

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9514 SENATE HEALTH EDUCATION & SOCIAL SERVICES

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3 to 1993. The present value of Alaska's Medicaid expenses attributable to smoking for the
4 period 1980 to 1993 exceeds \$150 million. This figure does not include other damages
5 suffered by the state, such as increased health care premiums.

6 **Q. Fraudulent Concealment**

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8 298. Plaintiff was without knowledge of defendants' combination or
9 conspiracy, or of any facts from which it might reasonably be concluded that defendants
10 were illegally conspiring, or which would have led to the discovery thereof, until early
11 1996. Plaintiff could not have discovered such facts or the alleged violations at an earlier
12 time because defendants fraudulently concealed their course of conduct.

13 299. Plaintiff is not aware of the methods used by defendants to conceal
14 their activities, but believes that the methods used by defendants in furtherance of their
15 combination and conspiracy were by nature self-concealing and not of a type which could
16 have reasonably been apparent to plaintiff.

17 300. For example, in 1985 a Brown & Williamson attorney recommended
18 that much of its medical research be declared "deadwood" and shipped to England. The
19 attorney stated that, "I have marked with an X documents which I suggested were
20 deadwood in the behavioral and biological studies area. I said that the B series are Janus
21 series studies and should also be considered deadwood." The attorney further suggested
22 that the research, development, and engineering department also "should undertake to
23 remove the deadwood from its files."

24 301. Brown & Williamson attempted to control other documents such that
25 it could later claim an attorney-client privilege or work product protection for documents
26 which its attorneys thought might later cause difficulties in product liability actions. Such
documents included scientific reports which the company sought to protect from discovery:

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3 "[Scientific] material should come to you [corporate counsel] under a policy statement
4 between you and Southampton [BAT] which describes the purpose of developing the
5 documents for B & W and sending them to you as use for defense of potential litigation.
6 It is possible that a system can be devised which would exempt the Engineering reports
7 because it might be difficult to maintain a privilege for covering such reports under the
8 potential litigation theory. [C]ontinued Law Department control is essential for the best
9 argument for privilege. At the same time, control should be exercised with flexibility to
10 allow access of the R & D staff to the documents."

11 302. The Brown & Williamson assertions of privilege are false and in bad
12 faith. Other defendants have used similar tactics to conceal the activities of the conspiracy.
13 The joint actions of the conspiracy through the CTR and Tobacco Institute have been
14 similarly shielded from scrutiny. Part of the document review undertaken by Brown &
15 Williamson was an effort to conceal documents showing the true nature of the associations:
16 "[In conducting document review] pay special attention to documents suggesting that TI
17 [Tobacco Institute] was used as a vehicle for the industry's alleged conspiracy to promote
18 cigarettes through the 'open controversy' PR program. . . ."

19 303. The CTR had a number of categories of research projects. Of
20 particular significance is the category "Special Projects." Special Projects were reviewed
21 and selected for funding by the general counsel of the member companies. It may be
22 reasonably inferred that lawyers controlled this research so as to protect it from discovery
23 and also to further the ends of the conspiracy.

24 304. Plaintiff's claim of CTR manipulation through the siphoning of
25 relevant projects is further supported by the notes of the September 10, 1981 Committee
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of General Counsel, transmitted via a September 18, 1981 letter from Webster & Sheffield, which states:

Stevens: 'I need to know what the historical reasons were for the difference between the criteria for lawyers' special projects and CTR special projects.' . . .

Jacob: 'When we started the CTR Special Projects, the idea was that the scientific director of CTR would review a project. If he liked it, it was a CTR special project. If he did not like it, then it became a lawyers' special project.'

Stevens: 'He took offense re scientific embarrassment to us, but not to CTR.'

Jacob: 'With Spielberger, we were afraid of discovery for FTC and Aviado, we wanted to protect it under the lawyers. We did not want it out in the open.'

These minutes explicitly acknowledge that the supposedly "independent" scientific director of CTR channeled research into "Special Projects" for defendants' litigation efforts. But even more disturbing is defendants' announced practice of using the "Special Projects" division in order to shield damaging research results from the public and the FTC. A document captioned "Notes from the September 10, 1981 Meeting of Company Counsel and Ad Hoc Committee Members" is even more explicit. Page one of the "Notes" states as follows:

skeptical scientists. . . . The staff at CTR also needed to be more tobacco oriented with a skeptical view.

This document pertains not only to the Special Projects division but also to defendants' intentional manipulation of the CTR as a whole.

305. Defendants' conspiracy is ongoing and continues to this day. The defendants continue to deny that (i) nicotine is addictive; (ii) smoking causes cancer and

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other health problems; (iii) that they are illegally targeting minors; and (iv) that they manipulate the level of nicotine in tobacco products to increase addiction.

VI. CLAIMS FOR RELIEF

COUNT I

(Violation of AS 45.50.471)

UNLAWFUL MARKETING AND TARGETING MINORS

306. The State of Alaska repeats and realleges paragraphs 1 through 119 and 150 through 305 as if set forth fully above.

307. The Alaska State Legislature has declared that it is the public policy of this State to prohibit minors' access to tobacco products. For example, pursuant to AS 11.76.100, it is a criminal violation to give or sell tobacco products to minors. Further, AS 11.76.100 and AS 11.76.107 outline various restrictions relating to the placement and supervision of cigarette vending machines, and AS 11.76.105 prohibits a person under the age of 19 from knowingly possessing tobacco products.

308. Defendants have engaged in a course of conduct and have suppressed information causing others to rely on such suppression in an effort to deceptively, unfairly and unlawfully encourage minors to violate the declared public policy of the State of Alaska.

309. More specifically, and as set forth above, defendants have caused their products to be sold to minors, in part, by (i) concealing that their marketing is designed to encourage minors to smoke in violation of State law; (ii) concealing that their products are addictive and harmful and suppressing and omitting information on these subjects; (iii) designing their marketing campaigns causing minors to rely on the tobacco companies' advertisements, and (iv) engaging in their course of conduct with the purpose of causing

COMPLAINT FOR INJUNCTIVE RELIEF,
DAMAGES, RESTITUTION, DISGORGEMENT,
PENALTIES AND OTHER RELIEF

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3 minors to smoke in violation of state law. This conduct is both unfair and deceptive.
4 Further, defendants' conduct is made even more deceptive by virtue of the fact they have
5 publicly proclaimed that they are against encouraging minors to smoke while secretly they
6 have launched a course of conduct designed to accomplish exactly the opposite.

7 310. Defendants' course of conduct and marketing efforts unfairly
8 encourages minors to violate the declared public policy of the State of Alaska.

9 311. Tobacco sales to minors and/or use by minors have increased in Alaska
10 as a direct, foreseeable and intended result of the defendants' practices.

11 312. Defendants' course of conduct and the targeting of minors as described
12 in the Complaint violates the expressed public policy of the State of Alaska, and as such,
13 is an unfair and deceptive act or practice in violation of AS 45.50.471.

14 313. Defendants' actions caused others to rely upon the concealment,
15 suppression and omissions of information set forth above.

16 314. Defendants' unfair and deceptive acts or practices occurred in the
17 course of conduct involving trade or commerce.

18 315. Defendants' conduct as described above constitutes unfair and
19 deceptive acts and practices in violation of Alaska's Unfair Trade Practices and Consumer
20 Protection Act: AS 45.50.471.

21 WHEREFORE, the State of Alaska prays as follows:

22 A. That the Court adjudge and decree that defendants have engaged in the
23 conduct alleged herein.

24 B. That the Court adjudge and decree that such conduct is unlawful and
25 in violation of AS 45.50.471.
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3 C. That the Court enjoin and restrain defendants and their officers, agents,
4 servants and employees, and those in active concert or participation with them, from
5 continuing or engaging in such conduct or other conduct having similar purpose or effect.

6 D. That the Court order defendants to publicly disclose, disseminate, and
7 publish all research previously conducted directly or indirectly by themselves and their
8 respective agents, affiliates, servants, officers, directors, employees and all persons acting
9 in concert with them, that relates to the issue of smoking and health.

10 E. That the Court order defendants to fund a corrective public education
11 campaign relating to the issue of smoking and health, administered and controlled by an
12 independent third party.

13 F. That the Court order the defendants to take reasonable and necessary
14 steps to prevent the distribution and sale of cigarettes to minors under the age of 19.

15 G. That the Court order defendants to fund clinical smoking cessation
16 programs in the State of Alaska.

17 H. That the Court order defendants to disgorge all unjust profits from
18 tobacco sales to minors, and from all other tobacco sales in the State of Alaska which
19 defendants should not be allowed to retain.

20 I. That, pursuant to AS 45.50.551(b), the Court assess civil penalties of
21 \$5,000 from each defendant for each violation of AS 45.50.471.

22 J. That the State of Alaska recover from defendants the costs of this
23 action, including a reasonable attorney's fee.

24 K. That the Court order such other and further relief as the Court deems
25 just, necessary and appropriate.
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COUNT 2
(Violation of AS 45.50.471)
CONTRIBUTING TO THE DELINQUENCY OF MINORS

316. The State of Alaska repeats and realleges paragraphs 1 through 119 and 150 through 305 as if set forth fully above.

317. The Alaska State Legislature has declared that it is the public policy of the State to prohibit a person from aiding, inducing, causing or encouraging a child under 18 years of age to do any act prohibited by state law. AS 11.51.130(a)(1).

318. Defendants have engaged in a course of conduct and have suppressed information causing others to rely on such suppression in an effort to deceptively, unfairly and unlawfully aid, induce, cause and/or encourage children of the State of Alaska to become delinquent children.

319. More specifically, and as set forth above, defendants have aided, induced, caused, and/or encouraged the delinquency of the children of Alaska, in part, by (i) concealing that their marketing is designed to encourage minors to smoke in violation of State law; (ii) concealing that their products are addictive and harmful and suppressing and omitting information on these subjects, while at the same time portraying tobacco use as glamorous and in a fashion that is designed to minimize the risks associated with tobacco use; (iii) designing their marketing campaigns to cause minors to rely on the tobacco companies' advertisements; and (iv) engaging in conduct with the purpose of causing minors to smoke in violation of state law. This conduct is both unfair and deceptive. Further, defendants' conduct is made even more unfair and deceptive by virtue of the fact they have publicly proclaimed that they are against encouraging minors to smoke while secretly they have launched a course of conduct designed to accomplish exactly the opposite.

COMPLAINT FOR INJUNCTIVE RELIEF,
DAMAGES, RESTITUTION, DISGORGEMENT,
PENALTIES AND OTHER RELIEF

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3 320. Tobacco sales to minors have increased in Alaska as a direct,
4 foreseeable and intended result of the defendants' practices.

5 321. Defendants' efforts to aid, induce, cause and/or encourage children of
6 the State of Alaska to become delinquent through the targeting of minors as described in
7 the Complaint violates the expressed public policy of the State of Alaska, and as such, is
8 an unfair and deceptive act or practice in violation of AS 45.50.471.

9 322. Defendants concealment, suppression and omission of information set
10 forth above caused Alaskans to rely on false information and purchase and use defendants'
11 unsafe and dangerous products.

12 323. Defendants' unfair and deceptive acts or practices occurred in the
13 course of conduct involving trade or commerce.

14 324. Defendants' conduct as described above constitutes unfair and
15 deceptive acts and practices in violation of Alaska's Unfair Trade Practices and Consumer
16 Protection Act, AS 45.50.471.

17 WHEREFORE, the State of Alaska prays as follows:

18 A. That the Court adjudge and decree that defendants have engaged in the
19 conduct alleged herein.

20 B. That the Court adjudge and decree that such conduct is unlawful and
21 in violation of AS 45.50.471.

22 C. That the Court enjoin and restrain defendants and their officers, agents,
23 servants and employees, and those in active concert or participation with them, from
24 continuing or engaging in such conduct or other conduct having similar purpose or effect.

25 D. That the Court order defendants to publicly disclose, disseminate, and
26 publish all research previously conducted directly or indirectly by themselves and their

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3 respective agents, affiliates, servants, officers, directors, employees and all persons acting
4 in concert with them, that relates to the issue of smoking and health.

5 E. That the Court order defendants to fund a corrective public education
6 campaign relating to the issue of smoking and health, administered and controlled by an
7 independent third party.

8 F. That the Court order the defendants to take reasonable and necessary
9 steps to prevent the distribution and sale of cigarettes to minors under the age of 19.

10 G. That the Court order defendants to fund clinical smoking cessation
11 programs in the State of Alaska.

12 H. That the Court order defendants to disgorge all unjust profits from
13 tobacco sales to minors, and from all other tobacco sales in the State of Alaska which
14 defendants should not be allowed to retain.

15 I. That, pursuant to AS 45.50.551(b), the Court assess civil penalties of
16 \$5,000 from each defendant for each violation of AS 45.50.471.

17 J. That the State of Alaska recover from defendants the costs of this
18 action, including a reasonable attorney's fee.

19 K. That the Court order such other and further relief as the Court deems
20 just, necessary and appropriate.

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22 **COUNT 3**
23 **(Violation of AS 45.50.471)**
24 **UNFAIR AND DECEPTIVE ACTS OR PRACTICES**

25 325. The State of Alaska repeats and realleges paragraphs 1 through 119
26 and 150 through 305 as if set forth fully above.

