

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 00/4

8924 SENATE JUDICIARY

1 confidentiality, or for which the judicial council promises confidentiality, shall be  
2 kept confidential, but the judicial council shall provide the applicant for  
3 administrative law judge or administrative law judges seeking reappointment a  
4 summary of the concerns raised in the comments, references and survey responses  
5 that are kept confidential;

6 (2) the judicial council has authority to review confidential Alaska  
7 Bar Association files, including bar complaint files, on applicants for  
8 administrative law judge and on administrative law judges seeking reappointment  
9 whose applications or reappointment evaluations are under review; the judicial  
10 council shall maintain the confidentiality of these files; and

11 (3) the judicial council shall send to the governor with its nominees  
12 or reappointment recommendations all nonconfidential materials that it gathers on  
13 applicants for administrative law judge and administrative law judges seeking  
14 reappointment whose applications or reappointment evaluations are under review,  
15 and shall provide the governor with summaries of concerns raised in the  
16 comments, references, and survey responses that are kept confidential."

17 Page 3, line 20:

18 Delete "board"

19 Insert "chief administrative law judge"

20 Page 7, line 16:

21 Delete "by the full board"

22 Page 7, line 29:

- 1 Delete "board"
- 2 Insert "administrative law judge"
- 3 Page 7, line 31:
- 4 Delete "board"
- 5 Insert "administrative law judge"
- 6 Page 8, line 5:
- 7 Delete "board"
- 8 Insert "administrative law judge"
- 9 Page 8, line 7:
- 10 Delete "board"
- 11 Insert "administrative law judge"
- 12 Page 8, line 8:
- 13 Delete "board"
- 14 Insert "administrative law judge"
- 15 Page 8, line 15:
- 16 Delete "board"
- 17 Insert "administrative law judge"
- 18 Page 10, lines 4 and 5
- 19 Delete all material
- 20 Renumber the following paragraphs accordingly.

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 341(FIN)

1 Page 19, lines 6 - 22:

2 Delete all material and insert:

3 \*\* Sec. 17. TRANSITIONAL PROVISIONS. (a) The remedies and procedures provided  
4 by this Act apply to all revenue tax appeals in which, under AS 43.05.240(b), a person has  
5 applied to the Department of Revenue and requested a formal hearing before the effective  
6 date of this Act. However, a person who has applied to the Department of Revenue and  
7 requested a formal hearing before the effective date of this Act may elect by giving written  
8 notice to the commissioner within 45 days from the enactment of this Act to use the remedies  
9 and procedures existing immediately before the enactment of this Act '

10 Reletter the following subsections accordingly.

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CSHB 314( ), "W" version, dated 4/13/96

- 1 Page 19, line 6:
- 2 Delete "[11.56.740]"
- 3 Insert "11.56.740"

AMENDMENT

OFFERED IN THE SENATE

TO: CSHB 341(FIN)

1 Page 19, line 6, through page 20, line 11:

2 Delete all material and insert:

3 "\*\* Sec. 17. TRANSITIONAL PROVISIONS. The remedies and procedures provided by  
4 this Act apply to all revenue tax appeals in which, under AS 43.05.240(b), a person has  
5 applied to the Department of Revenue and requested a formal hearing before the effective  
6 date of this Act. However, a person who has applied to the Department of Revenue and  
7 requested a formal hearing before the effective date of this Act may elect within 45 days  
8 from the enactment of this Act to use the remedies and procedures existing immediately  
9 before the enactment of this Act."

# FISCAL NOTE

No. 4

**STATE OF ALASKA**  
**1996 LEGISLATIVE SESSION**

Bill Version: CSHB 341(JUD)

(H) Publish Date: 3/12/96

Revision Date: \_\_\_\_\_ Dept. Affected: Administration  
 Title: "An Act relating to consideration and determination  
by the Superior Court of..." BRU: Tax Appeals \*  
 Sponsor: Rep. Green Component: Tax Appeals \*  
 Requestor: House Resources COMPONENT SERIAL NO. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

| OPERATING EXPENDITUR   | FY 97        | FY 98        | FY 99        | FY 00        | FY 01        | FY 02        |
|------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| PERSONAL SERVICES      | 225.6        | 225.6        | 225.6        | 225.6        | 225.6        | 225.6        |
| TRAVEL                 | 8.8          | 8.8          | 8.8          | 8.8          | 8.8          | 8.8          |
| CONTRACTUAL            | 43.0         | 43.0         | 43.0         | 43.0         | 43.0         | 43.0         |
| SUPPLIES               | 4.5          | 4.5          | 4.5          | 4.5          | 4.5          | 4.5          |
| EQUIPMENT              | 55.5         | 2.5          | 2.5          | 2.5          | 35.0         | 2.5          |
| LAND & STRUCTURES      | 0.0          | 0.0          | 0.0          | 0.0          | 0.0          | 0.0          |
| GRANTS, CLAIMS         | 0.0          | 0.0          | 0.0          | 0.0          | 0.0          | 0.0          |
| MISCELLANEOUS          | 0.0          | 0.0          | 0.0          | 0.0          | 0.0          | 0.0          |
| <b>TOTAL OPERATING</b> | <b>337.4</b> | <b>284.4</b> | <b>284.4</b> | <b>284.4</b> | <b>316.9</b> | <b>284.4</b> |

|                      |     |     |     |     |     |     |
|----------------------|-----|-----|-----|-----|-----|-----|
| CAPITAL EXPENDITURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|----------------------|-----|-----|-----|-----|-----|-----|

|                        |     |     |     |     |     |     |
|------------------------|-----|-----|-----|-----|-----|-----|
| CHANGE IN REVENUES ( ) | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|------------------------|-----|-----|-----|-----|-----|-----|

**FUND SOURCE** (Thousands of Dollars)

|                          |              |              |              |              |              |              |
|--------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| 1002 Federal Receipts    |              |              |              |              |              |              |
| 1003 GF Match            |              |              |              |              |              |              |
| 1004 GF                  | 337.4        | 284.4        | 284.4        | 284.4        | 316.9        | 284.4        |
| 1005 GF/Program Receipts |              |              |              |              |              |              |
| 1037 GF/Mental Health    |              |              |              |              |              |              |
| Other                    |              |              |              |              |              |              |
| <b>Total</b>             | <b>337.4</b> | <b>284.4</b> | <b>284.4</b> | <b>284.4</b> | <b>316.9</b> | <b>284.4</b> |

Estimate of current year (FY 96) cost: \$ 0.0 \_\_\_\_\_

**POSITIONS:**

|           |   |   |   |   |   |   |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 3 | 3 | 3 | 3 | 3 | 3 |
| PART-TIME |   |   |   |   |   |   |
| TEMPORARY |   |   |   |   |   |   |

**ANALYSIS:** (Attach a separate page if necessary)

\* New BRU and Component in the Department of Administration

(See Attached)

Prepared by [Signature] Director  
 Division: Administrative Services

Phone: 465-5655  
 Date: \_\_\_\_\_

Approved by Commissioner Mark Boyer [Signature]  
 Agency: Department of Administration

Date: 3/12/96

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FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. CSHB 341 (RES)

**ANALYSIS: (continued)**

This bill creates an Office of Tax Appeals as a quasi-judicial board to be housed in the Department of Administration.

**Personal Services** - The Office of Tax Appeals will include two Administrative Law Judges (equivalent to a Limited Entry Commissioner, range 26, annual cost \$96.4) who will hear all appeals involving tax matters from the Department of Revenue, including severance tax, corporate income tax, and all fisheries taxes. The ALJs will require the support of a full-time Administrative Clerk II range 8, annual cost \$32.8, for a total cost of \$225.6.

**Travel** - Cost based upon an estimated seven trips (air fare \$400) with 3 days (\$120 per day) of per diem for each trip for routine hearings and an additional \$3.5 to cover two or three major hearings (lasting in excess of 3 to 5 days) at the same rate.

**Contractual** - Additional funding is needed to provide office space, communications (telephone/computer), legal support, other professional services, subscriptions, courier service and printing that will result from creating a new office, and devoting it entirely to tax appeals. The recurring incremental costs for these items is \$43.3.

**Supplies** - \$4.5 is needed for general office supplies and data processing supplies.

**Equipment** - In setting up the new office, equipment needs include three computers, printer copier, FAX and office furniture. Estimated start-up costs are \$55.5. Recurring funding \$2.5 is needed for maintenance or replacement parts. We have also estimated \$35.0 in 2001 for equipment replacement or upgrade.

# FISCAL NOTE

No 3

E. Version: CSHB 341 (JUD)

(H) Publish Date: 3/12/96

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

Revision Date: 01/26/96 Dept. Affected: Alaska Court System  
 Title: An Act establishing a tax court... BRU: Trial Courts  
 Component: \_\_\_\_\_  
 Sponsor: Rep. Green  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97        | FY 98        | FY 99        | FY 00        | FY 01        | FY 02        |
|------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| PERSONAL SERVICES      | 134.7        | 134.7        | 134.7        | 134.7        | 134.7        | 134.7        |
| TRAVEL                 |              |              |              |              |              |              |
| CONTRACTUAL            | 2.5          | 2.5          | 2.5          | 2.5          | 2.5          | 2.5          |
| SUPPLIES               | 2.0          | 2.0          | 2.0          | 2.0          | 2.0          | 2.0          |
| EQUIPMENT              | 9.8          |              |              |              |              |              |
| LAND & STRUCTURES      |              |              |              |              |              |              |
| GRANTS & CLAIMS        |              |              |              |              |              |              |
| MISCELLANEOUS          |              |              |              |              |              |              |
| <b>TOTAL OPERATING</b> | <b>149.0</b> | <b>139.2</b> | <b>139.2</b> | <b>139.2</b> | <b>139.2</b> | <b>139.2</b> |

|                      |  |  |  |  |  |  |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES |  |  |  |  |  |  |
|----------------------|--|--|--|--|--|--|

|                        |  |  |  |  |  |  |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES ( ) |  |  |  |  |  |  |
|------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

|                          |              |              |              |              |              |              |
|--------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| 1002 Federal Receipts    |              |              |              |              |              |              |
| 1003 GF Match            |              |              |              |              |              |              |
| 1004 GF                  | 149.0        | 139.2        | 139.2        | 139.2        | 139.2        | 139.2        |
| 1005 GF/Program Receipts |              |              |              |              |              |              |
| 1037 GF/Mental Health    |              |              |              |              |              |              |
| Other                    |              |              |              |              |              |              |
| <b>TOTAL</b>             | <b>149.0</b> | <b>139.2</b> | <b>139.2</b> | <b>139.2</b> | <b>139.2</b> | <b>139.2</b> |

Estimate of any current year (FY 96) cost: \$ None

POSITIONS

|           |     |     |     |     |     |     |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 |
| PART-TIME | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 |
| TEMPORARY |     |     |     |     |     |     |

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: C. S. Christensen III, Staff Counsel  
 Agency: Alaska Court System  
 Approved by: Arthur H. Snowden, II, Administrative Director  
 Agency: Alaska Court System

Phone: 254-8228  
 Date: 01/26/96  
 Date: 01/26/96

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Alaska Court System  
Fiscal Analysis  
CSHB 341 (RES)

At the present time, the superior court has jurisdiction over all tax cases appealed from the Department of Revenue's administrative hearing process. Such appeals are held on the record unless the court, in its discretion, hears a particular appeal de novo.

CSHB 341 (RES) amends the jurisdiction of the superior court with respect to certain types of tax cases. In cases relating to fixing the amount of, or imposing a penalty on, a tax levied and collected by the state under AS 43.19 and AS 43.20, former AS 43.21, AS 43.55, AS 43.65, and AS 43.75, the superior court would have the following appellate jurisdiction:

1. Final orders of the Department of Revenue in matters relating to fixing the amount of, or imposing a penalty on, a tax levied and collected by the state when appeal is taken under AS 43.05.242(c)(1) shall be heard as a trial de novo as a matter of right.
2. Final orders of the Department of Revenue in matters relating to fixing the amount of, or imposing a penalty on, a tax levied and collected by the state when appeal is taken under AS 43.05.242(c)(2) shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

Testimony indicates that many taxpayers would prefer to go directly to court rather than utilize the Department of Revenue's formal procedure followed by an on-the-record appeal. By granting taxpayers the right to a trial de novo after an informal hearing by the Department of Revenue, CSHB 341 (RES) will significantly increase the number of tax cases heard by the superior court, and will increase the length of time required for disposition of individual cases.

According to the Department of Revenue, there are approximately 24 tax cases per year to which CSHB 341 (RES) would apply: 20 in the Income and Excise Audit Division, and 4 in the Oil and Tax Audit Division. These cases vary in size and complexity, with the largest cases requiring a substantial commitment of judicial and clerical time.

As drafted, CSHB 341 (RES) arguably grants the right of jury trial. This note does not reflect jury costs, on the assumption that the bill will be amended to clarify that the de novo trial is before a judge, not a jury.

Alaska Court System  
Fiscal Analysis  
CSHB 341 (RES)

Personal Services

| <u>Position</u>   | <u>Salary</u>           | <u>Benefits</u> | <u>Total</u> |
|---|-------------------------|-----------------|--------------|
| Pro Tem Superior Court Judge, Anchorage, PPT, 6 months 50% vested | \$24,150                | \$14,890        | \$39,040     |
| Records Clerk, 10A, Anchorage, PFT, 12 months                     | 24,012                  | 9,762           | 33,774       |
| In Court Clerk, 12A, Anchorage, PPT, 6 months                     | 13,554                  | 5,181           | 18,735       |
| Law Clerk, 13D, Anchorage, PFT, 12 months                         | 31,824                  | 11,278          | 43,102       |
|   |                         |                 | <hr/>        |
|   | Total Personal Services |                 | 134,651      |

Contractual

Postage, telephone, annual updates to legal reference materials, copier rental, etc. 2,500

Supplies

Office, courtroom and computer supplies. 2,000

Equipment (one time item)

Office furniture, computer or data terminal, software, dictation equipment, statutes, rules of court, facsimile machine, etc. 9,800

Total Estimated Cost \$148,951

Revision Date: January 17, 1996 Dept. Affected: Revenue  
 Title: Alaska Tax Court BRU: Revenue Operations  
 Component: Oil and Gas Audit  
 Sponsor: Representative Green  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 115

Expenditures/Revenues: (Thousands of Dollars)

| OPERATING EXPENDITURES        | FY 97      | FY 98      | FY 99      | FY 00      | FY 01      | FY 02      |
|-------------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES             |            |            |            |            |            |            |
| TRAVEL                        |            |            |            |            |            |            |
| CONTRACTUAL                   |            |            |            |            |            |            |
| SUPPLIES                      |            |            |            |            |            |            |
| EQUIPMENT                     |            |            |            |            |            |            |
| LAND & STRUCTURES             |            |            |            |            |            |            |
| GRANTS, CLAIMS                |            |            |            |            |            |            |
| MISCELLANEOUS                 |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b>        | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |
| <b>CAPITAL EXPENDITURES</b>   |            |            |            |            |            |            |
| <b>CHANGE IN REVENUES ( )</b> |            |            |            |            |            |            |

FUND SOURCE (Thousands of Dollars)

|                          |            |            |            |            |            |            |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts    |            |            |            |            |            |            |
| 1003 GF Match            |            |            |            |            |            |            |
| 1004 GF                  |            |            |            |            |            |            |
| 1005 GF/Program Receipts |            |            |            |            |            |            |
| 1037 GF/Mental Health    |            |            |            |            |            |            |
| Other                    |            |            |            |            |            |            |
| <b>TOTAL</b>             | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY96) cost \$ \_\_\_\_\_

POSITIONS

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| FULL-TIME |  |  |  |  |  |  |
| PART-TIME |  |  |  |  |  |  |
| TEMPORARY |  |  |  |  |  |  |

ANALYSIS: (Attach a separate page if necessary)

(See Attached Analysis)

Prepared by: John E. Pappas, Director Phone: (907) 276-1363 Ext 225  
 Division: Oil and Gas Audit Date: January 23, 1996  
 Approved by Commissioner: [Signature] Date: January 23, 1996  
 Agency: Department of Revenue

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As drafted, CSHB 341 will at a minimum add to our audit workload and delay current audits by reforming the "informal" proceedings within the department. It is also possible that it could eventually add an additional layer to the appeals process by altering the likelihood of trial de novo in an appeal from formal hearing, thereby increasing future costs of case resolution. The reason for both results is that CSHB 341 changes the primary purpose of the reviewing court from an appellate function to a trial function.

The change in the Court's fundamental purpose, and the fact that under AS 43.05.242(b) informal hearings now become automatic in all cases, will change the nature of the informal proceeding. Today, informal proceedings serve as a second review of the audit results and provide an informal process within which the taxpayer can attempt to resolve the matter. Although taxpayers can now bypass informal conference and go directly to formal hearing, most of the Division's past cases have been resolved at the informal level. Under existing law, an informal conference is followed by a formal administrative proceeding where the bulk of the department's work in putting our official litigation position together now takes place. Under CSHB 341, uncertainty regarding whether the taxpayer will go to formal hearing or to a civil trial de novo, will require much more "formal" and detailed preparation at the informal level. This will involve considerable time and effort from the audit and appeals staff that would normally be spent on current audits and informal resolution. Additionally, the current informal/formal procedure allows the department the opportunity to develop issues and determine which should be resolved and which litigated. Automatic appeal to civil court will allow taxpayer decisions to drive the department's litigation costs.

The change in the reviewing court's primary function could also alter the likelihood of trial de novo being granted on appeal from any cases which do go to formal hearing. Under CSHB 341, the Superior Court's review will no longer be primarily an "appellate review". Instead, the Court's primary function in these cases will be to sit as a specialized trial court for tax matters. Different rules of procedure and evidence will apply in a tax civil trials and sophisticated oil and gas taxpayers will likely have little trouble presenting "new" issues and "new" evidentiary questions to encourage the Court to exercise its independent judgment rather than defer to a Department hearing officer's decision which is portrayed as biased. Over time, the court will develop specialized tax expertise. Since these large, complex cases are almost unanimously appealed, a Judge is likely to prefer that the case go up on a record which he/she had some control in creating. Formal hearings might easily become little more than discovery and negotiation tools, with an almost automatic right to trial de novo.

