

**ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672**

**9070 SENATE STATE AFFAIRS**

**HB**

**365**

BILL: **HB-365**

SHORT TITLE: MINOR IN POSSESSION OF TOBACCO

BILL VERSION:

SPONSOR(S): REPRESENTATIVE(S) **BUNDE, James, Brown**

CURRENT STATUS: (S) **STA**

STATUS DATE: 03/25/96

**THEN JUD**

HEARING: (S) STA APR 02 03:30 PM BELTZ ROOM 211

TITLE: "An Act relating to the offense of possession of tobacco by a minor."

12/29/95	2361	(H)	PREFILE RELEASED
01/08/96	2361	(H)	READ THE FIRST TIME - REFERRAL(S)
01/08/96	2361	(H)	STATE AFFAIRS, JUDICIARY
02/19/96	2812	(H)	COSPONSOR(S): JAMES
03/06/96	2989	(H)	<b>STA RPT ADP</b>
03/06/96	2990	(H)	DP: JAMES, PORTER, OGAN, ROBIN: ON
03/06/96	2990	(H)	ZERO FISCAL NOTE (DPS)
03/14/96	3145	(H)	<b>JUD RPT SDP</b>
03/14/96	3146	(H)	DP: PORTER, BUNDE, VEZEY, FINKELSTEIN
03/14/96	3146	(H)	DP: TOOHEY
03/14/96	3146	(H)	<b>ZERO FISCAL NOTE (DPS) 3/17/96</b>
03/14/96	3146	(H)	REFERRED TO RULES
03/22/96	3273	(H)	RULES TO CALENDAR 3/22/96
03/22/96	3273	(H)	READ THE SECOND TIME
03/22/96	3273	(H)	ADVANCED TO THIRD READING UNAN: CONSENT
03/22/96	3274	(H)	READ THE THIRD TIME HB 365
03/22/96	3274	(H)	<b>PASSED BY THE HOUSE (Toohey)</b>
03/22/96	3290	(H)	COSPONSOR(S): BROWN
03/22/96	3292	(H)	TRANSMITTED TO (S)
03/25/96	2860	(S)	READ THE FIRST TIME - REFERRAL(S)
03/25/96	2860	(S)	<b>STATE AFFAIRS, JUDICIARY</b>

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO: HB 365

Revision Date: January 9, 1996 Dept. Affected: Public Safety  
 Title: Revisions to Minor in Possession of Tobacco BRU: Alaska State Troopers  
Statute Component: Detachments  
 Sponsor: Representative Bunde  
 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>	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

**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: *D. Smith* Date: 2/24/96  
 Agency: Ronald L. Ote, Department of Public Safety

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**SENATE COMMITTEE REPORT**

**First Committee of Referral**

DATE: 3/25/96

FURTHER: Judiciary

DATE TURNED INTO OFFICE: 4/2/96

The State Affairs Committee considered HOUSE BILL NO. 365

"An Act relating to the offense of possession of tobacco by a minor."

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<sup>o</sup> \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Kew A. Luman</i>	✓				
<i>ROD E. (100)</i>	✓				
<i>Duncan</i>	✓				
<i>Ben [unclear]</i>					
<i>Wanda Donly</i>	✓				
CHAIR: <i>Ben [unclear]</i>	✓	CHAIR:			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal
DPS	3/25/96	0	

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

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

\*Include fiscal notes accompanying Governor's bill





# Seven Circles Coalition

"It takes a whole village to raise a child"

-African Proverb

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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  
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.

# 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 Mofsky-Holsberg 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>5</sup> Most new smokers are children and adolescents — nearly 75% of current smokers began smoking before age 18.<sup>6</sup> In 1989, almost 1 billion packs of cigarettes were sold to persons younger than age 18.<sup>7</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>8</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>9-9</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>18</sup> and removal of profits from underage sales through taxation or assessments.<sup>19</sup> Empirical evidence suggests tobacco advertising has a disproportionate influence on children and adolescents,<sup>18,21</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>25,26</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>27</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>28</sup> This survey measured popular support for a range of proposed strategies to reduce access to and use of tobacco by children and adolescents.

William J. Bailey, MPH, Co-Director, Institute for Drug Abuse Prevention, and Associate Professor, Dept. of Applied Health Sciences; and James W. Crowe, EdD, Co-Director, Institute for Drug Abuse Prevention, and Associate Professor and Chair, Dept. of Applied Health Sciences, Indiana University, Bloomington, IN 47403. This article was submitted March 28, 1994, and revised and accepted for publication August 1, 1994.

## SURVEY PLAN. .ING

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>12</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 (CATT) 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 second option, 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>3</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>22-23</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>13</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.

**References**

1. US Public Health Service. *Smoking and Health: Report of the Advisory Committee to the Surgeon General of the Public Health*

Service, Washington, DC: US Government Printing Office; 1964. US Public Health Service publication 1103.

2. US Department of Health and Human Services. *Reducing the*

**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	31.9 (±2.9)
51-65 years	19.3 (±2.5)
Older than 65 years	11.0 (±2.0)
<b>Education</b>	
0-11 years	8.6 (±1.7)
12 years	29.7 (±2.8)
some college	28.7 (±2.7)
college degree	19.4 (±2.4)
some postgraduate	3.7 (±1.2)
master's degree	7.9 (±1.8)
doctorate	1.8 (±0.6)
vocational/technical degree	3.6 (±1.1)
<b>Ethnicity</b>	
White (Caucasian)	77.9 (±2.8)
Black or African-American	10.3 (±1.8)
Hispanic	3.6 (±1.1)
Native American	2.5 (±1.1)
Asian or Pacific Islander	1.5 (±0.6)
Other	3.3 (±1.1)
<b>Annual Household Income</b>	
\$0-14,999	15.9 (±2.2)
\$15,000-24,999	16.2 (±2.3)
\$25,000-34,999	22.1 (±2.8)
\$35,000-49,999	20.9 (±2.5)
\$50,000 and above	24.9 (±2.7)
<b>Tobacco Use History</b>	
Never used tobacco	29.0 (±3.0)
Former tobacco user	29.6 (±2.8)
Current tobacco user	31.4 (±2.8)

\*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	8.3 (±1.8)
Not serious at all	0.3 (±0.2)

\*95% confidence interval

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

	Support Percent (95% C.I.)*	Oppose Percent (95% C.I.)*	Neither Support nor Oppose Percent (95% C.I.)*
Vending machine controls	66.3 (±2.8)	15.4 (±2.2)	18.3 (±2.7)
Fines on sellers	77.8 (±2.8)	11.8 (±1.8)	11.4 (±2.0)
Licensing sellers	74.2 (±2.7)	15.2 (±2.7)	10.6 (±1.9)
Fine on minors possessing tobacco	46.8 (±3.1)	32.2 (±2.8)	21.0 (±2.5)
Banning youth-oriented tobacco signs	62.8 (±2.8)	18.2 (±2.4)	17.0 (±2.5)
Banning all advertising	51.8 (±2.1)	28.4 (±2.8)	19.8 (±2.8)
Increasing excise tax on tobacco	66.7 (±2.8)	19.8 (±2.4)	13.5 (±2.1)

\*95% confidence interval

*Health Consequences of Smoking: 25 Years of Progress. A Report of the Surgeon General.* Washington DC: US Government Printing Office; 1989. US Dept of Health and Human Services publication (CDC) 89-1411.

3. Centers for Disease Control. Smoking-attributable mortality and years of potential life lost — United States, 1988. *MMWR*. 1991;40: 62-71.

4. Pierce JP, Fiore MC, Novotny TE, Hacklander EJ, Davis RM. Trends in cigarette smoking in the United States: Projections to the year 2000. *JAMA*. 1989;261:61-65.

5. DiFranza JR, Tye JB. Who profits from tobacco sales to children. *JAMA*. 1990;263:2784-2787.

6. US Dept of Health and Human Services. *Healthy People 2000: National Health Promotion and Disease Prevention Objectives*. Washington, DC: US Government Printing Office; 1990. US Dept of Health and Human Services publication (PHS) 91-50212.

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9. Tonabli MR, Bailey WJ, Majid-Jabbari M. Cigarette smoking as a predictor of alcohol and other drug use by children and adolescents: Evidence of the "gateway drug effect." *J Sch Health*. 1993;63:302-306.

10. Public Law 102-31. 42 USC 300a-31 to 300a-35, 300a-31 to 300a-64.

11. Substance abuse prevention and treatment block grants: Sale or distribution of tobacco products to individuals under 18 years of age; Notice of proposed rulemaking. *Federal Register*. 1993(Aug 26); 58:45156-45174.

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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 Grindele, 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

Page 2

"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 of 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 affect 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 25200), 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 3186.

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, 25200), police department. In August 1988, Officer Talbot sent a letter to all cigarette vendors in Woodridge detailing the 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. Kenmore Ave, Chicago, IL 60614 (Dr Jason).

Sales Rates and Offense Data Before and After Passage of Community Smoking Legislation

Date	No. of Stores	Sales Rate, %	No. of Stores Complying	First Offense	Second Offense
Before Passage					
August 1988	20	70	6		
November 1988	20	60	8		
February 1989	19	79	4		
After Passage					
June 1989	23	35	15	8	
August 1989	22	36	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	20	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 \$200. 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-

forcement 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 (eg, 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 27% 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 minors' 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 Kelter, 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 Sperling 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.

