be suitable for the animal involved. Confinement areas must be kept reasonably clean and free from excess waste or other contaminants which could affect the animal's health. [1985 c.662 §1]

Note: 167.310 to 167.355 was enacted into law by the Legislative Assembly but was not added to or made a part of the Oregon Criminal Code of 1971 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

167.315 Animal abuse in the second degree. (1) A person commits the crime of animal abuse in the second degree if, except as otherwise authorized by law, the person intentionally, knowingly or recklessly causes physical injury to an animal.

(2) Any practice of good animal husbandry is not a violation of this section.

(3) Animal abuse in the second degree is a Class B misdemeanor. [1985 c.662 §2]

Note: See note under 167.310.

167.320 Animal abuse in the first degree. (1) A person commits the crime of animal abuse in the first degree if, except as otherwise authorized by law, the person intentionally, knowingly or recklessly:

(a) Causes serious physical injury to an animal; or

(b) Cruelly causes the death of an animal.

(2) Any practice of good animal husbandry is not a violation of this section.

(3) Animal abuse in the first degree is a Class A misdemeanor. [1985 c.662 §3]

Note: See note under 167.310.

167.325 Animal neglect in the second degree. (1) A person commits the crime of animal neglect in the second degree if, except as otherwise authorized by law, the person intentionally, knowingly, recklessly or with criminal negligence fails to provide minimum care for an animal in such person's custody or control.

(2) Animal neglect in the second degree is a Class B misdemeanor. [1985 c.662 §4]

Note: See note under 167.310.

167.330 Animal neglect in the first degree. (1) A person commits the crime of animal neglect in the first degree if, except as otherwise authorized by law, the person in-

tionally, knowingly, recklessly or with criminal negligence:

(a) Fails to provide minimum care for an animal in such person's custody or control; and

(b) Such failure to provide care results in serious physical injury or death to the animal.

(2) Animal neglect in the first degree is a Class A misdemeanor. [1985 c.662 §5]

Note: See note under 167.310.

167.335 Exemption for livestock, rodeo animals and commercially grown poultry. Unless gross negligence can be shown, the provisions of ORS 167.315 to 167.330 shall not apply to the treatment of livestock being transported by owner or common carrier, animals involved in rodeos or similar exhibitions or commercially grown poultry. [1985 c.662 §6]

Note: See note under 167.310.

167.340 Animal abandonment. (1) A person commits the crime of animal abandonment if the person intentionally, knowingly, recklessly or with criminal negligence leaves a domesticated animal at a location without providing for the animal's continued care.

(2) It is no defense to the crime defined in subsection (1) of this section that the defendant abandoned the animal at or near an animal shelter, veterinary clinic or other place of shelter if the defendant did not make reasonable arrangements for the care of the animal.

(3) Animal abandonment is a Class C misdemeanor. [1985 c.662 §8]

Note: See note under 167.310.

167.345 Authority to enter premises; search warrant; notice of impoundment of animal. If there is probable cause to believe that any animal is being subjected to treatment in violation of ORS 167.315 to 167.340, a peace officer, after obtaining a search warrant in the manner authorized by law, may enter the premises where the animal is being held, provide food and water and impound such animal. If after reasonable search the owner or person having custody of such animal cannot be found and notified of the impoundment, such notice shall be conspicuously posted on such premises and within 72 hours after the impoundment such notice shall be sent by certified mail to the address, if any, at which the animal was impounded. [Formerly 167.860]

Note: See note under 167.310.

167.350 Forfeiture of rights in mistreated animal; costs; disposition of animal. (1) In addition to and not in lieu of any other sentence it may impose, a court may

require a defendant convicted under ORS 167.315 to 167.330 and 167.340 to forfeit any rights of the defendant in the animal subjected to abuse, neglect or abandonment, and to repay the reasonable costs incurred by any person or agency prior to judgment in caring for each animal subjected to abuse, neglect or abandonment.

(2) When the court orders the defendant's rights in the animal to be forfeited, the court may further order that those rights be given over to an appropriate person or agency demonstrating a willingness to accept and care for the animal or to the county or an appropriate animal care agency for further disposition in accordance with accepted practices for humane treatment of animals. This subsection shall not constitute or authorize any limitation upon the right of the person or agency to whom rights are granted to resell or otherwise make disposition of the animal. A transfer of rights under this subsection constitutes a transfer of ownership. [Formerly 167.862]

Note: See note under 167.310.

167.355 Involvement in animal fighting. (1) A person commits the crime of involvement in animal fighting if the person:

(a) Owns or trains an animal with the intention that the animal engage in an exhibition of fighting; or

(b) Promotes, conducts, participates in or is present as a spectator at an exhibition of fighting or preparations thereto; or

(c) Keeps or uses, or in any way is connected with or interested in the management of, or receives money for the admission of any person to any place kept or used for the purpose of an exhibition of fighting; or

(d) Knowingly suffers or permits any place over which the person has possession or control to be occupied, kept or used for the purpose of an exhibition of fighting.

(2) For purposes of this section:

(a) "Animal" means any bird, reptile, amphibian, fish or nonhuman mammal, other than a dog.

(b) "Exhibition of fighting" means a public or private display of combat between two or more animals in which the fighting, killing, maiming or injuring of animals is a significant feature. "Exhibition of fighting" does not include demonstrations of the hunting or tracking skills of an animal or the lawful use of animals for hunting, tracking or self-protection.

(3) Nothing in this section applies to or prohibits any customary practice of breeding or rearing game cocks even though those cocks may be subsequently used in cock

fighting exhibitions outside the State of Oregon.

(4) Involvement in animal fighting is a Class A misdemeanor. [Formerly 167.865; 1987 c.249 §6]

Note: See note under 167.310.

167.360 Definitions for ORS 167.360 to 167.380. As used in ORS 167.360 to 167.380:

(1) "Dogfight" means a fight, arranged by any person, between two or more dogs the purpose or probable result of which fight is the infliction of injury by one dog upon another.

(2) "Fighting dog" means a dog that is intentionally bred or trained to be used in, or that is actually used in, a dogfight. A dog does not constitute a fighting dog solely on account of its breed. [1987 c.249 §1]

Note: 167.360 to 167.380 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 167 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

167.365 Dogfighting. (1) A person commits the crime of dogfighting if the person knowingly does any of the following:

(a) Owns, possesses, keeps, breeds, trains, buys, sells or offers to sell a fighting dog, including but not limited to any advertisement by the person to sell such a dog.

(b) Promotes, conducts or participates in, or performs any service in the furtherance of, an exhibition of dogfighting, including but not limited to refereeing of a dogfight, handling of dogs at a dogfight, transportation of spectators to a dogfight, organizing a dogfight, advertising a dogfight, providing or serving as a stakes holder for any money wagered on a fight.

(c) Keeps, uses or manages, or accepts payment of admission to, any place kept or used for the purpose of dogfighting.

(d) Suffers or permits any place over which the person has possession or control to be occupied, kept or used for the purpose of an exhibition of dogfighting.

(2) Dogfighting is a Class C felony. [1987 c.249 §2]

Note: See note under 167.360.

167.370 Participation in dogfighting.

(1) A person commits the crime of participation in dogfighting if the person knowingly:

(a) Attends or has paid admission at any place for the purpose of viewing or betting upon a dogfight.

(b) Advertises or otherwise offers to sell equipment for the training and handling of a fighting dog.

(2) Participation in dogfighting is a Class A misdemeanor. [1987 c.249 §3]

Note: See note under 167.360.

167.375 Seizure of fighting dogs; procedure. (1) Pursuant to ORS 133.525 to 133.703, a judge may order the seizure of alleged fighting dogs owned, possessed or kept by any person.

(2) The judge issuing an order for the seizure of a dog as provided in subsection (1) of this section may require the dog to be impounded at an animal shelter if the judge believes it to be in the best interest of the animal and the public to so order. The governmental unit, the agency of which executes the seizure of the dog, shall be responsible for the costs of impoundment at the animal shelter, but the governmental unit is entitled to receive reimbursement of those costs from the owner, possessor or keeper of the impounded dog. If the owner, possessor or keeper of the dog is subsequently convicted of dogfighting under ORS 167.365, the court may order the defendant to pay the costs of animal shelter as restitution in the case.

(3) In lieu of ordering such dogs seized under subsection (1) of this section to be impounded at an animal shelter, the court may order the dogs impounded on the property of their owner, possessor or keeper. If dogs are ordered impounded on the property of their owner, possessor or keeper, the court shall order such person to provide all necessary care for the dogs and to allow regular and continuing inspection of the dogs by any persons designated by the court, or the agents of such persons. The court shall further order the person not to sell or otherwise dispose of any of the dogs unless the court authorizes such sale or disposition, or until the seized dogs are released as evidence by the law enforcement agency that seized them, or restored to the person by the court pursuant to an order under ORS 133.643. [1987 c.249 §4]

Note: See note under 167.360.

167.380 Forfeiture of rights in fighting dogs or property; public nuisance; destruction of dogs. (1) In addition to and not in lieu of any other penalty it may impose upon a person convicted of dogfighting under ORS 167.365 or participating in dogfighting under ORS 167.370, the court shall, as a part of the judgment, order to be forfeited to the city or county wherein the crime occurred, as the case may be, the person's rights in any fighting dogs or property proved to have been used by the defendant as an instrumentality in the commission of the crime.

(2) A fighting dog is a public nuisance, regardless of whether or not a person has

been convicted of animal fighting with respect to the dog, and a dog proved by a preponderance of the evidence to be a fighting dog in a forfeiture proceeding shall be forfeited to the county in which the dog was found, to be destroyed as provided in this section.

(3) When a court orders a fighting dog to be forfeited, the dog shall be destroyed by a method consistent with such state law regulating methods to be used for destruction of animals. No forfeited fighting dog shall be released or given to any person or agency other than for purposes of destruction in accordance with this subsection. [1987 c.249 §5]

Note: See note under 137.360.