**HB**

**365**

# FISCAL NOTE

STATE OF ALASKA

BILL NO: HB 365

**1996 LEGISLATIVE SESSION**

Revision Date: January 9, 1996 Dept. Affected: Public Safety  
 Title: Revisions to Minor in Possession of Tobacco Statute BRU: Alaska State Troopers  
 Sponsor: Representative Bunde Component: Detachments  
 Requestor: H. State Affairs COMPONENT SERIAL NO. \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)**

| OPERATING                                     | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|---|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES                             |       |       |       |       |       |       |
| TRAVEL  |       |       |       |       |       |       |
| CONTRACTUAL                                   |       |       |       |       |       |       |
| SUPPLIES                                      |       |       |       |       |       |       |
| EQUIPMENT                                     |       |       |       |       |       |       |
| LAND & STRUCTURES                             |       |       |       |       |       |       |
| GRANTS, CLAIMS                                |       |       |       |       |       |       |
| MISCELLANEOUS                                 |       |       |       |       |       |       |
| <b>TOTAL OPERATING</b>                        | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |
| <b>CAPITAL</b>                                | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |
| <b>CHANGE IN REVENUES ( )</b><br>Revenue Code | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |

**FUNDING: (Thousands of Dollars)**

|                       |     |     |     |     |     |     |
|-----------------------|-----|-----|-----|-----|-----|-----|
| 1002 Federal Receipts |     |     |     |     |     |     |
| 1003 GF Match         |     |     |     |     |     |     |
| 1004 GF               |     |     |     |     |     |     |
| 1005 GF/Program       |     |     |     |     |     |     |
| 1006 GF/MHTIA         |     |     |     |     |     |     |
| Other                 |     |     |     |     |     |     |
| <b>TOTAL</b>          | -0- | -0- | -0- | -0- | -0- | -0- |

Estimate of current year (FY 95) impact: \$ \_\_\_\_\_

**POSITIONS:**

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

**ANALYSIS: (Attach a separate page if necessary.)**

This bill does not have a fiscal impact on the Division of Alaska State Troopers.

Prepared By: Lt. Dan Lowden Phone: 465-5505  
 Division: Alaska State Troopers Date: January 9, 1996  
 Approved by Commissioner: *Del Smith* Date: 2/24/96  
 Agency: Ronald L. Otte, Department of Public Safety

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FISCAL NOTE

RECEIVED  
MAY - 2 1996

Ans'd.....

May 1, 1996

Dear Senator Taylor,

The passage of HB 365 from  
your committee and into law  
is important for all of Alabama.

I'm proud that our Juvenile  
community has led the way  
in stopping tobacco sales to  
youth by using students to  
identify which businesses are  
selling to minors. We've gone  
from less than 50% compliance  
to almost 100%. Passing this  
bill allowing more aggressive  
procedures for stopping sale  
of tobacco to minors will help  
spread our local success throughout  
the state. This along with the  
tobacco tax will keep my kids  
and theirs from the smoking habit.

Thank you,  
Jefferson R. ...



Rick Mystrom,  
Mayor

# Municipality of Anchorage

Department of Health and Human Services

825 "L" Street

P.O. Box 196650 Anchorage, Alaska 99519-6650



Date: May 1, 1996

To: Senate Judiciary Committee  
Chair : Robin Taylor  
V-Chair: Lyda Green  
Mike Miller  
Johnny Ellis  
Al Adams

Subject: HB365

After speaking with an aide for the Judiciary Committee about HB 365, I wanted to address one of the concerns of the committee about the bill. I understand there was a question about why there was a special bill needed to exempt the usage of minors in stings when law enforcement uses people for stings already for alcohol and narcotics without a special bill. While it is true that the police use adults for stings in certain cases, they most likely do not use minors. There is a big difference in using an adult with their own permission, and using a minor.

A concern that the Municipal Prosecutor expressed to our group in Anchorage about using minors in a tobacco sting is that it is illegal not only for the minor to possess tobacco, but also for an adult to incite a youth to buy an illegal product. This is considered contributing to the delinquency of a minor, and the Prosecutor felt it would put any enforcement effort in a precarious situation should the merchant cited decide to sue. The Prosecutor said that we cannot get around it being illegal, only the Legislature can change the law.

Without a change in the law specifying an exemption for using youth in tobacco compliance efforts, it will be difficult to get widespread support in the Municipality. Please feel free to contact us if you have any other questions.

Delisa Culpepper, Manager  
Community Health Promotions Program  
343-4622  
343-6564 Fax

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

Department of Health & Social Services  
Division of Public Health  
Section of Community Health and Emergency Medical Services

P.O. Box 110616  
Juneau, Alaska 99811-0616

Emergency Medical Services  
Telephone: (907) 465-3027  
Teletax: (907) 465-4101

Health Promotion  
Telephone: (907) 465-3140  
Teletax: (907) 465-2770

Primary Care  
Telephone: (907) 465-3091  
Teletax: (907) 465-6861

April 30, 1996

Senator Robin Taylor  
Room 30, Capitol Building  
Juneau, AK 99801-1182

Dear Senator Taylor:

At the hearing on HB 365 held in the Senate Judiciary Committee yesterday, you requested information on the number of other states that involve youth in conducting routine, unannounced inspections (compliance checks) of vendors of tobacco products, under the Synar Amendment.

This morning I spoke with Sandie Johnson, Public Health Advisor for the State of Alaska, with the Division of State Prevention Systems, Center for Substance Abuse Prevention, in Rockville, Maryland. The Center for Substance Abuse Prevention (CSAP) is located within the federal Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMSHA). In January of this year, SAMSHA distributed the regulations implementing the Synar Amendment, "45 CFR Part 96 "Tobacco Regulation for Substance Abuse Prevention and Treatment Block Grants; Final Rule".\*

She informed me that *ninety percent* of states currently involve youth in conducting the unannounced inspections of vendors. She also added that the ten percent that currently do not will likely need to revise their inspection procedures, to comply with the recently published regulations. Youth involvement in inspections is not required in the federal regulations and CSAP is open to inspection protocols which do not involve youth. *However, they do not see how inspections can reliably be done without involving youth. All guidance for conducting inspections that CSAP has provided to states since publication of the federal register includes youth involvement.*

If I can be of further assistance to you or other members of the Judiciary Committee on issues surrounding HB 365, please contact me. I can be reached at phone 465-3140.

Sincerely,



Karen Dalenius, MPH  
Tobacco Prevention and Control Coordinator

cc: Representative Con Bunde  
Loren Jones

\* the Synar Amendment is a federal law that mandates adoption and enforcement of laws prohibiting sale or distribution of tobacco products to those younger than 18 years

REPRESENTATIVE CON BUNDE  
CO CHAIR HEALTH, EDUCATION  
& SOCIAL SERVICES  
VICE CHAIR RULES

**Alaska State Legislature**  
**House of Representatives**

*DURING SESSION*  
STATE CAPITOL, ROOM 108  
JUNEAU, ALASKA 99801 1182  
1 (907) 465-4843

*DURING INTERIM*  
710 WEST 4th AVENUE  
ANCHORAGE, ALASKA 99501 2133  
1 (907) 258 8168

**SPONSOR STATEMENT**  
**HB 365**

**“An Act relating to the offense of possession of tobacco  
by a minor.”**

The problem of youth in possession of tobacco is pervasive in Alaska and throughout the United States. In 1992, the problem was addressed on a federal level by the passage of the Synar Amendment. This amendment requires states to conduct random, unannounced inspections of locations which sell tobacco and to show a reduction in illegal sales. States which do not conduct the inspections and reduce rates of illegal sales will lose some portion of their federal substance abuse block grants.

In order to reduce rates of nicotine addiction in youth and to ensure compliance with the Synar Amendment, members of the Alaska Tobacco Control Alliance (ATCA) have been seeking to undertake “compliance checks” to determine which merchants are selling tobacco to children. Compliance checks that involve having undercover youth attempt to buy tobacco, are equivalent to the “random unannounced inspections” specified by the Synar Amendment. However, because state law prohibits the possession of tobacco by youth, the youth who participate in compliance checks could conceivably be charged with breaking the law, and the adults who work with them could be charged with contributing to the delinquency of a minor.

HB 365 was introduced to ensure our state's ability to conduct compliance checks consistent with the mandate of the Synar Amendment. This legislation adds a section to existing statute that will allow youth to work in tandem with law enforcement agencies to complete compliance checks relating to the sale of tobacco to youth.

If there are no compliance checks, there is no way to know which stores are selling tobacco to children. If police don't know who is selling, they obviously cannot enforce the law. Youth will continue to purchase tobacco and become addicted to nicotine, and we will continue to see high rates of tobacco related death and disease in Alaska. In addition, many other substance abuse prevention and treatment efforts will suffer if federal substance abuse block grants are reduced.

I urge your positive support of this legislation. This legislation will eliminate current obstacles to carrying out compliance checks and will reduce illegal sales of tobacco.

Department of Health & Social Services  
Division of Public Health  
Section of Community Health and Emergency Medical Services

TERRY KNOWLES, GOVERNOR

P.O. Box 110616  
Juneau, Alaska 99811-0616

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Telephone: (907) 465-3027  
Telefax: (907) 466-4101

Health Promotion  
Telephone: (907) 465-3140  
Telefax: (907) 465-2770

Primary Care  
Telephone: (907) 465-3081  
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April 24, 1996

Representative Con Bunde  
Room 108, Capitol Building  
Juneau, AK 99801

Dear Representative Bunde:

This is in response to your request for information pertaining to the financial burden placed upon the state if HB 363 is not passed.

The Synar Amendment is a federal law that mandates adoption and enforcement of laws prohibiting sale or distribution of tobacco products to those younger than 18 years. The federal Department of Health and Human Services distributed the final regulation implementing the law just two months ago. According to provisions of this new law, states must show that they are enforcing their minimum age laws in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to underage youth. States must conduct annual, random unannounced inspections (of vendors of tobacco products) to ensure compliance with the law. In general, an inspection involves a minor entering the outlet and attempting to purchase a tobacco product. The proportion of all purchase attempts that are successful is used to estimate the percentage of outlets that sell tobacco products to minors.

The first applicable year for Alaska concerning these tobacco regulations was FY 94. In FY 94 and 95, the state was required 1) to have in effect a youth access law, 2) to be conducting annually a reasonable number of random, unannounced inspections of outlets to ensure compliance with the law, and 3) to plan and begin to implement other actions which the state believed were necessary to enforce the law.

For FY 96 and every year thereafter, the state is required to conduct random, unannounced inspections annually to ensure compliance with the law. These inspections must be conducted in such a way as to provide a probability sample of outlets. The sample must reflect the distribution of the population under age 18 throughout the State and the distribution of the outlets throughout the State accessible to youth. An annual plan, detailing the State's activities to enforce the law and of the overall success the State has achieved in reducing the availability of tobacco products to individuals under age 18, must be submitted.

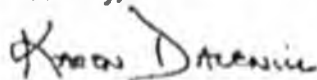
The Federal Substance Abuse and Mental Health Services Administration (SAMSHA) estimated the annual cost to the State to carry out the regulations at \$250,000. No new federal or state funds are available to cover this cost. Unlike some other states, Alaska does not have designated tobacco tax revenues or revenues generated from fees levied against non-compliant vendors to assist with implementation of these regulations.

If HB 363 is not passed, the difficulty and cost of complying with the Synar regulations in Alaska will greatly increase. Since it is not lawful at present for youth under age 19 to possess tobacco products, involving youth in inspections would require securing local legal authority in each identified community (which has one or more vendors included in the annual scientific sample). Such logistics may prevent the State from complying with the regulations.

The FY 96 baseline is due to the federal Department of Health and Human Services by September 1, 1996. The penalty associated with state noncompliance during this third applicable year is stiff. Thirty percent of the SAMSHA Substance Abuse Prevention and Treatment Block Grant for the State of Alaska, \$480,000, can be withheld. Such an action would cripple statewide alcohol and drug abuse services. The penalty increases. Forty percent of the grant can be withheld in FY 97 if the state is out of compliance.

Please contact me if I can be of further assistance to you. I can be reached at phone 465-3140.

Sincerely,



Karen Dalenius, MPH  
Tobacco Prevention and Control Coordinator

STATE

TONY KNOWLES, GOVERNOR

**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES**

*ADVISORY BOARD ON ALCOHOLISM AND DRUG ABUSE*

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JUNEAU, ALASKA 99811-0608  
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TOLL FREE: 1-800-420-8920

January 22, 1996

The Honorable Con Bunde  
Alaska State House of Representatives  
State Capitol, Room 108  
Juneau, AK 99801-1182

Dear Representative Bunde:

The Advisory Board on Alcoholism and Drug Abuse, Legislative Committee met in Juneau on January 17, 1996, to review legislation that will be considered during this session. As part of that review, House Bill No. 365 was reviewed and the Committee supports this initiative. We understand the preventative value of this carefully considered measure. We recognize that tobacco is the "gateway drug" for Alaska's young people and that measures which reduce access will result in delaying the age of first use. This directly supports one of the strategies in the State Strategic Plan for alcoholism and drug abuse, "Meeting the Challenge."

Please let us know if there is anything that we can do to support passage of this Bill. Our staff is available for your help in forwarding this as well as other initiatives that will result in reducing the devastating effect that alcohol and other drug abuse is having on our state.

Sincerely,



Valerie Therrien, Chair  
Legislative Committee

# **THE OHIO COMPLIANCE CHECK PROGRAM**

**An Instructional Manual**

**Tobacco Risk Reduction Program  
Bureau of Chronic Diseases  
Division of Preventive Medicine  
Ohio Department of Health**

**March 1995**

**SUPPORTING DOCUMENTS**

## PREFACE

This manual was produced by the Tobacco Risk Reduction Program of the Bureau of Chronic Diseases, Ohio Department of Health. The initial version of this document was developed to assist seven local health departments in Ohio to conduct tobacco sales compliance checks to help determine the extent of youth access to tobacco products.

The primary intent of this manual is to provide a "how to" guideline for local health departments and other community groups to plan and conduct effective tobacco sales compliance checks.

Parts I and III explain why compliance checks are needed. Part II gives an overview of the process. How to plan and conduct a tobacco product buying campaign is detailed in Parts IV and V. Part VI is devoted to conducting the education and media campaign, and Part VII covers merchant education.

There are two video tapes available that focus on the problem of youth access and can assist in planning compliance checks.

"Making a Difference: Reducing Minors' Access to Tobacco" runs 15 minutes and highlights the Raleigh, N.C. COMMIT Project efforts to reduce tobacco sales to minors

"Stop the Sale - Prevent the Addiction" is a 25 minute education program which can be used as an educational tool for a variety of audiences.

The videos are available from:

Ohio Department of Health  
Bureau of Chronic Diseases  
Tobacco Risk Reduction Program  
P.O. Box 118  
Columbus, Ohio 43266-0118  
614/466-2144

## ACKNOWLEDGEMENTS

Some of the materials used in this manual were pulled from documents used in other youth access programs conducted by the Davis County Health Department in Farmington, Utah and the Raleigh, North Carolina COMMIT Project. The COMMIT Project also produced the motivational video, "Making a Difference: Reducing Minors' Access to Tobacco."

The supplement entitled "Facing The News Media" was developed by Gary Beals of Gary Beals Advertising and Public Relations, La Mesa, California [(619) 463-5050].

Special appreciation goes to the youth who worked with and the staff of the following seven local health departments who used the initial version of this manual to conduct compliance checks.

Akron City Health Department  
Allen County Health Department  
Columbiana County Health Department  
Findlay City Health Department  
Licking County Health Department  
Trumbull County Health Department  
Washington County Health Department

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**PART I**

**FEDERAL AND STATE LAWS**

## OHIO COMPLIANCE PROGRAM

### PHS Act Section 1926

#### "Synar Amendment"

Section 1926 of the Federal Public Health Services Act, passed July 10, 1992, and effective October 1, 1992 (Federal FY 1993), requires states to do the following in order to receive full funding from the federal government for substance abuse programs. Failure to comply will result in a ten percent reduction in federal funds for the first year, increasing by ten percent per year to a maximum loss of 40 percent.

#### A. Relevant Law.

1. For Fiscal Year 1994 and subsequent fiscal years, the Secretary (HHS) will make a grant for substance abuse activities only if the State involved has in effect a law providing it is unlawful for any manufacturer, retailer or distributor of tobacco products to sell or distribute any such product to any individual under the age of 18.

Ohio is in compliance with this requirement.

#### B. Enforcement Activities and Reports.

1. For the first applicable fiscal year and subsequent fiscal year... "the State involved will enforce the law described in Section A above in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of 18". The first applicable fiscal year for Ohio was 1994.
2. The State involved will -
  - a. annually conduct random, unannounced inspections to ensure compliance with Section A; and
  - b. annually submit to the Secretary a report describing -
    - 1) the activities carried out by the State to enforce such law during the fiscal year preceding the fiscal year for which the State is seeking the grant;
    - 2) the extent of success the State has achieved in reducing the availability of tobacco products to individuals under the age of 18; and
    - 3) the strategies to be utilized by the State for enforcing such law during the fiscal year for which the grant is sought.

The Ohio Compliance Program addresses Section B, Enforcement Activities and Reports. The original effort was a short term program to meet the federal requirements for federal fiscal year 1994 (October 1, 1993 - September 30, 1994) activities. No final rules for this section have been promulgated by the Department of Health and Human Services; therefore, this program addresses only those requirements of the original legislation. When final rules are released, the Ohio Department of Alcohol and Drug Addiction Services and the Ohio Department of Health, in cooperation with other state and local organizations, can develop a more comprehensive plan to prevent minors from obtaining tobacco products.

