

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

10083 SENATE • JUDICIARY

A M E N D M E N T

OFFERED IN THE SENATE

TO: SCS CSHB 37(HES)

- 1 Page 3, line 13:
- 2 Delete "surveillance"
- 3 Insert "surveys"

ALASKA STATE LEGISLATURE

House of Representatives

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Representative Norman Rokeberg

SECTIONAL ANALYSIS CSHB37

"An Act relating to restricting sale of cigarettes, to enforcement of certain laws relating to sales of cigarettes, and to smoking education and cessation programs administered by the Department of Health and Social Services."

Prepared by: Representative Rokeberg

Section 1: Amends AS 43.70.075 (License endorsement) by adding new subsections which specify that:

- cigarettes be sold in groups of at least 20 and in the manufacturer's original cigarette pack or in a cigarette carton or box;
- cigarettes may not be sold or possessed if: (A) the cigarette package is not properly labeled according the federal Cigarette Labeling and Advertising Act; (B) the cigarette package indicates that the product was meant for export; (C) the cigarette package has been altered in order to conceal the language mentioned in (B).
- The commissioner of commerce and economic development may seize cigarettes not in compliance with this section and destroy them after notice and an opportunity for a hearing has been given.

Section 2: Amends AS 44.29.020(a) (Duties of department) to include a comprehensive smoking education, tobacco use prevention and tobacco control program in the list of state programs administered by the Department of Health and Social Services. Mandates that the program will include certain components, and will be conducted by contract or grant with more than one organization in the state.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

NO. CSH837(FIN)

Revision Date/Time (Note if correction): _____ Dept. Affected: Health and Social Services
 Title: Relating to Smoking Education and Cessation BRU: Health Services
 Component: Community Health and EMS
 COMPONENT SERIAL NO. 2078
 Sponsor: Rokeberg See also (SN#): _____
 Requestor: Senate (HES)

Expenditures/Revenues: (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
PERSONAL SERVICES	168.8	168.8	168.8	168.8	168.8	168.8
TRAVEL	15.0	15.0	15.0	15.0	15.0	15.0
CONTRACTUAL	701.6	701.6	701.6	701.6	701.6	701.6
SUPPLIES	5.5	5.5	5.5	5.5	5.5	5.5
EQUIPMENT	7.5	7.5	7.5	7.5	7.5	7.5
LAND & STRUCTURES						
GRANTS, CLAIMS	701.6	701.6	701.6	701.6	701.6	701.6
MISCELLANEOUS						
TOTAL OPERATING	1,600.0	1,600.0	1,600.0	1,600.0	1,600.0	1,600.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGES IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1,600.0	1,600.0	1,600.0	1,600.0	1,600.0	1,600.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	1,600.0	1,600.0	1,500.0	1,600.0	1,600.0	1,600.0

Estimate of any current year (FY2000) cost: \$1.4

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Last year the Department of Health and Social Services received \$1.4 million of the \$3.0 million requested for tobacco control. This fiscal note requests the balance of that 3.0 million. A comprehensive tobacco prevention and control program is required if Alaska is ever to become tobacco-free. Based on CDC's "Best Practices" Guidelines, the attached one page summary describes the core components and requested funding levels of a comprehensive tobacco prevention and control program. It is critical to build the capacity for the program to adequately plan, evaluate, and conduct ongoing surveillance activities. Funding is requested to support 1.0 FTE (percentages of 2 staff) to complete these functions. These positions would work with tobacco prevention and control staff and partners to design and implement on-going surveillance and evaluation efforts required to monitor tobacco control efforts and use over time, and to evaluate tobacco control efforts at all levels. They will analyze data, prepare and disseminate reports and provide technical assistance to statewide organizational partners and program staff. (see attached sheet)

Prepared by: Peter M. Nakamura, MD
 Division: Public Health

Phone: 465-3090
 Date/Time: 1/25/00 9:39 AM

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

Date: 1/25/00

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ANALYSIS (cont.):**CDC Best Practices Funding Priorities - Based on a 3 Million Dollar Program****Local Community Partnerships and Statewide Partnerships (\$1,439,475):**

- >Involve individuals in their homes, work sites, places of worship, entertainment venues, and civic organizations;
- >Include community professional, geographic, and ethnic diversity and strengths;
- >Promote community-wide policies such as access and advertising restrictions and clean indoor air initiatives;
- >Promote and support accessible cessation programs;
- >Provide statewide quit line providing general information, referrals, and self-help kits;
- >Ensure physician/health care provider training and statewide evaluation coordination;
- >Reach special populations such as youth, women, ethnic minorities, and low income individuals;
- >Provide technical support to provide updates and materials on educational strategies, policy and current research;
- >Ensure program coordination to expand diversity of alliance members to include tobacco industry target populations such as minorities, youth, and women.