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# **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**

## 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.

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 ~~could~~ could be done to the ~~suspension~~ 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. ~~5~~

Thank you,

Annette Maly

Alaska State Representative

## **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.

**HB**

**384**

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

No. 1  
Bill Version: CSHB 384(STA)  
(1) Publish Date: 2/21/96

Revision Date: \_\_\_\_\_  
Title: An Act relating to payment requirements for retention in the Pioneers' Home  
Sponsor: Rep. Rokeberg  
Requestor: (H) STA

Dept. Affected: Administration  
BRU: Senior Services  
Component: Pioneers' Homes  
COMPONENT SERIAL NO. 1950

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>00</b>	<b>00</b>	<b>00</b>	<b>00</b>	<b>00</b>	<b>00</b>

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES	0	0	0	0	0	0
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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>00</b>	<b>00</b>	<b>00</b>	<b>00</b>	<b>00</b>	<b>00</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 does not change the current practice of the Pioneers' Homes and will have no fiscal impact on the department. The bill intends to hold harmless any resident of a Pioneers' Home who is unable to pay the monthly rate charged by the Department of Administration. Anticipating that the proposed annual rate increases leading to full costs of care charges by FY 03, this bill seeks to assure the present residents that they will not be evicted from the Pioneers' Homes due to financial inability to pay present and future rates. This bill does not change the Pioneers' Homes present practice regarding this issue. At the current time, 96 of the 600 residents of the Homes are not able to pay the full amount of current rates. This results in approximately \$400,000 per year of rate charges that are not being collected, and for which a bill may be sent to the resident's estate. (Continued)

Prepared by: Connie Spn. Director  
Division: Senior Services

Phone: 563-5654  
Date: \_\_\_\_\_

Approved by Commissioner: Mari Boyer  
Agency: Department of Administration

Date: 2-10-96

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COMMITTEE COPY

## ANALYSIS (continued)

The bill gives specific statutory assurance to residents that the historic policy of the Homes, namely to keep all residents regardless of ability to pay, will continue.

From 1913 until 1990, indigent applicants to the Pioneers' Homes were given priority of admission over nonindigent applicants. The Pioneers' Homes system was based on assisting the indigent first. In 1990, the legislature withdrew the indigent preference for placement. Because of the low monthly rates, few residents admitted as nonindigent became indigent due to paying the established rates. At present, about 12 percent of residents are unable to pay the entire monthly rate. No resident has ever been asked to leave a Pioneers' Home due to inability to pay monthly charges.

The department has always read the provision in AS 47.55.020(c) as setting a clear mandate that residents would not be discharged for inability to pay full charges. AS 47.55.020(c) states, "*The Department of Administration may pay to a resident without funds the sum of \$100 per month.*" This part of the statute implies that a resident unable to pay charges is not only assured continued residence in a Pioneers' Home, but is also assured a minimum of \$100 spending money each month. Based on AS 47.55.020(c) and the Pioneers' Homes history of caring for the indigent, maintaining residents in the Homes who are unable to pay full charges has been an ongoing, established practice. The bill's effect will be to clarify and solidify this practice, thus giving additional assurance to residents and future applicants.

**SENATE COMMITTEE REPORT**  
**First Committee of Referral**

DATE: 4/23/96

FURTHER:

DATE TURNED INTO OFFICE: 4/23/96

The State Affairs Committee considered CS FOR HOUSE BILL NO. 384(HES) am  
 Relating to payment requirements for retention in the Pioneers' Home; efd.

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
<i>Herb A. Leman</i>	✓	<i>Roll E. Jolly</i>	✓		
<b>CHAIR:</b> <i>Bob A. King</i>	✓	<b>CHAIR:</b>			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal

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

Department	Date	Zero	Fiscal
<i>Dept. of Admin. -</i>			
<i>Senior Services</i>	<i>7/1/96</i>	0	

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

Rate Increases by Percentage by Year

1st year -- rates go up 50%  
2nd year -- rates go up 33%  
3rd year -- rates go up 25%  
4th year -- rates go up 17%  
5th year -- rates go up 14%  
6th year -- rates go up 11%

**DRAFT**

**CHAPTER 41. PIONEERS' HOMES**

2 AAC 41.015 is repealed and re-adopted to read:

2 AAC 41.015. RATES AND FEES. (a) Effective July 1, 1996, to partially compensate the state for the cost of services, the monthly fees charged a resident of a pioneers' home, in addition to fees for ancillary supplies and services as prescribed by the department, are:

- (1) coordinated services \$ 934
- (2) basic assisted living \$1,289
- (3) enhanced assisted living \$1,553
- (4) Alzheimer's disease and related disorders unit \$1,579
- (5) comprehensive care \$1,864

(b) Effective July 1, 2002, the pioneers' homes will be charging for the full cost of services. Effective July 1 of each fiscal year after fiscal year 1997, described in (a) of this section, rates will be increased to fiscal year 2003 by amending this section. The rate for each service level will be raised by an amount equal to the difference between the then present rate and the annually estimated full cost of services divided by the number of years remaining until fiscal year 2003.

(Eff. 1/1/90, Register 112; am 2/1/93, Register 125; am 2/1/94, Register 129; am 2/1/95, Register 133; am \_\_\_/\_\_\_/96, Register \_\_\_)

Authority: AS 47.55.010 AS 47.55.020 AS 47.55.030

2 AAC 41.080(a), (b), and (c) are amended to read:

2 AC 41.080. QUALITY AND SERVICE LEVELS [LEVEL OF CARE]. (a) A pioneers' home will provide a safe and sanitary environment. Each resident will be treated with consideration and respect for personal dignity, individuality, and the need for privacy. The service levels provided at each home, depending upon the availability of funding, facilities, and staff, are as follows:

- (1) coordinated services:
- (2) basic assisted living:
- (3) enhanced assisted living:
- (4) Alzheimer's disease and related disorders unit:

1           ~~(5) comprehensive services.~~ [A QUALITY OF CARE SUFFICIENT TO  
2 PRESERVE THE HEALTH AND SAFETY OF RESIDENTS WHILE THEY ARE  
3 PHYSICALLY PRESENT ON THE HOME'S PREMISES, OR WHILE UNDER THE DIRECT  
4 SUPERVISION OF AN EMPLOYEE OR AGENT OF THE HOME WHILE OFF THE  
5 HOME'S PREMISES.]

6           (b) A pioneers home will make every reasonable effort to provide the proper service  
7 level [OF CARE] to residents who require the same or a different service level [OF CARE] after  
8 being admitted. However, the home cannot guarantee that all service levels [OF CARE] will be  
9 available to every resident. Availability of various service [AND] levels [OF GERIATRIC  
10 CARE] will be based on the funding, facilities, and staff available at each home.

11           (c) A pioneers' home is not an acute care facility. A pioneers' home is an assisted living  
12 facility, operating in accordance with the statutes and regulations pertaining to assisted living  
13 homes. If a resident requires services [CARE] not normally provided by a pioneers' [THE]  
14 home, the resident will be referred to another appropriate health care facility for service until the  
15 resident is able to return to the home. [A RESIDENT OF THE RESIDENTIAL OR ASSISTED-  
16 LIVING SECTION OF A HOME MAY USE AN AVAILABLE HOME INFIRMARY BED  
17 FOR NOT MORE THAN 30 DAYS DURING A TEMPORARY NON-ACUTE ILLNESS. IF  
18 THE ILLNESS CONTINUES BEYOND 30 DAYS AND NO NURSING BED IS THEN  
19 AVAILABLE, THE RESIDENT WILL BE TEMPORARILY TRANSFERRED TO AN  
20 APPROPRIATE HEALTH CARE FACILITY, BUT ONLY AFTER ALL REASONABLE  
21 ALTERNATIVES, INCLUDING TEMPORARY PLACEMENT IN ANOTHER PIONEERS'  
22 HOME, ARE FULLY EXPLORED.]

23 2 AAC 41.080(d) and (e) are repealed:

24           (d) Repealed \_\_/\_\_/96.

25           (e) Repealed \_\_/\_\_/96.

26 (Eff. 3/31/85, Register 93; am 1/1/90, Register 112; am \_\_/\_\_/96, Register \_\_\_\_).

27 Authority: AS 47.55.010 AS 47.55.020

28 2 AAC 41 is amended by adding a new section to read:

29 2 AAC 41.990. DEFINITIONS. (a) In this chapter

1 (1) "Alzheimer's disease and related disorders unit" means the part of a pioneers'  
2 home where, in addition to enhanced assisted living services, the residents are provided  
3 assistance, as agreed upon, and 24-hour supervision, within an environment adapted to  
4 supporting the activities of daily living of persons with Alzheimer's disease and related  
5 disorders;

6 (2) "basic assisted living" means the provision of housing, meals, emergency  
7 assistance, opportunities for recreation, and, as agreed upon, occasional cues and intermittent  
8 assistance with activities of daily living, health care, and recreation, but not including 24-hour  
9 supervision;

10 (3) "comprehensive services" means, in addition to the provision of housing,  
11 meals, emergency assistance, and opportunities for recreation, the provision to residents, as  
12 agreed upon, of assistance with activities of daily living, intermittent health care, 24-hour  
13 supervision, and one or more of the following:

14 (A) 24-hour skilled nursing care for up to 45 continuous days (infirmery  
15 services);

16 (B) extensive assistance with activities of daily living;

17 (C) care of the terminally ill;

18 (4) "coordinated services" means the provision of housing, meals, emergency  
19 assistance, and opportunities for recreation;

20 (5) "department" means the Alaska Department of Administration;

21 (6) "director" means the director of the division of senior services;

22 (7) "division" means the division of senior services;

23 (8) "enhanced assisted living" means, in addition to the basic assisted living  
24 services, the provision of assistance with activities of daily living and intermittent health care, as  
25 agreed upon, with 24-hour supervision.

26 (b) In AS 47.55.020, "cost of the person's care" and, in AS 47.55.030, "cost of care and  
27 support," mean the cost of services provided to a pioneers' home resident. (Eff. \_\_/\_\_/96,

28 Register \_\_\_)

29 Authority: AS 47.55.010

NOTICE OF PROPOSED CHANGES  
IN THE REGULATIONS OF  
THE  
DEPARTMENT OF ADMINISTRATION

Notice is given that the Department of Administration, under the authority of AS 47.55.010, 47.55.020, and 47.55.030, proposes to repeal and re-adopt 2 AAC 41.015, setting rates for the Alaska Pioneers' Homes; amend 2 AAC 41.080 to redesignate and clarify the levels of care; and add 2 AAC 41.990, defining terms.

This revision will replace the current, fiscal year 1996 rates with new ones for fiscal year 1997, and will state the method for revising the rates each fiscal year in order to achieve a rate schedule that provides for payment of the full cost of care by fiscal year 2003. The basic purpose of the revision is to require payment of the full cost of care, but to do so on a graduated basis. The changes in 2 AAC 41.080 and the new 2 AAC 41.990 complement that basic purpose.

This revision of the rate schedule implements a recommendation in the plan proposed by the Pioneers' Homes Advisory Board, made in the fall of 1995. The recommendation is reflected in the governor's proposed budget for FY 97.