OHIO REVISED CODE

Section 2927.02      Illegal distribution of cigarettes or other tobacco products; vending machines

- (A) No manufacturer, producer, distributor, wholesaler, or retailer of cigarettes or other tobacco products, or any agent, employee, or representative of a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes or other tobacco products shall do any of the following:
- (1) Give, sell, or otherwise distribute cigarettes or other tobacco products to any person under eighteen years of age;
  - (2) Give away, sell, or distribute cigarettes or other tobacco products in any place that does not have posted in a conspicuous place a sign stating that giving, selling, or otherwise distributing cigarettes or other tobacco products to a person under eighteen years of age is prohibited by law.
- (B) No person shall sell or offer to sell cigarettes or other tobacco products by or from a vending machine except in the following locations:
- (1) An area either:
    - (a) Within a factory, business, office, or other place not open to the general public; or
    - (b) To which persons under the age of eighteen years are not generally permitted access;
  - (2) In any other place not identified in division (B)(1) of this section, upon all of the following conditions:
    - (a) The vending machine is located within the immediate vicinity, plain view, and control of the person who owns or operates the place, or an employee of such person, so that all cigarettes and other tobacco product purchases from the vending machine will be readily observed by the person who owns or operates the place or an employee of such person. For the purpose of this section, a vending machine located in any unmonitored area, including an unmonitored coatroom, restroom, hallway, or outer waiting area, shall not be considered located within the immediate vicinity, plain view, and control of the person who owns or operates the place, or an employee of such person.
    - (b) The vending machine is inaccessible to the public when the place is closed.
- (C) As used in this section, "vending machine" has the same meaning as "coin machine" as defined in Section 2913.01 of the Revised Code.
- (D) Whoever violates this section is guilty of illegal distribution of cigarettes or other tobacco products, a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of this section, then illegal distribution of cigarettes or other tobacco products is a misdemeanor of the third degree.

**PART II**

**OHIO  
COMPLIANCE CHECK PROGRAM:**

**AN OVERVIEW**

## PHASE I - BASELINE COMPLIANCE CHECKS

Ohio Revised Code prohibits the sale or distribution of tobacco products to anyone under the age of 18 years, but it is not illegal for minors to buy or possess tobacco products other than on school property or at school sponsored activities. Local health departments can conduct random, unannounced compliance checks (inspections) of tobacco vendors.

It is recommended that health departments work in cooperation with appropriate local legal and law enforcement agencies (city/county prosecutor, chief of police, sheriff, etc.). In seeking the cooperation of these offices, health department staff should make clear the federal requirements for such inspections and the penalties to Ohio; a ten to forty percent reduction in federal substance abuse monies if they are not completed regularly and in a professional manner.

Health departments and local legal and law enforcement agencies should develop a plan of action for the different phases before any activities begin.

### Selection of Tobacco Vendors

At least one vendor in each of these categories will be inspected: convenience store/gas station, grocery store, drug store, and vending machine.

Section 1926 calls for "random, unannounced" inspections. Given that time is not a factor, a purely random sample may be feasible. An alternative selection method might be to divide all tobacco vendors into the categories given above. If possible, a listing of all tobacco sellers should be obtained from the county auditor. If this list is not available, a listing from another source such as the Yellow Pages of the telephone directory or a local business directory may be used. To select a percentage from each category, select every X number vendor as necessary. For example: thirty convenience stores/gas stations are on the list. To select 25 percent or one in four, go down the list selecting every fourth vendor.

Once the selection is made, minor adjustments might be made to correct for geographic distribution or other factors which might skew the results.

### Compliance Checks

Phase I compliance checks will establish the baseline sales rate to minors. Therefore, it is recommended that they be conducted without any public announcement and with discretion. A member of the health department staff should accompany underage youth to the sites selected for compliance checks. The staff person should remain out of sight but be available as minors attempt to buy cigarettes, snuff, or chewing tobacco. If asked, the youth should answer truthfully about his/her age. If the youth is successful, he/she should leave the premises and turn over the purchased product to the staff person supervising the compliance check. A record of the compliance check can be completed using the form provided by the Ohio Department of Health in this Manual.

At this time, no indication will be made to the vendor of the inspection or, if a sale was made, the violation of Ohio Revised Code. It is critical that the vendor not alert other tobacco sellers that compliance checks are taking place.

A project like the one in North Carolina found that a team of two teens and one adult can survey 10 - 15 locations per hour. Plotting locations on a map and planning the buying route ahead of time will speed the process.

### **Age of Youth**

The average age that people begin smoking is 13; 60 percent begin by age 14 and 90 percent by age 20. The youth assisting in the compliance checks should not be obviously underage. Other compliance check programs have found that boys under age 14 are most likely to be asked for IDs; girls 14 and over are most likely to be successful and have the confidence to function well. Health departments might want to consider these experiences and recruit youth from 15 to 17 years of age to make the buys.

### **Written Permission**

All youth participating in the compliance checks must have written permission from their parent or legal guardian. A suggested permission form can be found in Part V of this Manual.

## **PHASE II - INFORMATION AND EDUCATION**

Following collection of baseline data, the results of the inspections can be made public through a news release and/or press conference. The information released can include the number of successful buys and the total number of attempts, the ages of the buyers, and the types of tobacco vendors checked. No individual vendor names should be used. The purpose is to inform the public of the extent of illegal sales.

In addition, the news release/press conference should briefly explain the federal requirements to conduct such inspections and the penalties to Ohio if they are not done. The news release/press conference should make it clear that this is not a one-time activity, but will be ongoing as required by the federal government.

During Phase II, all vendors making illegal sales should receive a letter signed by the county/city prosecutor and/or police chief, and the health commissioner. The letter should state the details of the illegal sale (date, time, what was purchased) and cite the appropriate sections of the Ohio Revised Code. A copy of the code section can also be included. Vendors should be advised that this is a warning letter. They should be informed that unannounced inspections will be ongoing and any further illegal sales could result in appropriate legal action.

All tobacco vendors, including those who made illegal sales, should receive letters briefly describing the federal requirements for inspections, citing the Ohio Revised Code, and explaining that they can expect the inspections to be ongoing.

### **PHASE III - FOLLOW-UP COMPLIANCE CHECKS AND LEGAL ACTION**

Phase III should be similar to Phase I with certain important changes. During Phase III, a representative of the appropriate legal and/or law enforcement office may accompany the health department staff and youth on all inspections. Different youth than those used in Phase I may be used during the follow-up period.

During Phase III, all vendors who sold tobacco products (including vending machines) to minors during Phase I should be reinspected. In addition, other tobacco vendors can be selected so that the total number of inspections equals those conducted in Phase I.

Legal and law enforcement authorities can take legal action as decided before the inspections begin. It is recommended that all legal actions should be based upon sales made during Phase III - follow-up compliance checks, and not on sales made during Phase I.

### **PHASE IV - REPORTING**

Health departments should generate and maintain reports to document the compliance check activity. It is suggested that such reports include survey forms (a sample of which is included in this Manual). The report should also include a summary of Phase I and Phase III data, copies of news releases, letters and other materials used/developed, and a general summary of the compliance check project (what did or did not work well, recommendations for improvement, etc.).

The Ohio Department of Health (ODH) encourages local health departments to share reports of their general activity and results. As a result of receiving such reports, the ODH could develop and maintain a master file to assess the effectiveness of the compliance check programs among participating health departments throughout Ohio.

## RECOMMENDED TIME TABLE

The ODH recommends that health departments conduct Phase I through Phase III during consecutive weeks to enhance program effectiveness. A time table might look like this:

### Phase I

- Week 1 Train youth and conduct first compliance checks.
- Week 2 Compile data from first compliance checks and prepare for Phase II.

### Phase II

- Week 3 Issue news releases, hold news conference, send letters to vendors and send out information packets.

### Phase III

- Week 4 Conduct follow-up compliance checks.
- Week 5 Compile data from follow-up compliance checks and compare with results of first compliance checks.

**PART III**

**UNDERAGE  
CIGARETTE BUYING OPERATIONS:  
WHY CONDUCT THEM?**

## UNDERAGE CIGARETTE BUYING OPERATIONS:

### WHY CONDUCT THEM?

Questions have been raised about the advisability and the legality of a health agency sponsoring an event for young teens to buy cigarettes. Wouldn't we be arranging for them to do exactly what we didn't want them to do? Would buying cigarettes teach them how to do it? Would their parents even let them participate? Would we alienate members of the community rather than win them as allies? And isn't there already a law against selling cigarettes to minors and is this something law enforcement, rather than a health department, should do something about?

These are serious, legitimate questions that can be raised in the context of community concerns. Yet, we can justify our reasons for being involved in a community education program about tobacco.

- Many of us had been touched by tobacco-caused deaths of loved ones and knew we wanted to keep kids from ever starting to smoke.
- We knew the average age that smokers begin is 13, and understood that if we could prevent young teens from being able to buy cigarettes, that would be a big step toward preventing addiction resulting in later death and disease.
- We knew that much of the public, including many store owners, clerks, and teenagers, were unaware of - or unconcerned about - the law against selling cigarettes to anyone under 18 years old.

### Translating Beliefs Into Action

As it will probably turn out, your concerns will become insignificant compared to the impact the campaign can make on your community. Taking actions which can make a difference will develop a deep sense of pride among your teens, and even your community. The truth is that no one wants young kids smoking and the campaign can produce dramatic, visible results from your own actions. There is no substitute for becoming an actor in a campaign which can change a community's capacity to protect children's lives and health.

You can also accomplish some less tangible results. You can expect these kinds of rewards and changes in your community, too:

- Community-wide awareness about the easy availability of cigarettes to minors can dramatically increase. You can deluge the media with press conferences, radio public service announcements, photographs, newsmaking events, youth appearances at the City Council, youth petitions to change the vending machine laws, TV talk shows, and slide shows to PTAs and community groups.

- Community awareness can lead to increased community involvement, which heightens efforts to change laws and change merchants' selling behavior.
- Simple participation by youth can grow into their taking real leadership roles and developing public speaking and advocacy skills. After teens have such a key role in buying operations and reporting of results, you can continue to provide arenas for them to describe their experiences. The youths' genuineness and the poignancy of their reflections can generate an audience impact. In many instances, the audience will observe the teens making new discoveries about the significance of their experiences as they speak:

"The clerk sold me the cigarettes I asked for and (knowing that I was underage) told me to put them in my pocket before leaving the store."

Because it was so easy, some minors thought buying cigarettes was a boring experience.

- Most merchants and store owners will probably respond enthusiastically to your "voluntary compliance" approach and to the fact that you do not identify store names in reporting the results. Follow-up calls to stores will reveal how much they appreciate your efforts.
- In Raleigh, N.C., a broadly diverse group in the community coalesced around the issue of minors' access to tobacco; and in the process of planning and conducting the campaign they created stronger ties within their community and greater interest in its health and welfare. Their actions created protective laws in the city, and they were able to have an empowering impact on their community.

Logistics, planning, and persistence (and maybe a few headaches) are all part of this process, but it's worth it. Your whole community can get involved in keeping cigarettes out of the hands of young people.

# ASSOCIATION OF ALASKA SCHOOL BOARDS

316 West 11th Street, Juneau, Alaska 99801-1510 • Tel: (907) 586-1063 • Fax: (907) 585-2295

*Advocates for Alaska's Youth*

April 18, 1996



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## EXECUTIVE DIRECTOR

Carl F. N. Rose

Senate Judiciary Committee  
The Honorable Robin Taylor, Chair  
The Honorable Lyda Green, V-Chair  
Alaska State Capitol, Rm. 30  
Juneau, AK 99801

RECEIVED

APR 15 1996

Ans'd.....

Dear Committee Members:

The Association of Alaska School Boards has established child advocacy as one of our top priorities. Our mission to promote parental, public, and social service commitment to the shared responsibility of educating all children enables us to address issues that deal with the health and safety of Alaska's children. To this end our membership adopted a resolution at the 1995 AASB Annual Conference which recommends supporting vigorous enforcement of laws concerning the sale, use, and possession of tobacco-related products by children and adolescents.

We encourage the Senate Judiciary Committee to schedule a hearing and pass HB 365, a bill which reduces children's access to tobacco through the enforcement of current Alaska law. We believe that, through the combined influences of strict law enforcement, quality education, and tax levies, we can all have a hand in keeping our kids tobacco free.

Thank you for your commitment to the health and well-being of Alaska's children.

Sincerely,

Carl F. N. Rose  
Executive Director

# ASSOCIATION OF ALASKA SCHOOL BOARDS

*Advocates for Alaska's Youth*

## Association of Alaska School Boards Resolution

**SUBJECT AREA: CHILD ADVOCACY  
RESTRICTING CHILDREN'S ACCESS TO TOBACCO PRODUCTS**

WHEREAS, nicotine is an addictive drug and has been proven to be harmful to children;  
and

WHEREAS, the average teenage smoker starts at 14 1/2 years old and becomes a daily  
smoker before the age of 18; and

WHEREAS, studies show that if people do not begin to smoke as teenagers or children,  
it is unlikely they will ever do so; and,

WHEREAS, each and every day, another 3,000 young people become regular smokers,  
and nearly 1,000 of them will eventually die as a result of their smoking; and

WHEREAS, children tend to vastly underestimate the likelihood that they will become  
addicted to nicotine; and

WHEREAS, a 1994 Surgeon General's report found that young people were able to  
buy cigarettes in vending machines an average of 88% of the time; and

WHEREAS, Alaska state law prohibits the use of tobacco by minors.

NOW THEREFORE BE IT RESOLVED that the Association of Alaska School Boards  
seeks legislation to strengthen penalties for illegal sale of tobacco products to  
minors; and

BE IF FURTHER RESOLVED, that AASB seek legislation to further reduce access to  
tobacco vending machines by minors; and

BE IT FURTHER RESOLVED that AASB support vigorous enforcement of laws  
concerning the sale, use, and possession of tobacco-related products by children and  
adolescents.



# Seven Circles Coalition

*"It takes a whole village to raise a child"*

-African Proverb

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(907) 966-8745  
(907) 966-8707 (Fax)

Representative Con Bunde  
Alaska State Legislature  
Juneau, AK 99801

February 27, 1996

Dear Representative Bunde:

I have received a request from the Division of Alcoholism and Drug Abuse to provide you with information on tobacco compliance checks recently conducted in Juneau to assist you in monitoring the effect of the Synar Amendment on youth access to tobacco products. I hope the following information will be of use to you.

Thank you for your support of tobacco issues especially efforts which help protect our youth from beginning a deadly addiction to tobacco. We appreciate the legislation you have introduced in support of compliance checks and to increase the tax on tobacco products. Members of the Tobacco Prevention Network and the Seven Circles Coalition are actively advocating for these pieces of legislation and we have members who would be happy to testify before committee hearings. We are also organizing and educating young people who are concerned about tobacco issues and would be willing to talk with legislators and testify before committees.

Please let us know if we can be of further assistance. If you have any questions or would like additional information on compliance checks or any of the other activities of the Juneau Tobacco Prevention Network please feel free to contact me directly at 463-5844.

Sincerely,

*Jeannie Monk*

Jeannie Monk  
Community Coordinator

Funded by the Center for  
Substance Abuse Prevention

Lead Agency  
Southeast Alaska Regional  
Health Consortium

## **Juneau Tobacco Prevention Network Tobacco Compliance Checks 1995**

The Juneau Tobacco Prevention Network and the Seven Circles Coalition have been working during the past year to conduct underage compliance checks as part of an effort to reduce youth access to tobacco products in Juneau.

The Juneau Tobacco Prevention Network is a grassroots group working to decrease the harmful effects of tobacco usage especially among youth. The Network takes a comprehensive approach to tobacco issues and has focused on four strategies. The Network believes all of these strategies are necessary and important if we are going to protect children from a deadly tobacco addiction.

1. Education and Cessation Programs
2. Tobacco Advertising To Youth
3. Tobacco Tax Increase
4. Youth Access to Tobacco Products

The Seven Circles Coalition is a regional coalition which seeks to assist communities in creating effective strategies, with youth involvement, to prevent the use of alcohol, tobacco, and other drugs and violence among youth. Seven Circles has provided staff and financial support to help the Tobacco Network achieve the goals, especially around issues involving youth access to tobacco.

The Juneau Tobacco Prevention Network became involved during the past year in trying to limit illegal tobacco sales to underage youth. This project was begun due to concerns that educational efforts in schools, churches and at home were being undermined when children were able to walk into a store and easily buy an illegal tobacco product.

We began our compliance checks last May using eighth grade - 14 and 15 year old - youth. During our first series of compliance checks we found that out of 42 purchase attempts 17 resulted in an illegal sale to a minor. This is a underage purchase rate of 40%. We found youth had an even easier time purchasing tobacco products at locations in the Mendenhall Valley (where the majority of youth live) with a underage purchase rate of 55%. It was disturbing how easy it was for 14 and 15 year old youth (well below the legal purchase age of 19) to buy tobacco from our local retailers.

Following the compliance checks we educated the community and the retailers about the problem of youth access to tobacco products. Managers at all establishments were contacted and alerted to concerns about illegal sales to minors and provided with materials to educate their clerks and signs to post at every checkout stating the law regarding sales to minors. The retailers were encouraged to talk with their clerks and help us ensure that underage youth were not able to purchase tobacco products at their store.

During our follow-up compliance checks conducted two months later (November & December 1995) we found clerks were more conscientious about preventing illegal sales to minors. This time we made 45 purchase attempts with only 9 resulting in a sale. The purchase rate for underage minors was reduced to 20%.

Again, managers of each establishment were contacted and the names of those retailers continuing to sell tobacco products to underage youth were publicly released. Additional educational support was offered to retailers. In the future, we hope to conduct a final series of compliance checks which provide immediate feedback to the clerk and store manager either through working with the police department to issue citations, having youth notify clerk after a sale has been made that it was an illegal sale, or by contacting the store manager immediately following the purchase attempt. The legislation being considered might help to provide additional police support in conducting our follow-up compliance checks.