School-Based Programs (\$416,475):

- >Promote a zero tolerance, requiring school policies on tobacco use for students, staff, and visitors;
- >Provide peer-teaching programs;
- >Assure tobacco prevention instruction for all students and teachers;
- >Provide cessation support for tobacco users.

Counter-Marketing (\$511,475):

- >Place effective ads on primetime television, radio, billboard, and print;
- >Focus on the responsibility of the industry relating to financial costs and health liability;
- >Maintain tested, up-to-date, rapid response, and sustained ads;
- >Provide technical assistance to local programs to ensure that statewide campaigns are coordinated with local efforts;

Surveillance and Evaluation (\$257,100):

- >Assist in local program evaluation and outcome measurement work;
- >Develop capacity for data collection and analysis in such areas as regional, state, and national health and tobacco cessation strategies;
- >Produce reports and disseminate findings to partners, grantees, program staff, and policy makers;
- >Provide training and technical assistance to partners, grantees, and program staff on the collection and use of data in program evaluation.

Enforcement (\$375,475):

- >Conduct FDA merchant inspections
- >Conduct/ensure local agency merchant inspections/prosecutions/hearings;
- >Provide merchant education;
- >Develop/provide diversion programs for under-age offenders.

1 **Suggestions for Alaska HB.37**

2

3 Amend paragraph (15) of AS 44.28.28.020(a) to include:

4 **Definitions**

5 (a) "Department" means the department of health and social services.

6 (b) "Grantee" means any public entity or private nonprofit entity approved by the

7 Department of Health and Social Services to receive monies from the Fund for

8 Qualified Youth Smoking Prevention Programs.

9 (c) "Qualified Youth Smoking Prevention Program" means a program that meets the

10 criteria set forth in the State Plan for Youth Smoking Prevention.

11 (d) "State Plan" means the State Plan for Youth Smoking Prevention adopted pursuant to

12 this Act.

13

14 **State Plan for Youth Smoking Prevention.**

15 (a) On or before [date], the Department of Health and Social Services shall
16 propose a State Plan for Youth Smoking Prevention. On or before [date] of each
17 subsequent year, the Department of Health and Social Services may propose amendments
18 to the plan. The Department of Health and Social Services shall submit its proposed
19 State Plan or any proposed amendments thereto to the Governor and legislature. The
20 Governor and legislature may submit comments to the Department of Health and Social
21 Services on or before [date] and may submit comments to the Department of Health and
22 Social Services on its proposed amendments to the State Plan on or before [date] of each
23 subsequent year. On or before [date], the Department of Health and Social Services shall
24 adopt a final State Plan and shall make such plan public. On or before [date] of each

25 subsequent year, the Department of Health and Social Services shall adopt any
26 amendments to the State Plan and shall make such amended State Plan public.

27 (b) The State Plan shall set out the criteria by which grant proposals are
28 considered by the Department of Health and Social Services. Such plan shall also
29 describe the types of youth smoking prevention programs that shall be eligible for
30 consideration for grants from the Fund. Such eligible programs shall include, but not be
31 limited to—

32 (1) media campaigns directed to youth to prevent underage consumption
33 of cigarettes;

34 (2) school-based education programs to prevent youth smoking;

35 (3) community-based youth programs involving youth smoking prevention
36 through general youth development; and

37 (4) enforcement and administration of sections 11.76.100 and related
38 retailer education and compliance efforts.

39 (c) The State Plan shall provide that no less than ___ percent of the dollar value of
40 the grants awarded in each year shall be dedicated to programs described in subsections
41 (b)(2) and (b)(3).

42 *Amendment* (d) The State Plan further shall provide for a grant for an annual statewide school
43 based survey to measure cigarette use and behaviors towards cigarette use by individuals
44 in grades 6-12. Such survey shall—

45 (1) involve a statistically valid sample of the individuals in each grade 6-
46 12;

47 (2) not include any individual who is 19 years of age or older; and

48 (3) be made available to the public, along with the resulting data,
49 excluding respondent identities and respondent-identifiable data, prior to [date] of
50 each year.

51 (e) The State Plan shall provide that no more than ___ percent of the fund shall be
52 expended on the administrative costs of the Department of Health and Social Services.