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3 326. In the regular course of business, defendants engaged in
4 misrepresentations and/or omissions of material facts, including but not limited to
5 representing:

6 a. That the defendants would lead an effort to discover and
7 disclose to the public the truth about the health effects of tobacco products use:

8 b. That the use of tobacco products is not harmful and has not been
9 proven to cause and exacerbate diseases:

10 c. That nicotine contained in tobacco products is not addictive:

11 d. That the defendants do not exploit or manipulate the nicotine
12 in tobacco products:

13 e. That the defendants do not target, direct or seek to focus their
14 tobacco products marketing efforts on children and adolescents and, in fact, actively
15 discourage sale of those products to children and adolescents.

16 327. The conduct described above and in this Complaint constitutes unfair
17 and deceptive acts or practices in violation of AS 45.50.471 in that:

18 a. The defendants have not been truthful in disclosing the
19 information developed by or otherwise known to them concerning the health hazards of
20 tobacco product use, including the addictive nature of nicotine. They have systematically
21 suppressed and concealed material information developed by or otherwise known to them
22 concerning the adverse health effects of tobacco product use, including the addictive nature
23 of nicotine, and have engaged in a misinformation and disinformation campaign to conceal
24 the truth. The defendants have further systematically sought falsely to discredit or cast
25 doubt upon scientific studies and reports which concluded that use of tobacco products
26 caused adverse health effects, including the addictive nature of nicotine:

COMPLAINT FOR INJUNCTIVE RELIEF,
DAMAGES, RESTITUTION, DISGORGEMENT,
PENALTIES AND OTHER RELIEF

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3 b. Tobacco products are harmful when used for their intended
4 purpose. Tobacco product use causes a large variety of diseases, including debilitating
5 diseases and diseases that result in death. In furtherance of their deceptive representations
6 about the health effects of tobacco product use, the defendants have suppressed the
7 development and commercial production of safer tobacco products:

8 c. The nicotine contained in tobacco products is addictive:

9 d. The tobacco companies rely upon the addictive nature of
10 nicotine in designing, marketing and selling tobacco products and manipulate nicotine
11 levels, availability and delivery in order to achieve their design, marketing and sales
12 strategies:

13 e. The defendants market, distribute and sell tobacco products in
14 a manner that targets children and adolescents and intentionally attracts them to begin or
15 continue to use tobacco products.

16 328. Defendants' actions caused others to rely upon the concealment,
17 suppression and omissions of information set forth above.

18 329. Defendants' unfair and deceptive practices occurred in the course of
19 conduct involving trade or commerce.

20 330. Defendants' violation of AS 45.50.471 was done in order to defraud
21 Alaskans.

22 WHEREFORE, the State of Alaska prays as follows:

23 A. That the Court adjudge and decree that defendants have engaged in the
24 conduct alleged herein.

25 B. That the Court adjudge and decree that such conduct is unlawful and
26 in violation of AS 45.50.471.

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C. That the Court enjoin and restrain defendants and their officers, agents, servants and employees, and those in active concert or participation with them, from continuing or engaging in such conduct or other conduct having similar purpose or effect.

D. That the Court order defendants to publicly disclose, disseminate and publish all research previously conducted directly or indirectly by themselves and their respective agents, affiliates, servants, officers, directors, employees and all persons acting in concert with them, that relates to the issue of smoking and health.

E. That the Court order defendants to pay restitution which would restore plaintiff to the financial position that it would be in, absent the defendants' conduct.

F. That the Court order defendants to disgorge all unjust profits from tobacco sales to minors, and from all other tobacco sales in the State of Alaska which defendants should not be allowed to retain.

G. That, pursuant to AS 45.50.551(b), the Court assess civil penalties of \$5,000 from each defendant for each violation of AS 45.50.471.

H. That the State of Alaska recover from defendants the costs of this action, including a reasonable attorney's fee.

I. That the Court order such other and further relief as the Court deems just, necessary and appropriate.

COUNT 4

**UNREASONABLE RESTRAINT OF TRADE UNDER THE
ALASKA MONOPOLIES AND RESTRAINT OF TRADE ACT, AS 45.50.562;
AND UNFAIR METHOD OF COMPETITION UNDER THE ALASKA UNFAIR
TRADE PRACTICES AND CONSUMER PROTECTION ACT, AS 45.50.471.
[Equitable Relief Under AS 45.50.580 and AS 45.50.501]**

331. The State of Alaska repeats and realleges paragraphs 1 through 305 as if set forth fully above.

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3 332. As described above, beginning at least as early as 1953 and continuing
4 until the present date, the defendants entered into a contract, combination or conspiracy to
5 eliminate and suppress competition in the market for tobacco products.

6 333. Pursuant to such contract, combination or conspiracy, the defendants
7 engaged in the following underlying activity, all as set forth in considerably more detail
8 above:

9 (a) They restrained and suppressed research on the health
10 consequences of smoking.

11 (b) They restrained and suppressed the dissemination of truthful
12 information on the health consequences of smoking in Alaska, including information as to
13 the addictive properties of nicotine.

14 (c) They knowingly disseminated false information in Alaska about
15 the health consequences of smoking and about their commitment to make public scientific
16 information regarding such consequences.

17 (d) They restrained, controlled, limited and suppressed research in
18 and the development, manufacture and marketing of a "safer" cigarette and other tobacco
19 products that would have resulted in reduced harmful health cost for the State of Alaska.

20 (e) In general, they declined to compete in Alaska in any manner
21 relating to the health claims of cigarettes.

22 (f) Apart from maintaining the demand for their tobacco products,
23 the defendants knew that their conduct would cause smoking-related diseases in Alaska as
24 well as cause the State of Alaska to incur substantial health care costs in treating such
25 diseases.
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3 334. In fact, as a direct result of the defendants' conduct, the State of Alaska
4 incurred substantial health care costs arising from smoking-related diseases and injuries.
5 The defendants' conduct is thus inextricably intertwined with the State's increased health
6 care costs.

7 335. The defendants' conduct has had a direct and foreseeable effect on the
8 State's health care costs. The defendants continue to reap enormous profits by virtue of
9 their wrongful conduct at the expense of the State, and have thus effectively shifted the
10 health care costs of smoking-related diseases to third parties, including the State of Alaska.

11 336. The defendants' conduct constitutes an unreasonable restraint of trade
12 and an unfair method of competition. The defendants have thus violated AS 45.50.562 of
13 the Alaska Monopolies and Restraint of Trade Act and AS 45.50.471 of the Alaska Unfair
14 Trade Practices and Consumer Protection Act, which violations are continuing and likely
15 to continue unless restrained, the State's remedy at law being inadequate.

16 337. By virtue of such violations, the State of Alaska, through the Attorney
17 General, is authorized to bring suit and seek appropriate equitable remedies and penalties
18 under AS 45.50.580(a) of the Alaska Monopolies and Restraint of Trade Act and
19 AS 45.50.501(a) of the Alaska Unfair Trade Practices and Consumer Protection Act.

20 WHEREFORE, the State of Alaska prays as follows:

21 A. That the Court adjudge and decree that defendants have engaged in the
22 conduct alleged herein.

23 B. That the Court adjudge and decree that such conduct is unlawful and
24 in violation of AS 45.50.562 and AS 45.50.471.

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3 C. That the Court enjoin and restrain defendants and their officers, agents,
4 servants and employees, and those in active concert or participation with them, from
5 continuing or engaging in such conduct or other conduct having similar purpose or effect.

6 D. That the Court order defendants to publicly disclose, disseminate, and
7 publish all research previously conducted directly or indirectly by themselves and their
8 respective agents, affiliates, servants, officers, directors, employees, and all persons acting
9 in concert with them, that relates to the issue of smoking and health.

10 E. That the Court order defendants to fund a corrective public education
11 campaign relating to the issue of smoking and health, administered and controlled by an
12 independent third party.

13 F. That the Court order defendants to fund clinical smoking cessation
14 programs in the State of Alaska.

15 G. That the Court award damages to the State resulting from the actions
16 described above.

17 H. That, pursuant to AS 45.50.580(b) of the Alaska Monopolies and
18 Restraint of Trade Act and AS 45.50.501(b) of the Alaska Unfair Trade Practices and
19 Consumer Protection Act, the Court allow such relief as necessary to remove the effects of
20 the defendants' violations, including the divestiture of the defendants' property (i) in the
21 form of profits they have derived from Alaska smokers attributable to the defendants'
22 wrongful conduct, and (ii) equal to the amount expended by the State of Alaska attributable
23 to such conduct;

24 I. That, pursuant to AS 45.50.580(b) of the Alaska Monopolies and
25 Restraint of Trade Act and AS 45.50.501(b) of the Alaska Unfair Trade Practices and
26 Consumer Protection Act, the Court allow such relief as necessary to prevent such

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3 violations from continuing or from being renewed in the future, including preliminary and
4 permanent injunctive relief.

5 J. That, pursuant to AS 45.50.580(b) of the Alaska Monopolies and
6 Restraint of Trade Act and AS 45.50.501(b) of the Alaska Unfair Trade Practices and
7 Consumer Protection Act, the Court impose a penalty in accordance with AS 45.50.551(b)
8 of the Alaska Unfair Trade Practices and Consumer Protection Act against each defendant
9 in the amount of \$5,000 for each wrongful act in furtherance of the defendants' contract,
10 combination or conspiracy.

11 K. That the State of Alaska recover from defendants the costs of this
12 action, including a reasonable attorney's fee.

13 L. That the Court order such other and further relief as the Court deems
14 just, necessary and appropriate.

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16 **COUNT 5**

17 **UNREASONABLE RESTRAINT OF TRADE UNDER THE**
18 **ALASKA MONOPOLIES AND RESTRAINT OF TRADE ACT, AS 45.50.562**
19 **[TREBLE DAMAGES AND EQUITABLE RELIEF UNDER AS 45.50.580]**

20 338. The State of Alaska repeats and realleges paragraphs 1 through 231,
21 272 through 305, and 332 through 337 as if set forth fully above.

22 339. The defendants' conduct constitutes an unreasonable restraint of trade
23 and an unfair method of competition. The defendants have thus violated AS 45.50.562 of
24 the Alaska Monopolies and Restraint of Trade Act, which violations are continuing and
25 likely to continue unless restrained, the State's remedy at law being inadequate.

26 340. By virtue of such violations, the State of Alaska, through the Attorney
General, is authorized to bring suit and seek appropriate equitable remedies and treble

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damages for its injuries under AS 45.50.580(a) of the Alaska Monopolies and Restraint of Trade Act.

WHEREFORE, the State of Alaska prays as follows:

A. That the Court adjudge and decree that defendants have engaged in the conduct alleged herein.

B. That the Court adjudge and decree that such conduct is unlawful and in violation of AS 45.50.562 of the Alaska Monopolies and Restraint of Trade Act.

C. That the Court enjoin and restrain defendants and their officers, agents, servants and employees, and those in active concert or participation with them, from continuing or engaging in such conduct or other conduct having similar purpose or effect.

D. That, pursuant to AS 45.50.580(b) of the Alaska Monopolies and Restraint of Trade Act, the Court provide for the recovery of damages equal to the amount incurred by the State of Alaska attributable to such conduct and, in accordance with AS 45.50.576(b), treble such damages.

E. That, pursuant to AS 45.50.580(b), the Court allow such relief as necessary to restrain continuing violations by the defendants, including preliminary and permanent injunctive relief.

F. That, pursuant to AS 45.50.576(b) and AS 45.50.580(b), the State of Alaska recover from defendants the costs of this action, including a reasonable attorney's fee.

G. That the Court order such other and further relief as the Court deems just, necessary and appropriate.

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COUNT 6
NEGLIGENCE

341. The State of Alaska repeats and realleges paragraphs 1 through 305 as if set forth fully above.

342. Beginning as early as 1954 with the publication of "A Frank Statement to Cigarette Smokers" and continuing to the present date, the defendants assumed a special and general duty to protect the public health and a duty to those who advance the public health, including the State of Alaska and its political subdivisions.

343. Defendants publicly represented that they were undertaking to act on behalf of the public's health ("¶ 78, 80-83, 85-86, 88); to aid and assist the research effort into all phases of tobacco use and health ("¶ 78, 80-83, 85-86, 88); to cooperate closely with those who safeguard the public health ("¶ 78, 80-83, 85-86, 88); to continue research and all possible efforts until all the facts were known; and to provide complete and authenticated information about cigarette smoking and health ("¶ 78, 80-83, 85-86, 88).

344. Defendants ostensibly undertook performance of their assumed duty, and awarded highly-publicized grants to supposedly "independent researchers." Throughout the years and continuing to the present date, defendants' spokespersons have repeatedly announced that research was underway, but the results are always "inconclusive" and the health questions "unresolved." These actions are part of defendants' elaborate disinformation campaign designed to obscure the overwhelming and conclusive evidence that smoking causes lung cancer, heart disease and a host of other health problems.

345. Defendants did not make these representations gratuitously. Rather, they were made to combat emerging concerns about smoking, to protect the Tobacco Cartels' enormous profits and to avoid government regulation. The "Frank Statement" and

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3 subsequent statements proclaiming the industries' "responsibility" were intended to affect
4 the State of Alaska: defendants directly pledged to cooperate with "those responsible for
5 public health." (¶ 78)

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7 346. Defendants further pledged to support research by independent
8 scientists and to share results (¶ 78).

9 348. Defendants also stated that public health was their preeminent concern,
10 of greater concern than their own profits (¶ 78).

11 348. Each of these undertakings was designed, among other purposes, to
12 cause Alaska governmental officials, among others, to believe that immediate action on
13 their part to curb tobacco use was not needed. As the evidence mounted as to the hazards
14 of tobacco use, governmental entities considered and/or began to legislate various controls
15 on tobacco use smoking and advertising. Defendants resisted these efforts and the "Frank
16 Statement" and its progeny were designed to lull the State of Alaska, among others, into
17 avoiding the implementation and/or passage of such regulations.