167.405 [Repealed by 1971 c.743 §432]

167.410 [Repealed by 1971 c.743 §432]

167.415 [Repealed by 1971 c.743 §432]

167.420 [Repealed by 1971 c.743 §432]

167.425 [Repealed by 1971 c.743 §432]

167.430 [Amended by 1961 c.648 §8; repealed by 1971 c.743 §432]

167.505 [Amended by 1959 c.530 §3; repealed by 1971 c.743 §432]

167.510 [Amended by 1959 c.530 §4; repealed by 1971 c.743 §432]

167.515 [Repealed by 1971 c.743 §432]

167.520 [Repealed by 1971 c.743 §432]

167.525 [Repealed by 1971 c.743 §432]

167.530 [Repealed by 1971 c.743 §432]

167.535 [Amended by 1959 c.530 §5; repealed by 1971 c.743 §432]

167.540 [Repealed by 1971 c.743 §432]

167.545 [Repealed by 1971 c.743 §432]

167.550 [Amended by 1959 c.426 §8; repealed by 1971 c.743 §432]

167.555 [Repealed by 1971 c.743 §432]

167.605 [Amended by 1963 c.201 §1; repealed by 1971 c.743 §432]

167.610 [Repealed by 1971 c.743 §432]

167.615 [Repealed by 1971 c.743 §432]

167.620 [Repealed by 1971 c.743 §432]

167.625 [Repealed by 1971 c.743 §432]

167.630 [Repealed by 1971 c.743 §432]

167.635 [Repealed by 1971 c.743 §432]

167.640 [Repealed by 1971 c.743 §432]

167.645 [Repealed by 1971 c.743 §432]

167.705 [Amended by 1959 c.503 §6; repealed by 1971 c.743 §432]

167.710 [Repealed by 1971 c.743 §432]

167.715 [Repealed by 1971 c.743 §432]

167.720 [Repealed by 1971 c.743 §432]

167.725 [Repealed by 1971 c.743 §432]

167.730 [Repealed by 1971 c.743 §432]

167.735 [Repealed by 1971 c.743 §432]

167.740 [Amended by 1965 c.370 §1; repealed by 1971 c.743 §432]

167.745 [1959 c.200 §1; repealed by 1971 c.743 §432]

H B

8 2

ALASKA STATE LEGISLATURE

Representative Eileen Panigeo MacLean
Co-Chair House Finance Committee
P.O. Box 830
Barrow, Alaska 99723



WHILE IN JUNEAU
Box V
Juneau, Alaska 99811
465-4525
465-4833

HOUSE OF REPRESENTATIVES

District 22

North Slope
Borough

Anaktuvuk Pass
Atkasuk
Barrow
Kaktovik
Nulqsut
Point Hope
Point Lay
Wainwright

Northwest Arctic
Borough

Ambler
Buckland
Deering
Kiana
Kivalina
Kobuk
Kolzebue
Noatak
Noorvik
Selawik
Shungnak

MEMORANDUM

TO: Representative Dave Donley, Chairman
House Judiciary Committee

FROM: Representative Eileen P. MacLean

Rep. E.P. MacLean

DATE: February 4, 1991

SUBJ: Scheduling House Bill 82

This is to request a hearing in the Judiciary Committee for House Bill 82, "an act exempting members of the clergy from service as jurors".

In rural areas, members of the clergy are often called on to provide services for the Health Department, Public Safety office, Public Health Service Hospital, Division of Family and Youth Services, and other organizations. Providing pastoral counseling and chaplaincy services to people who are, or will be, before the court system could present problems maintaining an unbiased viewpoint while serving on a jury.

John Gaguine, of the Legal Services Division, has suggested that language exempting only the clergy may raise problems of equal protection. Prior to 1981, members of the clergy as well as judicial officers, civil officers, attorneys, teachers, physicians, and dentists were exempt.

Letters from the Uteagvik Presbyterian Church and from Superior Court Judge Michael Jeffery are included in the back-up.

page 2

I respectfully request the Judiciary Committee review this request and A.S. 09.20.030 to see if there is some way to fairly address the concerns of the of the clergy.

If you have any additional questions, please contact Rena Bukovich of my staff at 465-4525.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

February 5, 1991

SUBJECT: Bill exempting members of the clergy from jury service
(WO 17LS0162)

TO: Representative Eileen MacLean
Attn: Rena Bukovich

FROM: John B. Gaguine *JBG*
Legislative Counsel

I am writing about HB 82, a bill that I drafted for you that would exempt members of the clergy from jury service. Although my research has turned up no case law on the question, I have some reservations about the constitutionality of this bill. It seems to me that exempting only members of the clergy, and not other social service occupations (AS 09.20.030 prior to its 1981 amendment also exempted attorneys, teachers, doctors and dentists), might raise problems of equal protection (Article I, Section 1 of the Alaska constitution) or of establishment of religion (Article I, Section 4 of the constitution).

I would also note that this bill could present problems in application. Your intent, I would imagine, is to exempt full-time clergy members with established congregations, and not to exempt others' such as persons with full-time non-clergy jobs who may preside over small congregations meeting in homes, or persons allegedly clergy in probably bogus "religions". (There was a movement a few years ago where people were declaring themselves ministers in their own religion so that their homes could be free from property tax as religious property.) However, as to the first group, it would be difficult to draw a line between the full-timers and non-full-timers (and might present constitutional problems). As to the second group, there would be no constitutional problems. The courts require sincerity before a religious belief will be recognized, but proving the lack of sincerity can be very difficult and time-consuming.

Please let me know if I can be of further assistance.

JBG:pl
91-066.plm

UTKEAGVIK PRESBYTERIAN CHURCH

A CONGREGATION OF THE UNITED PRESBYTERIAN CHURCH, U.S.A.

ORGANIZED ON EASTER SUNDAY, APRIL 2, 1899

REV. JAMES E. ROGHAIR

REV. WILLA B. ROGHAIR

CO-PASTORS

UTKEAGVIK
PRESBYTERIAN CHURCH
P.O. BOX 730
BARROW, ALASKA 99723

October 2, 1990

Mr. Michael Jeffery, Judge
Alaska District-Court
Barrow, Alaska 99723

Honorable Judge Jeffery:

I know that you have received several letters from my wife (and co-pastor), myself and from the Session of the Utkeagvik Presbyterian Church regarding jury duty. And I think that you know our position.

As ministers in the Utkeagvik Presbyterian Church we are defacto community chaplains for Barrow and the whole North Slope. Our church conducts probably 95% of all funerals and death notifications in Barrow. We are called upon by the Borough Public Safety Office, the Health Department, the Public Health Service Hospital, the State Division of Youth and Family Services, and other organizations for community chaplaincy services. We are even the back up for pastoral counselling for the Assembly of God Church members in the case of a pastoral absence or a pastoral vacancy. We are required by our position to stand ready to serve the pastoral needs of anyone on the North Slope. And serving on a jury could jeopardize our ability to work pastorally with people involved.

These responsibilities are not limited to Barrow, because we have official responsibilities to the other Presbyterian Churches in Wainwright, Nuiqsut, Kaktovik, Atqasuk and Anaktuvuk Pass. When people come to Barrow for programs such as SATS or the hospital we have pastoral responsibilities for them, too. Episcopalians (who predominate in Pt. Lay and Pt. Hope) expect pastoral services from us when they are in Barrow, too.

All of this is a reminder once again that jury duty is incompatible with our reason for being on the North Slope. Therefore we need to ask for jury excusal on the basis of employer hardship.

If you continue to feel that is inadequate reason we would seek your assistance in approaching the Alaska Legislature to consider this situation and to adjust the Alaska Code to account for this fact of life on the North Slope. (Perhaps similar situations exist in other Bush communities.)

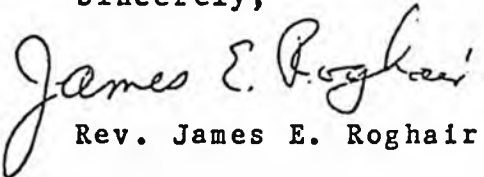
I do not intend to serve on a jury while I am on the North Slope because of this incompatibility of purpose.

Personally I feel that jury duty is a very important right and privilege of the American legal system. In general I feel that people should serve when called on a jury. But in view of the shortage of qualified pastors on the North Slope and view of the tremendous burden we carry as Borough Chaplains we cannot do it here.

In terms of coming over there to the court building to waste a few hours before I get excused from any particular case, I do not relish the thought, but may indeed do it if so directed by the court. For I do respect the court's authority. However, I think that my co-pastor Willa is scheduled sometime in October or November and would ask that I be deferred until her time is over if you determine that you cannot grant the excuse as required by the pastoral employment position.

By copies of this letter I am alerting the Presbytery of Yukon, our State Legislator, the Utkeagvik Session, and a colleague in ministry in the local Ministerial Association of the concerns.

Sincerely,


Rev. James E. Roghair

cc: Rev. Neil Munro, Executive of Yukon Presbytery
Rev. Del Burnett, Chair of Committee on Ministry
Ms. Eileen MacLean, State Representative
Elder Jeslie Kaleak, Clerk of Session
Rev. Duwain McKenzie, Pastor of Inupiat Assembly of God Church

KEEP THIS SECTION

You are being considered for jury service. To determine your qualifications for service, you must answer ALL the questions on the qualification form. When completed, please detach the qualification form and return it in the enclosed postage paid envelope. Failure to return the completed qualification form in 7 days may result in a warrant for you to appear in court.