Notice is also given that any person interested may present written comments relevant to the proposed action, including the potential costs to private persons of complying with the proposed action, by writing to James L. Kohn, Deputy Director, Division of Senior Services, Department of Administration, P. O. Box 110211, Juneau, Alaska 99811-0211, so that they are received no later than May 20, 1996.

In addition, an interested person may present oral or written statements or arguments relevant to the proposed action at a teleconference hearing to be conducted from the Division of Senior Services Conference Room on the 7th floor of the State Office Building, Juneau, Alaska, May 16, 1996. The other teleconference sites for that May 16 hearing are: the Division of Senior Services Conference Room on the 3rd floor of the Frontier Building, Anchorage, Alaska; and all Alaska Pioneers' Homes (Anchorage, Fairbanks, Juneau, Ketchikan, Palmer, and Sitka). A person may present his or her statements or arguments at any of the eight teleconference sites.

The hearing will begin at 10:00 a.m., and will continue to noon if a sufficient number of people appear and wish to testify. The hearing might be extended to accommodate those present before noon who have not had an opportunity to testify.

If you are a person with a disability who may need a special modification in order to comment on the proposed regulations,

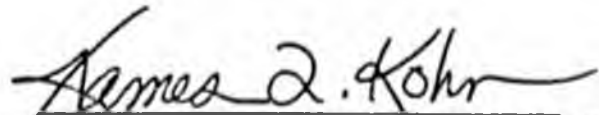
please contact Jim Kohn (phone: 907-465-4400) no later than May 10, 1996 to make any necessary arrangements.

This action is not expected to require an increased appropriation.

Copies of the proposed revision of the regulations may be obtained by writing to Jim Kohn at the address given in the fourth paragraph of this notice.

The Department of Administration, at the hearing or after it, will either adopt this or another proposal dealing with the same subject, without further notice, or decide to take no action on it.

DATE: April 18 1996



James L. Kohn, Deputy Director  
Division of Senior Services  
Alaska Dept. of Administration

# STATE OF ALASKA

## DEPARTMENT OF ADMINISTRATION

### DIVISION OF SENIOR SERVICES

April 17, 1996

TONY KNOWLES, GOVERNOR

P.O. BOX 110211  
JUNEAU, AK 99811-0211  
FAX: (907) 465-4108

LONGEVITY BONUS PROGRAM  
PHONE:(907) 465-4416

PIONEERS' HOMES  
PHONE:(907) 465-4400

The Honorable Norman Rokeberg  
Alaska State Legislature  
State Capitol Room 110  
Juneau, AK 99801-1182

Re: HB 384, "An act relating to payment requirements for retention in the Pioneers' Home; and providing for an effective date.

Dear Representative Rokeberg:

As you know, passage of HB 384 would make the eviction of a Pioneers' Home resident with insufficient income and assets to pay the monthly rate illegal.

Apparently there is some concern regarding the effect of HB 384 on the ability of the Department of Administration to use the threat or reality of discharge to deter residents from divesting themselves of assets and income in order to take advantage of this proposed legislation if it would become law.

HB 384 will not limit the department's ability to discharge a resident who fraudulently disposes of assets in order to become financially dependent on the state.

Inability to pay the monthly rent charge is nothing new. Presently there are almost 90 Pioneers' Home residents unable to pay the monthly rate. They have not been discharged. Pioneers' Home regulations are followed to determine if the resident is eligible to remain at the Home without paying the full monthly charge.

The Administrative Code clearly indicates that the department has the ability to discharge a person who has fraudulently disposed of assets and is unable to pay.

*A resident of a pioneers' home may not continue residency at the home if the home manager determines that the resident has sufficient assets and income to pay for the care and support and that the person's payments for care and support are in arrears. 2 AAC 41.070(c)*

Ability to pay is determined by including the value of any asset or interest owned by the resident within 24 months, preceding notice to the Home that the resident is unable to pay the monthly rate.

*... if the applicant (for indigent status) gave away the assets or interest, or sold or assigned the asset or interest at less than fair market value. Any such transaction will be rebuttably presumed to have been for the purpose of reducing the applicant's ability to pay the state for care and support in a pioneers' home. This standard will also apply in determining eligibility for continued residence in a pioneers' home. 2 AAC 41.040.(f).*

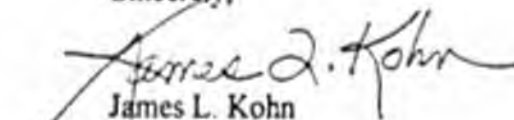
The Pioneers' Home requires extensive financial information from each resident unable to pay the monthly rent in full. The regulations provide for this mandatory release of financial information by a resident for continued residence if the resident cannot afford full payment of charges.

Residents unable to pay full charges accrue a debt to the state for the total amount unpaid. A claim against the estate of the resident is made upon the resident's death for the debt owed the state.

Although sufficient regulations are in place to prevent a resident from fraudulently disposing of assets and income, the Division of Senior Services expects an increase in the number of residents unable to pay the increased rates. As you are aware, the Governor's FY97 budget takes this into account. A revenue section in the Division will be created to enforce the revenue regulations, scrutinize residents' assets and income, and recover debt owed the state.

I hope that this information assists you in passing HB 384.

Sincerely,

  
James L. Kohn  
Deputy Director

cc: Connie J. Sipe, Director  
Mark Boyer, Commissioner

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

February 16, 1996

**SUBJECT:** Potential Constitutionality Problem in CSHB 384(STA)  
(Work Order No. 9-LS1450\G)

**TO:** Representative Jeannette James  
Attn: Walt Wilcox

**FROM:** Terri Lauterbach *T. Lauterbach*  
Legislative Counsel

Yesterday, I sent to you a final draft for CSHB 384(STA) in which you requested the addition of a phrase that would make the non-eviction policy applicable only to residents admitted to the Pioneers' Home before the effective date of the Act.

The purpose of this memorandum is to alert you that this change raises an equal protection issue that could cause the law to be overturned if its constitutionality is challenged.

The change divides Pioneers' Homes residents into two groups: those admitted before the effective date of the Act and those admitted after the effective date of the Act. An indigent person in one group could be evicted for nonpayment while an equally poor person in the other group could not be evicted. To support the constitutionality of treating one of these people differently from the other, the state will need to be able to demonstrate that there is a fair and substantial relation between the classification based on the date of the person's admission to the Home and a legitimate governmental objective. The question faced in court, if there's a challenge to this law, would be the following: What legitimate governmental objective is served by a non-eviction policy that affects residents differently based on the date they were admitted to the facility?

I think a court would have a hard time being convinced that there is a legitimate governmental objective served by this classification since, under AS 47.55.030(a), current residents have signed contracts under which they agreed to pay the rates set under law. What would be the state's objective in releasing these people from their contracts while enforcing the contracts against new admittees to the Home?

TML:klb  
96-104.klb

# ALASKA STATE LEGISLATURE

## House of Representatives

### COMMITTEE ASSIGNMENTS

OIL & GAS, CHAIRMAN  
LABOR & COMMERCE, VICE CHAIRMAN  
ADMINISTRATIVE REGULATION REVIEW, VICE CHAIRMAN  
HEALTH, EDUCATION & SOCIAL SERVICES, MEMBER  
ECONOMIC DEVELOPMENT, MEMBER



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ANCHORAGE, AK 99501  
PHONE (907) 258-8191  
FAX (907) 258-2010

SESSION  
STATE CAPITOL  
JUNEAU, AK 99801-1102  
PHONE (907) 465-4600  
FAX (907) 465-2040

## Representative Norman Rokeberg

### Sponsor Statement CSHB 384(HES)am

**"An act relating to payment requirements for retention in the Pioneers' Home; and providing for an effective date"**

HB 384(HES)am gives statutory protection to what has been the standard policy since the beginning of the Pioneers' Homes in Alaska -- that residents who cannot pay are not evicted. HB 384 will provide a statutory safety net that prevents the state from evicting residents.

Currently, 86 of the 600 residents in the states' six Homes cannot pay the full rent. Since significant annual rate increases have been proposed by the governor, many of the residents are living in fear of the consequences if they cannot afford the proposed rates.

Many of the residents are living on Social Security and the Longevity Bonus, which, for many, totals no more than \$1,000 a month. The residents are frightened and scared that they will be evicted, even though it has been a long-standing unwritten policy that no resident will be evicted based on an inability to pay.

In addition, in a memo to the Speaker of the House issued at the beginning of the session, the Ombudsman recommended to the legislature that state agencies "unwritten policies" be set out either in statute, regulation or in department policy procedure manuals."

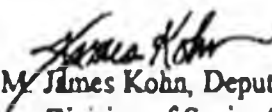
I believe it is crucial to the peace of mind of the elderly residents that this unwritten policy become state policy. I urge your support in this matter.

# MEMORANDUM

State of Alaska  
Department of Administration

TO: Representative Norman Rokeberg

DATE: March 13, 1996

FROM:  James Kohn, Deputy Director  
Division of Senior Services

TEL: 465-2159

SUBJECT: Pioneers' Homes Rate Increases

In October 1995 the Pioneers' Home Advisory Board proposed to the governor a rate increase plan of seven years duration which would bring rates to the cost of care by FY2003. The Administration's FY97 budget for the Pioneers' Homes assumes a rate increase equal to one seventh of the difference of the estimated cost of care minus the present rate. An estimation of the FY97 rate increase and the seven year plan, based on level of care, is expressed in the following chart.

Level of Care	Estimated Monthly Cost	Present Monthly Charge	Difference	Annual Monthly Increase	Estimated						
					FY97 Rate	FY98 Rate	FY99 Rate	FY00 Rate	FY01 Rate	FY02 Rate	FY03 Rate
Coordinated Services	\$2,129	\$735	\$1,394	\$199	\$934	\$1,133	\$1,332	\$1,532	\$1,731	\$1,930	\$2,129
Basic Assisted Living	\$3,862	\$860	\$3,002	\$429	\$1,289	\$1,718	\$2,147	\$2,575	\$3,004	\$3,433	\$3,862
Enhanced Assisted Living	\$5,079	\$965	\$4,114	\$588	\$1,553	\$2,140	\$2,728	\$3,316	\$3,904	\$4,491	\$5,079
ADRD Unit	\$5,262	\$696	\$4,567	\$614	\$1,579	\$2,193	\$2,807	\$3,420	\$4,034	\$4,648	\$5,262
Nursing/Comprehensive	\$6,448	\$1,100	\$5,348	\$764	\$1,864	\$2,628	\$3,392	\$4,156	\$4,920	\$5,684	\$6,448

Our calculations, as based on the U.S. Census on Alaska Income by Age Group, 1989, indicates that annual revenues from the rate increases will be in the range of \$750.0 to \$2,500.0. It is estimated that revenues in the initial year of the plan (FY97) will increase by approximately \$2,500.0. Each year thereafter revenues will increase at a slower rate. In the final year of the plan, revenues will increase by about \$750.0. At that time, FY2003, overall revenues should be around \$15,000.0. Present revenues for FY96 will be slightly in excess of \$5,000.0. Therefore, over seven years, revenues should increase by almost \$10,000.0.