Although our efforts demonstrated a significant reduction in illegal sales of tobacco to youth, the problem of youth smoking in Juneau has not gone away. In our compliance checks we primarily used younger teenagers and the youth participating were instructed not to lie about their age if asked directly or to lie if asked for ID. In real-life, youth attempting to buy cigarettes and chewing tobacco will lie about their age and will use fake ID. They also will get older teenagers to purchase for them. For these reasons although we strongly believe in compliance checks as an excellent way to enforce merchant compliance they are only one piece of the puzzle and must be used in combination with other strategies to prevent tobacco addiction among youth.

# JUNEAU TOBACCO PREVENTION NETWORK

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The purpose of the Juneau Tobacco Prevention Network is to decrease the harmful effects of tobacco by reducing the availability and usage of tobacco products in our community especially among youth.

**The Tobacco Network takes a comprehensive approach to tobacco issues with emphasis in four areas:**

- ◆ Education & Cessation Programs
- ◆ Youth Access to Tobacco Products
- ◆ Tobacco Tax Advocacy
- ◆ Advertising Tobacco to Youth

The Tobacco Network is a grassroots organization that is active because of the diverse interests and talents of its members. Membership is opened to anyone who would like to be involved with all or just one aspect of the Network's activities.

The Network receives support from the State of Alaska Department of Health and Social Services, Seven Circles Coalition through SEARHC, and in-kind support from a variety of community organizations and individuals.

## **WE WELCOME YOUR PARTICIPATION!**

The Tobacco Network meets monthly and has on-going sub-committees working on special projects. If you would like more information or ideas on how you can get involved call Karen Doxey at 789-9762 or Jeannie Monk at 463-5844.

*"If, in the United States, five 727s with 200 people crashed every day of the week of every month of every year, sooner or later someone would say,  
'We've got to do something about this.'"*

*-- Dr. John Allen (past president)  
American Lung Association*

Dear Mr. Chairman:

SB 365 will be instrumental in our efforts to reduce ~~the~~ tobacco use by kids in Alaska. By allowing underage kids to participate in compliance checks, vendors will be held to the law which states it is illegal to sell tobacco to minors under 19.

An angry mother called me the other day. Her 16 yr. old son had been caught with a can of chew that he bought at a 7-11 ~~store~~ in Anchorage. Her son was punished, but when the mother called the police about what ~~can~~ could be done to the ~~shop~~ vendor, she was told nothing could be done. She only represents one of many angry mothers who are willing to go all lengths to make sure vendors do not sell this addictive substance to their children. SB will show a means to conduct compliance checks. Please support it.

Thank you,

Annette Marley

Alaska State Representative

# A National Survey of Public Support for Restrictions on Youth Access to Tobacco

William J. Bailey, James W. Crowe

**ABSTRACT:** A national telephone survey was conducted to measure public support for seven proposals to restrict youth access to tobacco products, including increases in the cigarette excise tax. A random digit dialing survey, using computer-assisted telephone interviews and a two-stage Milofsky-Wuksberg design, was used to generate and replace telephone numbers and to select individuals from within households. More than 94% of respondents believed cigarette smoking by children and adolescents to be a "very serious" or "somewhat serious" problem. Most respondents expressed support for all the proposed measures to restrict youth access to tobacco products (fines for sellers, fines for youthful violators, licensing of all tobacco vendors, restrictions on cigarette vending machines, ban on sponsorship of youth-oriented events, and ban on all tobacco advertising), and for increases in the cigarette excise tax. (*J Sch Health*. 1994,64(8):314-317)

Despite 30 years of publicity about the health consequences of smoking, following publication of the first Surgeon General's report on smoking and health,<sup>1</sup> and a substantial decline in overall smoking rates since 1964,<sup>2</sup> cigarette smoking still is a causative factor in about one in six deaths per year in the U.S. (about 434,000).<sup>3</sup> Further, nearly one-third of U.S. adults continue to smoke cigarettes.<sup>4</sup>

Despite extensive education and information campaigns, each year more than 1 million Americans begin smoking cigarettes (about 3,000 people per day).<sup>4</sup> Most new smokers are children and adolescents — nearly 75% of current smokers began smoking before age 18.<sup>5</sup> In 1989, almost 1 billion packs of cigarettes were sold to persons younger than age 18.<sup>6</sup> Any long-term reduction in smoking prevalence must include a strategy for reducing the number of children and adolescents who begin smoking each year. In *Healthy People 2000*,<sup>7</sup> the U.S. Public Health Service established national health objectives to reduce tobacco use by youth (Objective 3.5), enact and enforce state laws against sales and distribution of tobacco products to youth (Objective 3.13), and to eliminate or severely restrict all forms of tobacco product advertising and promotion to which youth are exposed (Objective 3.15).

In addition to concerns about the direct health consequences of tobacco use, cigarette smoking also has been identified as a risk factor for the abuse of alcohol and other drugs by children and adolescents.<sup>8,9</sup> As a means of reducing this risk, in 1992, the U.S. Congress enacted the so-called "Synar amendment" to the authorization act providing block grant funding to states for alcohol and other drug abuse prevention and treatment programs, requiring states to enact and enforce laws restricting youth access to tobacco.<sup>10</sup> In response to the legislation, the Substance Abuse and Mental Health Services Administration (SAMHSA) proposed strict rules to require enforcement monitoring, including a regular system of "sting" operations to test vendor compliance with the state laws.<sup>11</sup> The "Synar amendment" requirements caused ex-

tensive policymaking debate at the state level, with policymakers expressing concern over public support for strict restrictions on youth access to tobacco.<sup>12</sup>

Despite increasing public attention to problems associated with youth access to tobacco, ample evidence indicates 70% to 100% of minors attempting to purchase cigarettes have little trouble doing so.<sup>13-16</sup> Despite state laws, now in effect in 49 of 50 states, that restrict sales to those younger than age 18,<sup>11</sup> enforcement of those laws is ineffective or non-existent in most communities.<sup>13-16</sup> In 1990, the U.S. Dept. of Health and Human Services endorsed a model law for states and local communities that would restrict minors' access to tobacco products.<sup>17</sup> The model law would (1) create a system of licensing retail vendors of tobacco, similar to the system used to license alcoholic beverage vendors, (2) use civil penalties and administrative sanctions to reduce impact on the criminal court system, (3) impose a graduated system of penalties, including fines and license suspensions, (4) set a minimum age of 19 for purchase of tobacco products, and (5) ban cigarette vending machines.<sup>17</sup>

Additional proposals to reduce tobacco use by minors include restrictions on advertising and promotion of tobacco products aimed at youth,<sup>8</sup> and removal of profits from underage sales through taxation or assessments.<sup>18</sup> Empirical evidence suggests tobacco advertising has a disproportionate influence on children and adolescents,<sup>19,21</sup> and may directly influence brand purchasing decisions.<sup>19</sup> Cigarette excise taxes decrease demand for cigarettes, especially among youth.<sup>22-23</sup> Price increases in the cost of cigarettes can reduce demand by minors for cigarettes by up to 40%.<sup>22-24</sup>

Strict enforcement of existing laws restricting sales to minors, and implementation of licensing systems that are enforced, also can have a dramatic impact on youth access to tobacco.<sup>25-27</sup> Active enforcement can reduce over-the-counter sales of tobacco products to minors to almost zero.<sup>24</sup> In response to the new federal mandates for state compliance checks, rigorous protocols for monitoring youth access have been developed.<sup>29</sup>

Although new federal regulations now require systematic enforcement of state youth access laws, including implementation of "sting" operations, little has been done to measure public support for proposals to restrict youth access to tobacco.<sup>13</sup> This survey measured popular support for a range of proposed strategies to reduce access to and use of tobacco by children and adolescents.

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## SURVEY PLAN. IING

Data were collected through a national telephone survey of adults living in U.S. households. A list-assisted random sample of all possible household telephone numbers in the U.S., generated by "Genesys" software, was used. This system allows for an equal probability of selecting all households with telephones, including unpublished and new listings. A two-stage Mitofsky-Waksberg design<sup>11,13</sup> was used to select and replace numbers from the list, and to select respondents from within households.<sup>13</sup> This design allows for systematic replacement of those who refuse to participate ("refusals"), or who do not answer repeated calls or cannot be contacted ("unable to contacts"), with randomly selected equivalent respondents. The design also assures random selection of adults within each household, rather than simply surveying the individuals that answer the telephone.

Indiana University's Center for Survey Research (CSR) coordinated data collection. The Center operates the nation's largest university-based Computer Assisted Telephone Interview (CATI) facility. This facility allows for

up to 24 interviews to be conducted simultaneously, and for audio and visual monitoring of all interviews by supervisors. Computer software controls the interview process, from sequencing of telephone numbers through sequencing of questions and recording of answers. All interviewers were experienced telephone surveyors who received at least 20 hours of training on general interviewing techniques, as well as an additional three hours of specific training on the questionnaire used in the survey. Each interviewer was monitored randomly at least twice during each four-hour shift. All CSR interviewers receive training in refusal conversion as part of the 20 hours of training. At least two attempts were made to convert each refusal prior to replacement. When replacements were necessary due to refusal or inability to contact the selected person, specific cutoff rules were followed<sup>12,13</sup> to assure the  $k+1$  or  $k+2$  replacement telephone numbers were equivalent to the number replaced.

The survey questionnaire was developed and pretested by the research team. The questionnaire was reviewed by subject matter experts and by experts in telephone survey methodology, and field tested for one week. The protocols were reviewed by Indiana University's Institutional review board to assure compliance with human subjects protection, and conform to the standards of disclosure of the National Council on Public Polls and the American Association for Public Opinion Research. Data were collected from October 7 through November 15, 1993. Eight questions concerning minors' access to tobacco, as well as 10 demographic questions, were embedded into a 35-item survey. The average interview length was 18 minutes, with approximately six minutes devoted to the tobacco items. Data were analyzed using SPSS. Confidence intervals for a population proportion were calculated using the protocol suggested by Daniel.<sup>14</sup>

Figure 1  
Text of Telephone Survey Items

1. In your opinion, how serious a problem is smoking in children and adolescents. Is it:
  - a) very serious
  - b) somewhat serious
  - c) not too serious, or
  - d) not at all serious?

Several proposals are being considered in some states to deal with smoking by children and adolescents. For each of the following proposals, please indicate your level of support.

2. First, making it illegal to place cigarette vending machines in locations where children and adolescents can have access to them. Do you:
  - a) support
  - b) oppose, or
  - c) neither support nor oppose this proposal?
3. Next, strengthening state laws against the sale of tobacco to minors by imposing fines on sellers, similar to the fines imposed on those who sell alcoholic beverages to minors. Do you:
  - a) support
  - b) oppose, or
  - c) neither support nor oppose this proposal?
4. Requiring businesses that sell tobacco to have a license, the alcohol sellers, so that their licenses could be suspended or revoked if they repeatedly sell tobacco to minors. Do you:
  - a) support
  - b) oppose, or
  - c) neither support nor oppose this proposal?
5. Banning tobacco products from sponsoring events that have special appeal to minors, such as athletic events and rock concerts. Do you:
  - a) support
  - b) oppose, or
  - c) neither support nor oppose this proposal?
6. Banning all advertising and promotion of tobacco products, including newspaper and magazine ads, special events sponsorships, and billboards. Do you:
  - a) support
  - b) oppose, or
  - c) neither support nor oppose this proposal?
7. Imposing fines on minors who possess or use tobacco products. Do you:
  - a) support
  - b) oppose, or
  - c) neither support nor oppose this proposal?
8. Increasing the federal excise tax on cigarettes. Do you:
  - a) support
  - b) oppose, or
  - c) neither support nor oppose this proposal?

## SURVEY RESULTS

A total of 1,005 interviews was completed. The number of interviews was planned to generate 95% confidence levels no greater than  $\pm 3\%$ . The response rate was 71%, the refusal rate was 18%, and the "unable to contact" rate was 11%. The use of the Mitofsky-Waksberg design reduces the importance of the response rate, since all refusals and "unable to contacts" are randomly replaced with equivalent households. Respondents ranged in age from 18 to 91. The demographic characteristics of respondents are found in Table 1. The distribution of respondents is typical of those found in RDD telephone surveys, and fairly represents the population of adults living in U.S. households with telephones. A post-survey weighting procedure was used to adjust for the slight over-representation of females in the survey population.

Each respondent was asked about his or her tobacco use and then asked to characterize how serious a problem they believed smoking by children and adolescents to be. More than 94% of respondents reported considering smoking by children and adolescents to be "very serious" (64.3%) or "somewhat serious" (29.3%). Only 0.5% of the respondents considered it to be "not at all serious."

Confidence intervals are shown in Table 2.

Next, respondents were asked about their support for seven specific proposals to reduce smoking by children and adolescents: (1) vending machine restrictions, (2) imposition of fines on sellers, (3) licensing of all tobacco vendors, (4) ban on sponsorship of events with appeal to youth, (5) ban on all advertising of tobacco products in all media, (6) imposition of fines on the minors who violate underage use laws, and (7) increasing cigarette excise taxes. Table 3 shows the percentages of respondents who supported, opposed, or expressed no opinion on each proposal. Widespread support existed for all seven proposals, with support to opposition ratios ranging from 7 to 1 for imposing fines on sellers who violate the laws, to 1.5 to 1 for imposing fines on the minors who violate the laws. Approximately twice as many respondents supported a total ban on tobacco advertising as opposed such a ban. Two-thirds supported increasing the excise tax on tobacco, while only one-fifth opposed such an increase.

**SURVEY IMPLICATIONS**

Cigarette smoking continues to be the United States' single greatest cause of preventable mortality,<sup>2</sup> accounting for nearly one-fifth of deaths from all causes each year.<sup>3</sup> Nearly 3,000 children and adolescents begin smoking each day, despite health warnings and societal disapproval.<sup>4</sup> If the national health objectives for the year 2000<sup>5</sup> are to be met, a significant reduction must occur in tobacco use by children and adolescents. Virtually all respondents to this national survey recognized cigarette use by children and adolescents to be a "very serious" or "somewhat serious" problem. Proposed laws and regulations to restrict youth access to tobacco enjoy widespread public support. The public also supports significant increases in the cigarette excise tax, which is predicted to make tobacco use much less attractive to minors.<sup>23-25</sup>

While the data reported herein cannot be generalized beyond individuals living in households with telephones (approximately 93% of the U.S. adult population), they demonstrate broad-based support for restricting youth access to tobacco products. Some legislators at the national, state, and local levels, have been reluctant to enact such restriction,<sup>12</sup> perhaps due to pressure from pro-tobacco industry forces, but public sentiment in favor of such restrictions is strong. Many state officials have been reluctant to implement the "random sting" enforcement procedures proposed by SAMHSA to comply with the "Synar amendment" due to concern about public opposition to such tactics.<sup>11</sup> The extent of public support for such measures has perhaps been underestimated by policymakers. The strong support expressed by the respondents to this national telephone survey should provide evidence needed to convince legislators and other officials that restricting youth access to tobacco products, restricting tobacco advertising, and increasing the excise tax on cigarettes are politically palatable to their constituents. If we are to reach the national health objectives for the year 2000, such policy decisions will be necessary.

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**Table 1**  
Characteristics of Survey Respondents  
(n=1,005)

|                                | Percent (95% C.I.)* |
|--------------------------------|---------------------|
| <b>Gender</b>                  |                     |
| Male                           | 40.6(±3.0)          |
| Female                         | 59.4(±3.0)          |
| <b>Age</b>                     |                     |
| 18-25 years                    | 12.5(±2.0)          |
| 26-35 years                    | 24.3(±2.7)          |
| 36-50 years                    | 31.0(±2.0)          |
| 51-65 years                    | 19.3(±2.5)          |
| Older than 65 years            | 12.0(±2.0)          |
| <b>Education</b>               |                     |
| 0-11 years                     | 8.5(±1.7)           |
| 12 years                       | 23.7(±2.8)          |
| some college                   | 26.7(±2.7)          |
| college degree                 | 19.4(±2.4)          |
| some postgraduate              | 3.7(±1.2)           |
| master's degree                | 7.6(±1.6)           |
| doctorate                      | 1.8(±0.8)           |
| vocational/technical degree    | 3.6(±1.1)           |
| <b>Ethnicity</b>               |                     |
| White (Caucasian)              | 77.8(±2.8)          |
| Black or African-American      | 10.3(±1.9)          |
| Hispanic                       | 3.6(±1.1)           |
| Native American                | 3.5(±1.1)           |
| Asian or Pacific Islander      | 1.5(±0.8)           |
| Other                          | 3.3(±1.1)           |
| <b>Annual Household Income</b> |                     |
| 00-14,999                      | 15.6(±2.2)          |
| 15,000-24,999                  | 18.2(±2.5)          |
| 25,000-34,999                  | 23.1(±2.6)          |
| 35,000-49,999                  | 20.8(±2.5)          |
| 50,000 and above               | 24.6(±2.7)          |
| <b>Tobacco Use History</b>     |                     |
| Never used tobacco             | 39.0(±3.0)          |
| Former tobacco user            | 29.6(±2.8)          |
| Current tobacco user           | 31.5(±2.0)          |
| *95% confidence interval       |                     |

**Table 2**  
Perceived Seriousness of Smoking by Minors  
(n=1,005)

|                          | Percent (95% C.I.)* |
|--------------------------|---------------------|
| Very serious             | 64.3(±3.0)          |
| Somewhat serious         | 29.3(±2.8)          |
| Not too serious          | 0.8(±1.6)           |
| Not serious at all       | 0.5(±0.3)           |
| *95% confidence interval |                     |

**Table 3**  
Public Support for Proposals to Control Minors' Access to Tobacco  
(n=1,005)

|                                      | Support<br>Percent<br>(95% C.I.)* | Oppose<br>Percent<br>(95% C.I.) | Neither Support<br>nor Oppose<br>Percent<br>(95% C.I.) |
|--------------------------------------|-----------------------------------|---------------------------------|--|
| Vending machine controls             | 89.3(±2.0)                        | 15.4(±2.2)                      | 15.3(±2.2)   |
| Fines on sellers                     | 77.3(±2.8)                        | 11.2(±1.8)                      | 11.5(±2.0)   |
| Licensing sellers                    | 74.0(±2.7)                        | 15.2(±2.2)                      | 10.8(±1.8)   |
| Fines on minors possessing tobacco   | 49.8(±3.1)                        | 32.2(±2.9)                      | 21.8(±2.8)   |
| Banning youth-oriented tobacco shops | 63.5(±3.0)                        | 18.3(±2.4)                      | 17.8(±2.3)   |
| Banning all advertising              | 61.8(±3.1)                        | 28.4(±2.8)                      | 19.8(±2.5)   |
| Increasing excise tax on tobacco     | 66.7(±2.8)                        | 19.6(±2.4)                      | 13.7(±2.1)   |
| *95% confidence interval             |                                   |                                 |  |

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August 10, 1995

Contact: FDA Press Office  
(301) 443-1130

CHILDREN AND TOBACCO: WHAT OTHERS SAY

"I figure if it's really so bad for you, they wouldn't be selling them everywhere. I mean, you walk into the Stop 'N' Go, and there's a whole wall of them right up front at the cash register. If they were really that bad for you, they'd make them less accessible."