18 349. In making the commitments set forth above in paragraphs ¶¶ 78-88,
19 defendants assumed duties to both the State and to the public. As to the State, defendants
20 specifically pledged to "cooperate closely with those whose task it is to safeguard the public
21 health and to report fully and truthfully on tobacco and health." As to the public,
22 defendants specifically order a "special responsibility to the public and accept[ed] an
23 interest in people's health as paramount to every other consideration in [their] business."
24 (¶¶ 78-88.) In accepting these responsibilities, defendants undertook three specific duties.
25 First, by committing themselves to making health their preeminent responsibility, the
26 tobacco companies agreed that they would not sell or continue to sell products which they
knew to cause death and disease when used as intended. The violation of this duty is the

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3 direct cause of the costs incurred by the State in treating the illness that resulted from
4 defendants' sales of tobacco products.

5 350. Second, defendants pledged to cooperate with public health and they
6 did the opposite, thereby directly allowing continued and unfettered tobacco sales, which
7 in turn directly injured the State.

8 351. Third, having undertaken to tell the truth about tobacco use and health,
9 they were legally bound to speak the whole truth. Defendants breached this duty and such
10 breach also damaged the State of Alaska.

11 352. Defendants reasonably could have foreseen the risk of harm to the
12 State of Alaska. Physical injury to tobacco users was not only foreseeable, it was
13 contemplated as the inevitable consequence of defendants' undertakings. Defendants knew
14 or should have known of the State's obligation to care for indigent people or Medicaid
15 recipients, who have suffered the ill effects of smoking, physical injury due to tobacco use.

16 353. The defendants' breach of duty not only served to forestall increased
17 government regulation but contributed to the State's increased health care costs because the
18 breach caused smokers in the State of Alaska to take up or continue smoking. Had the
19 defendants disclosed what they knew, had they not suppressed information about addiction
20 and nicotine manipulation, had they not targeted minors, and had they, in fact, reported the
21 truth, the amount of tobacco use in the State of Alaska would have been far less, which in
22 turn would have reduced the State's Medicaid costs attributable to smoking related diseases.
23 The very purpose of defendants' assumption of a duty was to promote the use of tobacco
24 products and thus directly increase the risk of harm to the State of Alaska.

25 354. Defendant's breach of duty also influenced the State's course of
26 conduct. Had defendants not breached their assumed and general duty, they would have

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3 fully disclosed (1) that the companies' own studies showed links between tobacco use and
4 adverse health effects, (2) that nicotine is highly addictive, (3) that the tobacco companies
5 manipulate nicotine levels in tobacco products in order to increase and maintain addiction,
6 and (4) that the tobacco companies were trying to induce minors to use tobacco to increase
7 their long-term profits by replacing tobacco users who die. For years these facts have been
8 concealed and many of the facts still remain concealed. Had those facts been disclosed
9 earlier, the State would have taken action to restrain the companies' activities. Once the
10 State learned, through partial disclosures, of the true nature of defendants' activities, this
11 action was commenced.

12 355. As a direct, foreseeable, intended and proximate cause of defendants'
13 breach, plaintiff suffered and will continue to suffer substantial injuries and damages.

14 356. The conduct described constitutes an intentional and or negligent
15 breach of a voluntarily assumed special and or general duty for which defendants are liable.

16 357. Defendants' unlawful conduct will continue unless the relief prayed
17 for in this Complaint is granted.

18 WHEREFORE, the State of Alaska prays as follows:

19 A. That the Court adjudge and decree that defendants have engaged in the
20 conduct alleged herein.

21 B. That the Court adjudge and decree that such conduct is an unlawful
22 breach of assumed duty.

23 C. That the Court enjoin and restrain defendants and their officers, agents,
24 servants and employees, and those in active concert or participation with them, from
25 continuing or engaging in such conduct or other conduct having similar purpose or effect.
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D. That the Court order defendants to publicly disclose, disseminate, and publish all research previously conducted directly or indirectly by themselves and their respective agents, affiliates, servants, officers, directors, employees, and all persons acting in concert with them, that relates to the issue of smoking and health.

E. That the Court award damages to the State resulting from the actions described above.

F. That the Court order such other and further relief as the Court deems just, necessary and appropriate.

COUNT 7
NEGLIGENCE PER SE

358. The State of Alaska realleges and incorporates paragraphs 1 through 119, 150 through 305, 306 through 324 as if set forth fully above.

359. Defendants violations of AS 45.50.471 and AS 11.76.100 as described above in Counts 1 and 2 constitutes negligence per se.

360. As a direct result of defendants' conduct, the State of Alaska has suffered and will continue to suffer substantial injuries and damages for which it is entitled to relief.

WHEREFORE, the State of Alaska prays as follows:

A. That the Court adjudge and decree that defendants have engaged in the conduct alleged herein.

B. That the Court adjudge and decree that such conduct is unlawful as negligence per se.

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3 C. That the Court enjoin and restrain defendants and their officers, agents,
4 servants and employees, and those in active concert or participation with them, from
5 continuing or engaging in such conduct or other conduct having similar purpose or effect.

6 D. That the Court order defendants to publicly disclose, disseminate, and
7 publish all research previously conducted directly or indirectly by themselves and their
8 respective agents, affiliates, servants, officers, directors, employees, and all persons acting
9 in concert with them, that relates to the issue of smoking and health.

10 E. That the Court order defendants to fund a corrective public education
11 campaign relating to the issue of smoking and health, administered and controlled by an
12 independent third party.

13 F. That the Court order defendants to fund clinical smoking cessation
14 programs in the State of Alaska.

15 G. That the Court order defendants to pay restitution which would restore
16 plaintiff to the financial position that it would be in, absent the defendants' conduct.

17 H. That the Court award damages to the State resulting from the actions
18 described above.

19 I. That the Court order such other and further relief as the Court deems
20 just, necessary and appropriate.

21
22 **COUNT 8**
23 **CONSPIRACY**

24 361. The State of Alaska realleges and incorporates paragraphs 1 through
25 360 as if set forth fully above.

26 362. Defendants entered into a conspiracy to violate the statutes set forth
above in Counts 1-5 and the common law as set forth in Count 6, and agreed as part of the

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3 conspiracy to: (1) suppress information concerning the adverse effects of smoking and the
4 addictive qualities of nicotine; (2) create doubt about the scientific studies linking smoking
5 to adverse health consequences and/or the addictive nature of nicotine; (3) conceal their
6 manipulation of the level of nicotine in tobacco products; (4) avoid competition based on
7 a safer cigarette.

8 363. Defendants knowingly and voluntarily participated in the common
9 scheme to commit these unlawful acts.

10 364. A part of this conspiracy was a plan to cause governmental officials
11 to believe that immediate action on their part to curb smoking was not needed. As the
12 evidence mounted as to the hazards of smoking, governmental entities considered and or
13 began to legislate various controls on smoking and advertising. Defendants resisted these
14 efforts and the "Frank Statement" and its progeny, an integral part of the conspiracy, were
15 designed to lull the State of Alaska, among others, into avoiding the implementation and or
16 passage of such regulations.

17 365. The defendants' conspiracy not only served to forestall government
18 regulation but contributed to the State's increased health care costs because the conspiracy
19 caused smokers in the State of Alaska to take up or continue smoking. Had the defendants
20 not engaged in the conspiracy and disclosed what they knew, had they not suppressed
21 information about addiction and nicotine manipulation, had they not targeted minors, and
22 had they in fact reported the truth, the amount of tobacco use in the State of Alaska would
23 be far less, which in turn would have reduced the State's Medicaid costs attributable to
24 smoking related. The very purpose of defendants' conspiracy was to promote and increase
25 the use of cigarettes and tobacco products and thus directly increase the risk of harm to the
26 State of Alaska.

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4 366. Defendants' conspiracy was designed to and did influence the State's
5 course of conduct. Had defendants not engaged in the conspiracy, they would have fully
6 disclosed (1) that the companies' own studies showed links between tobacco use and
7 adverse health effects, (2) that nicotine is highly addictive, (3) that the tobacco companies
8 manipulate nicotine levels in tobacco products in order to increase and maintain addiction,
9 and (4) that the tobacco companies were trying to induce minors to use tobacco products
10 despite the dangers outlined above and despite their representations that they were not
11 trying to encourage minors to use tobacco products. For years these facts have been
12 concealed and many of the facts still remain concealed. Had the conspiracy not occurred,
13 and had those facts been disclosed earlier, the State would have taken action to restrain the
14 companies' activities. Once the State learned, in a partial fashion, of the true nature of
15 defendants' activities, this action was commenced.

16 367. Defendants, knowingly, willingly and wantonly, combined and agreed
17 with one another for the purposes of deceiving the state regulators and the public about the
18 carcinogenic, pathologic and addictive properties of cigarettes and accomplishing the
19 unlawful ends complained of and/or for the purposes of unlawfully accomplishing the
20 lawful ends complained of, namely, the ability to legally continue to sell and profit from
21 cigarettes, in spite of the significant carcinogenic, pathologic and addictive properties of
22 cigarettes.

23 368. All defendants joined in the conspiracy at least by 1954 through the
24 formation of the TIRC, or, in the case of defendant Liggett, by its actual and/or tacit
25 agreement with the other defendants to withhold from government regulators and the public
26 their knowledge about the true carcinogenic, pathologic and addictive properties of their
cigarettes.

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3 369. Defendants' overt acts in furtherance of these purposes, include.
4 without limitation:

- 5 a. the formation and control of the TIRC and later the CTR;
6 b. engaging in deceptive acts and practices in the course of
7 business in violation of the Alaska law:
8 c. fraudulently misrepresenting and omitting material information
9 regarding the human health dangers of smoking:
10 d. restraining and suppressing research and information
11 concerning the adverse effects of tobacco product use and the addictive effect of nicotine:
12 e. creating doubt about the scientific studies linking tobacco
13 product use to adverse health consequences and/or the addictive nature of nicotine:
14 f. affirmatively misrepresenting the addictive effects of nicotine
15 and the harmful effects of tobacco product use:
16 g. concealing their manipulation of the level of nicotine in tobacco
17 products:
18 h. restraining the development, production, and marketing of a
19 safer cigarette:
20 i. avoiding competition based on health claims and safer
21 cigarettes:
22 j. passing on health care costs associated with tobacco products
23 to others;
24 k. designing, testing, manufacturing, marketing, supplying and
25 selling defective cigarettes;
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4 l. targeting minors for the marketing, supply, sale and use of their
cigarettes; and

5 m. suppressing the design, test, manufacture, marketing and or sale
6 of non- or less-addictive, carcinogenic and pathologic cigarettes.

7
8 370. The effect of this conspiracy was to violate State law as set forth
above. The conspiracy is ongoing and will not stop unless injunctive relief is granted.

9
10 371. The defendant co-conspirators performed tortious acts in furtherance
of the conspiracy, thereby proximately causing injury to the State of Alaska.

11
12 372. As a direct, actual and proximate result of defendants' conduct, the
State of Alaska has suffered and will continue to suffer substantial injuries and damages for
13 which the State of Alaska is entitled to relief.

14 WHEREFORE, the State of Alaska prays as follows:

15 A. That the Court adjudge and decree that defendants have engaged in the
16 conduct alleged herein.

17 B. That the Court adjudge and decree that such conduct is an unlawful
18 conspiracy.

19 C. That the Court enjoin and restrain defendants and their officers, agents,
20 servants and employees, and those in active concert or participation with them, from
21 continuing or engaging in such conduct or other conduct having similar purpose or effect.

22 D. That the Court order defendants to publicly disclose, disseminate, and
23 publish all research previously conducted directly or indirectly by themselves and their
24 respective agents, affiliates, servants, officers, directors, employees, and all persons acting
25 in concert with them, that relates to the issue of smoking and health.
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E. That the Court order defendants to fund a corrective public education campaign relating to the issue of smoking and health, administered and controlled by an independent third party.

F. That the Court order defendants to fund clinical smoking cessation programs in the State of Alaska.

G. That the Court order defendants to pay restitution which would restore plaintiff to the financial position that it would be in, absent the defendants' conduct.

H. That the Court award damages to the State resulting from the actions described above.

I. That the Court order such other and further relief as the Court deems just, necessary and appropriate.

COUNT 9

UNJUST ENRICHMENT/RESTITUTION

373. In the alternative to the above claims, if the Court finds that the State of Alaska has no remedy at law, the State of Alaska alleges as follows:

374. The State of Alaska realleges and incorporates paragraphs 1 through 383 as if set forth fully above.

375. Use of defendants' cigarettes as intended causes disease.

376. Many of the State of Alaska's residents who are afflicted with tobacco-related diseases are unable to provide for their own medical care. These residents rely upon the State of Alaska to provide their medical care, and the State is legally obligated to provide and pay for such medical services, pursuant to AS 47.07.010 et seq. and the provisions of 42 U.S.C. § 1396, et seq. The provision of and payment for such medical care results in an extreme burden on the taxpayers and the financial resources of this State. The

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COMPLAINT FOR INJUNCTIVE RELIEF,
DAMAGES, RESTITUTION, DISGORGEMENT,
PENALTIES AND OTHER RELIEF

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3 State of Alaska has expended millions of dollars in caring for residents who have and are
4 suffering from lung cancer, cardiovascular disease, emphysema, chronic obstructive
5 pulmonary disease and a variety of other cancers and diseases that were and are caused by
6 defendants' cigarettes. The State of Alaska has also expended millions in providing health
7 care for its employees the cost of which has been increased as a result of defendants'
8 conduct.