FEB 19 1996

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ALASKA STATE LEGISLATIVE COMMITTEE

307-475-2509

307-475-2509

307-475-2509

COORDINATOR  
Capital City Juv. Court  
Rupert Andrews  
9416 Long Run Drive  
Juneau AK 99801  
907-589-7422

February 15, 1996

Representative Norman Rokeberg  
House of Representatives  
State Capitol  
Juneau AK 99801-1182

Dear Representative Rokeberg,

Thank you for your letter of February 10, 1996. Upon reading your bill, HB 384, the executive committee of the Alaska State Legislative Committee of the American Association of Retired Persons supports this piece of legislation. When a resident of the Alaska Pioneers' Homes has income which is less than the cost of the home, there is always a concern that they will have to leave. This piece of legislation if passed will alleviate some of that concern.

Thank you for your support of the Seniors in Alaska. If we can be of further assistance to you please let me know.

Sincerely,

Barbara Rich, Chair  
Alaska State Legislative Committee

FEB 13 1996

## DEPARTMENT OF ADMINISTRATION

DIVISION OF PIONEERS' BENEFITS

PO BOX 110211  
JUNEAU, ALASKA 99811-0211  
PHONE (907) 465-4400

February 7, 1996

Representative Norman Rokeberg  
State Capital  
Juneau, Alaska 99801-1182

Dear Representative Rokeberg:

On behalf of the Residents of the Anchorage Pioneers' Home I wish to give their support to HB 384, "An act relating to payment requirements for retention in the Pioneers' Home". Resident Council President, Mr. John Gibbons, presented HB 384 to the Resident Council at their February 5, 1996 meeting and received a 100% vote to support passage of this legislation.

Speaking for myself, as Administrator of the Anchorage Pioneers' Home, I am very much aware of the need for the Administration to address the issue of Pioneer Home Resident rents being more in line with the cost of the services they receive. I am also aware that it has always been the historical practice that a persons income or ability to pay the full cost of care has never been consideration for admission or continued stay at the Homes.

It is always important to remember and related to others in the Legislature that a Pioneer Home is not just a facility for Senior Alaskans but the "Home" of Senior Alaskans and with passage of HB 384 our Residents will be provided a peace of mind so important in maintaining a healthy outlook for the future.

I congratulate you on your sponsorship of HB 384. Please free to call upon Mr. Gibbons or myself if we can be of any assistance in support of your bill.

Sincerely,



John Vowell

ANCHORAGE PIONEERS HOME  
823 WEST ELEVENTH AVENUE  
ANCHORAGE, ALASKA 99501-4390  
PHONE (907) 276-3414

FAIRBANKS PIONEERS HOME  
2221 EAGAN AVENUE  
FAIRBANKS, ALASKA 99701-8787  
PHONE (907) 456-4372

JUNEAU PIONEERS HOME  
4675 GLACIER HIGHWAY  
JUNEAU, ALASKA 99801-0618  
PHONE (907) 780-8422

KETCHIKAN PIONEERS HOME  
141 BRYANT STREET  
KETCHIKAN, ALASKA 99821-5575  
PHONE (907) 225-4111

PALMER PIONEERS HOME  
250 EAST FIREWEED  
PALMER, ALASKA 99645-0600  
PHONE (907) 745-4241

SITKA PIONEERS HOME  
170 KAILIAN STREET  
SITKA, ALASKA 99829-7501  
PHONE (907) 747-3213

THE RESIDENT COUNCIL  
SITKA PIONEERS' HOME

120 Katlian  
Sitka, AK 99835  
747-6398

JAN 0 19.

Representative Norman Rokeberg  
State Capitol  
Juneau, AK 99801-1182

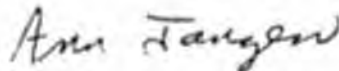
Dear Representative Rokeberg :

We have just received a copy of House Bill No. 384, which carries your name. On behalf of the residents here in Sitka, I want to thank you for this.

The anxiety level at the Home continues to be high as we approach the Legislative session. Just knowing that this bill is possible helps.

Thank you again for your sensitivity to the situation in which many of us find ourselves.

Sincerely yours,



Ann Janzen, Secretary

# DEPARTMENT OF ADMINISTRATION

## DIVISION OF SENIOR SERVICES

December 15, 1994

P.O. BOX 110211  
JUNEAU, AK 99811  
FAX (907)

LONGEVITY BOND  
PHONE (907)

PIONEERS' HOMES  
PHONE (907)

RAM

1

00

Dear Pioneers' Home Resident:

During October 1994, public hearings were held at each of the Pioneers' Homes regarding proposed new rates for each level of care in the Homes. The proposal also included the addition of a new level of care, Enhanced Assisted Living. In addition to public hearings, the rate proposal was extensively advertised throughout the state. The increased rates were approved as proposed.

Former Deputy Commissioner Robert Waldron and I thank you for your oral and written testimony which included very favorable comments regarding the services provided by each Pioneers' Home. We understand that some residents will find it financially difficult to meet this added expense.

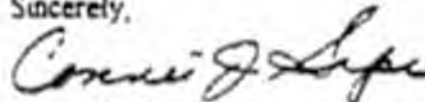
The new rates will be effective beginning February 1, 1995. If you have income or assets, you must pay the rate charged. If you do not have sufficient income or assets, please talk to the social worker or a business office staff member for assistance. No one who is unable to pay the full rate will be asked to leave the Home or be discriminated against in any way.

Beginning February 1, 1995, the charge for care in the Pioneers' Homes will be:

Residential	\$735 00
Basic Assisted Living	\$860 00
Enhanced Assisted Living	\$965 00
Skilled Nursing	\$1100 00

If you have any questions or concerns, please contact your Home Administrator or Jim Kohn, Deputy Director at 465-4400.

Sincerely,



Connie J. Sipe  
Director

I have circled your new rate. Residents who move to the new Special Care unit who need more assistance than Basic Assisted Living can provide will be charged the En- ed  
hanced Living rate when that occurs. If you have any questions, please feel free to  
call upon me. 00

Eugene C. Smith  
923 West 11th Avenue  
Anchorage, Alaska 99501  
274-7411

FEB 15 1996

February 13, 1996

Representative Norm Rokeberg  
State House  
State Capitol  
Juneau, Alaska 99811

Dear Norm,

Recently we have been informed through the news media that our Governor, Tony Knowles, is planning to increase the rental cost to those pioneers who reside in the Pioneer Homes in Alaska. This has brought considerable concern to many residents including my wife and I.

My wife was born here in Anchorage when it was still mostly a tent city, and I have been here since 1932. We have resided here since that time and only recently - in May - we moved into the Anchorage Pioneer Home. We raised 3 fine boys, who in turn married and raised their families. My wife and I are now the proud Grandma and Grandpa of 9 Grandchildren and 17 Great Grandchildren.

I am not trying to brag about my family, nor am I trying to tell you how to balance the State Budget, or what you should do as Legislators - mainly because I can't or don't know. I just want to give you some of the thoughts of an 85 year old man and some of the history of Alaska as I have seen it.

When I came to Alaska, and after looking around a bit, I was puzzled by the lack of older persons. Everyone called it a "young man's country". Suddenly it came to me. In Anchorage, the main employment was the Alaska Railroad and they had a retirement program. Everyone knew when he or she would retire and their homes were quietly sold as of their date of retirement. The old timers headed for warmer climates where rents, groceries, etc. were much less than in Alaska and where their retirement and savings would go further. They also took their wisdom and knowledge with them. This became a land with very little or no knowledge of what happened 40 years ago.

This country also needed population! It needed people who would help build our country - open up land and be able to farm

and raise produce. Do you remember the steamship days, when if you were lucky a ship came in weekly? How about the condition of the fruit and vegetables which had been harvested 20 days earlier?

The partial answer to that came in 1935 when the "colonists" came to settle in the Matanuska Valley and build farms. It brought a "shot in the arm" to the economy - more people, more jobs, roads, etc, etc.

Later on the Legislature gave us the Longevity Bonus which helped keep the older persons in Alaska. It was "seed money" - \$250.00 added to what that person had, was worth \$1,500 to \$2,000 per month to the local economy. And was not overlooked by the stores in the state.

now many of the older people living in Alaska are residents of the Pioneer Homes. They range in age from the late 60's through the 90's and even 100 years. They don't work anymore - and they don't have salaries. Some have retirements, some have savings put away - which are not finite. Some can't even afford the present services. I cannot say how many, as this is a personal thing.

Please remember that these people in their working years didn't make thirty - forty - or 50 thousand dollars a year. They maybe made \$500 to \$1,000 per month and as a result couldn't have set aside a big savings account.

However, and this boils down to what I want to ask you. Do you want the State of Alaska to put the burden of maintaining the Pioneer Homes on the backs of these old persons?

They have paid taxes all their working years. They have paid their dues.

I sincerely hope that you will give this letter, for what it's worth, your thoughtful consideration.

Thank you.

Sincerely,

*Eugene C. Smith*

Eugene C. Smith  
Ingaborg E. Smith

*Ingaborg E. Smith*

SEE PAGE 3

## Pioneers' Homes Assisted Living Contract

This agreement is entered into by and between the Pioneers Homes and :

\_\_\_\_\_

on \_\_\_\_\_

Home address and phone number here

### Services

The parties in the contract agree as follows: The Pioneers' Home will provide (check one):

- 1. Coordinated services as follows:
  - Private or semi-private room;
  - Three meals daily, served in the dining room;
  - Opportunities for recreation and social interaction;
  - General housekeeping services - (Periodic heavy cleaning);
  - Infirmary services - (See Infirmary Services);
  - Emergency assistance.
  