901322669 01 30 43
SERVICE 3 MONTHS - TEAM C - YOU WILL BE CALLED FOR PETIT JURY DURING THE MONTHS OF OCT. THRU DECEMBER. THIS COMPLETED QUALIFICATION FORM AND ANY LETTER REQUESTING EXCUSAL OR DELAY IN JURY SERVICE MUST BE FILED WITH THE COURT IMMEDIATELY. SEPARATE SUMMONS WILL BE SENT TO YOU IDENTIFYING YOUR GROUP NUMBER AND EXPLAINING THE TELEPHONE CALL IN SYSTEM.

SEE REVERSE SIDE

QUALIFICATION FORM

DETACH HERE

CHANGE OF NAME OR ADDRESS

901322669 809
 ROCHAIR
 JAMES E
 PO BOX 730
 BARROKAK

99723

DO NOT FOLD THIS PORTION

JURY CLERK USE ONLY
 SBA P
 901322669
 ROCHAIR
 JAMES E
 PO BOX 730
 BARROKAK 99723
 01 30 43

1. How many miles, one way, do you live from the courthouse? 1.2
2. Your hearing (corrected) is: Good Fair Poor I am deaf.
3. Your vision (corrected) is: Good Fair Poor I am blind.
4. Your home phone number is 855-2451 work phone 852-6566
5. If you wish to be re-scheduled to a different date, turn this form over and explain on the back. For medical excuses, enclose a statement from your doctor. If over age 70, you may request permanent excusal. Write request on back of this card.
6. Are you a United States citizen?
7. Can you read and speak the English language?
8. Do you live in Alaska? How long? 3+ yrs
9. At the time of scheduled service, will you be at least 18 years of age? Date of birth 1943
10. Have you been instructed to call in or appear in court for jury duty within the past 12 months? If yes, when? _____
11. Is there any mental or physical reason that would prevent you from serving as a juror? If yes, see #5.
12. Have you ever been convicted of a felony? If yes, have you been unconditionally discharged?

DETACH AND RETURN THIS PART

The answers are true and correct

James E. Rocha
 SIGNATURE

10/1/90
 DATE

J-100 (8/58)

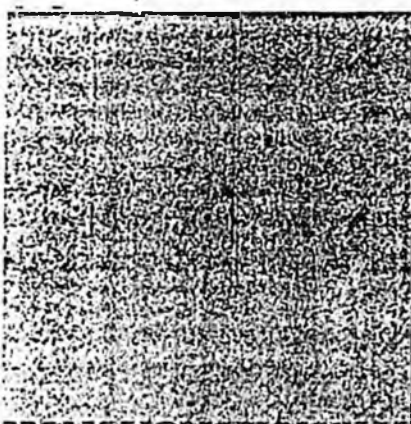
JURY EXCUSAL OR DEFERRAL

- If you need to request an excusal or deferral from jury duty, this is your ONLY opportunity to do so. Explain your reason for wanting to be excused or deferred on the back of your COMPLETED qualification form. You will be notified of the court's action regarding your request.
- Your service can be deferred to a date of your choice. Explain on the back of your qualification form the week-month you prefer.
- Medical Excuse — You may be excused or deferred from jury duty if your health or proper care of your family make it necessary to be excused or deferred. State reason and enclose doctor's statement.

- Employer Hardship — State reason and enclose letter from employer.
- Financial Hardship — State reason and, if employed, enclose letter from employer stating that you will not be paid while on jury duty.
- In Anchorage, for financial/employer hardship, do not send letter. Instead, you must report at the time shown and explain your reason to the Judge. For emergency questions ONLY, contact your local court. Further information will be given when you report for jury duty.

GENERAL INFORMATION

- FIRST DAY OF SERVICE. Report on the day and time indicated on your jury summons or as directed.
- SECOND AND SUBSEQUENT DAY. The jury clerk or judge will instruct you regarding further service.
- LUNCHESES are not provided. You may bring your own with you.
- COFFEE is provided.
- CLOTHES. Jurors are expected to be neat.
- PAY. Jury clerk will advise you.
- ABSENCE. Call the jury clerk.
- PARKING is juror's own responsibility.



10/1/90
 To the Court - please see enclosed letter.
 Rev. James E. Rocha



Superior Court
State of Alaska

SECOND JUDICIAL DISTRICT
P.O. BOX 2700
BARROW ALASKA 99723

Chambers of
JUDGE MICHAEL I. JEFFERY
Superior Court Judge

Phone: (907) 852-4800
Fax: (907) 852-4804

October 8, 1990

Rev. Dr. James E. Roghair
Rev. Dr. Willa Roghair
Utkeagvik Presbyterian Church
Post Office Box 730
Barrow, AK 99723

Dear Rev. Jim and Rev. Willa:

It seems best to address this letter to both of you, since you both have written recent, lengthy letters to the court expressing your desire to be exempted from jury duty in the Barrow Trial Courts. The basis for the request is based on your positions as pastors in this community and the very heavy workload experienced by you. As a member of your congregation, I'm very aware of the great service that persons such as you accomplish in a community like ours.

I have written you previously on this topic, but perhaps I have not been clear enough. By state law, a judge cannot excuse citizens in other occupations from jury duty simply because of their employment. As of 1981, the legislature decided that the only persons who may request to be exempted from jury duty based on their employment are judicial officers. A.S. 09.20.030. Prior to that amendment in the law, the legislature had allowed persons in the following occupations to request an exemption:

Rev. Dr. Jim Roghair
Rev. Dr. Willa Roghair
October 8, 1990
Page Two

1) a judicial officer; (2) any other civil officer of the state or United States whose duties are inconsistent with his attendance or service as a juror; (3) an attorney; (4) a minister of the gospel or priest of any denomination; (5) a teacher in a university, college, academy, or school; (6) a practicing physician; (7) a practicing dentist. (emph. supplied).

Former A.S. 09.20.030

As you stated in your most recent letter, you or the Presbytery may wish to approach the legislature to reinstate some or all of the previous categories for exemption that it eliminated in 1981. You asked that the court system do so as well. That decision is not up to me; however, I am forwarding a copy of your letter and this letter to the court administration in Anchorage for their information.

It is possible under current law to exempt someone from jury duty for advanced age (over 70), or

if it is shown that the person's health or proper care of the person's family, permanent physical or medical disability, or other substantial hardship expected to last more than two years makes it necessary for the person to be excused, or if the person is a judicial officer.

Administrative Rule 15; A.S. 09.20.030. The legislature changed the law in 1987 so that hearing or sight problems are no longer a jury excuse. A.S. 09.20.010(b).

The "substantial hardship expected to last more than two years" standard must be evaluated against the realities of the current jury system:

Rev. Dr. Jim Roghair
Rev. Dr. Willa Roghair
October 8, 1990
Page Three

-Who serves? Any person who receives a Permanent Fund Dividend, who is over 18 years of age and who has a Barrow address is on the computer list for the Barrow Trial Court. We do not bring in jurors from villages since all North Slope villages are more than 50 miles from Barrow. A computer in Anchorage randomly selects names each three months for the trial jury list. We have no control at Barrow about when a person is chosen, of whether the person is chosen for trial jury or grand jury service.

-Allowable deferments: By state law, a person showing "hardship" or "transportation problems" can be deferred for up to 10 months, providing that the person agrees to a new date of service. A.S. 09.20.035. In this court, I make these decisions personally. I receive hundreds of such requests yearly, and I believe that persons such as business managers, school principals, whaling captains and other subsistence hunters have found that the court has been sensitive to their needs. At the schools, for example, we have a "rotation system" so that only one teacher at a time from each school is called.

-Excusals at trial. The legislature has made a judgment that after deferrals of up to 10 months by the judge, any further excusals must be done on the public record during the trial. Once someone's term of jury duty begins--which could be as much as 10 months after the original summons--they are expected to remain in contact with the court for the three month term. Someone would have to physically come

Rev. Dr. Jim Roghair
Rev. Dr. Willa Roghair
October 8, 1990
Page Four

to court only 1) when a jury trial of some sort actually occurs (criminal, civil, inquest, etc.) and 2) if their assigned jury group were called. Even in a busy rural court such as ours, in most months there are no jury trials, or at the most one jury trial. Of course, any particular person's group may not even be called for that proceeding.

If someone is called for a jury trial, then they always have the opportunity to request an excusal from serving in that particular trial. We find that most people with obvious needs to be excused do not have to remain more than a couple of hours for the process required by the court rules governing jury trials to be completed. Then they are excused and need not return for that particular trial. Administrative Rule 15.

-When would someone be called again? Once someone has completed a term of jury duty, they cannot be called again for one year after their last date of jury service. A.S. 09.20.020. Whenever they are called again, which may be more than a year after the last date of previous service, the person could again ask for deferment of up to 10 months. In other words, the process described above starts over again.

As you can see from the above description, a person with great problems serving on jury duty would only have to spend a few hours at the court every 22 months or so. Of course, if someone having a great hardship to serve on jury duty chose not to request the 10 month deferral, they may be called for jury duty every 12-15 months.


Rev. Dr. Jim Roghair
Rev. Dr. Willa Roghair
October 8, 1990
Page Five

Of course, you are not alone in having hardships in serving on jury duty. I receive many letters from people who always work at night, or play critical roles at organizations like the hospital or public safety, or travel frequently, or have extreme financial hardship, or are breast feeding mothers, etc. As noted above, I believe that the citizens of Barrow have found the court to be flexible in meeting their needs, within the limits of state law discussed in this letter.

I know that both of you have particularly strong feelings about this subject. I hope that you have found this letter informative to you. You both clearly have grounds to request deferments of up to 10 months, but you will need to contact us with the date by which you wish to serve. A.S. 09.20.35. Your requests for total exemption based on your occupation as pastors or for "substantial hardship expected to last more than two years" must be denied.

Since you have sent copies of your most recent correspondence to a number of other individuals, a courtesy copy of this letter is being sent to them as well.