9
10 377. Defendants have knowledge of the benefit conferred on them by the
11 State's payment of health care costs for diseases resulting from the use of tobacco products
12 sold in the State of Alaska by the defendants, which payments were foreseeable, given the
13 defendants' knowledge of the health risks of their cigarettes.

14 378. Defendants had a duty to the State and to the residents of the state:
15 (1) to disclose all material facts about their products, (2) to refrain from any agreement that
16 would restrain the development of a safer product, and (3) to refrain from targeting minors
17 in order to induce their use of tobacco products in violation of State law. As set forth
18 above, defendants intentionally breached these duties. As a result of this breach of duty and
19 the suppression of evidence, defendants have successfully avoided the medical costs
20 associated with use of their products and have passed those costs off to the State of Alaska.

21 379. Defendants have knowledge of the benefit conferred on them by the
22 State's payment of health care costs for diseases resulting from use of tobacco products sold
23 in the State of Alaska, which payments were foreseeable, given the defendants' knowledge
24 of the health risks of their tobacco products.

25 380. While the State of Alaska pays the health care costs that result from
26 the use of tobacco products as intended, defendants continue to reap billions of dollars in
profits from the sale of their cigarettes and other tobacco products.

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3 381. Defendants have avoided regulations and the costs of disease, injuries
4 and deaths resulting from the normal use of their products. Defendants have been and are
5 able legally to promote the sale of cigarettes to the residents of the State of Alaska by
6 continuing to misinform the federal and state authorities about the true carcinogenic,
7 pathologic and addictive qualities of their cigarettes and other tobacco products.

8 382. In direct contradiction to and in spite of the State of Alaska's specific
9 statutory prohibitions, defendants have spent millions of dollars on programs designed to
10 encourage minors to purchase and use their cigarettes and other tobacco products.

11 383. In equity and fairness, the defendants and their agents, aiders and
12 abettors and co-conspirators, not the State of Alaska, should bear the costs of tobacco-
13 related diseases. By avoiding their own duties to stand financially responsible for the harm
14 done by their cigarettes, defendants wrongfully have forced the State of Alaska to perform
15 such duties and to pay the health care costs of tobacco-related disease. As a result,
16 defendants have been unjustly enriched to the extent that taxpayers of the State of Alaska
17 have had to pay these costs, which rightfully should be borne by defendants.

18 384. As a result of defendants' conduct, the State of Alaska has suffered and
19 will continue to suffer substantial injuries and damages for which it is entitled to relief.

20 WHEREFORE, the State of Alaska prays as follows:

21 A. That the Court adjudge and decree that defendants have engaged in the
22 conduct alleged herein.

23 B. That the Court enjoin and restrain defendants and their officers, agents,
24 servants and employees, and those in active concert or participation with them, from
25 continuing or engaging in such conduct or other conduct having similar purpose or effect.
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C. That the Court order defendants to publicly disclose, disseminate, and publish all research previously conducted directly or indirectly by themselves and their respective agents, affiliates, servants, officers, directors, employees, and all persons acting in concert with them, that relates to the issue of smoking and health.

D. That the Court order defendants to fund a corrective public education campaign relating to the issue of smoking and health, administered and controlled by an independent third party.

E. That the Court order defendants to fund clinical smoking cessation programs in the State of Alaska.

F. That the Court order defendants to pay restitution which would restore plaintiff to the financial position that it would be in, absent the defendants' conduct.

G. That the Court order defendants to disgorge all unjust profits from tobacco sales to minors, and from all other tobacco sales in the State of Alaska which defendants should not be allowed to retain.

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H. That the Court order such other and further relief as the Court deems just, necessary and appropriate.

DATED: April 14, 1997.

STATE OF ALASKA

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Douglas D. Gardner
Assistant Attorney General

By: Daveed A. Schwartz
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THIS MATTER IS FORMAL
ASSIGNED TO
LARRY R. WEEKS
SUPERIOR COURT JUDGE

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COMPLAINT FOR INJUNCTIVE RELIEF,
DAMAGES, RESTITUTION, DISGORGEMENT,
PENALTIES AND OTHER RELIEF

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COMPLAINT FOR INJUNCTIVE RELIEF,
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COMPLAINT FOR INJUNCTIVE RELIEF,
 DAMAGES, RESTITUTION, DISGORGEMENT,
 PENALTIES AND OTHER RELIEF

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COUNT 5 134
UNREASONABLE RESTRAINT OF TRADE UNDER THE ALASKA
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COMPLAINT FOR INJUNCTIVE RELIEF,
DAMAGES, RESTITUTION, DISGORGEMENT,
PENALTIES AND OTHER RELIEF

**PRESENT:
TRAUMATIC
BRAIN
INJURY ACT
UPDATE**

**Brain Injury Association
of Alaska**



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JUNEAU PRESENTATION February 17-18, 1998

Presenters:

Debra M. Russell, Ph.D. Candidate, CRC, President
Richard Warrington, Vice President, Foundation Affairs

The Brain Injury Association (BIA) was founded in 1980 as a national advocacy organization to help individuals, and their families, who have experienced a brain injury. Although most individuals associate brain injuries with traumatic injuries, our organization has evolved into a nationwide awareness of all types of brain impairments.

Brain injury is a disorder that is seen as "the silent epidemic." This disorder has no boundaries when it comes to socioeconomic, sex, age, or ethnicity. Millions of individuals, children and adults alike, experience this injury every year, leading to death and permanent disabilities. For example, individuals such as President Ronald Reagan (Alzheimer's Disease), Katherine Hepburn (Parkinson's Disease), Mohammed Ali (Dementia due to multiple traumatic brain injuries), Kirk Douglas (Stroke), Press Secretary Jim Brady (TBI from a bullet to his head), or recently Congressman Sonny Bono (Singer of Sonny and Cher, died from a brain injury associated with a skiing accident), all have experienced a brain injury. These individuals are a small fraction of the millions who experience a brain injury every day.

FACTS AND FIGURES

Nationwide, we have over 9.5 million brain injuries each year. During the last decade, the sustaining rates of surviving a brain injury has grown from 50% to 90%. For youths, traumatic brain injury is the most frequent cause of disability and death among children and adolescents in the United States. Each year, more than one million children sustain brain injuries ranging from mild to severe trauma (National Pediatric Trauma Registry). According to this registry, about one-third (334,000) of injury cases are related to brain trauma that leads to residual deficits. Unfortunately, a large percentage of this injury is due to physical abuse for new infants, followed by additional abuse for 64% of children under the age of one. Falls are the next major source of brain injury for children under 5 years of age (50%), followed by pedestrian-motor vehicle and bicycle crashes among school-age children and adolescents (National Pediatric Trauma Registry).

"Focus on capabilities - not disabilities"
Support the Brain Injury Association of Alaska

In Alaska, the death rate of young adults is extremely higher than other states. The comparison death rates were:

15-19 years of age at death - the U.S. rate was 69.6 compared to Alaskan death rates at 108.4:

20-24 years of age at death - the U.S. rate was 82.5 compared to Alaskan death rates at 117.26:

25-29 years of age at death - the U.S. rate was 68.8 compared to Alaska death rates at 104.18.

Even the combined rate in the U.S. was 58 compared to Alaskans at 81 for death. In contrast, the next highest cause of death in children is leukemia, at a rate of 1.9 per 100,000 population. In addition, concerning brain trauma for the adolescent, the annual prevalence rate jumps from 129.5 to 600 per 100,000 (other statistics record it at 930). For those who survive, a large percentage will suffer some transient cognitive, motor, or sensory irregularities and between 40% to 80% will have physical, intellectual or behavioral deficits. At least 10% will have deficits that result in total and permanent incapacitating disabilities.

Adult survivors also present alarming information and statistics. During the first few hours following a brain injury, more than 100,000 individuals with TBI alone usually die and over 2,000 will remain in a persistent vegetative state. For stroke victims, which affect 500,000 each year, 150,000 of these individuals will also die. Only 20% of stroke victims receive rehabilitation and only 5% for TBI survivors. 70,000 to 90,000 TBI survivors require long-term rehabilitation for basic restoration. In addition, these statistics do not reflect the rate of injury associated with snowmobile accidents; a significant problem unique to Alaska. These disturbing statistics justify the title of "silent epidemic" for these individuals. In summary, people experience brain injuries every 10 to 15 seconds (Brain Injury Association, Inc.), and this statement is why our organization exists.

In Alaska, we believe that our state experiences at least 5,000 to 6,000 brain injuries each year due to multiple causes. According to statistics from the Dept. Of Health Services in Alaska, injuries from unintentional and intentional causes are the leading cause of death, accounting for 29% of deaths and 53% of potential years lost in all ages. Brain injury accounts for 2% of all deaths and 26% of all injury deaths and 12% of hospitalizations due to injury. According to the Alaska Trauma Registry and Public Health, between 1991 to 1993, we had 2178 cases of hospitalized individuals just with TBI. Although this is alarming, these statistics are misleading. Although these facts identify thousands of survivors, the majority of people with brain injury are not hospitalized as their injury is considered mild (75%), yet they still endure deficits.

People with multiple injuries usually have the brain as the most commonly injured part and in fatal car accidents, injury to the brain is seen in as many as 75% of victims at autopsies

(p. 5). In addition, many studies have shown that brain injury predisposes the individual to the biologic development of other symptoms, such as depression and latent personality disorders (e.g., dependency, impatience, depression, decreased initiative, irritability, temper outbursts, decreased self-control, inappropriate public behavior). Furthermore, studies have shown that many individuals who are in the criminal justice system had significant brain injuries prior to their act of committing a crime. But even this information is not the complete picture. The Center for Disease Control and the Wonder Injury Data of 1994 recognized that suicide rates among Alaska's brain injury survivors and homicide are conjectured to be closely correlated with brain injury prevalence. Thus, these statistics are deceptive. Research has also shown that a large percentage of the homelessness, abuse of alcohol and drugs, and suicide rates following a brain injury is extremely elevated, e.g., nationwide statistics report that the average range of alcohol use of 23% increases to 75% when the person has a brain injury (Federoff et al., 1992; Hales et al., 1991; Lehr, 1990; Sells, 1992; Sladk, 1991, Shordone, 1987, 1988, 1990). If these statistics do not break your heart, it should affect your intellect:

the economic burden for treating these individuals is in the billions (economic losses of productivity, wages, health maintenance, and long-term care, which is recognized at 25 to 45 billion dollars yearly.

In 1996, a study was done on Organic Brain Syndrome (OBS) for Alaska, which identified many factors that contribute to crime, poverty, and low rates of successful vocational rehabilitation for this population (a copy of this study can be obtained from the Center for Disability Policy and Research, University of Washington or from David Maltman, Governor's Committee on Disability and Special Education, Alaska). When reviewing this report, one must begin with the fact that the researchers recognized a difference between mental illness and brain injury. According to this report, which we (BIA) concurs, a large percentage of clinicians working in this state are not schooled in the diagnosis or treatment of OBS. There is some services for children through the support system of the state for developmental disabilities, but this is only for children before the age of 22, and the services are more toward the learning disabled or mentally impaired. Medicaid only provides short-term treatment for situational conditions; they do not affectively address the long-term need (case management, rehabilitation services, independent living supports, etc.). People with OBS have a 60% to 80% rate of unemployment, a high divorce rate, ostracism, homelessness, financial difficulties, victimization, dependence, increased drug and alcohol abuse, secondary disabilities, and suicidal tendencies. In the Alaska Native population, the increase of brain injury is two to one compared to non-natives and services are minimal to none.

The mission of the Brain injury Association of Alaska is to not only advocate for and assist these survivors, but to help them return to the world of work and independence. Our purpose is to reach thousands of survivors and provide education, prevention, rehabilitation, and support (advocacy). This can be accomplished by:

Educational training and workshops about this disorder;

Full rehabilitation counseling for survivors and families;

Obtainment of assistive technology for the individual;

Collaboration with the school districts (programs such as the HeadSmart program that focuses on reducing violence for children in the school districts);

Violence and Brain Injury Projects (addresses the root causes of violent criminal behavior);

The BIRDS program, for children ages birth to 21 (rehabilitation psychology strategies in the development of training to other professionals, e.g., medical doctors, nurses, school administrators, therapists, etc.);

Public Awareness - prevention program (State Ambassadors Program for traveling across the state, especially villages) to provide information about brain injury as well as prevention strategies for the development of support groups for each area, and;

Counseling and assistance with families, organizations, or companies.

BIA of Alaska is willing to train employees in every city of our state concerning our programs. Our approach promotes exchange of ideas, family needs, current brain injury research, epidemiology, new models of treatment, as well as national training. We are also global as we promote international awareness of brain injury across the world. We even have a program for training the military (Defense and Veterans Head Injury) and training for police officers in identification of brain injuries.

PARTNERSHIP

We are sure that the mention of funding sends chills down your spines but we have a proposal that may interest you in the area of service provision. There are funds available through many organizations that could support part or all of these programs. For example, Mr. Warrington will present information about the TBI Act of 1996 that addresses some funding possibilities. As we receive calls daily requesting assistance and information, I believe that we must begin with education to our service providers and governing bodies, such as the Alaska Mental Health Trust Authority, the Governor's Council on Disabilities and Special Education, the Alaska Mental Health Board, the Alaska Commission on Aging, the State Independent Living Council, the Alaska Department of Health and Human Services, the Alaska Department of Education, the Alaska Division of Medical Assistance, Division of Vocational Rehabilitation, Workers' Compensation, and Alcohol and Drug Abuse, to name a

few (OBS, 1996). Our association receives phone calls every day from many of these organizations asking for assistance as well as calls from organizations such as P.A.R.E.N.T.S., Access Alaska, School Districts, Division of Vocational Rehabilitation (DVR), private individuals, and a variety of companies. All of these individuals request information and services, which we often cannot provide due to inadequate funding.