- 2. Basic assisted living services as follows:
  - Private or semi-private room;
  - Three meals daily, served in the dining room;
  - General Housekeeping services based on need, e.g., personal laundry, changing linen;
  - Infirmary services - (See Infirmary Services);
  - Emergency assistance;
  - Assistance with activities of daily living (ADLs) and or instrumental activities of daily living (IADLs);
  - Organized activity programs;
  - Nursing clinics to assist with intermittent health care needs, if indicated in the resident's assisted living plan;
  - Physical therapy, based on individual need and available resources, if indicated in the resident's assisted living plan;
  - Medication administration or assistance with self-administration of medication, if indicated in the resident's assisted living plan.

Page 1

3. Enhanced assisted living services . Services available in the Enhanced Assisted Living level of care may include the above Assisted Living services and one or more of the following, as specifically indicated in the assisted living plan:

- Intensive assistance with activities of daily living;
- Assistance with mobility for the non-ambulatory;
- Specially structured social, recreational and therapeutic programs for the resident with mental or physical impairments;
- 24-hour general supervision for the resident with safety needs.

#### Infirmiry Services

Each of the Pioneers' Homes has a small number of beds within the skilled nursing section designated as infirmiry beds. These beds accommodate residents within the assisted living sections who require short-term, round-the-clock nursing observation, assessment or intervention because of a change in health status. A resident from the assisted living or residential level care might use an infirmiry bed when he or she is acutely ill, or has taken a fall and requires continuous observation. These beds are assigned depending upon availability and need. The decision to place a resident in an infirmiry bed is based upon nursing/medical assessment of a resident's condition. A resident may use an infirmiry bed for up to 45 continuous days. Length of stay in the infirmiry is determined by medical or nursing assessment.

- If an infirmiry bed is not available, other arrangements may need to be made by the resident and his/her family to provide for the resident's health needs.
- An infirmiry bed is not intended to be a substitute for necessary hospital care.

The interdisciplinary care team will advise the administrator of each Home of any unresolved level of care needs. The Home administrator has final authority to determine the initial placement and when a resident should move to another level or area of care. The need for acute care and care not normally provided by the Homes may necessitate transferring or discharging a resident to another facility. If possible and consistent with the needs of residents, 30-day advance written notices will be given by the Home administrator, however, residents requiring emergency treatment will be transferred immediately.

A Pioneers' Home will make every reasonable effort to provide the proper level of care to residents who require the same or different level of care after being admitted. However, all levels and types of care may not be equally available at each Home. Availability and levels of geriatric care will be based on the funding, facilities, and staff available at each home (2 AAC 41.080(b)).

Rates-

Page 2

The monthly rates are as follows:

- ☐ 1. Coordinated Services-\$735.00
- ☐ 2. Basic Assisted Living-\$860.00
- ☐ 3. Enhanced Assisted Living-\$965.00

Monthly Rental Due Date-Rental fees are to be paid on or before the \_\_\_\_\_ day of each month, beginning on \_\_\_\_\_, 19 \_\_\_\_\_. If payment is mailed, it must be postmarked before the \_\_\_\_\_ day of the month.

**Rights**-Please refer to and review the Residents' Rights Booklet.

**Rules**-Please refer to and review the attached listing of Home rules, including that the resident shall notify the Home of any absence from the premises for overnight or longer.

### **Termination of Contract-**

- a. **Termination by Resident**-The resident shall give the Home written notice of intent to terminate the contract at least 30 days prior to the day rent is due for the month in which the termination occurs.
- b. **Termination by Home**-The Home will not terminate a residential services contract with a resident of the home against the resident's will, except:
  - 1. for medical reasons;
  - 2. for engaging in a documented pattern of conduct that is harmful to the resident, other residents, or staff of the home;
  - 3. for violation of the terms of the residential services contract, including failure to pay costs incurred under the contract;
  - 4. when emergency transfer out of the home is ordered by the resident's physician;
  - 5. when the home is closing; or
  - 6. when the home can no longer provide or arrange for services in accordance with the resident's needs and the resident's assisted living plan.

At least 30 days before terminating the residential services contract with a resident, the Home shall provide written notice of the proposed contract termination to the resident or the resident's representative, and to the resident's service coordinator, if any.

The notice must state the following:

1. The basis for the termination
2. The resident's right to contest the termination in the manner provided in the contract, which must include an offer by the home to participate in a case conference.

**Case conference-** Before terminating the residential services contract with a resident, the assisted living home shall participate in a case conference if requested by the resident or the resident's representative. The case conference must include the resident, the resident's representative, if any, the resident's advocate, if any, the resident's service coordinator, if any, the home administrator, and appropriate care providers who may discuss the appropriateness of the contract termination.

If a home terminates the residential services contract with a resident under this section, the home shall cooperate with the resident, the resident's service coordinator, if any, and the resident's representative, if any, in making arrangements to relocate the resident.

#### **Advance Rent-**

Under AS 47.33.030, an advance payment to an assisted living home may only be made as 1- security for performance of the residential services contract or 2-As advance rent for the immediately following rental period. The business office will provide receipts for any advance rent paid. The Home will also refund on a prorated basis, the rent for any part of the month that a resident was no longer in residence at the Home if termination of contract or death occurs.

This Contract shall be interpreted in accordance with the laws of the State of Alaska, and all provisions of the Assisted Living Homes Act of Alaska, which are incorporated within.

\_\_\_\_\_  
Administrator or Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Resident or Resident's Representative

\_\_\_\_\_  
Date

Original to: Resident file      Copies to: Resident and Representative, if any

# Pioneers' Home residents fear rate boosts

By DOUGLAS FISCHER  
Fairbanks Daily News-Miner

**FAIRBANKS** — Residents of Alaska's Pioneers' Home are facing the possibility of hefty rent increases. And they are scared.

Administrators hope to bring revenues in line with costs at the state-supported housing system for Alaska's senior citizens. But residents fear the price hikes will drive healthy adults into cheaper housing and turn the system into an Alzheimer's patient ward.

The Pioneers' Home Advisory Board, anticipating drastic budget cuts, has recommended that the state raise rents to cover the full cost of care.

Proposed rate hikes would increase a basic room's rent from \$735 a



month now to \$934 in July and \$2,129 by 2003. Comprehensive service — the most expensive — would run from \$1,100 now to \$6,448 in 2003.

Currently, residents pay about 17 percent of the system's operational costs, which run about \$30 million a year. State funds and some private grants pick up the rest.

First established in the 1920s, Pioneers' Homes offer residential and nursing

care to those over 65 who have lived in Alaska for at least a year. The homes are located in Fairbanks, Sitka, Juneau, Ketchikan, Palmer and Anchorage.

The 600-bed system has seen considerable threats from legislators wielding the budget ax, said Eileen Montano, administrator of the Fairbanks home.

"We have to look at future funding cuts," she said.

"A lot of people aren't able to take care of the increase," said Delmore Schmidt, grand president of the Grand Igloo, which represents the 8,000 Pioneers of Alaska members. "It destroys the original intent of the Pioneers' Home, to provide a place for those who couldn't afford anything else."

The Grand Igloo has a

committee working with legislators to find some relief, he said, but the future looks bleak for now.

"I don't see anything now that we could count on or anything that we like," Schmidt said.

Arthur Japson, a Fairbanks Pioneers' Home resident, said adding \$2,400 a year every year to his rent bill will force him out.

"We could probably take the next year's (increase). But it's the next one, and the next one after that," said Japson. "They'll wipe me out."

"Most of us come here so we won't be a pain in the butt to our relatives."

Mary Nichols, another Fairbanks Pioneers' Home resident, said, "(Legislators) will defeat their own purpose. If we can't afford

to pay, the state will pick up the tab, and they'll end up worse than before."

Indeed, the state already picks up the tab for 10 percent to 15 percent of the residents in the Fairbanks home, Montano said.

And in a letter to Gov. Tony Knowles, advisory board chairman Amos "Joe" Alter recommended that "in no event should any individual be either denied entry to or discharged from a Pioneers' Home due to inability to pay."

Both Japson and Nichols are afraid the proposed increases will transform their residence into a state-run nursing home, as more residents with Alzheimer's disease and related disor-

ders move in. Sprawl costs will force adults who just want a clean apartment into cheaper housing, they figure.

The fear is not unfounded.

Of the 84 residents in the Fairbanks home, 64 are some form of assisted living, ranging from an assisted bath to round-the-clock nursing care, Montano said. Of the almost 100 people on the waiting list, most have Alzheimer's or a similar disorder.

Asked where she'd go if she couldn't afford the Pioneers' Home, Nichols shrugged.

"I'll go to pieces, I guess. I don't have any family. ... I hope those fellows in Juneau remember when they get older."



# One part of the whole HEARTLAND

**SUNDAY**

Mostly sunny  
and cold  
High 20, Low -10  
Page A-2

**RBANKS**

THIS CITY COMMISSIONER  
ALASKA'S  
The Daily

# WS-Miner



of Interior Alaska

ALASKA, SUNDAY, MARCH 17, 1996

\$1.50 per copy

90 Pages

## Rent may rise for pioneers

### Board proposes hefty increases

By DOUGLAS FISCHER  
Staff Writer

Pioneers' homes residents are staring at some hefty rent increases, and they are scared.

Administrators hope to bring revenues in line with costs at the state-supported housing system for Alaska's senior citizens, but residents fear the proposed price spikes will drive healthy adults into cheaper housing and turn the venerable system into an Alzheimer's patient ward.

The Pioneers' Home Advisory Board, anticipating drastic budget cuts, has recommended that the state raise rents to cover the full cost of care. The Legislature must approve the increases.

Under the proposed plan, residents would see annual rent increases anywhere from \$200 to \$760—depending on the level of care—starting in July and running through at least 2003.

Currently, residents pay about 17 percent of the system's operational costs, which run about \$30 million a year—not including capital improvements—for the state's six seniors' homes. State funds and some private grants

pick up the rest.