Sincerely,



MICHAEL I JEFFERY
Superior Court Judge

cc. Rev. Neil Munro, Executive of Yukon Presbytery
Rev. Del Burnett, Chair of Committee on Ministry
Hon. Eileen Maclean, Representative, Dist. 22
Elder Jeslie Kaleak, Clerk of Session, Utkeagvik Church
Chris S. Christensen III, Staff Counsel, Alaska Court
System, Anchorage
Rev. Duwain McKenzie, Pastor, Assembly of God Church,
Barrow

RECEIVED APR 08 1991



United Methodist Church of Sitka

303 Kimsham Street

Sitka, Alaska 99835

Office (907) 747-8775 Parsonage (907) 747-8425

April 4, 1991

Judiciary Committee
Dave Donley, Chairman
P. O. Box V
Juneau AK 99811

RE: NB No. 82

Dear Chairman Donley:

While it is my understanding that this bill does not have a great deal of support, I wanted you to know of at least one member of the clergy who is opposed to it, just for the record.

Service as a juror is one of the privileges and obligations of a citizen and I do not think clergy should be exempted from that duty.

If there are special circumstances which apply, the system has many ways of dealing with that reality, without changing the State Statutes.

When I was the pastor in Nome, I served on a Grand Jury which ~~indicted~~ ~~indicted~~ indicted one of my church members, albeit not one of my more active ones. There did not appear to be any problem in that process.

If any pressure builds to act on this legislation, I would appreciate the opportunity of testifying or having these remarks made part of the record. I do not feel you would find wide support for this legislation among members of the clergy.

Sincerely,

A handwritten signature in cursive script that reads "John J. Shaffer".

John J. Shaffer
Pastor

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill No. HB 82

Revision Date: 01/21/92 Department Affected: Alaska Court System
 Title: An Act exempting members of the BRU: Trial Courts
clergy from service as jurors Components: _____
 Sponsor: MacLean
 Requestor: Judiciary Committee COMPONENT SERIAL NO.

000 000	000 768
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228
 Division: Alaska Court System Date: 01/21/92

Approved by: Arthur H. Snowden, II, Administrative Director  Date: 01/21/92
 Agency: Alaska Court System

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

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill No. HB 82

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act exempting members of the BRU: Trial Courts
clergy from service as jurors Components: _____
 Sponsor: MacLean
 Requestor: Judiciary Committee COMPONENT SERIAL NO.

000	000	000	768
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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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228
 Division: Alaska Court System Date: 02/08/91

Approved by: Arthur H. Snowden, II, Administrative Director  Date: 02/08/91
 Agency: Alaska Court System

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

HB

84



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

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

TO: Representative David Finkelstein, Chair
House Labor and Commerce Committee

Representative Pat Parnell
Representative Ivan Ivan
Representative Dave Donley
Representative Betty Bruckman
Representative Robin Taylor
Representative Jim Zawacki

FROM: Representative Kay Brown *efm*

DATE: February 27, 1991

SUBJ: HB 84 — Youth Tobacco Addiction Prevention Act

In anticipation of the House Labor and Commerce Committee hearing tomorrow on HB 84, I wanted to take this opportunity to provide you with a brief explanation of why I feel that this legislation is so important.

Smoking is more than just a nuisance or bad habit. More Americans die each year from smoking related illness than died in all of World War II — nearly one each minute. At the same time, there is a new teenage smoker approximately every 30 seconds. Alaska has the highest age-adjusted lung cancer death rate in the Nation; close to 90% of all lung cancer deaths are caused by cigarettes. The adverse health impacts of tobacco addiction are not only tragic in terms of human lives lost, there are also substantial economic impacts. The federal Department of Health and Human Services estimates that smoking related illness costs the nation about \$52 billion per year in health treatment and other costs — about \$221 per capita.

Finally, I would like to add I do not dislike smokers. In fact, I myself am a cigarette smoker. And, as a smoker, I know how hard it is to quit (I am in the process right now of trying — once again — to quit). While respecting the rights of informed adults to make choices about their personal lives, we must also work to prevent young children from falling victim to tobacco product addiction, illness and death.

I have attached a short "quiz" on tobacco. I think you may find it interesting.

**THE FOLLOWING PAGES
WERE TREATED AS A UNIT
IN THE ORIGINAL FILE**



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

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

TO: Representative Dave Donley, Chair
House Judiciary Committee

FROM: Representative Kay Brown *efw*

DATE: March 22, 1991

SUBJ: CS HB 84 (L&C) — Youth Tobacco Addiction Prevention Act

Please find attached the following materials for reference by the House Judiciary Committee during its consideration of CS HB 84 (L&C), legislation that would place restrictions on the sale of tobacco products to children.

1. Sponsor Statement
2. CS HB 84 (L&C)
3. Sectional Analysis
4. Department Fiscal Notes & Position Statements
 - Commerce and Economic Development
 - Revenue
 - Alaska Court System
5. Position Paper/Department of Health and Social Services
6. Additional Information:
 - "Ten Reasons to Ban Tobacco Vending Machines"
 - "Sullivan wants laws to cut tobacco vending"
 - Smoking Compared to Other Causes of Death (pie chart)
 - "Tobacco: A Gateway Substance to Other Drug Dependencies"
 - Tobacco as a Gateway Drug (bar graph)
 - Teenage Smoking/General Accounting Office (fetal effects)
 - "War on drugs must include battle against tobacco"
 - "Cigarette Vending Machines Sell Cigarettes To Children..."
 - "Study attributes 400,000 deaths to past smoking"
 - "Smoking's Ills: Tobacco is taking a huge financial toll"

If you have any questions concerning this legislation, please let me know or contact Eric Myers of my staff at 465-4998.

attachments

SPONSOR STATEMENT

CS HB 84 (L&C) — Youth Tobacco Addiction Prevention Act

CS HB 84 (L&C)

As part of the effort to curb illegal sales of tobacco products to children, CS HB 84 (L&C) has three basic elements:

- CS HB 84 (L&C) would prohibit the sale of tobacco products through vending machines. It is estimated that about sixty percent of current smokers started by age 14, and 90 percent by age 19. Studies have found that children routinely succeed in purchasing cigarettes through vending machines. By eliminating tobacco product vending machine sales, tobacco product sales to minors would require direct merchant supervision through over-the-counter sales.
- CS HB 84 (L&C) would require the placement of warning signs stating that it is illegal to sell tobacco sales to individuals under age 19.
- CS HB 84 (L&C) streamlines the enforcement process for illegal tobacco product sales to minors in two ways: 1) setting the fine for illegal sales at \$300 and allowing for citations to be issued for an infraction; and 2) amending the standard of liability for a violation, changing it from the current "knowing sale" to minors to a negligence standard.

Discussion

Sixty percent of current smokers started by age 14, 90 percent by age 19. Studies have found that children routinely succeed in purchasing cigarettes through vending machines. By eliminating passive sales of tobacco products through vending machines, tobacco product sales to minors would require direct merchant supervision through over-the-counter sales.

According to a research survey sponsored by the vending machine industry, it is the youngest new smokers (the 13 year olds in the survey population) who rely most heavily on vending machines as a source of tobacco products. As noted in the survey: "Teens who bought from vending machines often or occasionally found this source to be attractive because no one will stop them from buying cigarettes this way."

Sectional Analysis

CS HB 84 (L&C) — Youth Tobacco Addiction Prevention Act

Section 1

Legislative findings.

Section 2

Amends AS 11.76.100 (a) to establish that the offense of making a sale or gift of tobacco is an offense subject to the negligence standard. Removes language referencing the sale of tobacco or tobacco products through vending machines.

Section 3

Amends AS 11.76.100(d) to establish that the sale or gift of tobacco to a minor is a violation punishable by a fine of \$300.

Section 4

Prohibits the sale of cigarettes by vending machines. Requires the court to notify the Department of Commerce and Economic Development of any person convicted under this section who holds a tobacco business license endorsement (AS 43.70.075).

Section 5

Amends AS 43.50.010(a) to remove language referencing the sale of tobacco or tobacco products through vending machines.

Section 6

Amends AS 43.50.010(b) to remove language referencing the sale of tobacco or tobacco products through vending machines.

Section 7

Amends AS 43.50.020 to remove language referencing the sale of tobacco or tobacco products through vending machines.

CORRECTION

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

SPONSOR STATEMENT

CS HB 84 (L&C) — Youth Tobacco Addiction Prevention Act

CS HB 84 (L&C)

As part of the effort to curb illegal sales of tobacco products to children, CS HB 84 (L&C) has three basic elements:

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Discussion

Sixty percent of current smokers started by age 14, 90 percent by age 19. Studies have found that children routinely succeed in purchasing cigarettes through vending machines. By eliminating passive sales of tobacco products through vending machines, tobacco product sales to minors would require direct merchant supervision through over-the-counter sales.

According to a research survey sponsored by the vending machine industry, it is the youngest new smokers (the 13 year olds in the survey population) who rely most heavily on vending machines as a source of tobacco products. As noted in the survey: "Teens who bought from vending machines often or occasionally found this source to be attractive because no one will stop them from buying cigarettes this way."

According to a report by the U.S. Inspector General, each day more than 3,000 minors start smoking — more than one million new teenage smokers each year, approximately *one new teenage smoker every 30 seconds*.