BIA of Alaska believes that with proper support, we can provide a large percentage of services for children and adults who have sustained a brain injury. For example, many survivors are directed to DVR for services. This organization attempts to provide rehabilitation services, yet they have a high rate of failure. I am not directing fault at DVR, as many of these counselors are excellent with good intentions. The problem is these individuals never received proper rehabilitation for their cognitive deficits; dooming this service to failure. They are missing the critical component of successful rehabilitation - lack of education for rehabilitating these individuals BEFORE they enter the maze of welfare to work programs. How can a person sustain employment when their cognitive abilities are at a 3rd grade level?

Although our plan does incorporate prevention and education as a major component, we can offer the development and implementation of a rehabilitation program. BIA of Alaska believes that we could provide, alone or in conjunction with other programs, a one-stop-shop for persons with brain injuries. For example, let's assume that this individual was hospitalized for their brain injury. This program would begin once the individual has completed their acute rehabilitation in the hospital. Their records would be transferred to our office and a review would be completed. In the meantime, this individual, and their family, would begin our program as the psychological trauma of this injury is usually extremely distressing. At this point, we would begin with assessments (e.g., neuroevaluations or assistive technology) that have not been provided, for identification of deficits. At this same building, a program will be developed for each client based on history, assessment results, psychological needs, psychopharmacology management, cognitive restoration strategies, and review of the medical diagnosis for each survivor.

Once deficits are identified and a program is developed, clients would be very involved in a holistic method of rehabilitation. Professionals, such as cognitive therapists, speech-language pathologists, occupational therapists, physical therapists, rehabilitation specialists, educational counselors, etc., would provide services at this facility. These individuals will be contracted on an hourly basis, overseen by a case manager(s). Rehabilitation may include memory strategies or training, assistive technology, cognitive restructuring, behavior management, substance abuse education, counseling (group or individual), family support, independent living training, employer training, social skill training, job training and development, etc., all administered by BIA of Alaska. Concentration on restoring language, attention, information processing, problem-solving, organization & planning, sequencing, judgment, executive functioning, etc., will be a segment of the rehabilitation plan.

Trained volunteers will be involved to assist in some services, reducing staff support. By merging these services toward a complete program, most individuals recover more quickly while reducing the chance of inappropriateness or regressive behaviors. Although the program will not focus on rapid recovery as the major goal, our intent is complete rehabilitation so we do not have a return rate (additional rehabilitation services) into this program. Additionally, as this is a nonprofit association, tax benefits for companies will be attractive and can provide additional funding. Financial support could also come from areas such as fines from driving while impaired (DWI) convictions, insurance companies, Workmans' Compensation, private donations, fund raisers, etc. We suspect that within 5 years, this majority of this program will be self-supporting.

Statistically, the State of Alaska will save a large amount of money by providing this program. We will not repeat services in our state: we will work with other organizations to provide the foremost services without duplication. In addition, listed above are some statistics concerning the average lifespan of persons with brain injury (15-29), which means 40 to 50 years of welfare or Social Security benefits for thousands of Alaskans. We will also reduce the costs of Medicare and Medicaid by returning these individuals back into the workforce. The graduates of this approach will become tax-paying citizens. This program would invest quality rehabilitation in the embryonic stages of recovery, reducing decisions that lead to expensive trial & errors. Everyone will win from this program, especially the individuals, and their families, who have survived one of the most traumatic experiences in their life - a brain injury.

**Brain Injury Association
of Alaska**



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Kenai Chapter: 313 Cindy Circle
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Hello Senator Wilken,

January 13th 1998

Hapy New Year,

The three Ambassadors of the National Brain Injury Association and the President of the Brain Injury Association of Alaska are looking to have a meeting with you and Commitee Members on Febraury 13th 1998.

We want Alaska to "Qualify" for Grants that are aviabile under the TBI Act (public Law 104-166) that was passed thru the "Congress in July 1996.

We will give you detail on how the 5,000 Brain Injuries happen in Alaska each year and its impact on people with Brain Injuries and their families.

Brain Injury is the leading cause of death and disability among people under 24 years of age.

A Brain Injury occurs every 15 seconds, every five minutes one of these people will die and another will be permanently disabled.

Brain Injury is not acts of fate.

Injuries, like diseases, occur in highly predictable patterns and are often preventable. They are not "Accidents". Injuries can be either unintentional or intentional.

Alaska needs to set up Emergency Centers to help the survivors instead of losing time and money to out of State Treatments and the follow thru Rehabilitation.

I'm a SURVIVOR OF TBI THAT HAPPENED 20 YEARS AGO IN COLORADO.

I have lived in Alaska twelve years.

Please let me now when you get this letter. Please share this letter with Senator, Mike Miller and Representative, Con Bundie and House Speaker Gail Phillips.

The Governer's Council on Disability and Special Education likes what I'm trying to do for the Brain Injured in the State.

" We need funding for this trip"

SINCERELY,

RICHARD A. WARRINGTON

Kenai, Alaska

**Brain Injury Association
of Alaska**



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January 23, 1998

Senator Gary Wilken
State Capitol
Room 510
Juneau, Alaska 99801-1182

Dear Senator Miller,

The Brain Injury Association of Alaska is scheduled to meet in Juneau on February 17th and 18th of 1998 concerning public issues such as the TBI Act of 1996, the HeadSmart School Program, prevention, rehabilitation, and other programs associated with the topic of brain injuries. In our state, we have thousands of brain injuries every year that often lead to permanent deficits in living, learning, and working. These individuals desperately need rehabilitation and training to work around their disabilities. In fact, it was this need that evolve into the TBI Act of 1996 (Public Law 104-166).

The Traumatic Brain Injury Act (TBI) authorized the federal government to disburse funds for this population in areas such as advancement, prevention, rehabilitation, treatment, and education. The initial appropriation of funds was to the study of this malady as well as funding education and prevention, with the goal to be disseminated at state levels. The consensus of the study included identification, accountability, therapeutic interventions in rehabilitation, and adequacy of appraising outcomes. According to Section 4, paragraph (a)(2), a report describing the findings made as a result of carrying out paragraph (1)(A) must be generated. I believe we have reached this date, according to this Act, and we wait patiently for the results.

The purpose of our attention to this law is rooted in the suffering that people with brain injuries experience daily with minimal or no services in rehabilitation. Although the Vocational Rehabilitation Acts were initiated in the early 1900's to protect and assist veterans with disabilities, additional Acts were developed but none were associated with brain injury restoration. These Rehabilitation Acts were geared more for sheltered workshops for persons with discriminating disabilities. Although this law was for the most "severely" disabled, many survivors with TBI were too severe for most services. Many survivors of TBI were ignored, considered "nonrehabilitatable," or for the less severe, were given menial (often token) positions for training or employment. Rehabilitation for this population in the past and present is considered "two costly" as sometimes it requires some long term restoration services. Instead, these individuals are often provided unacceptable, but cheaper, alternatives in place of rehabilitation. In Alaska, there is no long-term rehabilitation program(s) for persons with brain injuries, outside of the private rehabilitation specialists, who do exist.

"Focus on capabilities - not disabilities"
Support the Brain Injury Association of Alaska

However, most of the survivors cannot afford their services. As the majority of these individuals do not have funding for even basic needs, they usually fall through the cracks into destitution without a chance of rehabilitation. In fact, only 5% of these individuals receive proper rehabilitation and secondary problems usually develop, e.g., increased rates in suicide, substance abuse, poverty, etc., all associated with the brain injury (specific data will be provided at the presentation). However, additional statistics show that when survivors are rehabilitated, these individuals are harder workers than the nondisabled, have fewer sick days, and are considered committed employees.

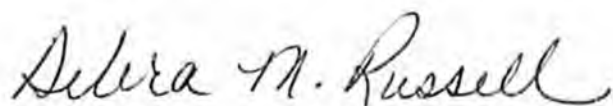
Our organization desperately needs funding and we believe that we can offer you a great barter. We receive approximately 5 phone calls a day just at our Anchorage office requesting assistance, and many others for information, and we do the best we can with our limited funding (last year cash donations were \$425). During this time, we provided information to organizations such as the Division of Vocational Rehabilitation, ACCESS Alaska, P.A.R.E.N.T.S., School Districts, private organizations, etc., as well as parents and survivors - all without funding. Obviously, we were only able to offer basic information. We suspect that our organization, with proper financial support, could incorporate the full gamete of rehabilitation services at offices that would encompass rehabilitation counseling, vocational training, assistive technology, prevention, employer/employee education as well as family education, and training to the school districts. This program could encompass neuroevaluations, occupational therapy, speech therapy, physical therapy, community integration and social training, rehabilitation counseling, cognitive restructuring, etc., all in one office, which could reduce costs. Furthermore, additional studies have shown that proper rehabilitation could even reduce crime rates as many incarcerated individuals have sustained a significant brain injury that altered their cognitive abilities, e.g., poor problem solving due to cerebral injury. In summation, it could be a one-stop-shop for persons with brain injuries once they leave the hospital. In addition, once we have completed the non-profit requirements, there will be tax benefits for any contributors and supporters. Our goal is to assist any individual who has a brain impairment to reach their highest level of potential with a major goal of independence and reemployment for most individuals. For the children, we can "teach the teachers."

Another major goal of the Brain Injury Association is prevention, such as methods to reduce violence and injury (HeadSmart Program) or the Headie Hurtle Program for young children and educate the public about this often disabling injury, e.g., the importance of helmets for bicyclists, motorcyclists, and all ATVs (All Terrain Vehicles). We also want to visit hospitals where we can disseminate information to the families of the survivors and obtain a 1-800 number for the state. We are willing to travel to villages through our Ambassador Program, which distributes information about prevention and rehabilitation statewide. It would be during this time that support groups and chapters could be developed, with an emphasis in respecting cultures. Our intent is to incorporate education, support, rehabilitation, and prevention for the public, children and adults. We are also working on a registered program developed by professionals called B.I.R.D.S. (Brain Injury Rehabilitation Developmental Systems), which is specifically geared for professionals, e.g., teachers, counselors, medical community, etc. for treating children from birth to 21 years of age. Obtaining services has been done in other states where funding was provided, e.g., Florida, Arizona, Washington,

etc. Furthermore, this could be funded by several grants associated with the TBI Act, donations by organizations and companies, monies from insurance companies, or dollars added to traffic fines. With time, funding from multiple resources could be identified, which would reduce funding from the state. We believe that BIA of Alaska could be self-supporting after five years.

We know this is a simplistic explanation of our goals, but we believe that this is attainable. We would appreciate an opportunity to meet with the Senators and Legislators to discuss the possibilities. I hope you will support and attend our meeting in Juneau in February.

Respectfully,

A handwritten signature in cursive script that reads "Debra M. Russell".

Brain Injury Association of Alaska

Debra M. Russell, Ph.D. Candidate, CRC, President

Rick Warrington, Vice President

Mary Warrington, Vice President



Brain Injury Association, Inc.
formerly the *National Head Injury Foundation*
Brain Injury Association
105 N. Alfred Street
Alexandria, VA 22314

Family Help Line: 1-800-444-6443

Phone # (703) 236-6000

Fax # 703-236-6001

What is the Brain Injury Association?

Founded in 1980, the Brain Injury Association (BIA) is a national advocacy organization, providing services to millions of Americans with traumatic brain injury (TBI) and their families. BIA works to increase public awareness of TBI through our network of state associations and support groups, and provides support programs directly to individuals who have sustained a brain injury and their families. BIA also provides a toll-free Family Helpline which offers information about brain injury, available services and resources. The Brain Injury Association is here to provide the help and information people need.

The BIA Mission Statement:

The mission of the Brain Injury Association is to advocate for and with people who have survived brain injury, to secure and develop community based services for people with traumatic brain injury and their families, to support research leading to better outcomes that enhance the life of people who sustain a brain injury, and to promote prevention of brain injury through public awareness, education and legislation.

What can the BIA offer you?

The following is a sample of BIA programs supported in part by membership dues:

The BIA Information and Resource Network:

BIA's toll-free Family Helpline responds to over 20,000 queries each year, concerning every aspect of brain injury, including rehabilitation facilities, state associations, and much more. Individuals with brain injury, their families and professionals can turn to the Helpline for information and support.

Public Awareness:

Through BIA's national education and public awareness campaigns, The organization promotes awareness and educates the public about the causes and consequences of TBI, and the means and benefits of TBI prevention.

Educational Symposia and Workshops:

Through its annual national symposium, regional and state association conferences, BIA promotes the exchange of ideas and information about TBI. Topics run the full spectrum of issues, including: family needs, trends in current brain injury research, new models for treatment and the effectiveness of rehabilitation methods. Regional training workshops are conducted in conjunction with our state chapters, and a series of acute neurotrauma conferences will take place at five strategic locations throughout 1996.

Educational Materials:

BIA maintains an extensive library about TBI research, epidemiology, rehabilitation, and information about brain injury. In addition, BIA's *Catalogue of Educational Materials* includes over 100 books, brochures, tapes and videos on a wide range of subjects related to brain injury. These materials can be purchased through our publications department.