-- Brian Grindole, 18  
*The New York Times*, July 30, 1995

"Given all that we know, the scientific case for protecting children from tobacco is indisputable. The moral imperative to act is ~~imperative~~... This is not a Democratic or a Republican issue. It is a bipartisan, pro-child, pro-family, pro-health issue."

*overwhelming*

-- President Jimmy Carter  
*USA Today*, August 3, 1995

"The tobacco industry continues to insist that smoking is a simple matter of individual rights and adult choice. If that were true, I would be on their side. But we're not talking about adults. We're talking about keeping an addictive and lethal substance out of the hands of children. Neither the FDA nor anyone else is talking about prohibiting adults from smoking."

-- Former U.S. Sen. Barry Goldwater  
*Wall Street Journal*, August 8, 1995

"The American Medical Association reminds physicians, the public, and politicians that the damning evidence against tobacco makes opposition to its use a pressing, nonpartisan public health issue."

-- Editorial  
*Journal of the American Medical Association*  
July 19, 1995

"We believe that current tobacco regulations, limited primarily to a ban on television advertising and the promotion of warning labels on packages, are insufficient in protecting America's children. The FDA should have authority to control tobacco by placing new limits on tobacco advertising, creating stricter licensing regulations for vendors, and banning cigarette vending machines."

-- American Public Health Association  
Letter to President Clinton from APHA  
July 13, 1995

"What is most significant about teens and smoking, however, is that, from all indications, smoking is an addiction that is typically initiated during the teenage years or not at all. For the great majority of smokers, this addiction begins before they are old enough to purchase tobacco lawfully. In fact, 75 percent of all adult smokers report that they became addicted to tobacco before they were 18 years old. Very few smokers take up smoking for the first time as adults. If youth access can be controlled effectively, and the decision whether to smoke can be delayed until adulthood, then, over time, smoking will be greatly reduced as a major addiction in our society."

-- "No Sale: Youth, Tobacco and Responsible  
Retailing"  
Working Group of State Attorneys General  
December, 1994

"The nation must commit itself to a vigorous public health initiative in tobacco control....The nation cannot reasonably expect to eliminate tobacco-related disease and death by 2010. However, by putting a youth-centered prevention strategy at the center of tobacco control efforts, and by implementing the initiatives proposed (to that end) in this report, the nation can take a firm and resolute step on that path."

-- "Growing Up Tobacco Free"  
Institute of Medicine, September, 1994

"The concept -- pediatric disease -- qualifies as an epiphany, given the acknowledged authority of society over a minor. He/she has to go to school, has to wait until a certain age before being allowed to drive, to vote, to drink beer. It yields no substantial libertarian ground to add to the list enforcement mechanisms designed to dissuade the 15-year-old from taking up a habit that brings on premature and painful death."

-- William F. Buckley Jr.  
Syndicated columnist, March, 1995



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
Olympia, Washington 98504

May 12, 1994

RE: Retailer Compliance Checks -- Immunity for Youth Participants

To determine the ease to which youth under the age of eighteen can access tobacco products, retailer compliance checks are being conducted across the state by local health departments and districts or their authorized contractors. Youth volunteers have agreed to participate in these controlled buys with the approval of their parents or guardians.

State law (RCW 70.155.080) grants immunity to youth participating in tobacco retailer compliance checks:

"A person under the age of eighteen who purchases or attempts to purchase or obtains or attempts to obtain cigarettes or tobacco products commits a class 3 civil infraction under chapter 7.80 RCW and is subject to a fine as set out in chapter 7.80 RCW or participation in a smoking cessation program, or both. This provision does not apply if a person under the age of eighteen, with parental authorization, is participating in a controlled purchase as part of a liquor control board, law enforcement, or local health department activity." [RCW 70.155.080 RCW]

All youth participants will be under the strict supervision of an adult escort. All tobacco products obtained through these compliance checks will be returned to the local health department to be destroyed or used as evidence.

If there are any questions regarding this immunity, please contact your local health department, your local Liquor Control Board office or the Department of Health's Youth Tobacco Prevention Program at (206) 753-4312.

Sincerely,

Jo Wadsworth, Director  
Non-Infectious Disease and Injury  
Department of Health

Gary Gilbert, Chief  
Washington State Liquor  
and Tobacco Enforcement

# Active Enforcement of Cigarette Control Laws in the Prevention of Cigarette Sales to Minors

Leonard A. Jason, PhD, Peter Y. Ji, Michael D. Anes, Scott H. Birkhead

**Objective.**—To assess the effect that cigarette legislation would have on reducing merchant sales rates of cigarettes to minors and the effect on adolescent smoking behavior.

**Design.**—Observational survey of merchant selling behaviors and adolescent smoking habits before and after passage of legislation.

**Setting.**—The setting for the merchant survey was Woodridge, Ill (population 25 200), a suburban community of Chicago. The surveys were distributed to adolescents in the local junior high school.

**Participants.**—Convenience sample of both merchants and adolescent students.

**Intervention.**—Passage of community antismoking legislation.

**Main Outcome Measures.**—Percentage of stores selling cigarettes to minors in Woodridge and percentage of students who had experimented with cigarettes or were regular smokers.

**Results.**—Merchant sales rates in Woodridge decreased from a baseline of 70% before legislation to less than 5% in 1.5 years of compliance checking after legislation. Student surveys showed that the rates of cigarette experimentation and regular use of cigarettes by adolescents were reduced by over 50%.

**Conclusion.**—Cigarette control laws can be effective in significantly reducing the rate of cigarettes sold by merchants and rates of cigarette use by adolescents. Key elements of successful legislation implementation are consistent compliance checking and heightened community awareness of the problems and prevalence of adolescent smoking.

(JAMA 1991;266:3159-3161)

DESPITE the health hazards of smoking, approximately 3000 adolescents become new smokers daily.<sup>1</sup> A recent study by DiFranza and Tye<sup>2</sup> has estimated over \$1 billion in illegal sales of tobacco products to minors. Although state laws prohibit sales to minors, minors frequently have little difficulty in purchasing cigarettes. Across the nation, active tobacco-control investigators have sent minors, under supervision, into stores to purchase cigarettes. In Santa Clara County, California, 74% of stores sampled in this manner sold tobacco products to minors.<sup>3</sup> In Massachusetts, an 11-year-old child was able to purchase cigarettes from stores 75% of the time.<sup>4</sup>

Campaigns to alert merchants to cigarette laws are insufficient for restricting cigarette sales. In Buffalo, NY, letters describing the city's cigarette sales law, warning signs, and enforcement instruc-

tions were sent to merchants. Despite Buffalo's educational efforts, a citywide investigation showed that 77% of stores receiving educational packages sold cigarettes to minors.<sup>5</sup> In Santa Clara, Calif, an aggressive campaign was used to alert merchants to cigarette laws. There was an initial reduction of cigarette sales to minors from 74% to 39%,<sup>6</sup> yet vending machine sales were unchanged. A 1-year follow-up showed that the merchant sales had rebounded to 60%.<sup>7</sup>

See also pp 3168 and 3185.

The following study sought to assess, by periodic checking, the effects of licensing and enforcement of legislative provisions on cigarette selling behaviors of merchants and minors' accessibility to cigarettes. Through distribution of questionnaires before and after passage of legislation, we also sought to determine the effect of the law on the prevalence of adolescent cigarette use in a local junior high school.

## METHOD

This study was initiated as a result of a private citizen's complaint regarding a minor's possession of cigarettes to Officer Bruce Talbot of the Woodridge, Ill (population, 25 200), police department. In August 1988, Officer Talbot sent a letter to all cigarette vendors in Woodridge detailing Illinois state law prohibiting cigarette sales to minors. In addition, following a media focus on a DePaul University study of cigarette sales to minors in Chicago (L. A. J. and P. Y. J., unpublished data, 1991), Officer Talbot invited one of the authors (L. A. J.) to assess cigarette sales rates in Woodridge. These measurements were done in August and November 1988 and February 1989. The DePaul University research team also distributed a questionnaire to students at the local junior high school in March 1989 to determine the number of adolescent smokers and their smoking habits. In May 1989, new legislation was passed restricting cigarette sales in Woodridge, and cigarette sales were tracked after the legislation was passed.

During each checking period, minors 12 to 13 years of age (all of whom were rated by independent judges as looking less than 18 years of age) were sent into stores to purchase a pack of cigarettes. Unobtrusively, a Woodridge police official or a DePaul University research assistant observed the transaction. Vending machine sales were also tracked by sending minors to purchase cigarettes from these machines. There was 100% agreement between two independent judges as to whether an illegal sale occurred.

Sales assessments conducted before legislation to determine if Officer Talbot's letter to merchants was effective, were made in August and November 1988 and February 1989. In the spring of 1989, Officer Talbot and other Woodridge officials drafted cigarette control legislation modeled after the city's liquor control laws. This was done to treat the sales of tobacco and alcohol, both age-restricted products, in precisely the same manner. Using the liquor laws as

From the Department of Psychology, DePaul University, Chicago, Ill.  
Reprint requests to the Department of Psychology, DePaul University, 2323 N Seminary Ave, Chicago, Ill 60614 (Dr Jason).

Sales Rates and Offense Data Before and After Pa: of Community Smoking Legislation

| Date           | No. of Stores | Sales Rate, % | No. of Stores Complying | First Offense | Second Offense |
|----------------|---------------|---------------|-------------------------|---------------|----------------|
| Before Passage |               |               |                         |               |                |
| August 1988    | 20            | 70            | 0                       |               |                |
| November 1988  | 20            | 60            | 8                       |               |                |
| February 1989  | 19            | 79            | 4                       |               |                |
| After Passage  |               |               |                         |               |                |
| June 1989      | 23            | 35            | 15                      | 8             |                |
| August 1989    | 22            | 30            | 14                      | 4             | 4              |
| November 1989  | 22            | 0             | 22                      | 0             | 0              |
| January 1990   | 22            | 0             | 22                      | 0             | 0              |
| April 1990     | 27            | 4             | 26                      | 1             | 0              |
| July 1990      | 27            | 4             | 26                      | 1             | 0              |
| December 1990  | 30            | 3             | 29                      | 1             | 0              |

a guide had the additional effect of taking advantage of existing civil enforcement structures, such as the mayor's office, for issuing sales licenses and following up violations. The new cigarette legislation, containing licensing, enforcement, and possession provisions, was passed May 1, 1989, with a 30-day enforcement grace period. Vendors were issued cigarette sales licenses and billed a licensing fee of \$50.

Reports of the cigarette sales assessment and the passage of the law were aired on local television stations and published in local newspapers to inform community members. During the grace period, Officer Talbot personally delivered a copy of the law and a tip sheet describing all forms of valid age identification issued by the state of Illinois to every cigarette vendor in Woodridge. Vendor's questions about the law were answered during these face-to-face store visits, each of which took approximately 15 minutes. All store visits were concluded in 1 day.

The Woodridge police department planned quarterly "stings" to check merchant compliance after the grace period, and all stores were checked regularly (Table). When a violation occurred, the police officer wrote a report on the violation and sent it to the mayor's office (the mayor is the tobacco commissioner under the ordinance, as well as liquor commissioner). The mayor's office then sent a letter informing the merchant of his or her right to appeal within 10 days. If the merchant chose to appeal, a civil hearing was held; otherwise, the mayor issued a warning to the merchant, and either suspended the cigarette-selling license for 1 or more days, and/or imposed a monetary fine of up to \$40. First offenses incurred a warning in the first year of enforcement, with a fine and/or suspension imposed if a second violation occurred during the subsequent compliance check. In the second year of enforcement, the tobacco commissioner has tended to enforce the ordinance more stringently than in the first year. If the merchant did not sell cigarettes to minors

during compliance checking periods, a congratulatory note was sent from the mayor's office.

The possession clause of the Woodridge ordinance allows police officers to issue a ticket to any minor caught with illegal tobacco products. This ticket carries a fine of \$25. The minor can pay the fine immediately at the police department, in a manner similar to paying for a parking ticket, or can wait for a civil hearing on the possession charge.

The police department in Woodridge has played an important role in the enforcement of penalties. First, after passage of the ordinance, all officers were informed of the provisions by a departmental memorandum from the chief of police. Second, if a store incurred a 1-day suspension, the mayor's office notified the police, and all officers patrolling the area were reminded at morning roll call to keep a watchful eye on the store.

The police also maintained heightened community awareness in Woodridge by sending letters to two different populations on a regular basis. At the end of every school year, police sent a letter to merchants warning them that during the summer months more adolescents would be in their stores, reminding them of the ordinance, and asking for their continued support. Also, at the beginning of every school year, Woodridge schoolchildren were given an informative letter about the ordinance to take home to their parents. This letter asked for continued compliance and stressed the importance of preventing adolescent tobacco access.

A follow-up questionnaire was distributed to junior high school students in April 1991, almost 2 years after passage of the ordinance. This questionnaire sought to determine the effects of the Woodridge ordinance on the number of adolescent smokers and their smoking habits.

## RESULTS

Results of the assessment of Woodridge merchants' sales rates before en-

actment of the ordinance are shown in the Table. In addition, in each of the time periods predating the legislation, sales from three vending machines in Woodridge were shown to be 100%.

The results of compliance checking of Woodridge merchants conducted after the passage of the legislation are shown in the Table.

From March through May 1989, the interval between the compliance checks before and after passage of the legislation, the number of vending machines in Woodridge increased from three to six. In the first assessment after passage of the legislation (June 1989), three of six vending machines sold cigarettes in Woodridge. The number of vending machines decreased from six in January 1990 to two in December 1990. In January, April, and July 1990, there were no vending machine sales. In December 1990 there was one vending machine sale.

Fifty minors were cited for possession of cigarettes in the 1.5 years after passage of the ordinance. These minors were assessed a \$25 fine and their cigarettes were confiscated. Four of the 50 minors were repeat offenders during this time period.

A total of 680 local seventh- and eighth-grade students were surveyed in March 1989, before the law was passed. Results from this survey indicated that 46% of the students had experimented with cigarettes (i.e., had tried cigarettes on at least one occasion) and 16% were regular smokers. In April 1991, almost 2 years after passage of the Woodridge ordinance, 639 local seventh- and eighth-grade students were surveyed, and 23% reported experimentation with cigarettes, with only 5% describing themselves as regular smokers. Survey return rates were at 90% or above both before and after passage of the legislation.

Other important data from the April 1991 survey revealed that 77% of the smokers cited friends, parents, siblings, or others as sources of their cigarettes, 17% cited stores or vending machines outside of Woodridge as their source, and 6% cited stores or vending machines within Woodridge. Additionally, 86% of student respondents knew of the Woodridge law and 69% felt the law would either prevent their procurement of cigarettes or make it harder for them to obtain cigarettes.

## COMMENT

Two significant findings have emerged from this study. Principally, to our knowledge, Woodridge is the first community to successfully reduce cigarette sales rates to minors to a minimal level as a result of legislation. The key ele-

ments of the legislation are vendor licensing, active compliance checking, and penalties for merchant sales violations and minor possession of cigarettes. Second, the combined effects of this legislation and a community awareness of the problem of adolescent smoking have substantially reduced the frequency of adolescent experimentation with cigarettes and regular smoking.

The licensing process in Woodridge is efficient because it takes advantage of existing enforcement procedures designed to control sales of alcohol to minors. The purpose of licensing is to motivate a store to monitor itself in cigarette sales, rather than face license suspension. If a temporary suspension is made, it is likely to have a greater impact than a fine, because so much of a store's profit is made through the sale of cigarettes, especially in large stores.

The legislation and enforcement success in Woodridge must also be attributed to the commitment of the police department and mayor's office to continually reinforce to the community the problem of adolescent smoking. The involvement of the local and Chicago metropolitan area media in reporting on cigarette sales before passage of the ordinance, the ordinance passage itself, and subsequent successes fostered community pride in the initiative. The police visits to merchants to clarify the law, internal police briefings regarding merchant violations, the police letter to merchants at the beginning of the summer, and the yearly age-identification tip sheets were all integral parts of main-

ing positive police-merchant interaction. Thank-you letters from the mayor's office helped to instill a sense of merchant solidarity and promoted merchant-community ties. Finally, the police department's letter describing the ordinance that was given to schoolchildren to take home to their parents and police efforts toward enforcement helped to keep families focused on the issue of adolescent smoking.