- Tobacco causes more premature death than AIDS, use of heroine, cocaine and alcohol, fire, automobile accidents, homicides and suicides combined — *more Americans die each year from smoking related illness than died in all of World War II.*
- No other cancer-causing drug or addictive product or drug that it is illegal for children to possess is sold through vending machines; cigarettes should not be an exception.
- Secretary of Health and Human Services Louis Sullivan and former Surgeon General Koop have called for a ban on tobacco vending machines.
- Studies have found that young children find it relatively easy to purchase cigarettes through vending machines, even those located in bars.
- More than 430,000 Americans die each year of illness and diseases caused by tobacco — *nearly one person each minute, 49 people every hour, 1,179 people each day.*
- Smoking by pregnant women has been linked to fetal and infant mortality. Low birthweight, often associated with mental retardation and other developmental and health problems, has been conclusively linked to the number of cigarettes smoked during pregnancy. Other effects include premature delivery, retardation in fetal growth, and diminished availability of oxygen to the fetus. These problems may affect a child, often severely, throughout its lifetime.
- The federal Department of Health and Human Services estimates that smoking related illness cost the nation about \$52 billion per year (about \$221 per capita) in health treatment and other costs. *In Alaska, it has been estimated that for one year (1985) direct and indirect mortality and morbidity costs were in excess of \$100 million.*
- Tobacco (nicotine) is highly addictive and recognized as a gateway drug.

While respecting the rights of adults to make informed choices about their personal lives and to bear the consequences, CS HB 84 (L&C) is needed to help prevent uninformed and impressionable children from being manipulated by sophisticated advertising practices leading to tobacco product addiction, illness and death.

Sectional Analysis

CS HB 84 (L&C) — Youth Tobacco Addiction Prevention Act

Section 1

Legislative findings.

Section 2

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Section 5

Amends AS 43.50.010(a) to remove language referencing the sale of tobacco or tobacco products through vending machines.

Section 6

Amends AS 43.50.010(b) to remove language referencing the sale of tobacco or tobacco products through vending machines.

Section 7

Amends AS 43.50.020 to remove language referencing the sale of tobacco or tobacco products through vending machines.

Section 8

Amends AS 43.50.070 to add that violation of the law regarding the criminally negligent sale or gift of tobacco to minors (AS 11.76.100) or the sale of tobacco products through vending machines (AS 11.76.107) are grounds for the suspension or revocation of a tobacco sales license under AS 43.50.010-180.

Section 9

Amends AS 43.50.075(d) to reference that a violation of AS 11.76.107 (the sale of tobacco products through a vending machine) is grounds for suspension of a tobacco license endorsement.

Section 10

Amends AS 43.50.010 to add a new subsection to require the posting of warning signs on the premises where tobacco or tobacco products are sold.

Section 11

Repeals language referencing the sale of tobacco through vending machines.

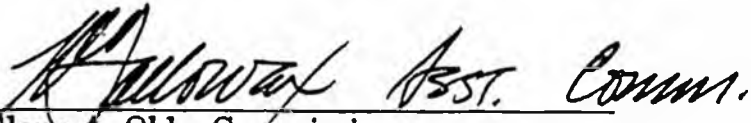
Section 12

Directs the supreme court to include on a schedule of bail amounts the fines resulting from violations of the law regarding tobacco sales or gifts to minors or through vending machines.

CSHB 84 (L&C): "An Act relating to the offense of selling or giving tobacco to a minor; prohibiting sale of tobacco products by vending machine; requiring certain retailers to post a tobacco warning sign; and relating to the suspension or revocation of a license to sell, purchase, possess, or acquire cigarettes."

The bill attempts to reduce the availability of tobacco products by prohibiting the sale of tobacco products by vending machines. The bill also requires the court to notify the business licensing section of the Department of Commerce and Economic Development of any person convicted of violating the prohibition on vending machine sales in order to facilitate suspension of the person's business license tobacco endorsement. The department must also provide a consumer warning sign to be posted by all businesses that are issued the tobacco endorsement on their business license.

CSHB 84 (L&C) will strengthen existing laws concerning the illegal sale of tobacco to minors under the age of 19 by removing the availability of tobacco vending machines and, therefore, the department supports passage of the bill.


Glenn A. Olds, Commissioner

Date: 3-22-91

House Bill No. 84

For an Act entitled: "An Act relating to the sale, exchange, or giving of tobacco and tobacco products."

Summary

This bill amends AS 11.76.100, Selling or giving tobacco to a minor and AS 43.50. Article 1, Cigarette Tax Act, Sections 10 and 20, License and Separate Licenses. The bill repeals Subsection (b) and (c) of AS 11.76.100 and subsection (c) of AS 43.50.030. These subsections refer to the offense committed through the sale of tobacco products to a minor by vending machines and the licensing of vending machine operators to sell tobacco products. Section 107 is added to AS 11.76 prohibiting the sale of tobacco products by vending machines and provides for a fine of not less than \$300.00 for those found in violation. Subsection (d) in AS 11.76.100 is amended to fine persons not less than \$300.00 who are convicted in violation of selling or giving tobacco to a minor. Section 43.50.070(1) is amended to provide for suspension or revocation of license for those found criminally negligent in violation of selling tobacco products to minors or the sale of tobacco products through vending machines.

Subsection (f) is added to AS 43.50.010 and requires persons holding a license to sell tobacco products to post an 11 by 14 inch warning sign that reads "WARNING: Tobacco products are highly addictive. The sale of tobacco products to persons under age 19 is illegal." This sign must also depict a pack of cigarettes defaced by a red diagonal diameter within a surrounding red circle.

Discussion

Only a very small percentage of smokers begin smoking as adults. Efforts at prevention must focus on children. Vending machines are the main source of cigarettes for the youngest children.

Nicotine addiction becomes quickly established in children as evidenced by studies that document the difficulty children have in quitting. Given the prevalence of smoking in the Alaska (33.8%) and the Nation (26.5%), tobacco use is the most widespread form of drug dependency. The sale of tobacco should be considered as seriously as the sale of alcohol and other

addictive drugs.

In addition, tobacco-use represents the most extensively documented cause of disease ever investigated in the history of biomedical research. There are forty-three identified carcinogens present in tobacco smoke and high concentrations of carcinogenic tobacco-specific nitrosamines found in smokeless tobacco.

Maternal smoking is associated with several complications of pregnancy in addition to a 25 to 50 percent high rate of fetal and infant death among women who smoke during pregnancy.

The economic impact of smoking in Alaska, the smoking attributable direct and indirect costs, was 82.3 million in 1985. This includes 2.4 million in pediatric deaths associated with smoking.

Alaska is among the states at highest risk for tobacco use and its devastating health consequences. Alaska has the highest age-adjusted lung cancer death rate in the Nation. Close to 90% of all lung cancer deaths are caused by cigarette smoking and 43.4% of Alaska males over 20 smoke, the highest smoking rate in the country.

Cancer was the second leading cause of death in Alaska in 1986 and 1987, accounting for 21% of all deaths, 30 percent of all cancer deaths and again, 90% of all lung cancer deaths are caused by smoking.

Recent studies by the Centers for Disease Control and the American Cancer Society rank Alaska second in the nation with deaths from oral and pharyngeal cancer and tied for third in our death rate from all cancers. Risk taking behaviors associated with oral and pharyngeal cancer are tobacco use and heavy alcohol consumption.

The elimination of vending machines will make tobacco products less available and reduce children's and adolescent's opportunity to experiment with tobacco products and lessen the likelihood that children will develop a regular pattern of use.

Studies have shown that children and adolescents who start to smoke do not understand the nature of tobacco addiction and are unaware of or underestimate important health consequences of smoking. Children and adolescents decision to smoke is therefore not a fully informed choice.

Studies by states and voluntary health organizations have shown that merchant compliance with tobacco access laws is

low. A recent study reported that 80 percent of the retailers in five states were violating the law and selling to minors.

However, compliance with the law was six times greater in stores where signs were posted compared to stores without signs. The posting of the sign as required by this bill, will increase the difficulty a minor has in obtaining tobacco products through a higher merchant compliance with the law.

The initiatives contained in this bill are becoming more widespread. Legislation restricting the sale of tobacco products through vending machines exists in nine states with Colorado banning the sale of smokeless tobacco products through vending machines.

There are currently 22 cities and/or counties in the U.S. that have a total ban on vending machine sales of tobacco products. In addition, there are 14 states that require the posting of signs relating to prohibiting the sale of tobacco products to minors.

In addition, the 100th Congress introduced legislation, (H.R. 3658), that included the limiting of sales of tobacco products to over-the-counter (prohibiting vending machine sales) and requiring every retail establishment selling tobacco products to post a sign stating "The sale of cigarettes to minors is strictly prohibited".

Given both the highly addictive nature of tobacco use and its adverse health consequences, it is important to protect children and adolescents from using tobacco until they are capable of making a mature and informed decision.

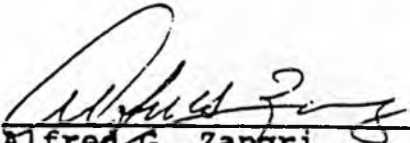
This bill would compliment the laws already in place that are known to reduce the availability of tobacco products to children 1) restricting the sale of tobacco products to minors; 2) banning the use or possession of tobacco by minors; 3) banning vending machines and 4) the posting of signs at the point-of-purchase. Banning the free distribution of tobacco product samples is the fifth policy shown to be effective in preventing initiation of tobacco addiction.

Although addiction is one of the health consequences of the use of tobacco products, the Department recommends strengthening the message on the sign; for example "WARNING: Tobacco products are highly addictive, hazardous to your health and may cause complications during pregnancy. The sale of tobacco products to persons under age 19 is illegal." Stronger language may be substituted such as "a cause of lung disease and cancer".

Recommendation


The Department strongly supports this bill which will help prevent the initiation of smoking among young children and adolescents.