Prevention Campaigns:

Prevention education is a high priority for BIA. Educating the public about prevention of traumatic brain injury is a major focus of BIA. Through the Be HeadSmart™ Campaign, BIA is reducing the incidence of TBI. In addition, the Violence and the Brain Injury Project addresses the root causes of violent criminal behavior and examines the efficacy of model treatment and violence prevention.

Defense and Veterans Head Injury Program (DVHIP):

The DVHIP is a unique collaboration among the Department of Defense, Department of Veterans Affairs and BIA. This project ensures that all military and DVA personnel with TBI receive specific evaluation and follow-up to assist in their treatment.

Advocacy and Public Policy:

The Paul Spanbock Fund for Public Policy was created in 1993, to ensure adequate representation of people with TBI before the Congress, Administration and Executive branch. Advocacy is the reason BIA is in Washington, DC. Because of BIA's continued presence and activity here, your concerns have a strong voice and impact on the public policies and laws developed and enacted by our government. Significant changes are occurring in Washington by the moment, as a result, BIA remains vigilant in its mission to advocate for and with persons with TBI, their families, and the people who serve them.

State Associations:

Through BIA's national network of state associations, chapters, and support groups, individuals can identify and reach local resources who understand the needs and problems associated with TBI. Social reinforcement is an integral aspect in rehabilitation both for the person with brain injury and family members. Through this network, you can become involved in local activities and find the social support you may need.

The Brain Injury Resource Center (BIRC):

The Brain Injury Resource Center is an interactive multimedia touch-screen computer system. A combination of video, graphics, text, and sound delivers educational information about brain injury, rehabilitation and prevention. The system provides information which meets the needs of a family member whose relative has sustained an injury. At the same time, it will provide education and information of a more technical nature for medical professionals with varying degrees of knowledge of TBI. And, because the person using the BIA's Brain Injury Resource Center controls the rate at which it is explored, they can learn at their own pace.

TBI Challenge!

All members receive TBI Challenge! BIA's quarterly magazine. This magazine addresses issues of importance to people with TBI and updates members on the activities of BIA and its state Associations.

International Brain Injury Foundation (IBIA)

IBIA is a multi-disciplinary organization dedicated to promoting international awareness of brain injury through grassroots advocacy programs, education concerning the latest innovative medical treatment and subjects related to brain injury. IBIA is composed of individuals with brain injury, their families, professionals and other concerned individuals from all over the world.

The Library

The BIA library houses a collection of approximately 10,000 volumes on issues related to brain injury and disabilities. It consists of print as well as audio/video materials and has an extensive assortment of serials, conference proceedings and reference literature. (Rev. 7/95)

WHO SUSTAINS TRAUMATIC BRAIN INJURIES

Males aged 14 to 24 years are at highest risk, followed by infants and the elderly.⁷

Males are twice as likely as females to sustain TBI due to differences in risk exposure and lifestyle.

According to the National Pediatric Trauma Registry, more than 30,000 children sustain permanent disabilities as a result of brain injuries.⁸

WHEN TRAUMATIC BRAIN INJURY OCCURS

Mid-afternoons to early evenings, weekends and the summer months are critical times during which TBI is most likely to occur.⁹

Children are especially at risk in the afternoon hours after they are dismissed from school. 42.6% of children's injuries occur on roads, 34.3% at home and 6.6% in recreation areas.¹⁰

CONSEQUENCES

Cognitive: may include short and long term memory loss; difficulties with concentration, judgment, communication and planning; spatial disorientation.

Physical: may include seizures; muscle spasticity; vision, hearing, smell and taste loss; speech impairment; headaches; reduced endurance.

Psychosocial/Behavioral/Emotional: may include anxiety and depression; mood swings; denial; sexual difficulties; emotional lability; egocentricity; impulsivity and disinhibition; agitation; isolation.

COST

The cost of traumatic brain injuries in the United States is estimated to be \$48.3 billion annually. Hospitalization accounts for \$31.7 billion, whereas fatal brain injuries cost the nation \$16.6 billion.¹¹

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TRAUMATIC BRAIN INJURY ACT BECAME LAW IN 1996

Congress Passes Traumatic Brain Injury Act

On July 12, 1996, the Senate passed language identical to the House passed version of the Traumatic Brain Injury Act. The House of Representatives had passed the bill on July 9. The TBI Act authorizes the federal government to spend \$24.5 million over the next three years on:

- Grants to states to develop model treatment programs.
- Funds for the Centers for Disease Control and Prevention to study the incidence of brain injury.
- Funds for agencies in the Department of Health and Human Services to research into prevention, treatment and rehabilitation of brain injury.
- Funds for the National Institutes of Health to host a national conference, gathering all the experts in the field of brain injury.

After a 5 -year process, not a single legislator voted against the Traumatic Brain Injury Act in 1996. In fact, a number of legislators were instrumental in passing the TBI Act. Jim Greenwood of Pennsylvania ushered this legislation through the House and consistently worked with the Senate to keep that chamber on track. Other legislators who played pivotal roles include Senators Orrin Hatch of Utah and Ted Kennedy of Massachusetts, and Congressman Frank Pallone of New Jersey.

President Hosts Signing Ceremony For The Traumatic Brain Injury Act

On July 29, President Clinton hosted a signing ceremony, recognizing the importance of people with brain injury and their families. By passing and signing this legislation, the federal government has taken proactive efforts to resolve problems associated with brain injury. Christopher Reeve, Gary Busey, Jim Brady and Frank Gifford made phone calls to the White House to convince the President that this signing ceremony was important to millions of Americans -- individuals with brain injury and their family members. In addition to BIA President Dr. George Zitnay, Vice Chairman Jim Brady and Chairman Martin Foil, top federal agency officials and ranking members of Congress were present at the ceremony.

Congress Appropriates Funds for the Traumatic Brain Injury Act

On September 30, 1996, Congress appropriated funds to support the Traumatic Brain Injury Act for fiscal year 1997:

- \$2,600,000 for the Centers for Disease Control to study the incidence of brain injury and fund education/prevention initiatives
- \$2,857,000 for the Health Resources and Services Administration to implement model demonstration projects at the state level
- A directive to the National Institutes of Health to organize a national consensus conference and produce a white paper on brain injury in the United States



What Legislators Need To know About Traumatic Brain Injury

Executive Summary

© National Conference of State Legislatures

Each year, 2 million Americans sustain traumatic brain injuries from automobile crashes, falls, recreation injuries, assaults and violence. These injuries are the leading cause of death and disability in children and young adults in the United States. Of those who suffer traumatic brain injuries, 75,000 to 100,000 will die, and 70,000 to 90,000 must live the remainder of their lives with severe disabilities. The highest rate of injury is suffered by young males.

Brain injury has dramatic repercussions for the injured and their families. People with brain injuries have trouble with short-term memory, concentration, judgment and organization. Many have substance abuse problems that may have existed before the injury or were acquired afterwards as a way to escape the difficulties of their lives. Divorce is common among married people who sustain brain injuries, and many lose their friends. People with serious brain injuries may need constant supervision and help in managing money, doing household chores, and sometimes bathing and dressing. Because the injuries are not always visible, people with brain injuries may have trouble qualifying for federal and state programs.

Families provide the majority of care for people with brain injuries. Many exhaust their family resources or have to give up jobs to care for a family member full time. The psychological and financial stress is overwhelming as families struggle to provide care with little or no help from existing state service systems.

Today, more and more people survive brain injuries, thanks to advances in medicine and trauma care. The for-profit brain injury rehabilitation industry has grown rapidly in the last 10 years until it is now generating an estimated \$10 billion a year in gross revenues.

However, state services have lagged far behind for people with brain injuries who are not insured, have exhausted their benefits, or have left the rehabilitation centers to live with their families or in the community. Today, only one in 20 people with traumatic brain injuries receives the rehabilitation services needed.

People with brain injuries, like everyone else, want good relationships with friends and family, respect and dignity, opportunities to develop and exercise competence, and opportunities to contribute to community life and make choices about their futures. The growing advocacy movement is demanding that people with traumatic brain injuries be able to control their lives and the services they receive. Increasingly, legislators will be asked to set policies based on these values and create cost-effective systems of care.

Though some forward-looking states are providing services targeted at the special needs of people with brain injuries, in other states services are fragmented and inefficient. Many state bureaucracies

have no central home for people with traumatic brain injuries. Services are spread over many departments, including health, mental health, education and social services, to name a few. This causes problems for the people with brain injuries and their families who have to go from department to department, trying to patch together services. It also causes problems for states as they look to developing policies that would more appropriately meet the needs of people with traumatic brain injuries.

States are trying to improve service delivery by establishing state councils, creating a lead agency for people with traumatic brain injuries, and offering case management to control costs by ensuring that people get the most appropriate services. States are paying for services through traditional sources of financing such as Medicaid, vocational rehabilitation funds and state general revenues. States are also making use of more innovative financing ideas, such as dedicated funding streams drawn from fees on motor vehicle violations, including speeding, drunk driving and seat belt violations. Other states are writing Medicaid home- and community-based waivers targeted at people with traumatic brain injuries.

States can reduce the catastrophic costs of brain injury through prevention programs. Brain injury, unlike other illnesses, can be prevented in many instances. States can help prevent the incidence and severity of brain injury by passing and rigorously enforcing laws requiring seat belts, child restraints and helmets for motorcycle riders. States and localities can also launch educational campaigns to increase the use of helmets by bicycle riders and in other sports.

This publication is intended to provide legislators with the background information to help them make informed public policy decisions about systems of care for people with traumatic brain injuries in their states. The booklet is in a question and answer format and is organized as follows:

- The first two questions define traumatic brain injury and its impact on people with brain injuries and their families. They raise issues of interest to legislators, including the high cost to society, the high cost of inappropriate care, the inability of existing service systems to meet the needs, aging caregivers, the growth of advocacy movements, federal legislation that will elevate brain injury to the national agenda, and the availability of data.
- Questions 3 and 4 outline services needed by people with brain injuries and available federal assistance.
- Questions 5 and 6 look at private insurance coverage for people with traumatic brain injuries and public/private options that might be used to support services, including publicly subsidized health insurance, state-financed catastrophic health insurance, catastrophic riders to insurance policies, preferred provider organizations targeted at people with disabilities, state high-risk pools and self-sufficiency trusts.
- Questions 7 and 8 look at state service delivery and financing of services for people with traumatic brain injuries.
- Prevention efforts are addressed in Question 9, including mandatory seat belt laws, mandatory helmet laws for motorcycle riders and other strategies.
- Question 10 presents innovative approaches by state and nonprofit agencies, including statewide programs, home- and community-based services, housing, jobs education, and central registries.

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

P.O. BOX 110601
JUNEAU, ALASKA 99811-0601
PHONE: (907) 465-3030
FAX: (907) 465-3068

May 29, 1997

Jean Athey, Director
Emergency Medical Services for Children
Maternal and Child Health Bureau
Health Resources and Services Administration
Room 1812, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

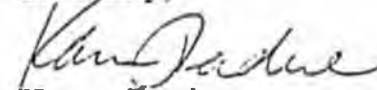
Dear Ms. Athey:

It is with pleasure that I submit the attached application for a Traumatic Brain Injury Demonstration Grant. This request is for a Planning Grant for one year. This application was completed by the Section of Community Health and Emergency Medical Services, within the Division of Public Health, Department of Health and Social Services.

Within the application package you will find all signed assurances and certifications required by the program announcement.

Thank you for the opportunity to focus efforts on traumatic brain injuries.

Sincerely,


Karen Perdue
Commissioner

enclosure

SB

3

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/13/97

FURTHER: Judiciary

Date of 5-Day Notice: 2/13/97
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: 2/21/97

Health, Education and Social Services Committee considered SENATE BILL NO. 3

"An Act authorizing prosecution and trial in the district court of municipal curfew violations."

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>[Signature]</i>	✓	<i>[Signature]</i>			✓
		<i>[Signature]</i>	X		
		<i>[Signature]</i>	✓		
CHAIR: <i>[Signature]</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
Alaska Court System	2/20/97		✓
Admin - Public Defender	2/13/97	in det.	
Public Safety	2/18/97	✓	
Health + Social Services	2/12/97	in det.	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*Include fiscal notes accompanying Governor's bill

Alaska State Legislature

During Interim:

716 West 4th Avenue, Suite 510
Anchorage, Alaska 99501-2133
(907) 258-8185
Fax (907) 258-0226

During Session:

State Capitol
Juneau, AK 99801-1182
(907) 465-4993
Fax (907) 465-3872

Senator Drue Pearce District F

SPONSOR STATEMENT FOR SB 3

Currently, juvenile offenses other than traffic, tobacco, fish and game, parks and recreational facilities, or alcohol violations, are handled through municipal courts where these exist, or are not handled at all because of the Division of Family and Youth Services caseload.

SB 3 will put in place a uniform approach to handling curfew violations. It will enable those communities who so wish to put a curfew ordinance into effect, with the ability to prosecute.

SB 3 will help the City of Juneau, where plans for a youth curfew were set aside because they had no avenue to prosecute offenders. This bill will relieve municipalities from the burden of prosecution and will allow for more effective and expeditious handling of these offenses.