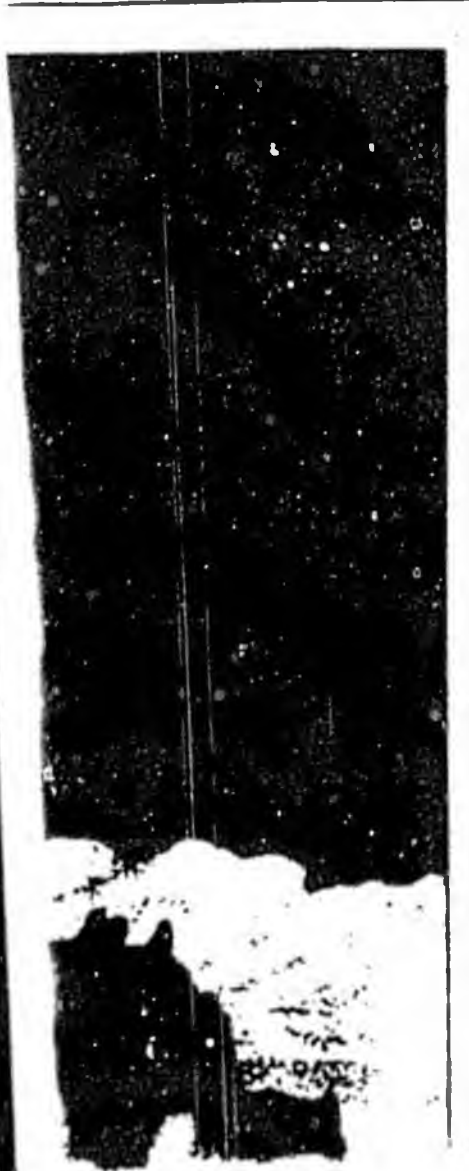
First established in the 1920s, pioneers' homes offer residential and nursing care to those over 65 who have lived in Alaska for at least a year. The homes are located in Fairbanks, Sitka, Juneau, Ketchikan, Palmer and Anchorage.

The 600-bed system has seen considerable threats from legislators wielding the budget ax, said Eileen Montano, administrator of the Fairbanks home.

"We have to look at future funding cuts," she said, citing a recent preliminary funding report from Juneau that placed no cash in the system's money column. The final report, however, had the homes back in and funded.

Proposed rate hikes, which would ramp up a basic room's rent from \$736 a month now to \$834 in July and \$2,129 by 2003, have many residents reaching for the Mylanta. Comprehensive service—the most expensive—would run from a monthly \$1,100 now to \$6,448 in 2003.

"A lot of people aren't able to  
See PIONEERS, Page A-7



ties to exempt seniors from having to pay property taxes on the first \$150,000 of their homes' assessed value. But the state has steadily contributed less toward the program, requiring the municipalities to foot the bill. Today, the state pays

executive director. "I think [the tax exemption] really does help people, but it would be hard to get a direct cause and effect identified on that issue," Demmert says. However, when all the programs for seniors begin to be

ment it has been." Demmert says her office receives many calls and letters from people out of state, who are scouting for a retirement location. "They're asking what benefits are available as a part of their research and

But on the other hand, I also know, working here, that we clearly do have to figure out some way to save." Lee Carman, president of the Fairbanks Chapter of the American Association of Retired Persons (AARP), says he

While it is difficult to get a consensus from seniors, it is certain that the governor's proposals won't just slide through the legislature, Carman says. "I don't know whether the legislature's going to give him anything or not," Carman says. "They like to fight politics."

## Pioneers' Home bill allows those unable to pay to stay

by David Washburn  
Senior Voice staff

Rep. Norm Rokeberg (R-Anchorage) has introduced a bill that would forbid the state from evicting Pioneers' Homes residents who cannot afford to pay their rent.

Rokeberg says he sponsored the bill, HB 384, because Pioneers' Homes residents and their families are worried about the state's plan to increase rates at the Homes over the next seven years.

Last fall, the Pioneers'

Home Advisory Board recommended the increases because current rates do not cover the costs of the program. Operating the six Pioneers' Homes costs the state over \$30 million a year. Funds generated from the residents' rent pays for approximately 15 percent of the costs; the state subsidizes the rest.

Rokeberg says he learned during hearings on the increases that there is no statute specifically protecting resi-

dents from being evicted for inability to pay full rent.

"It's clearly not been the policy of the state to expel anybody, and I understand that," Rokeberg says. However, a clearly worded law would help put residents'


minds at ease, he says.

State officials agree current laws are not worded as clearly as they could be, but emphasize that HB 308 simply enacts into law what is already standard policy.

"It's always been the prac-

tice to not throw anybody out for not being able to pay," says Jim Kohn, deputy director of the Division of Senior Services.

Kohn says there are 603 seniors currently living in the Homes, about 70 of whom cannot pay the full rent.




### SENIORS

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---

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### State of Alaska Alaska Commission on Aging Legislative Teleconference Meeting Sites

The Alaska Commission on Aging will begin weekly Legislative Subcommittee meetings on Tuesday, February 8, 1995, and will continue throughout the legislative session. Meetings are scheduled for Tuesdays from 10:00 a.m. till 11:00 a.m.

*Public sites include:*

- Anchorage** Division of Senior Services Office, 3601 C Street, Suite 310, Anchorage, AK 99503.
- Fairbanks** North Star Council on Aging, 1424 Moore Street, Fairbanks, AK 99701.
- Juneau** Alaska Commission on Aging, State Office Building, Room 757, Juneau, AK 99811.
- Kodiak** Kodiak Senior Center, 302 Erskine Ave., Kodiak, AK 99815.
- Mat-Su** Mat-Su Legislative Information Center, 600 E. Railroad Ave., Wasilla, AK 99854.
- Nome** XYZ Senior Center, 95 Hunter Way, Nome, AK 99762.
- Sitka** Center for Community, 700 Kallian, Suite B, Sitka, AK 99835.

Anyone requiring special devices and equipment to participate in the meet

## Bill bars eviction for pioneers

By DOUGLAS FISCHER  
Staff Writer

**JUNEAU**—Residents of state Pioneers' Homes, facing stiff rate hikes over the next seven years, could find some security under a measure that passed the House on Friday.

House Bill 384, sponsored by Anchorage Republican Norman Rokeberg, codifies a long-standing but unwritten policy preventing the state from evicting residents if they can't pay the rent.

But with demographics of the state's six Pioneers' Homes changing as retirees move out and the infirm move in, the bill could have a significant financial impact.

The one-page measure saw impassioned bipartisan testimony as lawmakers appealed to memories of parents and grandparents and debated who should care for the state's elderly.

"These people expect to pay their bills," said Rokeberg. "When they don't have money in the bank, they get very concerned ... I haven't seen such fear in people's faces since I was in basic training in the Army."

Driving the debate are proposed rent hikes that would



News Graphic/News Miner

**MAKING MUSIC**—Lesley Salisbury plays duets with her friend, Sam Quintal, 8, Friday afternoon at her room at the Pioneers Home.

bring revenues in line with costs at the state-supported housing system for Alaska's senior citizens.

Under the proposed plan, residents would see annual rent in-

creases ranging from \$1,400 to \$9,120—depending on the level of care—through at least 2003.

Currently, a basic room at a Pioneers' Home rents for \$735 per month, and comprehensive

service—the most expensive—runs \$1,100 a month.

If HB 384 becomes law, the state would not be able to evict residents lacking sufficient income and assets to pay rent.

Rep. Jeannette James, R-North Pole, said voting on the measure put her in "terrible, terrible, terrible" straits.

"I wasn't willing to vote  
See HOME, Page A-10

# HOME

Continued from Page A-1

against seniors for whom it's a sensitive issue," she said, explaining her "yes" vote. But she felt the proper place for this kind of commitment was the rent contract—not state law.

"We need to think seriously about this issue," she said. "It needs more than one page."

Indeed, lawmakers questioned whether the state should so cavalierly make what some say is a commitment to care for the indigent and ill.

"It will become a home in the not-too distant future just for indigents with dementia problems," said Rep. Joe Green, R-Anchorage. "We're asking the state to absorb a very expensive problem."

Current trends at Pioneers Homes bear him out.

Of the 98 residents at the Fairbanks home, 64 need some form of assistance, ranging from an occasional bath to round-the-clock nursing care. Of the almost 100 people on the waiting list, most have Alzheimer's disease or a similar disorder.

"Very few people are interested in retiring at a Pioneers Home today because they have other options," said Jim Kohn, deputy director for the state's Senior Services Division, of the shifting demographics at the state system. "Whereas there are not options for care for those with Alzheimer's."

Kohn predicted that most residents could absorb the first and second rent increases. But he anticipated a "fairly significant drop-off" after the third. About 90 of the 600 residents cannot afford full rent now at a Pioneers Home.

The measure passed 26-10, though Green asked for reconsideration on his vote. Kohn said the administration supports HB 384.

**HB**

**437**

# FISCAL NOTE

No. 2

Bill Version: CSHB 437(FIN)

(H) Publish Date: 2/26/96

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Office of the Governor  
 Title: "An Act establishing the Judicial Officers" BRU: Commissions/Special Offices  
 Compensation Commission: \_\_\_\_\_ Component: Judicial Officers Compensation  
 Sponsor: House Judiciary Commission  
 Requester: House Judiciary COMPONENT SERIAL NO. \_\_\_\_\_

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

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 100	FY 01	FY 02
PERSONAL SERVICES	0.0		0.0		0.0	
TRAVEL	10.6		2.3		2.3	
CONTRACTUAL	31.9		28.6		28.6	
SUPPLIES	1.5		1.0		1.0	
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>44.0</b>	<b>0.0</b>	<b>31.9</b>	<b>0.0</b>	<b>31.9</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

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

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	44.0	0.0	31.9	0.0	31.9	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>44.0</b>	<b>0.0</b>	<b>31.9</b>	<b>0.0</b>	<b>31.9</b>	<b>0.0</b>

Estimate of any current year (FY96) cost: \$ 0.0

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

Fiscal note reflects every other year activity with report to legislature in January of odd-numbered years. Analysis attached.

Prepared by: Michael A. Nizich, Director Phone: 465-3876  
 Division: Division of Administrative Services Date: 2/2/96  
 Approved by Commissioner: Jim Ayers, Chief of Staff Date: 2/2/96  
 Agency: Office of the Governor

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HB 437 Analysis

Fiscal note assumptions are based on the activity of the State Officer Compensation Commission which held four meetings in first fiscal year for organizational and first report purposes.

PERSONAL SERVICES

- 0 -

Staff will be provided by the Alaska Court System per sec. 7 (39.23.530)

TRAVEL

10.6

Fiscal note assumes 4 meetings and two teleconferences for public comment prior to Commission's first report, and one face-to-face and one teleconference meetings with two teleconference public hearings in subsequent even-numbered years to present required reports to Legislature by January of each odd-numbered year.