Recommended: _____


Alfred G. Zangri
Acting Director
Division of Public Health

Date: _____

Approved: _____


Theodore Mala, M.D., M.P.H.
Commissioner
Department of Health
and Social Services

Date: _____

2/25/91

10 Reasons to Eliminate Tobacco Vending Machines

1. Cancer-causing, addictive drugs should not be sold as if they were candy or sodapop.
2. No other dangerous, cancer-causing, addictive product or drug that is illegal for children to own is sold through vending machines. Cigarettes should not be the exception.
3. Each day more than 3,000 minors start smoking — approximately one new teenage smoker every 30 seconds — more than one million new teenage smokers each year.
4. According to a survey of high school seniors, the average age for the first use of cigarettes is 13 years. Vending machines are an especially significant source for these youngest of new smokers.
5. Industry sponsored research has documented that teens who illegally buy cigarettes from vending machines find vending machines to be attractive because no one will stop them from buying cigarettes this way.
6. A survey of high school seniors found a strong correlation between those who were cigarette smokers and those who had used harder drugs. Non-smokers were found to be less likely to have used harder drugs.
7. Secretary of Health and Human Services Louis Sullivan and former Surgeon General Koop have called for total ban on cigarette vending machines.
8. The federal Department of Health and Human Services estimates that smoking related illness cost the nation about \$52 billion per year (about \$221 per capita) in health treatment and other costs.
9. In Alaska, it has been estimated that for one year (1985) there were 261 smoking-attributable deaths in Alaskans over age 20 representing 1,363 person-years of potential life lost *direct* costs of \$52.8 million (hospital care, physician services, medication, etc.) and *indirect* morbidity and mortality costs of \$47.7 million — for just one year then, *total costs in excess of \$100 million.*
10. More than twenty local governments in Minnesota have passed total bans on cigarette vending machines.

Sullivan wants laws to cut tobacco vending

WASHINGTON (AP) — The Bush administration on Thursday called on states to help stop children and teen-agers from smoking by banning cigarette vending machines and licensing tobacco retailers.

"We must put an end to the time when any child with a handful of change can commence the slow-motion suicide that is taking the lives of millions of Americans," Health and Human Services Secretary Louis Sullivan told senators.

Sullivan proposed the model federal legislation to guide state lawmakers in creating a licensing system similar to that used for alcoholic beverages and in outlawing cigarette vending machines.

"You can't buy beer from a vending machine," he said in testimony prepared for the Senate Finance Committee, "why should you be able to purchase cigarettes there?"

Also, signs would be required at all points of sale warning that cigarette sales to minors is illegal.

The plan would punish violators with fines and license suspensions.

Forty-four states and the District of Columbia have laws prohibiting the sale of cigarettes to minors. But "these laws are being blatantly ignored," the secretary said.

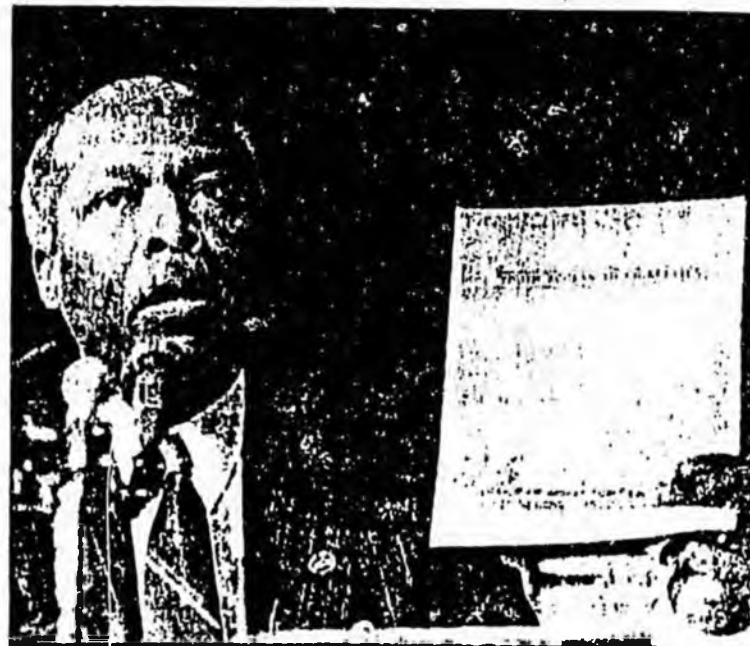
The states that do not have laws are: Kentucky, Louisiana, Missouri, Montana, New Mexico and Wyoming.

Sullivan, who has become the federal government's crusader against smoking, released a report by the Inspector general of the Department of Health and Human Services documenting the widespread lack of enforcement of the state laws.

The few communities that have successfully enforced the laws have done so by licensing tobacco vendors, suspending and revoking licenses, banning or restricting vending machines and using "stings" to identify illegal sales, the report said.

Vending machines account for 16 percent of the cigarettes sold to minors, according to the report.

But the Amusement & Music Operators Association, which represents the vending industry, said only about 9 percent of minors who smoke get their ciga-



ASSOCIATED PRESS

Health and Human Services Secretary Dr. Louis Sullivan holds a report concerning youth access to cigarettes Thursday at a Capitol Hill hearing before the Senate Finance Committee.

rettes from vending machines.

Also, 89 percent of the 375,000 cigarette vending machines are in places where minors are prohibited or are unlikely to frequent.

Sullivan said 90 percent of adult smokers picked up the habit as children or adolescents.

"These young smokers account for almost all of our future problems," he said. "As long as a

significant proportion of teens view smoking as a desirable, adult pleasure, and become addicted before they can make a mature judgment, we will never succeed in eradicating smoking."

Sullivan said it is "more appropriate" to build on the legislation already on the books in 44 states than to have a federal ban on vending machines

Smoking Kills More Americans Each Year Than Alcohol, Cocaine, Crack Heroin, Homicide, Suicide, Car Accidents, Fires, and AIDS combined.

Approximate Number of Deaths:

Smoking.....	390,000 ¹
Alcohol (including drunk driving).....	125,000 ²
Car Accidents (including drunk driving).....	47,000 ³
Fires.....	4,000 ³
AIDS.....	23,000 ⁴
Heroin and Morphine.....	2,400 ⁵
Suicide.....	31,000 ⁵
Homicide.....	21,000 ⁵
Cocaine and Crack.....	3,300 ⁵

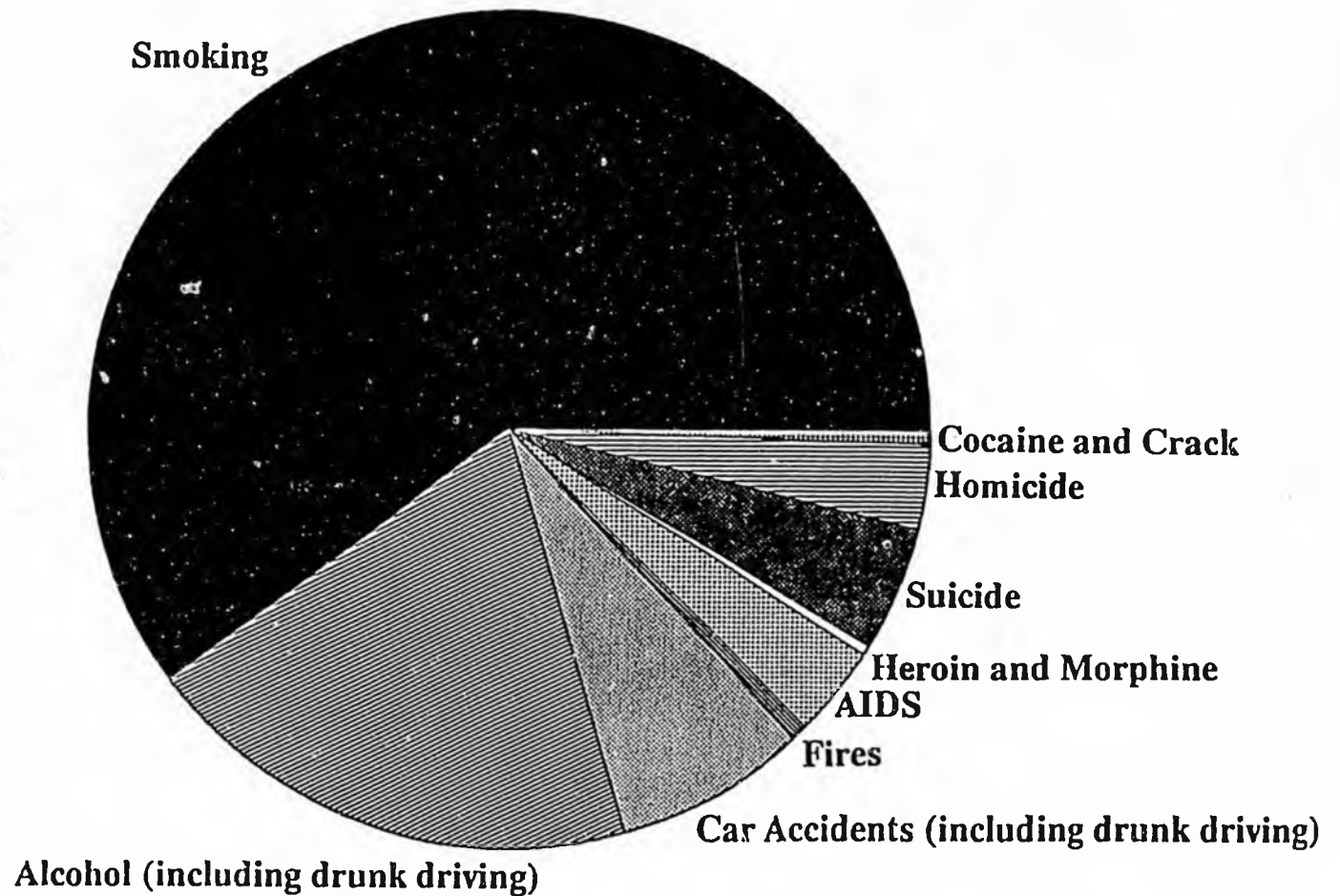
¹1989 Surgeon General's Report, 1985 data

²Surgeon General's Office, 1985 data

³National Safety Council, 1989 data

⁴Center For Disease Control, 1989 data

⁵National Center For Health Statistics, 1987 data



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Tobacco: A Gateway Substance To Other Drug Dependencies

BALTIMORE — Tobacco holds a special status as a "gateway" substance in the development of other drug dependencies, say Jack E. Henningfield, Ph.D., of the National Institute on Drug Abuse Addiction Research Center, and his associates.