SB 3 will mandate that all juvenile curfew violations be handled in District Court. Alaska Delinquency Rules will not apply, and the minor accused of the offense will be charged, prosecuted, and sentenced in the district court in the same manner as an adult. When a minor is charged, prosecuted and sentenced for an offense under this subsection, the minor's parent, guardian, or legal custodian will be present at all proceedings.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO: 3

Revision Date: 02/17/97 Dept. Affected: Public Safety
 Title: Prosecute Juvenile Municipal Curfew BRU: Alaska State Troopers
Violations In District Court Component: Detachments
 Sponsor: Sen. Pearce
 Requestor: Senate HESS Committee COMPONENT SERIAL NO. 0799

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

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-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						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 97) 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 would not have any significant fiscal impact on AST.

Prepared By: Capt. Ted M. Bachman Phone: 269-5650
 Division: Alaska State Troopers Date: 02/17/97
 Approved by Commissioner: Ronald L. Otte *[Signature]* Date: 2/18/97
 Agency: Department of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 3

Revision Date: _____

Department Affected: Administration

Title: "An Act authorizing prosecution and trial in the district court of municipal curfew violations"

BRU: Public Defender Agency

Component: Public Defender Agency

Sponsor: Senator Pearce

Requestor: (S) HES

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	***	***	***	***	***	***
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	***	***	***	***	***	***

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

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

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts	***	***	***	***	***	***
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	***	***	***	***	***	***

Estimate of any current year (FY 97) cost: \$ -0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

This bill changes jurisdiction for violation of a municipal curfew ordinance from juvenile court to district court where the child will be prosecuted and sentenced in the same manner as if an adult. Fiscal impact will vary depending upon what degree of crime the municipal curfew ordinance establishes and whether or not the potential punishment gives rise to the right to appointed counsel. Without accurate numbers regarding referrals to the district court, fiscal impact is impossible to quantify.

Prepared by: Barbara K. Brink, Director

Phone: (907) 264-4414

Division: Public Defender Agency

Date: _____

Approved by Commissioner: Mark Boyer

Agency: Department of Administration

Date: 2/12/97

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Revision Date: _____
 Title: Prosecution in district court of municipal curfew violations.
 Sponsor: Senator Pearce
 Requestor: Senate (HESS)

Dept. Affected: Health and Social Services
 BRU: Family and Youth Services
 Component: Probation Services
 COMPONENT SERIAL NO. 2134
 see also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	*****	*****	*****	*****	*****	*****

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

CHANGES IN REVENUES ()						
-------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY97) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

DFYS is not able to accurately project the fiscal impact of this bill on the division's detention beds. Changes to the juvenile code in recent years have given districts court authority to handle an increasing number of juvenile offenses, with minor consuming and smoking being two examples. District judges and magistrates in some jurisdictions have been issuing bench warrants for failure to appear and contempt citations for failure to pay fines, resulting in juveniles being detained for smoking infractions. We have no way to anticipate what the increase would be if municipal curfew violations were added. However, serious overcrowding already exists in DFYS detention facilities, and it seems unnecessary to increase detention admissions for such minor violations when there is inadequate space to house serious offenders.

Prepared by: L. Diane Worley, Director
 Division: Family & Youth Services

Phone: 465-3191
 Date: 02/10/97

Approved by Commissioner: Karen Perdue, Commissioner
 Agency: Department of Health & Social Services

Date: 2/12/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 3

Revision Date:

Dept. Affected: Alaska Court System

Title: Minor's Curfew Violation Heard in District Court

BRU: Trial Courts

Component:

Sponsor: Sen. Pearce and Donley

Requestor:

COMPONENT SERIAL NO. 768

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	24.3	24.3	24.3	24.3	24.3	24.3
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	24.3	24.3	24.3	24.3	24.3	24.3

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

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

Fund Source

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	24.3	24.3	24.3	24.3	24.3	24.3
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	24.3	24.3	24.3	24.3	24.3	24.3

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time	2.0	2.0	2.0	2.0	2.0	2.0
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel
 Agency: Alaska Court System

Phone: 264-8228
 Date: 02/20/97

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

Date: 02/20/97

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Alaska Court System

Fiscal Analysis

SB 3

SB 3 amends AS 47.12.030(b) to provide that if a minor is cited for violating a municipal ordinance which mandates a curfew, the minor shall be charged, prosecuted and sentenced in district court in the same manner as an adult.

It is anticipated that most municipalities will enact curfew ordinances. As drafted, SB 3 would allow municipalities to adopt criminal ordinances for which the penalty can be jail time, mandatory community service, or loss of a valuable license. Such ordinances would require the state to provide a jury trial. In addition, SB 3 would allow municipalities to require mandatory court appearances by juveniles. All citations which are contested will come before the court system, unless the municipality decides to pay for its own municipal hearing officer.

Based upon statistics generated during the first year of Anchorage's civil curfew system, which uses a municipal hearing officer rather than the court system, this note assumes that HB 474 will generate 3000 citations per year statewide. Noncontested citations may be paid directly to the municipalities; however, defendants may contest citations or enter guilty pleas at court. Thus, many persons subject to this section will come before a district judge and/or pay citations through the court's accounting system. This note assumes that no municipality will require a mandatory court appearance (probably an incorrect assumption), and that one-third of juvenile citations will be run through the court system; this is the rate at which the courts deal with other municipal citations. It should be kept in mind that the rate at which juveniles contest citations will depend on the size of fines set by the municipalities in their ordinances. This note also assumes that no municipality will criminalize curfew violations and require six-person jury trials. This last assumption is probably optimistic, in that some municipalities will likely criminalize repeat offenses or offenses by business owners who allow minors to remain on premises after curfew, if only to impose community service on the offenders.

Alaska Court System

Fiscal Analysis

SE 3

Personal Services

Positions

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Court Clerk II, range 10A, PPT, 4 months, Anchorage/statewide	\$8,420	\$2,169	\$10,589
Committing Magistrate, range 22B, PPT, Anchorage/statewide, 1 1/2 months	7,266	1,872	9,138
Overtime for In-Court Clerks at range 12A for additional trials			<u>4,600</u>
Estimated Total Cost			<u><u>\$24,327</u></u>

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

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



January 16, 1997

RECEIVED
JAN 24 1997

Business Manager

Joseph E. Young
Anchorage

Board of Directors

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Fairbanks

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Juneau

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James See, Member
Craig
Pres. Prince of Wales Chapter

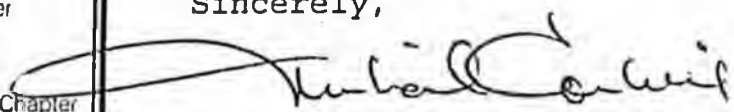
Senator Drue Pearce
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

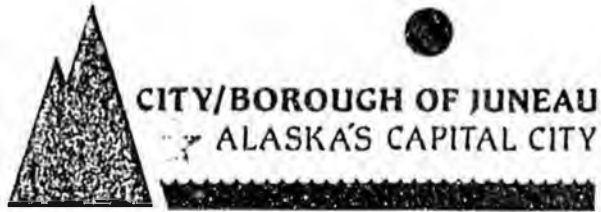
Dear Senator Pearce,

On behalf of the Alaska Peace Officers Association, I would like to thank you for introducing Senate Bill 3 relating to district court prosecutions of municipal curfew violations. At a recent meeting of the APOA State Board, we decided unanimously to support this legislation. We believe that a uniform approach in dealing with juveniles at risk in status offenses such as curfew will be a preventive aid in keeping them from becoming involved in other more risky behaviors. It will further relieve municipalities from the burden of prosecution and will hopefully bring more immediate consequences than the courts currently supply to offending juveniles.

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

Sincerely,


Michael Corkill
APOA State President



CITY/BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

OFFICE OF THE MAYOR

RECEIVED

JAN 30 1997

January 27, 1997

The Honorable Drue Pearce
Senator
Alaska State Legislature
State Capital, Room 518
Juneau, AK 99801-1182

RE: Senate Bill 3


Dear Senator Pearce:

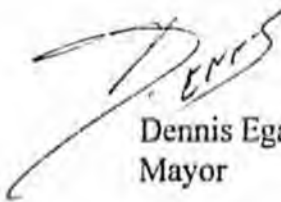
The City and Borough of Juneau Assembly considered implementing a new youth curfew ordinance last year. That proposal is very comprehensive, partly modeled after the ordinance currently in effect in Anchorage. The Juneau proposed ordinance includes monetary penalties and community work service for youth and penalties for parents of repeat offenders and businesses which permit youth to remain on the premises after the curfew hours. The ordinance also includes a broad base of exceptions, including employment, running approved errands and returning home after certain events, among others.

One of the difficulties in implementing our proposed ordinance is the limitation in AS 47.12 which generally requires that offenses committed by juveniles be treated through the juvenile justice system, which includes supervision by the Superior Court and the Division of Family and Youth Services. In Juneau's view, this system is not appropriate for curfew violations by youth. It is far more efficient and effective to treat these violations similar to traffic, parks and recreation, and fish and game violations, in the District Court in the same manner as adults.

Your Senate Bill 3 would make the changes necessary in the Juvenile Code to allow youth curfew violators to be adjudicated in the District Court. We also support community work service in addition to fines as an option available to the Court. The City and Borough of Juneau Assembly supports this important change. This will substantially reduce the costs of administration of these violations and help respond to them more rapidly.

We appreciate you introducing Senate Bill 3 and strongly support it. If there is anything that Juneau can do to help insure its passage, please contact me.

Sincerely,


Dennis Egan
Mayor

3200 Hospital Drive, Room 202
Juneau, AK 99801
(907) 463-5845

January 22, 1997



RECEIVED
JAN 30 1997

The Honorable Senator Drue Pearce
Alaska State Legislature
State Capitol (ms-3100)
Juneau, AK 99801-1182

Dear Senator Pearce:

The Mayor's Task Force on Youth has performed a considerable amount of research on youth curfews over the last year. Curfews are typically municipal ordinances, which establish evening hours during which juveniles of certain ages are restricted from some activities. These activities generally include being on public property or in some private business establishments. The purposes of curfews include preventing crimes by or upon juveniles, supporting parental control of children's night activities and helping to assure that youth are rested and ready for the school classroom.

Violations by juveniles are usually processed through the juvenile justice system in the Superior Court and the Division of Family and Youth Services. This process is time-consuming and expensive to administer and is appropriate for those offenses in which treatment, in addition to discipline, is most effective. In the case of status offenses such as tobacco and alcohol possession and curfew violations, the juvenile justice system is too cumbersome and complex. It is more effective to handle these offenses in the District Court. Currently traffic tickets, fish and game violations, tobacco and alcohol possession and parks and recreation violations by juveniles are handled in the District Court. In order to process curfew violations in the same manner, the juvenile code must be changed.

Senate Bill 3, which you introduced, would make these changes. The Task Force supports your proposed legislation. If there are any questions, or we can provide additional information, we'd be happy to help.

Sincerely,

Ron Gleason

Co-Facilitator

Ernie Mueller

Facilitator of Curfew Subcommittee

Juneau puts aside curfew plans

JUNEAU — City officials have set aside plans for a youth curfew, saying they would need changes in state law before the proposal could work. The Juneau Assembly's human resources committee plans to recommend that the city begin lobbying the Legislature to allow curfew violations to be handled in state district courts. The district courts now handle juvenile offenses related to alcohol, tobacco, traffic, fish and game, and parks and recreation, said city attorney John Corso. Other juvenile offenses are handled by the state division of health and youth services, which does not have the resources to process curfew cases, Corso said. If the city convinces the Legislature to allow courts to handle the cases, Juneau could have a new curfew law in place next fall, said Cathy Munoz, the human resources committee chairwoman. Meanwhile, Juneau youths are still supposed to obey an existing curfew intended to keep them off the streets at night, "but it's a weak law because we can't issue a citation," Munoz said.

S B

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SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 1/13/97

FURTHER: Finance

Date of 5-Day Notice: 2/20/97
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 3/24/97

Health, Education and Social Services Committee considered

SENATE BILL NO. 11

"An Act relating to state aid for school construction debt; and providing for an effective date."

and recommends:

- be replaced with CS SB 11 (HES)
- 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>[Signature]</i>	✓	<i>[Signature]</i>			
<i>[Signature]</i>	✓	<i>[Signature]</i>			
CHAIR: <i>[Signature]</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
Education - SB 11		✓	
Education - CS SB 11 (HES)		✓	
(previous FN applies to CS)			

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*Include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA

BILL NO. SB 11

1997 LEGISLATIVE SESSION

Revision Date: _____

Department Affected: Education

Title: An act relating to state aid for school construction debt; and providing for an effective date.

BRU: K-12 Support

Sponsor: Sen. Halford

Component: Debt Reimbursement

Requester: State Affairs

COMPONENT SERIAL NO. _____ 153

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1030 School Fund	0.0	0.0	0.0	0.0	0.0	0.0
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY97) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Section 1 - amends AS 14.11.100 by adding section 8 which allows up to 50% reimbursement for school construction debt incurred after July 1, 1997. Projects must first be approved by the department as eligible and must be approved by the qualified voters. A request for an allocation of funds under AS 14.11.100 must be submitted to the department by the school district no later than October 15 of the fiscal year before the fiscal year for which the request is made. The proposed legislation does not limit the amount or number of projects the department can approve. The department can not project the fiscal impact until projects are submitted for approval under the new program. The first year this amendment could have fiscal impact is FY99.