School survey results indicate that the Woodridge law has substantially reduced the number of adolescents who smoke. The reduction of merchant cigarette sales has played a major role in keeping cigarettes from minors. Another possible contribution to this reduction is the possession clause of the ordinance. The possession clause may provide an additional deterrent to experimental cigarette use by minors. Although opponents of penalties for possession in cigarette legislation have insisted that these clauses are a case of "blaming the victim" for cigarette use, we feel that possession clauses are one part of an overall plan—one part that may have a deterrent effect.

Traditional educational approaches to reducing merchant cigarette sales have resulted in only short-term reductions presumably because an educational message instills little motivation for change. Without the possibility of direct action, merchants will fail to respond to educational programs to reduce the number of adolescent smokers because of the tremendous profits involved in cigarette sales and the certainty of not being

caught. Legislation was effective in Woodridge because (1) police conducted regularly scheduled compliance checks and used uniform checking methods, (2) legislation was coupled with a strong educational message from the police to community members at the beginning and end of every school year, and (3) the community's success received consistent media exposure.

We would like to thank students Nick Cicarelli, age 13 years, Allison Vega, age 13 years, Christy Keller, age 13 years, and Jenny Haut, age 12 years, for participating in the Woodridge compliance checks.

We also thank Richard Russell, principal of Jefferson Junior High School in Woodridge, Ill, for allowing access to students for our surveys and Woodridge Police Department Juvenile Officer Will Sterling for his helpful comments.

Last, we would like to thank Sergeant Bruce "Buzz" Talbot for his continued effort, support, and contribution to the Woodridge City Tobacco Ordinance, without which this article would not have been possible.

#### References

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5. Reducing minors' access to tobacco. *Tobacco Youth Rep* Autumn 1990;4:17.
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**HB**

**370**

# FISCAL NOTE

BILL NO. CSHB 370 JUD)

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Alaska Court System  
 Title: Legal counsel for accused criminals BRU: Trial Courts  
 Component: \_\_\_\_\_  
 Sponsor: Reps. Martin, Forner, Toohey  
 Requester: Judiciary COMPONENT SERIAL NO. 768

| Expenditures/Revenues  |       | (Thousands of Dollars) |       |       |       |       |  |
|------------------------|-------|------------------------|-------|-------|-------|-------|--|
| OPERATING EXPENDITURES | FY 97 | FY 98                  | FY 99 | FY 00 | FY 01 | FY 02 |  |
| PERSONAL SERVICES      |       |                        |       |       |       |       |  |
| TRAVEL                 |       |                        |       |       |       |       |  |
| CONTRACTUAL            |       |                        |       |       |       |       |  |
| SUPPLIES               |       |                        |       |       |       |       |  |
| EQUIPMENT              |       |                        |       |       |       |       |  |
| LAND & STRUCTURES      |       |                        |       |       |       |       |  |
| GRANTS & CLAIMS        |       |                        |       |       |       |       |  |
| MISCELLANEOUS          |       |                        |       |       |       |       |  |
| TOTAL OPERATING        | 2.0   | 2.0                    | 2.0   | 2.0   | 2.0   | 2.0   |  |
| CAPITAL EXPENDITURES   |       |                        |       |       |       |       |  |
| CHANGE IN REVENUES     |       |                        |       |       |       |       |  |

| Fund Source              |     | (Thousands of Dollars) |     |     |     |     |  |
|--------------------------|-----|------------------------|-----|-----|-----|-----|--|
| 1002 Federal Receipts    |     |                        |     |     |     |     |  |
| 1003 GF Major            |     |                        |     |     |     |     |  |
| 1004 GF                  | 2.0 | 2.0                    | 2.0 | 2.0 | 2.0 | 2.0 |  |
| 1006 GF Program Receipts |     |                        |     |     |     |     |  |
| 1007 GF Mental Health    |     |                        |     |     |     |     |  |
| Other                    |     |                        |     |     |     |     |  |
| TOTAL                    | 2.0 | 2.0                    | 2.0 | 2.0 | 2.0 | 2.0 |  |

Estimate of any current year (FY 96) cost: None

| Positions |  |  |  |  |  |
|-----------|--|--|--|--|--|
| Full-Time |  |  |  |  |  |
| Part-Time |  |  |  |  |  |
| Temporary |  |  |  |  |  |

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228  
 Agency: Alaska Court System Date: 01/24/96  
 Approved by: Arthur H. Snowden, II, Administrative Director Date: 01/24/96  
 Agency: Alaska Court System

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FISCAL NOTE

No. 2

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

Bill Version: CSHB 370(JUD)

(H) Publish Date: 1/26/96

Revision Date: \_\_\_\_\_  
Title: "An Act relating to the provision of legal services to criminal defendants"  
Sponsor: Rep. Martin  
Requestor: (H) Jud

Department Affected: Administration  
BRU: Office of Public Advocacy  
Component: Office of Public Advocacy  
COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES      |       |       |       |       |       |       |
| TRAVEL                 |       |       |       |       |       |       |
| CONTRACTUAL            |       |       |       |       |       |       |
| SUPPLIES               |       |       |       |       |       |       |
| EQUIPMENT              |       |       |       |       |       |       |
| LAND & STRUCTURES      |       |       |       |       |       |       |
| GRANTS, CLAIMS         |       |       |       |       |       |       |
| MISCELLANEOUS          |       |       |       |       |       |       |
| TOTAL OPERATING        | 00    | 00    | 00    | 00    | 00    | 00    |

|                      |  |  |  |  |  |  |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES |  |  |  |  |  |  |
|----------------------|--|--|--|--|--|--|

|                    |  |  |  |  |  |  |
|--------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES |  |  |  |  |  |  |
|--------------------|--|--|--|--|--|--|

FUND SOURCE: (Thousands of Dollars)

|                          |    |    |    |    |    |    |
|--------------------------|----|----|----|----|----|----|
| 1002 Federal Receipts    |    |    |    |    |    |    |
| 1003 GF Match            |    |    |    |    |    |    |
| 1004 GF                  |    |    |    |    |    |    |
| 1005 GF/Program Receipts |    |    |    |    |    |    |
| 1037 GF/Mental Health    |    |    |    |    |    |    |
| OTHER                    |    |    |    |    |    |    |
| TOTAL                    | 00 | 00 | 00 | 00 | 00 | 00 |

Estimate of any current year (FY 96) cost: \$ 0

POSITIONS:

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| FULL-TIME |  |  |  |  |  |  |
| PART-TIME |  |  |  |  |  |  |
| TEMPORARY |  |  |  |  |  |  |

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact on the Office of Public Advocacy.

Prepared by Grant McGee, Public Advocate  
Division: Office of Public Advocacy

Phone: 274-1684  
Date: \_\_\_\_\_

Approved by Commissioner Mark Boyer  
Agency: Administration

Date: 1/23/96

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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

No. 3  
Bill Version: CSHB 370 (JUD)  
(H) Publish Date: 1/26/96

Revision Date: \_\_\_\_\_  
Title: "An Act relating to the provision of legal services to criminal defendants"  
Sponsor: Representative Martin  
Requestor: (H) Jud

Department Affected: Administration  
BRU: Public Defender Agency  
Component: Public Defender Agency  
COMPONENT SERIAL NO. 1631

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97      | FY 98      | FY 99      | FY 00      | FY 01      | FY 02      |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES      | ***        | ***        | ***        | ***        | ***        | ***        |
| TRAVEL                 |            |            |            |            |            |            |
| CONTRACTUAL            |            |            |            |            |            |            |
| SUPPLIES               |            |            |            |            |            |            |
| EQUIPMENT              |            |            |            |            |            |            |
| LAND & STRUCTURES      |            |            |            |            |            |            |
| GRANTS, CLAIMS         |            |            |            |            |            |            |
| MISCELLANEOUS          |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>***</b> | <b>***</b> | <b>***</b> | <b>***</b> | <b>***</b> | <b>***</b> |

|                      |     |     |     |     |     |     |
|----------------------|-----|-----|-----|-----|-----|-----|
| CAPITAL EXPENDITURES | *** | *** | *** | *** | *** | *** |
|----------------------|-----|-----|-----|-----|-----|-----|

|                        |     |     |     |     |     |     |
|------------------------|-----|-----|-----|-----|-----|-----|
| CHANGE IN REVENUES ( ) | *** | *** | *** | *** | *** | *** |
|------------------------|-----|-----|-----|-----|-----|-----|

**FUND SOURCE:** (Thousands of Dollars)

|                          |            |            |            |            |            |            |
|--------------------------|------------|------------|------------|------------|------------|------------|
| *002 Federal Receipts    | ***        | ***        | ***        | ***        | ***        | ***        |
| *003 GF Match            |            |            |            |            |            |            |
| *004 GF                  |            |            |            |            |            |            |
| *005 GF/Program Receipts |            |            |            |            |            |            |
| *037 GF/Mental Health    |            |            |            |            |            |            |
| OTHER                    |            |            |            |            |            |            |
| <b>TOTAL</b>             | <b>***</b> | <b>***</b> | <b>***</b> | <b>***</b> | <b>***</b> | <b>***</b> |

Estimate of any current year (FY 96) cost: \$ -0-

**POSITIONS:**

|           |     |     |     |     |     |     |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | *** | *** | *** | *** | *** | *** |
| PART-TIME |     |     |     |     |     |     |
| TEMPORARY |     |     |     |     |     |     |

**ANALYSIS:** (Attach a separate page if necessary.)

This bill would have the effect of slightly decreasing the workload of the Public Defender.

Prepared by John B. Salem, Director  
Division: Public Defender Agency

Phone: (907) 264-4472  
Date: \_\_\_\_\_

Approved by Commissioner Mark Royer  
Agency: Department of Administration

Date: 1/26/96

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# LEGAL SERVICES

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130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

March 14, 1996

**SUBJECT:** Provision of Legal Services at Public Expense - CSHB 370(JUD)  
(Work Order No. 9-LS1352\C)

**TO:** Senator Robin Taylor  
Attn: Chuck Achberger

**FROM:** Gerald P. Luckhaupt   
Legislative Counsel

You have asked if CSHB 370(JUD) amends Rule 5(b), Alaska Rules of Criminal Procedure? It is my opinion that CSHB 370(JUD) does not amend Rule 5(b), A.R.Cr.P.

Rule 5(b), A.R.Cr.P., provides that immediately after arrest a prisoner may telephone an attorney or a friend or relative and is entitled to visit with an attorney or relative. This rule is based upon AS 12.25.150(b). This right of a prisoner to telephone calls and to visits is unaffected directly by CSHB 370(JUD), in that a prisoner is still going to be able to telephone and visit with relatives, friends, and attorneys the prisoner is able to contact on his own. The prisoner, though, will not be able to contact the public defender and have the public defender undertake representation of the prisoner at this time, as the prisoner's initial appearance will probably not have occurred. This does not in my opinion mean that CSHB 370(JUD) amends or changes Rule 5(b), A.R.Cr.P., as that rule does not guarantee a prisoner a right to counsel at state expense but merely provides that law enforcement authorities may not hold a prisoner incommunicado.

If you have further questions, please contact me at your convenience.

GPL:pl  
96-077.plm

MEMORANDUM  
ALASKA PUBLIC DEFENDER AGENCY  
900 W. 5TH AVE., SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907)264-4412 (direct number)  
Fax line: (907)269-5476

FAXED  
3-14-96

DATE: 3-13-96

TO: Senator Robin Taylor

FROM: John B. Salemi, Public Defender

RE: HB370 (Limiting Public Defender Appointments Until after Arraignment)

Thank you for allowing my (partial) testimony regarding the above-mentioned bill. I appreciated your grasp of the legal issues. Thank you for your assurance that I will be permitted to complete my testimony so as to raise the other issues of concern which did not surface due to time constraints.

The legislative hearing process can be very frustrating when one does not get to respond to assertions made by others, whether it be the sponsor, or an APD representative. The Public Defender does not "aggressively pursue" cases; we have plenty of business, without going out drumming up more. To be likened to an "ambulance chaser" as was done by the sponsor unfairly discredits our agency in a very visible and public forum. The sponsor, through his comments, demonstrated only that he knows very little about the criminal justice system, the Public Defender Agency, and the potential impact of the bill he is sponsoring. The problem is, some people will be left with the impression that PD staff attorneys are out walking the streets telling people not to cooperate with the police. I believe you know that isn't true.

This bill is bad law. If it passes, it will generate an enormous amount of litigation. It is also bad public policy. It creates a two-tiered system of justice where people of some means can consult with lawyers, but poor people are not afforded that right. If you recall, officer Warner testified related to your question about Miranda situations, if the person wants to contact a private attorney, the police provide that opportunity. She went on to say if the individual being detained has no private lawyer, but instead asks for a free lawyer, the police are instructed to shut down the interrogation. That policy is illegal. It is an equal protection violation, violative of Miranda and the 6th Amendment. Even with Miranda in place the police are apparently making efforts to circumvent an individual's right to counsel.

The police are involved in the "competitive enterprise of ferreting out crime". Every citizen should applaud their considerable efforts in this regard. However, they are not objective about what the law should be in the area of access to counsel for suspects or accused persons. If it were up to the police there would be no right to a lawyer, period. But that's not the law. The police are the moving force behind this bill. Representative Porter told

me this directly. Law enforcement is frustrated when lawyers give people legal advice which goes like this: "you don't have to talk to the police if you don't want to, and no one can force you to". This right is one of the concepts which distinguishes us from totalitarian forms of government. We should be reinforcing a citizen's ability to receive this advice, not eliminating it.

This bill allows people who have money access to that advice, but for poor people, they will be kept in the dark. When Officer Warner said the PD has dispensed this advice "hundreds and hundreds of times", she was making a wildly exaggerated claim. My intake lawyers in Anchorage, our busiest office by far, say they help individuals make decisions about talking to the police once or twice a month, on average. More often than not, they say, they either advise the person to co-operate with the police (often these individuals have nothing to hide as they are only witnesses), or they begin negotiating directly with the prosecutor regarding a resolution of the case. Sure, there are times we tell an individual not to submit to interrogation. Any criminal defense lawyer worth his or her salt better be giving out that advice under appropriate circumstances.

I've been a PD lawyer for 16 years. I've told people not to talk to the police no more than a dozen times in all those years. As I stated in my testimony, 99% of our cases/contacts are court appointments which occur after formal charges have been filed. The police aren't permitted to talk to our clients once we're appointed, so there is no need for us to focus on this issue.

There are other legal problems with this bill. Alaska Criminal Rule 5(b) is in direct conflict with this proposal. This bill would have to include a rule change in order for it to be legal.

Then there is the intoximeter/DWI issue. Before the police can make someone take the alcohol breath test, they have to give them an opportunity to consult with counsel. See Copelin v. St., 659 P2d 1206. We have a 24 hour answering service where lawyers are on call around the clock to take these calls. If this bill passes, there won't be anyone to take those to answer the phone. I'd frankly be happy to shut down the answering service and on-call list (its expensive and I am on call along with the other PDs. I don't like talking to drunks at 4:00 a.m.). On the other hand, the prosecutor isn't going to be very happy when they can't get the intoximeter result into evidence because the DWI suspect had no reasonable opportunity to consult with counsel.

There's more, but I'll wait until the bill is heard again. I am crossing my fingers that this bill will be seen as an inappropriate change in the law. I sincerely believe the committee's time could be taken up with more pressing and immediate concerns.

Thanks for your time. Please give me a call if I can answer questions.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

March 14, 1996

**SUBJECT:** CSHB 370(JUD) - Constitutional Requirements Concerning  
Appointment of Counsel in Criminal Proceedings  
(Work Order No. 9-LS1352\C)

**TO:** Representative Brian Porter  
Attn: Daniella Loper

**FROM:** Gerald P. Luckhaupt   
Legislative Counsel

You have asked when the appointment of counsel is required by the constitution in a criminal proceeding and does bill sec. 1 of CSHB 370(JUD) comport with the constitutional requirement?

### **Sixth Amendment, United States Constitution**

Under the United States Constitution, the Sixth Amendment right to counsel attaches only upon the commencement of adversary criminal proceedings and then only at "critical stages" of criminal proceedings following the arraignment. The arraignment signals "the initiation of adversary criminal proceedings." United States v. Gouveia, 467 U.S. 180, 188, 104 S.Ct. 2292, 81 L.Ed.2d 146 (1984). The arraignment itself may or may not be a "critical stage" at which the presence and assistance of counsel is necessary unless waived. Michigan v. Jackson, 475 U.S. 625, 630, n. 3, 106 S.Ct. 1404, 89 L.Ed.2d 631, 638 (1986).<sup>1</sup> Generally a determination of what is and is not a "critical stage" depends upon whether the "substantial rights of the accused may be affected" at the particular proceeding. Mempa v. Rhay, 389 U.S. 128, 88 S.Ct. 254, 19 L.Ed.2d 336 (1967). In Coleman v. Alabama, 399 U.S. 1, 90 S.Ct. 1999, 26 L.Ed.2d 387 (1970), the United States Supreme Court concluded that a preliminary hearing granted under state law at which a plea is taken or entered is a "critical stage."

### **Article I, § 11, Alaska Constitution**

The Alaska Supreme Court has stated with regard to the right to counsel:

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<sup>1</sup>In Hamilton v. Alabama, 368 U.S. 52, 82 S.Ct. 157, 7 L.Ed.2d 114 (1961), the United States Supreme Court found an Alabama arraignment to be a "critical stage".

Representative Brian Porter

March 14, 1996

Page 2

Unlike the privilege against self-incrimination, the right to counsel provided by the sixth amendment attaches only after formal charges have been filed. *Kirby v. Illinois*, 406 U.S. 682, 92 S.Ct. 1877, 32 L.Ed.2d 411 (1972). Although we are not limited to the scope of the sixth amendment when construing the right to counsel provided by our state constitution, when we have provided a broader right in the past we have done so only to protect the accused during the proceedings that are investigatory in nature and which are conducted in an adversary context.