The results of studies have shown that the great majority of people who have ever used such illicit drugs as marijuana and cocaine had previously used cigarettes and alcohol. Conversely, people who have never used tobacco are less likely to abuse illicit drugs or alcohol.

The relationship between cigarette

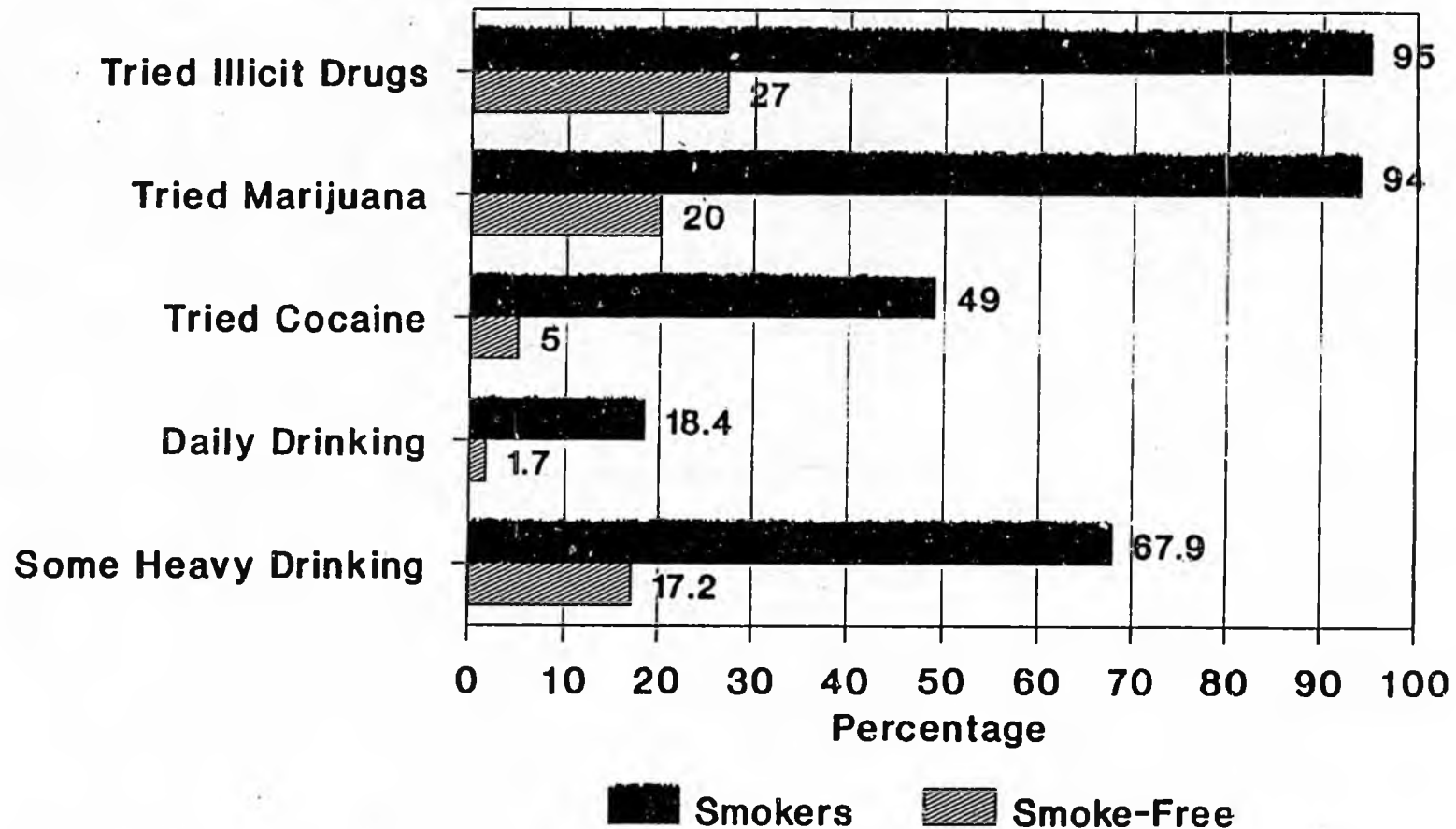
smoking and the extent of use of other psychoactive drugs has been shown to be strongest among individuals who began smoking before age 17, the investigators say (*Br. J. of Addict.* 85: 279-92, 1990).

Investigations of the pattern of nicotine addiction, including the factors associated with beginning, quitting, and returning to drug use, could provide perspectives for the understanding and treatment of other chemical dependencies.

Conducting such investigations would be facilitated by the large number of and ready access to individuals who smoke cigarettes or use smokeless tobacco, Dr. Henningfield and his associates say.

TOBACCO AS A GATEWAY DRUG

Percentage of High School Seniors Who
Have Tried Illicit Drugs and Alcohol
Smokers vs. Smoke-Free



Source: U.S. National Institute on Drug Abuse:
National Trends in Drug Use and Related Factors Among
American High School Students and Young Adults 1975-86

Smokefree Educational Services, New York City

Appendix I
The Extent and Consequences of
Teenage Smoking

Teenagers who are unaware of the addictive nature of cigarettes or who underestimate the strength of a tobacco addiction may tend to experiment with smoking initially but, to their surprise, later become addicted. The 1974 and 1979 Teenage Smoking Surveys by the Department of Health, Education, and Welfare (predecessor of the Department of Health and Human Services) asked teenagers what the possibility was of them being cigarette smokers in 5 years; half of the regular smokers answered "definitely not" or "probably not." Surveys of young adult smokers suggest that, unfortunately, the teenagers' optimistic predictions tend to be wrong.

The linkage in the scientific literature of cigarette smoking to numerous illnesses and premature death has received wide publicity in the past two decades. The 1989 Surgeon General's Report states that about 390,000 deaths in 1985 were attributable to smoking. Smoking is considered to be the major cause of lung cancer—the leading cause of cancer death in men since the 1950s. Numerous other types of cancer are also attributed, at least in part, to cigarette smoking. In addition, smoking is a cause of coronary heart disease, cerebrovascular disease (stroke), chronic obstructive pulmonary disease (the permanent airflow blockage that smokers develop) and many other diseases. Finally, given the fact that cigarette smoking is associated with alcohol use by teenagers, it is significant that recent research suggests that cigarette smoking combined with the ingestion of alcohol may further increase the risk of cancer.

Smokers Harm
Nonsmokers' Health and
Economic Well-Being

Most of the severe health risks generated by smoking affect teenagers directly, but are usually manifested only in adulthood. Some of the health risks caused by teenagers smoking are borne, though, by nonsmokers. In particular, when teenagers who are parents smoke, they put their infants at greater risk. The prevalence of teenage pregnancy and teenagers as parents makes this a widespread problem.

Smoking by the mother during pregnancy has been linked to fetal and infant mortality. Low birthweight, often associated with mental retardation and other developmental and health problems, has been conclusively linked to the number of cigarettes smoked during pregnancy. Premature delivery, retardation in fetal growth, and diminished availability of oxygen to the fetus are also effects of smoking during pregnancy. The consequences of these problems may affect the child, often severely, throughout its lifetime. In addition, after a child is born, smoking by family members is likely to be harmful to the child. For example,

FORUM

War on drugs must include battle against tobacco

By REP. KAY BROWN

Any meaningful discussion about the threat of drugs should start with the one drug that is clearly the most serious threat to our youth — tobacco.

While a great deal of media and popular press attention is focused on the so-called "hard" drugs like cocaine and crack, tobacco is clearly and without serious question the most substantial drug threat when measured objectively:

- 390,000 Americans die each year of diseases caused by cigarettes — approximately one person each minute, 44 people every hour, 1,068 each day.

- Tobacco causes more premature death than AIDS, use of heroin, cocaine and alcohol, fire, automobile accidents, homicides and suicides combined — more Americans die each year from smoking-related illness than died in all of World War II.

- Smoking by pregnant women has been linked to

fetal and infant mortality. Low birth weight (associated with mental retardation and other developmental and health problems) has been conclusively linked to the number of cigarettes smoked during pregnancy.

While respecting the rights of informed adults to make choices about their personal lives, we must also work to prevent young children from falling victim to tobacco addiction, illness and death.

Tobacco Products and Minors

Tobacco (nicotine) is highly addictive. In fact, studies document that the success rate for quitting smoking is lower than the success rate of programs to stop using heroin. Phillip Morris is far more of a threat to children in this country than Manuel Noriega ever was, even on his best day.

Hooking kids on tobacco is big business. Sixty percent of current smokers started by age 14; 90 percent



Rep. Kay Brown

by age 19. The tobacco industry makes \$250 million a year from the direct sales of cigarettes to children.

We must increase efforts to prevent youth from being seduced by subtle and sophisticated advertising campaigns.

Young, impressionable

adolescents are precisely the market segment most easily influenced by advertising. Each child who becomes addicted to cigarettes as a minor is, in effect, an "investment" for the tobacco industry that will pay dividends (tobacco purchases) into the future.

While strongly supporting the right of adults to make informed choices on their own, we must prevent profiteering premised on the addiction of children to substances that will injure and kill them. An estimated 1 billion packs of cigarettes are sold to children in this country each year, and trials observing minors attempting to purchase cigarettes have found that minors are able to illegally purchase tobacco products more than 70 percent of the time.

Tougher Laws Needed to Protect Children
Last session the state legislature took steps to curtail the illegal sales of tobacco to children. HB 141 established a requirement that busi-

nesses selling tobacco products obtain a specific "license endorsement." The state Department of Commerce and Economic Development can suspend the license endorsement for illegal sales to minors.