First Year

Four face-to-face meetings for five public members and one staff

Airfare	\$6830
Per Diem/trans.	3727

Subsequent Years

One face-to-face meeting for five public members and one staff

Airfare	\$1276
Per Diem/trans.	1009

CONTRACTUAL

31.9

First Year

Communication:	
Teleconference costs	\$5760
Phones/fax toll charges	2400
Postage	1800

Transportation:	
Transportation/express charges	1200

HB 437 Analysis

Contractual - continued

Advertising/Printing	
Subscriptions	250
Advertising (6 meetings)	12000
Annual report	7500
Forms/misc.	1000

Subsequent years changes

Teleconferences	\$7200
Advertising	8000
Forms, misc.	250

Supplies

1.5

Miscellaneous supplies for Commission's activities

# FISCAL NOTE

No. 1

Bill Version: CSHB 437(JUD)

(H) Publish Date: 1/30/96

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Alaska Court System  
 Title: Judicial Officers Compensation BRU: Trial Courts  
Commission Component: \_\_\_\_\_  
 Sponsor: Judiciary by Request  
 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						
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>						
<b>CHANGE IN REVENUES (</b>						

**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>	0.0	0.0	0.0	0.0	0.0	0.0

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  
 Agency: Alaska Court System

Approved by: Arthur H. Snowden, II, Administrative Director  
 Agency: Alaska Court System

Phone: 284-8228  
 Date: 01/22/96  
 Date: 01/22/96

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**Alaska Court System**  
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

**CHARLES S. CHRISTENSEN III**  
Staff Counsel

303 K Street  
Anchorage, AK 99501  
(907) 264-8228

March 22, 1996

The Honorable Bert Sharp  
Chairman, Senate State Affairs Committee  
P.O. Box V  
Juneau, Alaska 99811

Dear Senator Sharp:

I am writing to request that House Bill 437, establishing a Judicial Officers Compensation Commission, be scheduled by the State Affairs Committee. This bill was introduced by the House Judiciary Committee at the request of the Alaska Supreme Court, and passed the House on a vote of 35 - 2.

CSHB 437 (FIN) creates a new Judicial Officers Compensation Commission to assume the judicial salary functions of the existing State Officers Compensation Commission. As you know, the existing commission recommends compensation levels for judges and other state officers to the legislature; its proposals frequently go unheeded for reasons unrelated to their merits.

In contrast, the commission created by CSHB 437 (FIN) would have the authority to actually establish compensation levels for supreme court justices, judges of the court of appeals, judges of the superior court and district court judges. This commission, appointed by the governor, could submit proposed salary and per diem for those officers to the legislature every two years. These compensation levels would take effect on the effective date of the first appropriation to fund the increase, unless disapproved by a bill that was enacted into law prior to the end of session.

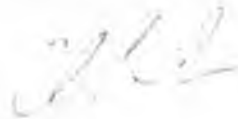
The Honorable Bert Sharp  
March 22, 1996  
Page 2

Eight states, as well as the federal government, currently operate compensation commissions with the authority to establish compensation amounts. The purpose behind the existence of these commissions is simple: to see that fair decisions are made regarding the compensation of certain government officials, and to reduce the political battles that inevitably surround such salary decisions.

An essential goal of the State of Alaska must be to attract and retain highly qualified jurists. Achieving this goal requires salaries that are commensurate with the qualifications and responsibilities of the office, which has proven problematic. Alaska's judges last received a cost-of-living adjustment in 1991, and the effects on the system of this real-dollar salary reduction are already evident.

I hope that you will agree with the supreme court on the need for CSHB 437 (FIN). Please feel free to contact my office if you require any additional information on this piece of legislation.

Very truly yours,



C. S. Christensen III  
Staff Counsel

Attachments

**CSHB 437(FIN)** "An Act establishing the Judicial Officers Compensation Commission; relating to the compensation of supreme court justices, judges of the court of appeals, judges of the superior court, and district court judges; and providing for an effective date."

- Eight states and the federal government operate a compensation commission which actually sets the salary of certain public officials, rather than merely offering recommendations to the legislature.
- The existing State Officers Compensation Commission does not have the power to establish salaries, only to make recommendations to the legislature. The legislature has generally not acted on its recommendations.
- The commission created by CSHB 437 (FIN) is modeled very closely on the existing commission. There are two major differences: the new commission will have the power to establish compensation for justices and judges, not make recommendations, and the new commission will have a list of specific factors it must consider in determining fair compensation for justices and judges.
- The commission has five members appointed by the governor to four-year terms. Among the members must be a person with experience in economics, a person with experience in personnel management, a representative of a nonpartisan voters' organization, and an attorney licensed to practice law in Alaska. (section 7)
- The commission meets every other year. It must hold public hearings. (section 7)
- The commission may consider the compensation of justices of the supreme court, judges of the court of appeals, judges of the superior court, and district court judges. (section 7)
- "Compensation" is defined as salary and per diem. (section 7)
- No later than the 10th day of the regular session in each odd-numbered year, the commission must submit a report on its findings to the legislature. It may also submit an order changing the compensation of justices and judges. (section 7)
- The legislature has until the end of the session to reject the order by enacting a law. This rejection must be done by law, since the legislature may not overturn an administrative order by resolution. State v. A.L.I.V.E. Voluntary,

606 P.2d 769 (Alaska 1980). If an order is not rejected, and if the legislature has appropriated the money to fund it, the order becomes effective on the effective date of the appropriation. If the order is rejected, it must be rejected in its entirety. (section 7)

- The standards for setting salaries which the commission must follow are modeled on Illinois law, with modifications to reflect Alaska conditions. These standards have been upheld by the Illinois Supreme Court. (section 7)
- Two jurisdictions operating a statutory compensation commission similar to that proposed by CSHB 437 (FIN) have had their law challenged (Illinois and the federal government). This delegation of legislative power to set salaries has been upheld three separate times by the federal courts, as well as by the Illinois Supreme Court.
- A legislative body may delegate its power to set the salaries of public officials, even when the constitution provides that such salaries must be set "by law," as long as the legislature retains the ultimate control over the salaries. This control exists if the following conditions are met:
  1. There should be specific standards to guide the commission in its determination of salaries. CSHB 437 (FIN) contains such standards in section 7.
  2. There should be a holdover period in which the legislature can reject the salaries proposed by the commission. In section 7, CSHB 437 (FIN) provides that for the remainder of the session in which a commission order is proposed, the legislature may reject the compensation.
  3. The legislature must retain control over the appropriation process. This control is affirmed in section 7.
  4. The legislature must retain the power to pass overriding legislation at a later date if it wishes to change salaries. Since one legislature cannot bind another, this power cannot be taken away by CSHB 437 (FIN).

**HB**

**490**

# FISCAL NOTE

No. 2

Bill Version: HB 490

(H) Publish Date: 3/12/96

**STATE OF ALASKA  
1996 LEGISLATIVE SESSION**

Revision Date: \_\_\_\_\_  
Title: Financial Assistance to BIDCO's

Department: Commerce and Economic Development  
BFU: Banking, Securities and Corporations  
Component: Banking, Securities and Corporations

Sponsor: Representative B. Davis  
Requestor: \_\_\_\_\_

COMPONENT SERIAL NO. 1233

**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	0.0	0.0	0.0
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<b>CHANGE IN REVENUES</b>	0.0	0.0	0.0	0.0	0.0	0.0
---------------------------	-----	-----	-----	-----	-----	-----

**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

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

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Willis F. Kirkpatrick, Director  
Division: Banking, Securities and Corporations  
Approved by Commissioner: William L. Hensley  
Agency: Commerce and Economic Development

Phone: 465-2521  
Date: 2-27-96  
Date: 2-27-96

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# FISCAL NOTE

**STATE OF ALASKA  
1995 LEGISLATIVE SESSION**

No. 1  
 Bill version: HB 490  
 (H) Publish Date: 3/12/96

Revision Date: 2-15-96 Dept. Attached: DCED/ASTF  
 Title: BIDCO Assistance Program BRU: ASTF  
 Sponsor: Representative Bettye Davis Component: ASTF  
 Requester: Representative Bettye Davis COMPONENT SERIAL NO. \_\_\_\_\_

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

	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
<b>OPERATING EXPENDITURES</b>						
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>CHANGES IN REVENUES</b>						

**FUND SOURCES (Thousands of Dollars)**

	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MTA						
Other ASTF Endowment Earnings						
<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) costs: 0.0

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

Zero fiscal note to HB 490. ASTF does not anticipate that HB 490 will require any funds from the ASTF endowment interest income to accomplish the purpose of the legislation contained in HB 490

*James H. Kemworthy*

Prepared by: James H. Kemworthy, Exec. Director Phone: 07-272-4333  
 Division: ASTF Date: 2-15-96  
 Approved by Commissioner: \_\_\_\_\_ Date: \_\_\_\_\_  
 Agency: Department of Commerce & Econ. Dev.

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**SENATE COMMITTEE REPORT**  
**First Committee of Referral**

DATE: 4/23/96

FURTHER:

DATE TURNED INTO OFFICE: 5/2/96

The State Affairs Committee considered HOUSE BILL NO. 490

Relating to financial assistance authorized for the BIDCO assistance program.

and recommends:

be replaced with S CS HB 490 (STA)

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 DQ PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>Roll E. [Signature]</i>	<input checked="" type="checkbox"/>		
		<i>John D. Swan</i>	<input checked="" type="checkbox"/>		
		<i>Daniel [Signature]</i>	<input checked="" type="checkbox"/>		
CHAIR: <i>[Signature]</i>	<input checked="" type="checkbox"/>	CHAIR:			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal

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

Department	Date	Zero	Fiscal
Commerce/Econ. Dev.	2/27	<input checked="" type="checkbox"/>	
- Banking Div.			
- ASTF	2/5	<input checked="" type="checkbox"/>	

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

## SENATE CS FOR HOUSE BILL NO. 490(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES B.DAVIS, Robinson, Willis, Brown, Elton

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to grants and other financial assistance authorized or made  
2 by the Alaska Science and Technology Foundation for the BIDCO assistance  
3 program."