53 (e) The development and adoption of the State Plan shall not be subject to the
54 notice and comment provisions of the [State Administrative Procedures Act].

55 (f) Monies from the Fund shall not be used to engage in any political activities or
56 lobbying, including but not limited to, support of or opposition to candidates, ballot
57 initiatives, referenda or other similar activities.

58

59 **Procedures for the Award of Grants.**

60 (a) On or before [date] of each year, beginning in 2000, the Department of Health
61 and Social Services shall award grants to qualified applicants for the next fiscal year. To
62 the extent practicable and consistent with the criteria for qualified applicants set forth in
63 the state plan, the Department of Health and Social Services shall make recommendations
64 for the expenditure of the total amount of funds appropriated in each fiscal year for
65 Qualified Youth Smoking Prevention Programs.

66 (b) An applicant for a grant for a Qualified Youth Smoking Prevention Program
67 must file an application with the Department no later than [date] of the year preceding the
68 fiscal year for which the grant is requested.

69 (c) An applicant that requests funding to initiate, continue or expand a youth
70 smoking prevention program shall demonstrate, by means of application, letters of

71 recommendation, and such other means as the Department may designate, that the
72 proposed youth smoking prevention program for which it seeks funds meets the criteria
73 set forth in the State Plan. Previous grant recipients shall include recent evaluations of
74 their programs with their applications. The Department may not recommend the award
75 of a grant unless it makes a specific finding, as to each applicant, that the program
76 proposed to be funded meets the criteria set forth in the State Plan.

77 (d) In addition to evaluating the funding request pursuant to the criteria set out in
78 the State Plan, the Department shall consider:

79 (1) In the case of applications to fund media campaigns directed to youth
80 to prevent underage consumption of cigarettes, whether the campaign provides for
81 sound management and periodic evaluation of the campaign's relevance to the
82 intended audience, including audience awareness of the campaign and
83 recollection of the main message.

84 (2) In the case of applications to fund school-based education programs to
85 prevent youth smoking, whether there is credible evidence that the program is
86 effective in reducing youth smoking.

87 (3) In the case of applications to fund community-based youth programs
88 involving youth smoking prevention through general youth development, whether
89 the program --

90 (a) has a comprehensive strategy with a clear mission and goals;

91 (b) has committed, caring, and professional leadership;

92 (c) offers a diverse array of youth-centered activities in youth-
93 accessible facilities;

94 (d) is culturally sensitive, inclusive and diverse;

95 (e) involves youth in the planning, delivery, and evaluation of
96 services that affect them; and

97 (f) offers a positive focus including all youth.

98 (4) In the case of applications to fund enforcement and administration of
99 section 11.76.100 and related retailer education and compliance efforts, whether
100 such activities and efforts can reasonably be expected to reduce the extent to
101 which tobacco products are available to individuals under the age of 19.

102 (e) State and local government agencies and departments shall be eligible for
103 grants provided pursuant to this Act.

104

105 **Award of Grants.**—On or before [date] each year, the Department of Health and Social
106 Services shall announce the award of grants for the next fiscal year. Any funds
107 appropriated for Qualified Youth Smoking Prevention Programs not expended in any
108 fiscal year shall be retained in the Fund and available for Qualified Youth Smoking
109 Prevention Programs in any following year.

110

111 **Reports.**

112 (a) As a condition to the receipt of funds under this Act, a grantee shall agree to
113 file a report with the Department of Health and Social Services, on or before the [date]
114 day after the end of the fiscal year for which the grant was awarded, as to the following:

115 (1) amount received as a grant and the expenditures made with the
116 proceeds of the grant;

117 (2) a description of the program offered and the number of youths who
118 participated in the program; and

119 (3) specific elements of the program meeting the criteria set forth in the
120 State Plan.

121 (b) Any grantee failing to timely file the report required under this section shall be
122 subject to the jurisdiction of the state Attorney General for repayment of the full amount
123 of the grant expended.

124 (c) The Department of Health and Social Services shall review and evaluate the
125 reports of grantees required under this section and shall file a written report with the state
126 legislature, and Governor on or before [date] of each year on the status and activities of
127 the appropriated funds for the fiscal year most recently ended. The report shall include
128 the beginning and ending balance of the account for each fiscal year, payments or gifts
129 received by the Department of Health and Social Services, income earned and
130 expenditures made, the name of each grantee and the amount of each grant made, the
131 criteria used to award each grant, and whether the program implemented by each grantee
132 met the criteria. The report shall be publicly available immediately upon its filing.