Loveless v. State, 592 P.2d 1206, 1210 (Alaska 1979)(footnotes omitted). And in regard to what is a "critical stage," the Alaska Supreme Court has said that an initial appearance and examination under Rule 5, A.R.Cr.P., is not a "critical stage." The court said:

With regard to the sixth amendment claim, it is clear that the Rule 5 proceeding is not a "critical stage" requiring the assistance of counsel. No plea may be taken at that stage, Rule 5(e), and no plea was entered, unlike the situations present in *Coleman v. Alabama*, 399 U.S. 1, 90 S.Ct. 1999, 26 L.Ed.2d 387 (1970), and *White v. Maryland*, 373 U.S. 59, 83 S.Ct. 1050, 10 L.Ed.2d 193 (1963), respectively. The probable cause determination made pursuant to Rule 5(e)(1) neither involves the examination of witnesses nor precludes the state from seeking a grand jury indictment should no probable cause be found. See Rule 5.1(g)(2) ... The setting of bail is likewise not an adversary confrontation wherein "potential substantial prejudice" to "the defendant's basic right to a fair trial" inheres, but rather is limited to the issue of interim confinement.

Padgett v. State, 590 P.2d 432, 436 (Alaska 1979). See also Thiel v. State, 762 P.2d 478 (Alaska App. 1988) in which the Alaska Court of Appeals noted the similarities between the Sixth Amendment and the Article I, § 11 guarantees of counsel and explained that the existence of a "criminal proceeding" is necessary for application of the guarantees.<sup>2</sup>

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<sup>2</sup>In Blue v. State, 558 P.2d 636 (Alaska 1977), the Alaska Supreme Court interpreted Art. I, § 11, to require the assistance of counsel at a pre-indictment lineup, before the initiation of formal charges. The court limited this right to counsel to situations where the provision of counsel would not interfere with a prompt and purposeful investigation. In Blue a lineup conducted at the scene of the offense within three hours of the commission of the offense did not give rise to a constitutional right to counsel. This pre-indictment right to counsel merely means that law enforcement authorities may not place a defendant into a pre-indictment lineup that is not conducted in close temporal proximity to the commission of the offense. Otherwise the court will consider the lineup a "critical stage" of the criminal proceedings. The decision to make a Rule 5, A.R.Cr.P., initial appearance, or a Rule 5.1, A.R.Cr.P., preliminary examination, the place to commence the provision of counsel, and

(continued...)

Representative Brian Porter

March 14, 1996

Page 3

It is my opinion that CSHB 370(JUD) complies with the United States and Alaska constitutional guarantees of counsel for those accused of criminal offenses. While I believe that case law would support a legislative determination that appointment of counsel would not occur until the preliminary examination stage of criminal proceedings, a legislative determination to provide counsel beginning at the Rule 5, A.R.Cr.P., initial appearance, seems reasonable and within the authority of the legislature especially considering the fact that not all defendants have preliminary examinations. It is my opinion that bill sec. 1 of CSHB 370(JUD) is constitutional.

GPL:klb

96-197.klb

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<sup>2</sup>(...continued)

therefore be a statutorily determined "critical stage" is not impacted by this pre-indictment lineup ruling. To the extent that law enforcement wants to place the defendant in a pre-indictment lineup before the initial appearance, at which time counsel would be appointed under CSHB 370(JUD), law enforcement can request the appointment of counsel for the defendant under bill sec. 2 of CSHB 370(JUD).

# SENATE COMMITTEE REPORT

## First Committee of Referral

DATE: 2/21/96

FURTHER: Finance

DATE TURNED INTO OFFICE: \_\_\_\_\_

The Judiciary Committee considered CS FOR HOUSE BILL NO. 370(JUD)

"An Act relating to the provision of legal services at public expense."

and recommends:

be replaced with \_\_\_\_\_ CS \_\_\_\_\_ ( )

adopt previous \_\_\_\_\_ CS \_\_\_\_\_ ( )

attached amendment(s)

adopt Letter of Intent by \_\_\_\_\_ Committee

further referral to the \_\_\_\_\_ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR' \_\_\_\_\_

| SIGNING DO PASS           | DP | OTHER RECOMMENDATIONS | NR | DNP | AM |
|---------------------------|----|-----------------------|----|-----|----|
| Mike Miller               | ✓  | Linda Green           | ✓  |     |    |
|                           |    | Al Adams              |    | X   |    |
|                           |    |                       |    |     |    |
|                           |    |                       |    |     |    |
|                           |    |                       |    |     |    |
| CHAIR: <i>John Stumpf</i> | ✓  | CHAIR:                |    |     |    |

**NEW FISCAL NOTE(S):**

| Department | Date | Zero | Fiscal |
|------------|------|------|--------|
|            |      |      |        |
|            |      |      |        |
|            |      |      |        |
|            |      |      |        |
|            |      |      |        |
|            |      |      |        |

**PREVIOUS FISCAL NOTE(S):\***

| Department | Date | Zero | Fiscal |
|------------|------|------|--------|
|            |      |      |        |
|            |      |      |        |
|            |      |      |        |
|            |      |      |        |
|            |      |      |        |
|            |      |      |        |

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

**MUNICIPALITY OF ANCHORAGE  
PUBLIC SAFETY PARTNERSHIP PROGRAM  
LEGISLATIVE ISSUES**

**Allow municipalities to respond to less serious juvenile behavior by expanding its jurisdiction to include the ability to subject juvenile offenders to civil infractions and/or mediation**

Early intervention has been proven an effective means of changing young people's attitudes and behaviors. Because the current juvenile justice system is overwhelmed with serious offenses and offenders, many offenders who begin with lower level or less dangerous conduct receive no meaningful consequences until they graduate to the higher level.

According to the 1994 Anchorage Police Department Annual Report, juvenile arrests have increased 66% since 1990. Juvenile offenders have become increasingly dangerous and increasingly blatant regarding their offenses in the knowledge that the system can do very little to them.

Recognizing this situation, the Municipality of Anchorage would like the ability to respond to less serious juvenile behavior by expanding its jurisdiction to include the ability to subject juvenile offenders to civil infractions and/or mediation. This will allow the juvenile justice system to focus on the more serious criminal activity while assuring that juvenile offenders of less serious offenses receive more immediate consequences for their actions.

FEB 14 1996

Municipality  
of  
Anchorage



P.O. Box 196650  
Anchorage, Alaska 99519-6650  
Telephone: (907) 343-4433

*Rick Mystrom, Mayor*

OFFICE OF THE MUNICIPAL MANAGER

February 9, 1996

Senator Rick Halford  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Re: S.B. 270

Dear Senator Halford:

Thank you for sponsoring S. B. 270, "An Act relating to juveniles, relating to the jurisdiction of juvenile courts; relating to the release of juveniles; and relating to records concerning juveniles."

This bill offers important reform to the way in which juvenile criminal activity is addressed.

Attached are issue summaries supporting the need for the proposed changes.

Thank you again for sponsoring this legislation. If we can offer further information, please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tim Rogers".

Tim Rogers  
Legislative Program Coordinator

JAN 06 1996



Anchorage - Star of the North  
Chamber of Commerce

Anchorage Chamber of Commerce  
Criminal Justice System Reform  
Resolution 95/96-5

WHEREAS the public is unsafe due to the "Catch and Release" of drug offenders who continue to operate after arrest; and

WHEREAS Civil Abatement is a useful tool in preventing illegal activities and is available only to the State and not local municipalities; and

WHEREAS juvenile offenders are becoming more dangerous and are exempt from public censure because of confidentiality laws; and

WHEREAS the sealing of the records of juvenile offenders obscures the fact after their 18th birthday that they have a criminal history; and

WHEREAS the State has sole jurisdiction over juvenile crime and municipalities are barred from addressing juvenile crime; and

WHEREAS the "best interest of the juvenile" standard conflicts with society's expectation of accountability to and protection of the public; and

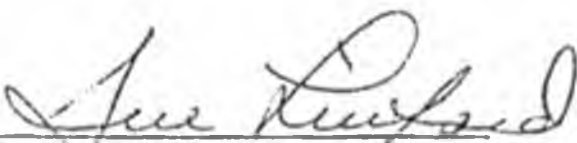
WHEREAS the Municipality of Anchorage has assumed costs of criminal justice services in excess of \$5,535,000 those costs normally reserved to the state, and yet is burdened with inadequate numbers of correctional facilities and magistrates;

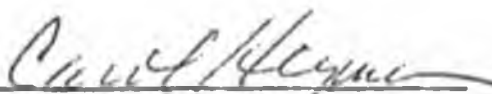
NOW THEREFORE BE IT RESOLVED that the Anchorage Chamber of Commerce does hereby support the Criminal Justice Proposals brought forward by the Municipality of Anchorage that propose more stringent conditions for bail for repeat drug offenders, allow municipalities to utilize Civil Abatement procedures, revise the confidentiality laws concerning juvenile offenders, give municipalities jurisdiction over less serious juvenile crimes, and provide for at least equal consideration of the best interest of the Public and the victims in bail and sentencing procedures for juveniles; and

BE IT FURTHER RESOLVED that the Anchorage Chamber of Commerce supports the Municipality of Anchorage's initiative to call upon the state to recognize the importance of increasing the number of correctional facilities and magistrates serving Anchorage by raising their priority within the state budget; and

BE IT FURTHER RESOLVED that the Anchorage Chamber of Commerce urges all of its members to actively support these proposals by encouraging their Senators and Representatives to support these measures.

Approved December 15, 1995

  
Sue Lirford, Chair

  
Carol Heyman, President

**FISCAL NOTE**

BILL NO. SCS CSHB370 (Jud)

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
 Title: An Act relating to the provision of legal services at public expense.  
 Sponsor: Representatives Martin and Porter  
 Requestor: (S)Jud.

Dept. Affected: Administration  
 BRU: Public Defender Agency  
 Component: Public Defender Agency  
 COMPONENT SERIAL NO. 1631

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES      | ***   | ***   | ***   | ***   | ***   | ***   |
| TRAVEL                 |       |       |       |       |       |       |
| CONTRACTUAL            |       |       |       |       |       |       |
| SUPPLIES               |       |       |       |       |       |       |
| EQUIPMENT              |       |       |       |       |       |       |
| LAND & STRUCTURES      |       |       |       |       |       |       |
| GRANTS, CLAIMS         |       |       |       |       |       |       |
| MISCELLANEOUS          |       |       |       |       |       |       |
| <b>TOTAL OPERATING</b> | ***   | ***   | ***   | ***   | ***   | ***   |

|                      |     |     |     |     |     |     |
|----------------------|-----|-----|-----|-----|-----|-----|
| CAPITAL EXPENDITURES | *** | *** | *** | *** | *** | *** |
|----------------------|-----|-----|-----|-----|-----|-----|

|                        |     |     |     |     |     |     |
|------------------------|-----|-----|-----|-----|-----|-----|
| CHANGE IN REVENUES ( ) | *** | *** | *** | *** | *** | *** |
|------------------------|-----|-----|-----|-----|-----|-----|

**FUND SOURCE:** (Thousands of Dollars)

|                          |     |     |     |     |     |     |
|--------------------------|-----|-----|-----|-----|-----|-----|
| 1002 Federal Receipts    | *** | *** | *** | *** | *** | *** |
| 1003 GF Match            |     |     |     |     |     |     |
| 1004 GF                  |     |     |     |     |     |     |
| 1005 GF/Program Receipts |     |     |     |     |     |     |
| 1037 GF/Mental Health    |     |     |     |     |     |     |
| OTHER                    |     |     |     |     |     |     |
| <b>TOTAL</b>             | *** | *** | *** | *** | *** | *** |

Estimate of any current year (FY 96) cost: \$ -0-

**POSITIONS:**

|           |     |     |     |     |     |     |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | *** | *** | *** | *** | *** | *** |
| PART-TIME |     |     |     |     |     |     |
| TEMPORARY |     |     |     |     |     |     |

**ANALYSIS:** (Attach a separate page if necessary.)

This bill would have the effect of slightly decreasing the workload of the Public Defender.

Prepared by: John B. Salome, Director  
 Division: Public Defender Agency

Phone: (907)264-4412  
 Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
 Agency: Department of Administration

Date: 3/29/96

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**FISCAL NOTE**

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SCS CSHB370 (Jud)

Revision Date: \_\_\_\_\_  
 Title: An Act relating to the provision of legal services at public expense.  
 Sponsor: Representatives Martin and Porter  
 Requestor: (S)Jud.

Dept. Affected: Administration  
 BRU: Office of Public Advocacy  
 Component: Office of Public Advocacy  
 COMPONENT SERIAL NO. 43

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES      |       |       |       |       |       |       |
| TRAVEL                 |       |       |       |       |       |       |
| CONTRACTUAL            |       |       |       |       |       |       |
| SUPPLIES               |       |       |       |       |       |       |
| EQUIPMENT              |       |       |       |       |       |       |
| LAND & STRUCTURES      |       |       |       |       |       |       |
| GRANTS, CLAIMS         |       |       |       |       |       |       |
| MISCELLANEOUS          |       |       |       |       |       |       |
| <b>TOTAL OPERATING</b> | 0.0   | 0.0   | 0.0   | 0.0   | 0.0   | 0.0   |

|                             |   |   |   |   |   |   |
|-----------------------------|---|---|---|---|---|---|
| <b>CAPITAL EXPENDITURES</b> | 0 | 0 | 0 | 0 | 0 | 0 |
|-----------------------------|---|---|---|---|---|---|

|                               |   |   |   |   |   |   |
|-------------------------------|---|---|---|---|---|---|
| <b>CHANGE IN REVENUES ( )</b> | 0 | 0 | 0 | 0 | 0 | 0 |
|-------------------------------|---|---|---|---|---|---|

**FUND SOURCE:** (Thousands of Dollars)

|                          |     |     |     |     |     |     |
|--------------------------|-----|-----|-----|-----|-----|-----|
| 1002 Federal Receipts    |     |     |     |     |     |     |
| 1003 GF Match            |     |     |     |     |     |     |
| 1004 GF                  |     |     |     |     |     |     |
| 1005 GF/Program Receipts |     |     |     |     |     |     |
| 1037 GF/Mental Health    |     |     |     |     |     |     |
| OTHER                    |     |     |     |     |     |     |
| <b>TOTAL</b>             | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY 96) cost: \$ -0-

**POSITIONS:**

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| FULL-TIME |  |  |  |  |  |  |
| PART-TIME |  |  |  |  |  |  |
| TEMPORARY |  |  |  |  |  |  |

**ANALYSIS:** (Attach a separate page if necessary.)

There is no fiscal impact to the Office of Public Advocacy.

Prepared by: Brent McGee, Public Advocate  
 Division: Office of Public Advocacy

Phone: 274-1684  
 Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
 Agency: Department of Administration

Date: 3/29/96

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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SCS CSHB 370 (JUD)

Revision Date: \_\_\_\_\_ Dept. Affected: Alaska Court System  
 Title: Legal counsel for accused criminals BRU: Trial Courts  
 Component: \_\_\_\_\_  
 Sponsor: Reps. Martin, Porter, Toohay  
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97      | FY 98      | FY 99      | FY 00      | FY 01      | FY 02      |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES      |            |            |            |            |            |            |
| TRAVEL                 |            |            |            |            |            |            |
| CONTRACTUAL            |            |            |            |            |            |            |
| SUPPLIES               |            |            |            |            |            |            |
| EQUIPMENT              |            |            |            |            |            |            |
| LAND & STRUCTURES      |            |            |            |            |            |            |
| GRANTS & CLAIMS        |            |            |            |            |            |            |
| MISCELLANEOUS          |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |
| CAPITAL EXPENDITURES   |            |            |            |            |            |            |
| CHANGE IN REVENUES (   |            |            |            |            |            |            |

Fund Source (Thousands of Dollars)

|                          |            |            |            |            |            |            |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts    |            |            |            |            |            |            |
| 1003 GF Match            |            |            |            |            |            |            |
| 1004 GF                  | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| 1005 GF Program Receipts |            |            |            |            |            |            |
| 1037 GF Mental Health    |            |            |            |            |            |            |
| Other                    |            |            |            |            |            |            |
| <b>TOTAL</b>             | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY 96) cost: None

Positions

|           |  |  |  |  |  |
|-----------|--|--|--|--|--|
| Full-Time |  |  |  |  |  |
| Part-Time |  |  |  |  |  |
| Temporary |  |  |  |  |  |

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *CPC* Phone: 264-8228  
 Agency: Alaska Court System Date: 03/25/96  
 Approved by: Arthur H. Snowden, II, Administrative Director *AHS* Date: 03/25/96  
 Agency: Alaska Court System

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REPRESENTATIVE  
TERRY MARTIN  
CHAIRMAN  
BUDGET & AUDIT COMMITTEE  
MEMBER  
HOUSE FINANCE COMMITTEE

# Alaska State Legislature



MAY 15 - JAN 15 258-8169  
716 W. 4TH, SUITE 650  
ANCHORAGE, AK 99504

JAN 15 - MAY 15 465-3783  
STATE CAPITOL  
JUNEAU, AK 99901-1182

HOME FAX 4991  
355 EUSNA DRIVE #11  
ANCHORAGE, AK 99504

## SPONSOR STATEMENT CSHB370 (JUD)

An Act relating to the provision of  
legal services to criminal defendants.

A recent audit report compiled by the Division of Legislative Audit and approved by the Legislative Budget & Audit Committee concluded that the eligibility screening process to acquire counsel as an indigent by the Public Defender Agency and Office of Public Advocacy lacks the necessary mechanism to prevent non-indigents from receiving free legal service.

HB370 attempts to resolve this problem by making sure that, in all cases, the court makes the determination of indigence and decides whether to appoint counsel. This legislation would prevent the PDA and OPA from undertaking representation before a determination has been made by the court. HB370 also sets a specific time from when the determination should be made and counsel should be appointed, thereby providing uniformity in the appointment and provision of counsel.