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

5 \* Section 1. AS 37.17.020(b) is amended to read:

6 (b) The endowment shall be held and invested by the Alaska Permanent Fund  
7 Corporation subject to AS 37.13.120; however, net income from the endowment shall  
8 be distributed under AS 37.17.010 - 37.17.110 and 37.17.225 Net income from the  
9 endowment may not be included in the computation of net income available for  
10 distribution under AS 37.13.140.

11 \* Sec. 2. AS 37.17.030(d) is amended to read:

12 (d) Except for payments under (c) of this section, the board of directors shall  
13 distribute the income of the endowment through competitive grants under  
14 AS 37.17.010 - 37.17.110 and 37.17.225. The board may disburse money that is

1 received by the foundation for special or general purposes.

2 \* Sec. 3. AS 37.17.090(a) is amended to read:

3 (a) The board of directors shall provide adequate and appropriate notice of all  
4 solicitations for grant proposals at least once a year. Except for projects listed in (k)  
5 of this section and grants under AS 37.17.225, the board shall give preference,  
6 consistent with the purposes of AS 37.17.010 - 37.17.110, to soliciting proposals for  
7 research projects that are reasonably expected to use or enhance research capabilities  
8 for basic and applied research in the state. The board may actively solicit persons,  
9 organizations, or institutions to apply for general or specific grants.

10 \* Sec. 4. AS 37.17.090(b) is amended to read:

11 (b) Except for grants under AS 37.17.225, grant [GRANT] proposals must  
12 be submitted for impartial and competitive peer review for scientific and technical  
13 validity by a panel of recognized experts appointed by the board of directors.  
14 Members of a peer review panel are entitled to per diem and travel expenses  
15 authorized under AS 39.20.180. The identity of members of a peer review panel is  
16 confidential until final action is taken by the board on the grant proposal. The board  
17 shall consider the recommendations of the panel in deciding whether to award a grant.  
18 The board may exempt grants of \$5,000 or less from peer review.

19 \* Sec. 5. AS 37.17.090(c) is amended to read:

20 (c) Except for grants under AS 37.17.225 grant [GRANT] awards by the  
21 board must be consistent with the policy and research priorities identified by the  
22 foundation under AS 37.17.420.

23 \* Sec. 6. AS 37.17.090(d) is amended to read:

24 (d) Except for grants awarded under (k) of this section and under  
25 AS 37.17.225, not less than 50 percent of the endowment income that is distributed  
26 to grantees by the foundation in a fiscal year must be for grant payments in that fiscal  
27 year of \$100,000 or less, exclusive of other funding.

28 \* Sec. 7. AS 37.17.090(g) is amended to read:

29 (g) As a condition of all grants awarded under AS 37.17.010 - 37.17.110 or  
30 37.17.225, the board of directors shall require that a fair and reasonable return to the  
31 foundation, as determined by the board, from the revenue, economic value, or profits

1 derived by the grantee from the grant project be paid into the principal of the  
2 endowment, subject to AS 37.07. To secure payment of sums owed to the foundation  
3 under a grant agreement, the foundation may take a security interest in and own  
4 patents, copyrights, and other intellectual property.

5 \* Sec. 8. AS 37.17.220(b) is amended to read:

6 (b) The foundation may not authorize new financial assistance under  
7 AS 37.17.200 - 37.17.390 after June 30, 2000 [1996], without the approval of the  
8 legislature.

9 \* Sec. 9. AS 37.17 is amended by adding a new section to read:

10 Sec. 37.17.225. ENDOWMENT GRANTS. From the income of the  
11 endowment established under AS 37.17.020, the foundation may make grants under  
12 AS 37.17.010 - 37.17.110 to accomplish the purposes of AS 37.17.200. However, to  
13 make the grants under this section the foundation may not use more than \$2,000,000  
14 of the income of the endowment, in addition to the endowment income appropriated  
15 to the foundation for the BIDCO fund under ch. 79, SLA 1993, other money  
16 appropriated to the foundation for the grants, and private contributions made to the  
17 foundation for the grants.

# ALASKA STATE LEGISLATURE

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## REPRESENTATIVE BETTYE DAVIS DISTRICT 21

### MEMORANDUM

**TO:** Senator Bert Sharp  
Chair, Senate State Affairs Committee

**FROM:** Representative Bettye Davis *BD*

**DATE:** April 24, 1996

**RE:** HB 490: Extending the sunset date and authorizing the Alaska Science and Technology Foundation to make grants to BIDCOs.

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I am writing to request a hearing for HB 490 in the Senate State Affairs Committee, at your earliest convenience. The bill passed the House 35-0. Attached please find the following documents: bill history, most recent version of the bill, sponsor statement, two zero fiscal notes, sectional summary and backup materials.

# ALASKA STATE LEGISLATURE

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CLERK  
AND CLERK  
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## REPRESENTATIVE BETTYE DAVIS DISTRICT 21

### SPONSOR STATEMENT

**HB 490: Extending the sunset date; and authorizing the Alaska Science and Technology Foundation to make grants to BIDCOs**

BIDCOs (Business Investment Development Companies) are middle-risk private sector financial institutions. They provide emerging, small and medium size businesses with financing, management support and technical assistance. The primary goal of BIDCOs is to establish private sector businesses that create jobs.

BIDCOs provide flexible financing for businesses with economically-sound financing needs, but which are considered too risky by conventional lenders. They compensate for taking greater risks by providing a much greater degree of hands-on support and management assistance, thus reducing the risk and facilitating the growth of their portfolio companies. Incentives are included to assist businesses that are minority-owned or located in distressed areas.

A successful BIDCO is expected to require about \$6 million in capitalization, of which one-half would be a private match. State funds reduce the risk needed to attract private investors to provide start-up and earlier-stage financing. Although the 18th Legislature appropriated \$3 million to establish a BIDCO fund, Governor Hickel vetoed \$2 million and no additional appropriations have been made. Both the State and the private sector have determined that the \$1 million in the BIDCO fund is not enough to allow an otherwise acceptable request for proposal to be funded.

HB 490 would authorize the Alaska Science and Technology Foundation (ASTF) to make grants to BIDCOs, thus overcoming this funding obstacle. Grants would be structured in the form of interest-bearing loans. Credits would be earned to forgive the loans based on jobs and sales increases in the businesses invested in by the BIDCO.

Under current law, the ability of ASTF to authorize new financial assistance to BIDCOs without legislative approval will sunset on June 30, 1996. HB 490 would thus extend the sunset date to June 30, 2000.

RECEIVED

FEB 29 1996

Ans'd.....

**Position Paper on BIDCOs****What are BIDCOs?**

Business Investment Development Companies (BIDCOs) are private sector financial institutions structured to serve the middle risk market financing businesses through a combination of debt and equity investments. BIDCOs generally finance a broader range of deals than are eligible for only equity or venture capital investment and riskier deals than can be financed by banks doing asset-based lending. The BIDCO legislation passed by the Alaska legislature was modeled from Michigan where public funds were matched 2-1 by private investors to capitalize twelve BIDCOs at \$5-12 million apiece. Based on their performance, most BIDCOs in Michigan have now had a second round of capitalization by banks and other investors to total more than \$200 million in capitalization.

The state funds lower the risk needed to attract private investors to providing startup and earlier-stage financing. The loan is structured in the form of an interest-bearing loan with credits earned to forgive the loan based on the jobs and sales increases in the businesses invested in by the BIDCO.

**Legislative and ASTF History**

Originally, \$3 million in state funds were requested but when the BIDCO Assistance Program was passed (AS 37.17.200) in 1994 only \$1 million earmarked from Alaska Science and Technology Foundation (ASTF) earnings was appropriated. The legislation provided for a minimal private investment of \$500,000 match.

ASTF issued an RFP to form a BIDCO and in October 1995 both final proposals were turned down because neither finalist could pledge the minimal \$500,000 to launch a BIDCO. Spreadsheet analysis showed that \$1.5 million is too small a capitalization to cover the administrative expenses of managing a risk capital institution and providing the hands-on management assistance required in startup ventures, processor turnarounds, and other BIDCO client investments.

At its February 23, 1996, meeting, the ASTF Board decided that establishing a BIDCO was sufficiently important to its mission to develop the technology infrastructure of the state that an additional \$2 million in ASTF earnings should be pledged to be matched 1-1 by a private sector. This would provide the \$6 million in capitalization which ASTF believes is the minimal size to establish a BIDCO.

**The Case for BIDCOs**

A number of reasons have been identified for the importance of establishing BIDCOs:

1. There is a thin infrastructure in the state which is experienced and able to do prebankable risk capital financing. The growth of an increasing number of technology-based firms and innovative natural resource processing firms is limited in a state with little risk capital available. It is also important to establish firms in Alaska with the experience and capability in putting together debt-equity deals and the management of such enterprises.
2. Many programs to provide business development capital provide unleveraged public funds with decision making in the public sector. BIDCOs have the opposite intent; they use public funds to attract private sector management to risk their own capital and build a permanent private sector financial institution.
3. The state loan is performance based. Credits to pay off the loan are earned by increased sales and payroll in Alaska for the first five years after BIDCO investment in an Alaskan firm. To recognize the additional costs of doing deals in Alaska in rural Alaska and the presence of few minority-owned firms, smaller additional credits are available for those types of deals. Since no

credits are earned for BIDCO investment in firms which do not increase sales and jobs, there is no incentive for the BIDCO to invest in a business which is not expected to succeed.

4. The cost of BIDCO loans are priced to insure that BIDCO deals represent investment which would not have otherwise occurred. A firm which could qualify for lower rate bank financing would take it rather than pay the 20% return on investment represented by a loan with the expected above prime interest rate plus additional warrant or equity. The price of a BIDCO loan reflects the higher reward necessary for a private investor to accept the higher risk of a firm with a promising growth potential but insufficient assets to qualify for bank financing.
5. The program can be administered in a nonbureaucratic way. The Michigan experience was to audit annually the firms to calculate the credits earned through increased payroll in the state and sales.

#### Next Steps

In order for ASTF to capitalize a BIDCO, the legislature should amend the ASTF statute to extend the June 30, 1996, sunset provision of BIDCO funds to June 30, 2000. Proposed statute changes would also exempt the BIDCO grant from the \$100,000 limitation of AS 37.17.090(d).

It is also suggested that the title to HB490 be "An Act relating to the BIDCO assistance program" to avoid any misunderstandings as to purpose.