133

CIGARETTE ENFORCEMENT ACT

The State Code is amended by adding a new chapter [x] as follows:

Chapter [X]. Cigarette Enforcement.

SEC. 1. Prohibitions. It shall be unlawful for any person—

(a) to sell or distribute in this state; to acquire, hold, own, possess, or transport, for sale or distribution in this state; or to import, or cause to be imported, into this state for sale or distribution in this state—

(1) any cigarettes the package of which—

(A) bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including but not limited to labels stating "For Export Only", "U.S. Tax-Exempt", "For Use Outside U.S.", or similar wording; or

(B) does not comply with—

(i) all requirements imposed by or pursuant to Federal law regarding warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including but not limited to the precise warning labels specified in the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333; and

(ii) all federal trademark and copyright laws;

(2) any cigarettes imported into the United States in violation of 26 U.S.C. 5754 or any other federal law, or implementing federal regulations;

(3) any cigarettes that such person otherwise knows or has reason to know the manufacturer did not intend to be sold, distributed, or used in the United States; or

(4) any cigarettes for which there has not been submitted to the Secretary of the U.S. Department of Health and Human Services the list or lists of the ingredients added to tobacco in the manufacture of such cigarettes required by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1335a;

(b) to alter the package of any cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal or obscure—

(1) any statement, label, stamp, sticker, or notice described in subparagraph (a)(1)(A) of this section;

(2) any health warning that is not specified in, or does not conform with the requirements of, the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333; or

(c) to affix any stamp required pursuant to Chapter [X] of the State Code to the package of any cigarettes described in subsection (a) of this section or altered in violation of subsection (b).

SEC. 2. Documentation. On the first business day of each month, each person licensed to affix the state tax stamp to cigarettes shall file with the [Commissioner], for all cigarettes imported into the United States to which such person has affixed the tax stamp in the preceding month—

(a) a copy of—

(1) the permit issued pursuant to the Internal Revenue Code, 26 U.S.C. 5713, to the person importing such cigarettes into the United States allowing such person to import such cigarettes; and

(2) the customs form containing, with respect to such cigarettes, the internal revenue tax information required by the U.S. Bureau of Alcohol, Tobacco and Firearms;

(b) a statement, signed by such person under penalty of perjury, which shall be treated as confidential by the Commissioner and exempt from disclosure under the [public records/FOIA] law, identifying the brand and brand styles of all such cigarettes, the quantity of each brand style of such cigarettes, the supplier of such cigarettes, and the person or persons, if any, to whom such cigarettes have been conveyed for resale; and

(c) a statement, signed by an officer of the manufacturer or importer under penalty of perjury, certifying that the manufacturer or importer has complied with—

(1) the package health warning and ingredient reporting requirements of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333 and 1335a, with respect to such cigarettes; and

(2) [the state's Exhibit T statute], including a statement indicating whether the manufacturer is, or is not, a participating tobacco manufacturer within the meaning of that statute.

SEC. 3. Criminal Penalties. Any person that commits any of the acts prohibited by section 1, either knowing or having reason to know he is doing so, or that fails to comply with any of the requirements of section 2, is guilty of a felony, punishable by a fine of not more than \$5,000 or imprisonment of not more than 5 years, or both.

SEC. 4. Administrative Sanctions.

(a) The [Commissioner] may revoke or suspend the license or licenses of any [licensee] pursuant to the procedures set forth in section [XX] of the State Code, and impose on the [licensee] a civil penalty in an amount not to exceed the greater of 500 percent of the retail value of the cigarettes involved or \$5,000, upon finding a violation by such [licensee] of this act, or any implementing rule promulgated by the [Commissioner].¹

(b) Cigarettes that are acquired, held, owned, possessed, transported in, imported into, or sold or distributed in this state in violation of this act shall be deemed contraband under section [xx] of the State Code and are subject to seizure and forfeiture as provided therein, and all such cigarettes so seized and forfeited shall be destroyed. Such cigarettes shall be deemed contraband whether the violation of this act is knowing or otherwise.

SEC. 5. Unfair Trade Practices. A violation of section 1 or section 2 of this act shall constitute an unlawful trade practice as provided in section [xx] of the State Code and, in addition to any remedies or penalties set forth in this act, shall be subject to any remedies or penalties available for a violation of that section.