REPRESENTATIVE  
TERRY MALIN  
CHAIRMAN  
BUDGET & AUDIT COMMITTEE  
MEMBER  
HOUSE FINANCE COMMITTEE

# Alaska State Legislature



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HOME 333-6990  
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ANCHORAGE, AK 99504

## SECTIONAL ANALYSIS CSHB370 (JUD)

### Educational benefits for family members of deceased members of the Armed Forces

**SECTION 1:** References the new subsection adding specified benefits and deletes the definitions

**SECTION 2:** Adds a new subsection allowing the prosecution to request the court to provide representation in the interest of justice (e.g. in the circumstance of an informant).

**SECTION 3:** Requires that the court, instead of the law enforcement officer, at the time of the person's appearance before the court (rather than during the arrest) inform the person of the right of an indigent person to be represented by an attorney at public expense. Deletes subsection (a)(2) to reduce unnecessary information transfer since the court will be aware of the indigent's status as a result of the income verification at the initial appearance.

**SECTION 4:** Identifies the court as the agency that will determine indigence and notify the Public Defender Agency or Office of Public Advocacy if their services are required.

**SECTION 5:** Establishes that the determination of indigence by the court shall set out the basis for the finding that the person is indigent.

**SECTION 6:** Repeals AS18.85.110(b) because the reference "commencement of detention" is eliminated earlier in the bill. Repeals AS18.85.110(c) because the individual will have already been informed of the determination of indigence at the initial appearance. Repeals AS18.85.110(f) because the court will determine indigence, as per the changes provided in the bill, not the Public Defender Agency.



# Audit Report

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DEPARTMENT OF ADMINISTRATION  
ALASKA PUBLIC DEFENDER AGENCY  
OFFICE OF PUBLIC ADVOCACY  
ELIGIBILITY ISSUES AND OTHER  
PROGRAM ASPECTS

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May 22, 1995

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Audit Control Number:

02-4507-95

Division of Legislative Audit

P.O. Box 113300, Juneau, Alaska 99811-3300

SUPPORTING DOCUMENTS

## REPORT CONCLUSIONS

The Public Defender Agency (PDA) and, to a lesser degree, the Office of Public Advocacy (OPA) provides legal defense services to indigent persons. Representation is constitutionally guaranteed to individuals who are charged with crimes and face a potential sentence of imprisonment. Additionally, since the creation of PDA and OPA, the legislature and courts have extended the right to representation in other cases.

Public counsel caseloads reportedly continue to increase. The PDA reports annual caseloads growing every year since 1988 (with the exception of a decline in 1993).

While it is speculative to predict caseload size from year to year, all indications are that PDA caseload will continue to grow, particularly with the passage of new crime bills at the state and federal levels and as crime remains a priority with the public.

Because representation is in most cases guaranteed there are only limited steps that can be taken to control caseload. While the guarantee to basic representation cannot be changed, steps can be taken to control the number of cases to which the guarantee applies (a legislative prerogative) and, similarly, steps can be taken to adequately screen criminal defendants for eligibility before referral to PDA (an administrative remedy).

Despite our scope constraints of being denied access to documentation within the court system and PDA and OPA offices, we have determined that the eligibility screening process as employed by the Alaska Court System (ACS) for public defender services severely lacks in scope and depth. Based on our court room observations, file review, and discussions with judges, magistrates, district attorneys, and pre-trial services coordinators it is apparent to us that the eligibility screening process for criminal defendants is not standardized, is not uniformly applied, varies widely between judicial districts and even within a district, and has resulted in the appointment of public defenders to defendants who clearly had resources to retain their own counsel.

There are no written guidelines or definitions of indigency which are used by the court to determine eligibility. The effort to determine indigency is hampered by: (1) the court not verifying income or expenses claimed by defendants, (2) the court rarely taking into consideration employment potential, and (3) the court's concern for keeping the "system" moving without any impediment or delays caused by a defendant searching for private counsel or defending themselves (Pro se). Despite our inability to review defendant financial declarations made to the court and client files at PDA and OPA, during our review we did note instances of an indigency determination process gone awry. For example:

- We observed the court appointment of a public defender for a person arraigned on

misdemeanor charges in spite of her informing the court that she had \$24,000 in savings.

- We noted the court appointment of a public defender for a person arraigned on DWI charges despite the fact she disclosed to the court she and her husband had joint annual income of \$80,000, monthly expenses of \$3,280 and liabilities of \$26,950.
- The court appointed a public defender for an individual charged with a misdemeanor who declared income of \$16,000 and an IRS liability of \$10,000, without any verification of the debt.
- We were informed of an instance where the court appointed the public defender to an individual and the public defender appealed for a continuance to the court so that his client may return to work on the North Slope.

Additional concerns center around the relationship that should exist between PDA, OPA, and ACS. PDA and OPA have invoked attorney-client privilege over their client files. ACS has denied access to defendant financial disclosures. Contrary to the court's administrative rules,<sup>4</sup> PDA and OPA do not communicate with ACS about the financial matters of the defendant/client. Additionally, ACS does not provide PDA and OPA with the financial disclosures made by the defendant to the court when the court considers eligibility for public counsel. This lack of communication and extremism in keeping what is arguably public information confidential contributes to the already inadequate eligibility screening process and contributes to the lack of accountability for public counsel programs. We believe that better communication between PDA, OPA and ACS on these critical eligibility matters and a more thorough and fair public counsel eligibility screening process would result if ACS and the Department of Administration (which oversees the PDA and OPA programs) were to jointly develop eligibility and indigency standards and criteria which, within limits, can be uniformly applied.

We are of the opinion that eligibility screening procedures need to be formalized and uniformly applied and have addressed that in the Findings and Recommendations section of this report.

We have also identified other areas of the operation of ACS, PDA and OPA that warrant attention which include:

- PDA and OPA should begin honoring administrative rules governing their responsibility to inform the court when clients may no longer be eligible for public paid counsel. (Recommendation No. 3)

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<sup>4</sup> Court Administrative Rule 12 places a requirement upon an attorney appointed to represent an indigent person to inform the court of any changes in the financial status of the client that may render the client ineligible for publicly appointed counsel. (Also see Recommendation No. 3)

- Criminal Rule 39 judgments should be imposed on all defendants - regardless whether or not the defendant is convicted. (Recommendation No. 5)
- ACS should adopt standardized documentation between districts regarding eligibility screening and appointment and should use standardized documentation for Criminal Rule 39 judgement processing. (Recommendation Nos. 1 and 6)
- ACS should reassess defendant eligibility for public counsel when legal issues subsequent to conviction are raised. (Recommendation No. 4)
- The Department of Administration and ACS should request statutory and regulatory amendments to more clearly define indigency for public counsel purposes. (Recommendation No. 2)

STATE OFFICE  
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355



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Fairbanks

Chris Fairness Chapter

February 5, 1996

Representative Terry Martin  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau AK 99801-1132

Dear Representative Martin,

On behalf of the Alaska Peace Officers Association, I would like to thank you for introducing House Bill 370. At a recent meeting of the APOA State Board, we unanimously decided to support this piece of legislation. As law enforcement officers, we see defense bar abuses in this area that raise concern about how the public's money is being spent.

We encourage you to call on us when there are teleconference hearings, so that we may testify about the need for this legislation. If you need assistance as you shepherd this bill through the legislative process, please contact me at 451-5316, or our business manager, Joseph Young at 277-0515.

Sincerely

Handwritten signature of Michael Corkill.

Michael Corkill  
State President

**HB**

**372**

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: Restaurant & Eating Place liquor license BRU: Alcoholic Beverage Control Board  
Hb 372 Component: A&C Board  
 Sponsor: Rep. Rokeberg  
 Requestor: House Labor Commerce Committee COMPONENT SERIAL NO. 100

Expenditures/Revenues: (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97      | FY 98      | FY 99      | FY 00      | FY 01      | FY 02      |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES      |            |            |            |            |            |            |
| TRAVEL                 |            |            |            |            |            |            |
| CONTRACTUAL            |            |            |            |            |            |            |
| SUPPLIES               |            |            |            |            |            |            |
| EQUIPMENT              |            |            |            |            |            |            |
| LAND & STRUCTURES      |            |            |            |            |            |            |
| GRANTS, CLAIMS         |            |            |            |            |            |            |
| MISCELLANEOUS          |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

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| CHANGE IN REVENUES ( ) |  |  |  |  |  |  |
|------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

|                          |            |            |            |            |            |            |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts    |            |            |            |            |            |            |
| 1003 GF Match            |            |            |            |            |            |            |
| 1004 GF                  |            |            |            |            |            |            |
| 1005 GF/Program Receipts |            |            |            |            |            |            |
| 1007 GF/Mental Health    |            |            |            |            |            |            |
| Other                    |            |            |            |            |            |            |
| <b>TOTAL</b>             | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY96) cost \$ \_\_\_\_\_

POSITIONS:

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|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | 0   | 0   | 0   | 0   | 0   | 0   |
| PART-TIME | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TEMPORARY | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Douglas B. Griffin  
 Division: Alcoholic Beverage Control Board  
 Approved by Commissioner: \_\_\_\_\_  
 Agency: Department of Revenue

Phone: 907-277-8638  
 Date: 1/16/96  
 Date: 1/19/96

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Submitted by: Assemblymember Bell  
Prepared by: Assembly Policy and Budget Office  
For reading: February 27, 1996

CLERK'S OFFICE  
APPROVED  
Date: 2-27-96

ANCHORAGE, ALASKA  
AR NO. 96-45

**A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY SUPPORTING  
STATE HOUSE BILL 372 RELATING TO LIQUOR LICENSES ISSUED TO A  
RESTAURANT OR EATING PLACE**

WHEREAS, Senate Bill 87, passed during the last legislative session, allows for ten (10) percent of restaurant or eating place licenses to be exempt from the fifty (50) percent food provision of license requirements; and

WHEREAS, in Alaska, the statutory authority to sell beer and wine in restaurants has historically been limited, allowing eating establishments the ability to compliment their food menu with alcohol, but not provide a full bar service, and

WHEREAS, Senate Bill 87 creates a tavern industry in Alaska, where beer and wine can be sold with a limited or token food menu; and

WHEREAS, House Bill 372, introduced this session and sponsored by State Representative Norman Rokeberg, repeals the specific section [AS 04 11 100(F)] allowing such a tavern industry (see attached copy of bill and current statute language); and

WHEREAS, House Bill 372 is scheduled to be heard by the State Affairs Committee, possibly next week.

NOW, THEREFORE, the Anchorage Municipal Assembly resolves:

Section 1: That the Assembly supports House Bill 372 and encourages the State Legislature to pass this legislation

Section 2: That this resolution is effective upon passage and approval

PASSED AND APPROVED by the Anchorage Municipal Assembly this  
day of \_\_\_\_\_, 1996

ATTEST

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Municipal Clerk

FISCAL NOTE

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: Restaurant & Eating Place Liquor License BRU: Alcoholic Beverage Control Board  
Hb 372 Component: ABC Board  
 Sponsor: Rep. Rokeberg  
 Requestor: House Labor Commerce Committee COMPONENT SERIAL NO. 100

Expenditures/Revenues: (Thousands of Dollars)

| OPERATING EXPENDITURES        | FY 97      | FY 98      | FY 99      | FY 00      | FY 01      | FY 02      |
|-------------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES             |            |            |            |            |            |            |
| TRAVEL                        |            |            |            |            |            |            |
| CONTRACTUAL                   |            |            |            |            |            |            |
| SUPPLIES                      |            |            |            |            |            |            |
| EQUIPMENT                     |            |            |            |            |            |            |
| LAND & STRUCTURES             |            |            |            |            |            |            |
| GRANTS, CLAIMS                |            |            |            |            |            |            |
| MISCELLANEOUS                 |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b>        | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |
| <b>CAPITAL EXPENDITURES</b>   |            |            |            |            |            |            |
| <b>CHANGE IN REVENUES ( )</b> |            |            |            |            |            |            |

FUND SOURCE (Thousands of Dollars)

|                          |            |            |            |            |            |            |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts    |            |            |            |            |            |            |
| 1003 GF Match            |            |            |            |            |            |            |
| 1004 GF                  |            |            |            |            |            |            |
| 1005 GF/Program Receipts |            |            |            |            |            |            |
| 1037 GF/Mental Health    |            |            |            |            |            |            |
| Other                    |            |            |            |            |            |            |
| <b>TOTAL</b>             | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY96) cost \$ \_\_\_\_\_

POSITIONS:

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|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | 0   | 0   | 0   | 0   | 0   | 0   |
| PART-TIME | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TEMPORARY | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Douglas B. Quinn Phone: 907-277-8638  
 Division: Alcoholic Beverage Control Board Date: 1/16/96  
 Approved by Commissioner: [Signature] Date: 1/19/96  
 Agency: Department of Revenue

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A M E N D M E N T

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TO: CSHB 379(JUD)

1 Page 7, after line 28:

2 Insert a new bill section to read:

3 **\*\* Sec. 4. REVISOR'S INSTRUCTION.** In the event SCS CSSHB 387(JUD), passed  
4 by the Nineteenth Alaska State Legislature, becomes law, the amendment to AS 47.10.020(a)  
5 made in sec. 2 of this Act shall be treated as an amendment to AS 47.12.040; the amendment  
6 to AS 47.10.080(u) made in sec. 3 of this Act shall be treated as an amendment to  
7 AS 47.12.120; and AS 47.10.267, enacted by sec. 4 of this Act, shall be renumbered by the  
8 revisor to place it in AS 47.12, with conforming changes made to AS 22.35.020, enacted by  
9 sec. 1 of this Act."

*Juvenile Code Revision (Curfew Provisions)*

**SENATE CONCURRENT RESOLUTION NO.  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - SECOND SESSION**

**BY THE SENATE JUDICIARY COMMITTEE**

**Introduced:**

**Referred:**

**A RESOLUTION**

1 Suspending Uniform Rules 24(c), 35, 41(b), and 42(e) of the Alaska State  
2 Legislature concerning House Bill No. 372, relating to liquor licenses.

3 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 That under Rule 54 of the Uniform Rules of the Alaska State Legislature, the  
5 provisions of Rules 24(c), 35, 41(b), and 42(e) of the Uniform Rules, regarding changes to the  
6 title of a bill, are suspended in consideration of House Bill No. 372, relating to liquor licenses.

9-LS1358VZ  
Ford  
5/4/96

SENATE CS FOR CS FOR HOUSE BILL NO. 572( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES ROKEBERG, B.Davis, Brown

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a restaurant or eating place license; relating to the  
2 Alcoholic Beverage Control Board; and providing for an effective date."

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

4 \* Section 1. AS 04.11.100(f) is amended to read:

5 (f) Notwithstanding the provisions of (b) [AND (c)] of this section, upon  
6 written application and approval of the local governing body, the board may renew  
7 [ISSUE OR REISSUE] a restaurant or eating place license and exempt the licensee  
8 from the requirements of (b) [AND (c)] of this section if the license was issued under  
9 the provisions of this subsection before the effective date of this Act. (A  
10 LICENSEE EXEMPT AS PROVIDED IN THIS SUBSECTION SHALL PROVIDE  
11 FOOD ITEMS FOR SALE ON THE PREMISES AS SHOWN ON A MENU  
12 APPROVED BY THE BOARD AND AVAILABLE TO PATRONS.] The board may  
13 not

14 (1) renew [ISSUE OR REISSUE] a license as provided under this

1 subsection if

2 (A) the renewal [ISSUANCE OR REISSUANCE] would result  
3 in more than one exempt restaurant or eating place license for every 10  
4 restaurant or eating place licenses allowed under the provisions of  
5 AS 04.11.400(a)(2) or (3);

6 (B) the premises would be located in a building having a public  
7 entrance within 200 feet of the boundary line of a school or a church building  
8 in which religious services are being regularly conducted; for purposes of this  
9 subparagraph, the 200-foot prohibition is measured from the outer boundary  
10 line of the school or the public entrance of the church building by the shortest  
11 pedestrian route to the nearest public entrance of the restaurant or eating place;

12 or

13 (2) [REISSUE A RESTAURANT OR EATING PLACE LICENSE  
14 AS EXEMPT AS PROVIDED UNDER THE PROVISIONS OF THIS SUBSECTION  
15 IF THE LICENSE WAS ISSUED UNDER THE PROVISIONS OF AS 04.11.400(g).  
16 OR

17 (3)] transfer an exempt license issued under this subsection to another  
18 person.

19 • Sec. 2. AS 04.11.100 is amended by adding a new subsection to read:

20 (g) A restaurant or eating place licensee

21 (1) operating under a license issued under (f) of this section shall offer  
22 a full-service menu of food items available to the public during all times that beer or  
23 wine is served or consumed; the menu must be approved by the board.

24 (2) may only provide entertainment on the licensed premises between  
25 the hours of 6:00 p.m. and 11:00 p.m. unless approved by the director after written  
26 request by the licensee for a specific occasion; in this paragraph, "entertainment"  
27 includes dancing, karaoke, live performances, or similar activities, but does not include  
28 recorded or broadcast performances without live participation.

29 • Sec. 3. AS 04.11.450(b) is amended to read:

30 (b) A person who is a representative or owner of a wholesale business,  
31 brewery, winery, bottling works, or distillery may not be issued, solely or together with

1 others, a beverage dispensary license, a restaurant or eating place license, or package  
2 store license. A holder of a beverage dispensary license may be issued a brewpub  
3 license, subject to the provisions of AS 04.11.135. The prohibition against issuance  
4 of a restaurant or eating place license imposed under this subsection does not  
5 apply to a restaurant or eating place license issued on or before the effective date  
6 of this Act or a restaurant or eating place license issued under an application for  
7 a restaurant or eating place license approved on or before the effective date of  
8 this Act.

9 \* Sec. 4. REQUIRED HEARING. The Alcoholic Beverage Control Board shall hold a  
10 public hearing on or before January 1, 1997, for the purpose of discussing the alcoholic  
11 beverage licenses currently being issued by the board and the interrelationship between those  
12 licenses.

13 \* Sec. 5. This Act takes effect July 1, 1996.