We hear a lot about the "war on drugs." Yet, there are roughly 170 tobacco-related deaths for every one attributed to cocaine. Tobacco-related illness and death costs the nation about \$52 billion annually.

Still, in the face of incontrovertible evidence that tobacco is the most deadly of all drugs, our society has a generally passive attitude toward the enforcement of tobacco laws. It is grossly inconsistent to largely ignore illegal tobacco sales that result in the addiction, disability and eventual death of children while trying to maintain support for the "war on drugs."

And it sends the wrong message to children. The failure to aggressively en-

force tobacco laws undermines the credibility of all efforts to combat drug abuse.

While the tobacco industry recently pledged to do a better job educating children about the dangers of tobacco products, it is clearly not enough. The tobacco industry's very economic existence is based on recruiting future smokers. The industry cannot be trusted with the task of self-regulation.

Stronger prevention and law enforcement efforts are needed. Prevention and enforcement efforts to curb illegal tobacco sales to minors not only will help reduce the nation's leading cause of preventable death, it will also, perhaps most importantly, send a consistent message to minors about the "war on drugs" and the dangers of drug abuse.

□ Rep. Kay Brown is a state legislator representing downtown Anchorage.



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CIGARETTE VENDING MACHINES SELL CIGARETTES TO CHILDREN, 11-15 YEARS OLD, 100% OF THE TIME

Six children, ages 11-15, were able to buy cigarettes from 35 of 35 cigarette vending machines tested in Manhattan, Brooklyn, Queens, Staten Island, and the Bronx.

Over 25% of these vending machines were located in bars. Eleven and twelve year olds had no more difficulty buying cigarettes from vending machines in bars than they had buying cigarettes from vending machines in restaurants, pizza parlors, or video arcades. In all instances, the barman and/or patrons watched but did not intervene.

The 35 cigarette vending machines were located in the following establishments:

Restaurants	11	Hotel	1
Bars	8	Video Arcade	1
Pizza Parlors	5	Ice Cream Parlor	1
Supermarkets	4	Other	2
Bowling Alleys	2	Total	35

In one case, a restaurant employee ran after an 11 year old to tell him that he forgot his change. In another case, a gas station attendant told an 11 year old that they did not have a cigarette vending machine, but would have one next week. In almost all cases, adults watched but did not care.

No other dangerous product or drug, addictive product or drug, or cancer-causing product or drug is sold through vending machines. No other product or drug which is illegal to sell to children is sold through vending machines. Dangerous, addictive, cancer-causing drugs should not be sold like candy and soda pop. Cigarettes should not be sold in vending machines.

Study attributes 400,000 deaths to past smoking

By ROBERT BYRD
The Associated Press

ATLANTA — More Americans are quitting smoking, and more are dying — now more than 400,000 a year — as the habits of the 1950s and '60s take an increasing toll, federal health officials said Thursday.

The national Centers for Disease Control reported that 434,175 Americans died from smoking in 1988, up 11 percent from the 390,000 deaths attributed to smoking in a 1985 study.

Those numbers reflect a steady, deadly trend, CDC researchers said. Back in 1965, the calculated toll from smoking deaths was 188,000.

"The problem is, we are now paying for what happened 20, 30 years ago, when large numbers of people smoked in large amounts," said Dr. William Roper, director of the Atlanta-based CDC.

"Even though the percentage of Americans now smoking is lower than in the past, the burden of the past practice is coming clear."

That burden includes more than 100,000 annual deaths from lung cancer, the leading cause of smoking-related deaths, Roper noted. The CDC reported 111,985 smoking-related lung cancer deaths for 1988, up from 106,000 in 1985 and 38,100 in 1965.

"It takes 10, 20 years for the cancer caused by smoking to result," he said.

Smoking also resulted in 48,896 other cancer deaths,

such as mouth cancers and pancreatic cancer, in 1988; 201,002 deaths from cardiovascular diseases such as heart disease and arterial disease; and 82,857 deaths from respiratory diseases such as bronchitis and emphysema, among other causes.

The CDC also said 3,825 Americans' died from lung cancer caused by others' smoking, or passive smoke. But the CDC's statistical formulas do not yet include passive smoking deaths from heart diseases, which a recent study estimated at 37,000 a year.

Roper said health officials hope the increasing death toll from smoking will turn around, given recent trends toward stopping smoking.

CDC researchers estimate that about 29 percent of Americans smoke, down from 30 percent in 1985 and 40 percent in 1964, the year of the landmark surgeon general's warning against smoking.

"We've seen a reduction in smoking percentages for several years now, and I hope that by the year 2000 ... we're going to begin to see a decline in actual numbers of smoking-attributable illnesses and deaths," Roper said.

"But that's heavily dependent on behavior patterns right now, and we're anxious to get the message especially to young people, young women, who tend to be the largest percentage smokers."

Anchorage Daily News

Gerald E. Grilly
Publisher



Howard Weaver
Managing Editor

Michael Carey, Editorial Page Editor

Katherine Fenning, Editor and Publisher 1971 to 1983

Lawrence Fenning, Editor and Publisher 1967 to 1971

Founded in 1946 by Norman C. Brown

Smoking's ills

Tobacco is taking a huge financial toll

There's more to the cost of smoking than the price of a pack of cigarettes. A new government study reports that while less than one-third of the American population is still smoking, smokers cost the nation more than \$52 billion a year.



Predictably, most of the costs are for health care. The cancers and respiratory ills linked to smoking are among the costliest diseases known. On top of the price tag documented in the Department of Health and Human Services study, treating smoking's victims also has a more subtle effect: It monopolizes health-care professionals' time and equipment.

One of the worst aspects of the cost of smoking is that non-smokers bear such a huge part of it. Smokers' illnesses boost health-care costs and insurance for everybody, smoker and non-smoker. And illnesses resulting from second-hand smoke have been well-documented.

The Health and Human Services study noted that the \$52 billion averages out to \$221 per capita, every dime of which, when borne by a non-smoker, is unfair and unjustified. Ideally, the new study — added to the weight of dozens of others on the societal damage of tobacco — will help forge a change in cigarette advertising. Regretably, it probably won't. Cigarette manufacturers, in fact, have initiated a series of new ad campaigns, which try to lure specific groups — women, minorities and young people — into the smoking fold.

Anti-smoking efforts have picked up in recent years. And the new study demonstrates that these campaigns are justified. The cost of smoking has reached intolerable levels and must be curbed.

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

Tobacco Quiz

True or False

1. More Americans die each year from smoking related causes than died in all of World War II.

True False

2. The use of cigarettes in America causes more premature death than AIDS, use of heroine, cocaine, fire, automobile accidents, homicides and suicides combined.

True False

3. Low birth weight, often associated with mental retardation and other developmental and health problems has been conclusively linked to the number of cigarettes smoked during pregnancy.

True False

4. The success rate of efforts to quit smoking is lower than the success rate of efforts to stop using heroine.

True False

Multiple Choice

5. Passive smoke (ie, environmental tobacco smoke from others smoking) is responsible for how many deaths each year?

- a) 5,000
- b) 12,000
- c) 22,000
- d) 53,000

6. How many chemicals in tobacco smoke have been confirmed as carcinogenic?

- a) 1
- b) 12
- c) 43
- d) none

7. Trials observing minors attempting to purchase cigarettes have found that minor succeed what percent of the time?

- a) 10%
- b) 25%
- c) 50%
- d) 70%

8. Smoking related illness costs the nation how much each year?

- a) \$25 million
- b) \$100 million
- c) \$10 billion
- d) \$52 billion

9. What is the rate of tobacco related deaths in America?

- a) 1 per hour
- b) 10 per hour
- c) 20 per hour
- d) 49 per hour

Answers: 1. True 2. True 3. True 4. True 5. 53,000 6. 43 chemicals 7. 70% 8. \$52 billion 9. 49 per hour

The Tobacco Institute

1875 I Street, Northwest
Washington, DC 20006
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FOR RELEASE:
December 11, 1990
9:00 a.m.

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202/457-9387

**MAJOR NEW INITIATIVES TO DISCOURAGE
YOUTH SMOKING ANNOUNCED**

Efforts focus on access, marketing and education

WASHINGTON, D.C. -- A broad-based series of new initiatives to discourage youth smoking and address recent concerns about cigarette marketing were announced today by The Tobacco Institute. The five new initiatives that expand and reaffirm the industry's longstanding commitment and positive actions against youth smoking are:

- o A national program to help retailers observe and enforce state laws prohibiting tobacco sales to youth. The store signage and education campaign's theme is "It's the Law."
- o Industry support for passage of new state laws setting a minimum age of 18 for cigarette sales in those states without a minimum age law or one lower than 18.
- o Industry support for new state laws requiring supervision of cigarette vending machines located in places frequented by minors.
- o Sharp new limitations on the distribution of product samples and premiums, requirements that billboard advertisements for cigarettes be located away from areas near schools and playgrounds, and other strong new industry guidelines that supplement current industry codes.
- o Direct assistance to parents to help them assist their children in resisting peer pressure to smoke with new, tobacco-specific educational materials to be promoted through a multi-million dollar advertising campaign.

NEWS RELEASE

"Reducing youth smoking cannot be accomplished by a single action. That's why the tobacco industry is tackling this problem on many fronts," said Brennan Dawson, Vice President of The Tobacco Institute. "Since it is widely recognized that young people smoke primarily because of peer pressure, we are addressing this directly with a major program to assist parents in reducing that peer pressure. At the same time, we are setting into motion measures to help curb youth access to cigarettes through aggressive work with the retail community and by supporting new state laws," she added.

"We also were determined to address substantively concerns about cigarette marketing. And so we reviewed our practices to find what more we could do. While the controversy will surely remain and some will continue to seek censorship, we are taking further steps to address concerns," Dawson said.