SEC. 6. Unfair Cigarette Sales. For purposes of sections [xx-yy] of the State Code, cigarettes imported or reimported into the United States for sale or distribution under any trade name, trade dress, or trademark that is the same as, or is confusingly similar to, any trade name, trade dress, or trademark used for cigarettes manufactured in the United States for sale or distribution in the United States shall be presumed to have been purchased outside of the ordinary channels of trade.

SEC. 7. General provisions.

¹ The referenced licenses are all state licenses required for persons involved in the sale and distribution of tobacco products (e.g., distributors, wholesalers, and retailers). In some cases, provision may need to be made for license suspension or revocation by local authorities.

(a) This act shall be enforced by the [Commissioner]; provided, that at the request of the [Commissioner] or the [Commissioner's] duly authorized agent, the state police and all local police authorities shall enforce the provisions of this act. The attorney general has concurrent power with the prosecuting attorneys of the state to enforce this act.

(b) For the purpose of enforcing this act, the [Commissioner] and any agency to which the [Commissioner] shall have delegated enforcement responsibility pursuant to paragraph (a) may request information from any state or local agency, and may share information with, and request information from, any federal agency and any agency of any other state or any local agency thereof.

(c) In addition to any other remedy provided by law, including enforcement as provided in subsection (a), [any person may bring an action for appropriate injunctive or other equitable relief for a violation of this act; actual damages, if any, sustained by reason of the violation; and, as determined by the court, interest on the damages from the date of the complaint, taxable costs, and reasonable attorney's fees. If the trier of fact finds that the violation is flagrant, it may increase recovery to an amount not in excess of 3 times the actual damages sustained by reason of the violation.][²]

SEC. 8. Definitions.—As used in this act:

- (a) "Cigarette" means [incorporate cigarette tax act definition].
- (b) "[Commissioner]" means [incorporate pertinent reference].
- (c) "Importer" means "importer" as that term is defined in 26 U.S.C. 5702(1).
- (d) "Manufacturer" means [incorporate cigarette tax act definition].
- (e) "Package" means "package" as that term is defined in 15 U.S.C. 1332(4).
- (f) "Person" means [incorporate standard definition].

SEC. 9. Applicability.

- (a) This act does not apply to—

² If possible, the language of this provision should be derived from the language of an existing private right of action provision providing for treble damages (e.g., under the state's antitrust law or its unfair trade practices law).

(1) cigarettes allowed to be imported or brought into the United States for personal use; and

(2) cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C. 1555(b) and any implementing regulations, provided, however, that this act shall apply to any such cigarette that are brought back into the customs territory for resale within the customs territory.

(b) The penalties provided in this act are in addition to any other penalties imposed under other law.

SEC. 10. Severability. [Insert standard severability provision.]

SENATE CS FOR CS FOR HOUSE BILL NO. 37(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES ROKEBERG, Croft, Kemplen, Smalley

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to restricting sale of cigarettes, to enforcement of certain laws
2 relating to sales of cigarettes, and to smoking education and cessation programs
3 administered by the Department of Health and Social Services."

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

5 * Section 1. AS 43.50 is amended by adding new sections to read:

6 Article 4. Compliance with Federal Laws Relating to Cigarettes.

7 Sec. 43.50.400. Sale or distribution of cigarettes; prohibitions. A person
8 may not

9 (1) sell or distribute to consumers in this state, acquire, hold, own,
10 possess, or transport for sale or distribution in this state, or import or cause to be
11 imported into this state for sale or distribution in this state cigarettes

12 (A) the package of which

13 (i) bears a statement, label, stamp, sticker, or notice
14 indicating that the manufacturer did not intend the cigarettes to be sold,

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distributed, or used in the United States, including labels stating, "for export only," "U.S. tax-exempt," "for use outside U.S.," or similar wording; or

(ii) does not comply with all requirements of federal law regarding health warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including the warning labels required by 15 U.S.C. 1333 (Federal Cigarette Labeling and Advertising Act), and all federal trademark and copyright laws;

(B) imported into the United States on or after January 1, 2000, in violation of 26 U.S.C. 5754; or

(C) for which a list of the ingredients added to tobacco in the manufacture of those cigarettes has not been submitted to the Secretary of the United States Department of Health and Human Services as required under 15 U.S.C. 1335a (Federal Cigarette Labeling and Advertising Act);

(2) alter a package of cigarettes before sale or distribution to the consumer so as to remove, conceal, or obscure

(A) a statement, label, stamp, sticker, or notice described in (1)(A)(i) of this section; or

(B) any health warning, including a health warning that is specified in 15 U.S.C. 1333 (Federal Cigarette Labeling and Advertising Act).