Prepared by: Eddy Jeans, School Finance Manager

Phone: 465-8679

Division: Education Support Services

Date: _____

Approved by Commissioner: *Shirley Holloway*

Shirley Holloway, Ph. D., Commissioner

Agency: Education

Date: _____

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Mail Stop 3101

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

MEMORANDUM

March 22, 1997

SUBJECT: Reimbursement of school bonds - (CSSB 11(HES))

TO: Senator Gary Wilken
Attn: Sheila

FROM: Michael F. Ford *M.F.*
Legislative Counsel

As you requested, this is a brief memo to explain the bond reimbursement program authorized by CSSB 11(HES). Bonds authorized after April 30, 1993, but before July 1, 1995, are eligible for reimbursement at a rate of 70 percent, if the payments meet the criteria established under paragraph 6 of AS 14.11.100(a). Bonds authorized on or after July 1, 1995, but before July 1, 1997, are eligible for reimbursement at a rate of 70 percent, if the payments meet the criteria established under paragraph 8 of AS 14.11.100(a). Bonds authorized on or after July 1, 1997, are eligible for reimbursement at a rate of 75 percent, if the payments meet the criteria established under paragraph 9, of AS 14.11.100(a). Bonds eligible for reimbursement under paragraphs (8) and (9) are not subject to the bond reimbursement cap under AS 14.11.100(m).

Please contact me if you have further questions.

MFF:glc
97-203.glc

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR HALFORD

TO: SB 11

Page 3, line 30:

Delete "1997"

Insert "1995"

Page 4, line 7:

Delete "50"

Insert "70"

Page 4, line 10:

Delete "1997"

Insert "1995"

Page 5, line 26, following "enrollment;":

Delete "or"

Insert "[OR]"

Page 5, line 28, following "codes": demonstrated that the project will
Insert "; result in a reduction in annual operating costs which
~~(C) operating costs that would be reduced by the project;~~ economically justifies
or ~~(D) facilities that require modification or rehabilitation~~ the cost of the
Project.
for the purpose of improving the instructional program"

Page 5, line 29:

Delete "takes effect July 1, 1997"

Insert "is retroactive to July 1, 1995"

Page 5, following line 29:

Insert a new bill section to read:

"* Sec. 6. This Act takes effect immediately under AS 01.10.070(c)."

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR WILKEN

TO: SB 11

1 Page 4, following line 11:

2 Insert a new bill section to read:

3 **** Sec. 2.** AS 14.11.100(b) is amended to read:

4 (b) The commissioner shall administer the program of reimbursement
5 authorized under this section and shall provide by regulation for the filing of
6 applications for reimbursement, the form of proof of costs for which application for
7 reimbursement is made, and other regulations necessary to administer the program.

8 **An amount due a municipality for reimbursement under this section may not be**
9 **reduced by the cost to the department to administer the reimbursement program.**

10 The commissioner shall exclude from the total school construction cost of the local
11 district all state and federal funds included in these costs except funds provided under
12 this section and AS 43.50.140. In approving applications for reimbursement, the
13 commissioner shall offset against the amount of reimbursement authorized the amount
14 of any funds distributed to the borough or city in the second preceding fiscal year
15 from the school fund provided for in AS 43.50.140."

16 Renumber the following bill sections accordingly.

MEMORANDUM

State of Alaska
Department of Education

To: Brett Huber
Senator Halford's Office

Date: March 21, 1997

Phone: 465-1858

File: g:\ndm\deptmemo\
File Name

From: Michael Morgan
Special Projects Manager
ESS/Facilities

Subject: Change to SB 11

Brett:

Here are a couple of options.

Proposed language change to the amendment to SB 11:

Page 5, line 28, following "codes"

Insert ";

((C) demonstrated that the project will result in a reduction in annual operating costs which economically justifies the cost of the project

OR

(C) completed a cost/benefit analysis of annual operational cost savings versus project costs which economically justifies the project

cc: Rick Cross

Compared to SB 11
Changes highlighted -

0-LS0151NB ✓
Ford
3/22/97

CS FOR SENATE BILL NO. 11(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered:
Referred:

Sponsor(s): **SENATORS HALFORD, Phillips, Green**

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to state aid for school construction debt; and providing for an
2 effective date."

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

4 * Section 1. AS 14.11.100(a) is amended to read:

5 (a) During each fiscal year, the state shall allocate o a municipality that is a
6 school district [,] the following sums:

7 (1) payments made by the municipality during the fiscal year two years
8 earlier for the retirement of principal and interest on outstanding bonds, notes, or other
9 indebtedness incurred before July 1, 1977, to pay costs of school construction;

10 (2) 90 percent of

11 (A) payments made by the municipality during the fiscal year
12 two years earlier for the retirement of principal and interest on outstanding
13 bonds, notes, or other indebtedness incurred after June 30, 1977, and before
14 July 1, 1978, to pay costs of school construction;

1 (B) cash payments made after June 30, 1976, and before July 1,
2 1978, by the municipality during the fiscal year two years earlier to pay costs
3 of school construction;

4 (3) 90 percent of

5 (A) payments made by the municipality during the fiscal year
6 two years earlier for the retirement of principal and interest on outstanding
7 bonds, notes, or other indebtedness incurred after June 30, 1978, and before
8 January 1, 1982, to pay costs of school construction projects approved under
9 AS 14.07.020(a)(11);

10 (B) cash payments made after June 30, 1978, and before July 1,
11 1982, by the municipality during the fiscal year two years earlier to pay costs
12 of school construction projects approved under AS 14.07.020(a)(11);

13 (4) subject to (h) and (i) of this section, up to 90 percent of

14 (A) payments made by the municipality during the current fiscal
15 year for the retirement of principal and interest on outstanding bonds, notes, or
16 other indebtedness incurred after December 31, 1981, and authorized by the
17 qualified voters of the municipality before July 1, 1983, to pay costs of school
18 construction, additions to schools, and major rehabilitation projects that exceed
19 \$25,000 and are approved under AS 14.07.020(a)(11); [AND]

20 (B) cash payments made after June 30, 1982, and before July 1,
21 1983, by the municipality during the fiscal year two years earlier to pay costs
22 of school construction, additions to schools, and major rehabilitation projects
23 that exceed \$25,000 and are approved under AS 14.07.020(a)(11); and

24 (C) payments made by the municipality during the current fiscal
25 year for the retirement of principal and interest on outstanding bonds, notes, or
26 other indebtedness to pay costs of school construction, additions to schools, and
27 major rehabilitation projects that exceed \$25,000 and are submitted to the
28 department for approval under AS 14.07.020(a)(11) before July 1, 1983, and
29 approved by the qualified voters of the municipality before October 15, 1983,
30 not to exceed a total project cost of (i) \$6,600,000 if the annual growth rate of
31 average daily membership of the municipality is more than 7 percent but less

1 than 12 percent, or (ii) \$20,000,000 if the annual growth rate of average daily
 2 membership of the municipality is 12 percent or more; payments made by a
 3 municipality under this subparagraph [PARAGRAPH] on total project costs
 4 that exceed the amounts set out in (i) and (ii) of this subparagraph
 5 [PARAGRAPH] are subject to (5)(A) of this subsection;

6 (5) subject to (h) - (i) [(h), (i), AND (j)] of this section, 80 percent of

7 (A) payments made by the municipality during the fiscal year
 8 for the retirement of principal and interest on

9 [(i)] outstanding bonds, notes, or other indebtedness
 10 authorized by the qualified voters of the municipality

11 (i) after June 30, 1983, but before March 31, 1990, to
 12 pay costs of school construction, additions to schools, and major
 13 rehabilitation projects that exceed \$25,000 and are approved under
 14 AS 14.07.020(a)(11); or

15 (ii) [OUTSTANDING BONDS, NOTES, OR OTHER
 16 INDEBTEDNESS AUTHORIZED BY THE QUALIFIED VOTERS OF
 17 THE MUNICIPALITY] before July 1, 1989, and reauthorized before
 18 November 1, 1989, to pay costs of school construction, additions to
 19 schools, and major rehabilitation projects that exceed \$25,000 and are
 20 approved under AS 14.07.020(a)(11); and

21 (B) cash payments made after June 30, 1983, by the
 22 municipality during the fiscal year two years earlier to pay costs of school
 23 construction, additions to schools, and major rehabilitation projects that exceed
 24 \$25,000 and are approved by the department before July 1, 1990, under
 25 AS 14.07.020(a)(11);

26 (6) subject to (h) - (j) [(h), (i), (j),] and (m) of this section, 70 percent
 27 of payments made by the municipality during the fiscal year for the retirement of
 28 principal and interest on outstanding bonds, notes, or other indebtedness authorized by
 29 the qualified voters of the municipality on or after April 30, 1993, but before July 1,
 30 1995, to pay costs of school construction, additions to schools, and major rehabilitation
 31 projects that exceed \$200,000 and are approved under AS 14.07.020(a)(11);

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(7) subject to (h) - (j) [(h), (i), (j),] and (m) of this section, 70 percent of payments made by the municipality during the fiscal year for the retirement of principal and interest on outstanding bonds, notes, or other indebtedness authorized by the qualified voters of the municipality after March 31, 1990, but before April 30, 1993, to pay costs of school construction, additions to schools, and major rehabilitation projects;

was 50

(8) subject to (i) and (i) of this section. 70 percent of payments made by the municipality during the fiscal year for the retirement of principal and interest on outstanding bonds, notes, or other indebtedness authorized by the qualified voters of the municipality on or after July 1, 1995, but before July 1, 1997, to pay costs of school construction, additions to schools, and major rehabilitation projects:

new language

new language

(9) subject to (i) and (j) of this section. 75 percent of payments made by the municipality during the fiscal year for the retirement of principal and interest on outstanding bonds, notes, or other indebtedness authorized by the qualified voters of the municipality on or after July 1, 1997, to pay costs of school construction, additions to schools, and major rehabilitation projects.

* Sec. 2. AS 14.11.100(b) is amended to read:

(b) The commissioner shall administer the program of reimbursement authorized under this section and shall provide by regulation for the filing of applications for reimbursement, the form of proof of costs for which application for reimbursement is made, and other regulations necessary to administer the program.

new section

An amount due a municipality for reimbursement under this section may not be reduced by the cost to the department to administer the reimbursement program.

The commissioner shall exclude from the total school construction cost of the local district all state and federal funds included in these costs except funds provided under this section and AS 43.50.140. In approving applications for reimbursement, the commissioner shall offset against the amount of reimbursement authorized the amount of any funds distributed to the borough or city in the second preceding fiscal year from the school fund provided for in AS 43.50.140.

* Sec. 3. AS 14.11.100(h) is amended to read:

1 (h) An allocation under (a)(4) - (7) [(a)(4) OR (5)] of this section for school
2 construction begun after July 1, 1982, shall be reduced by the amount of money used
3 for the construction of residential space, hockey rinks, planetariums, saunas, and other
4 facilities for single purpose sporting or recreational uses that are not suitable for other
5 activities and by the money used for construction that exceeds the amount needed for
6 construction of a facility of efficient design as determined by the department. An
7 allocation under (a)(4) - (7) [(a)(4) OR (5)] of this section may not be reduced by the
8 amount of money used for construction of a small swimming pool, tank, or water
9 storage facility used for water sports. However, an allocation shall be reduced by the
10 difference between the amount of money used to construct a swimming pool that
11 exceeds the standards adopted by the department and the amount of money that would
12 have been used to construct a small swimming pool, tank, or water storage facility, as
13 determined by the commissioner.

14 * Sec. 4. AS 14.11.100(i) is amended to read:

15 (i) For the purposes of (a)(4) - (9) ^{was 8} [(a)(4) AND (5)] of this section,

16 (1) an indebtedness for bonds is incurred after the bonds are sold;

17 (2) reimbursement for a cash payment may only be made after the
18 payment is made to a vendor; and

19 (3) payments may not be made for costs that are incurred under a
20 contract after the contract has been released.

21 * Sec. 5. AS 14.11.100(j) is amended to read:

22 (j) Except as provided in (l) of this section, the state may not allocate money
23 to a municipality for a school construction project under (a)(5) - (9) ^{was 8} [(a)(5), (6), OR
24 (7)] of this section unless the municipality complies with the requirements of (1) - (4)
25 of this subsection, the project is approved by the commissioner before the local vote
26 on the bond issue for the project or for bonds authorized after March 31, 1990, but on
27 or before April 30, 1993, the bonds are approved by the commissioner before
28 reimbursement by the state, and the local vote occurs before July 1, 1987, or after
29 June 30, 1988. In approving a project under this subsection, the commissioner shall
30 require

31 (1) the municipality to include on the ballot for the bond issue, for

1 bonds authorized on or before March 31, 1990, or after April 30, 1993, the estimated
 2 total cost of each project including estimated total interest, estimated annual operation
 3 and maintenance costs, the estimated amounts that will be paid by the state and by the
 4 municipality, and the approximate amount that would be due in annual taxes on
 5 \$100,000 in assessed value to retire the debt;

6 (2) that the bonds may not be refunded unless the annual debt service
 7 on the refunding issue is not greater than the annual debt service on the original issue;

8 (3) that the bonds must be repaid in approximately equal annual
 9 principal payments or approximately [APPROXIMATE] equal debt service payments
 10 over a period of at least 10 years;

11 (4) the municipality to demonstrate need for the project by establishing
 12 that the school district has

13 (A) projected long-term student enrollment that indicates the
 14 district has inadequate facilities to meet present or projected enrollment; [OR]

15 (B) facilities that require repair or replacement in order to meet
 16 health and safety laws or regulations or building codes;

17 (C) demonstrated that the project will result in a reduction
 18 in annual operating costs that economically justifies the cost of the project;

19 or

20 (D) facilities that require modification or rehabilitation for
 21 the purpose of improving the instructional program.

22 * Sec. 6. This Act is retroactive to July 1, 1995.

23 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).

new
language