Sec. 43.50.410. Imported cigarettes: requirements. A person that imports into this state for sale or distribution in this state cigarettes manufactured outside of the United States shall file with the department, on or before the last day of each calendar quarter, for the cigarettes that the person imported into this state in the preceding calendar quarter, a statement signed by the person under penalty of perjury that the commissioner shall treat as confidential and that shall not be considered a public record under AS 09.25.110, identifying the brand and brand styles of the cigarettes, the quantity of each brand style of cigarettes, and the person or persons to whom the cigarettes have been shipped. In this section, "calendar quarter" means each of the three-month periods ending March 31, June 30, September 30, and

L

1 December 31.

2 **Sec. 43.50.420. Enforcement.** For the purpose of enforcing AS 43.50.400 -
3 43.50.450, the commissioner may share information with any local, state, or federal
4 government agency.

5 **Sec. 43.50.430. Applicability.** AS 43.50.400 - 43.50.450 do not apply to
6 cigarettes

7 (1) imported into the United States for personal use free of federal tax
8 or duty, or voluntarily abandoned to the United States Secretary of the Treasury at the
9 time of entry; or

10 (2) sold or intended to be sold as duty-free merchandise by a duty-free
11 sales enterprise in accordance with the provisions of 19 U.S.C. 1555(b); however,
12 AS 43.50.400 - 43.50.450 apply to duty-free cigarettes that are brought back into the
13 customs territory for resale within the customs territory.

14 **Sec. 43.50.450. Definitions.** In AS 43.50.400 - 43.50.450, unless the context
15 otherwise requires,

16 (1) "cigarette" has the meaning given in AS 43.50.170;

17 (2) "manufacturer" has the meaning given in AS 43.50.170.

18 * **Sec. 2.** AS 43.70.075 is amended by adding new subsections to read:

19 (g) A person who is required to hold a business license endorsement under this
20 section, or who is required to be licensed or agrees to be licensed under AS 43.50.010,
21 or an agent or employee of the person, may not

22 (1) sell cigarettes to another person unless the cigarettes are sold in
23 groups of at least 20 and the cigarettes are in the manufacturer's original cigarette pack
24 or contained in a cigarette carton or box; or

25 (2) sell or possess cigarettes if the cigarette package

26 (A) differs in any respect from the requirements of 15 U.S.C.
27 1331 - 1341 (Cigarette Labeling and Advertising Act) for the placement of
28 warnings or of any other information upon a package of cigarettes that is sold
29 within the United States;

30 (B) is labeled "For Export Only," "U.S. Tax Exempt," "For Use
31 Outside U.S.," or with similar wording indicating that the manufacturer did not

1 intend that the product be sold in the United States; this subparagraph does not
2 apply to cigarettes sold or intended to be sold as duty-free merchandise by a
3 duty-free sales enterprise under 19 U.S.C. 1555(b); however, this subparagraph
4 does apply to duty-free cigarettes that are brought back into the state for resale
5 in the state;

6 (C) has been altered by adding, masking, or deleting wording
7 described in (B) of this paragraph.

8 (h) A violation of (g) of this section is an unfair or deceptive act or practice
9 under AS 45.50.471.

10 (i) The commissioner or the commissioner of revenue may seize cigarettes that
11 do not comply with this section. After notice and an opportunity for a hearing, the
12 commissioner or the commissioner of revenue shall destroy cigarettes seized under this
13 subsection.

14 * Sec. 3. AS 44.29.020(a) is amended to read:

15 (a) The Department of Health and Social Services shall administer the state
16 programs of public health and social services, including

- 17 (1) maternal and child health services;
18 (2) preventive medical services;
19 (3) public health nursing services;
20 (4) nutrition services;
21 (5) health education;
22 (6) laboratories;
23 (7) mental health treatment and diagnosis;
24 (8) management of state institutions, except for adult penal institutions;
25 (9) medical facilities;
26 (10) adult public assistance;
27 (11) Alaska temporary assistance program;
28 (12) child welfare services;
29 (13) general relief; [AND]
30 (14) licensing and supervision of child care facilities; and
31 (15) a comprehensive smoking education, tobacco use prevention,

1 and tobacco control program; to the maximum extent possible, the department
2 shall administer the program required under this paragraph by grant or contract
3 with more than one organization in the state; the department's program must
4 include

5 (A) a community-based tobacco use prevention and cessation
6 component addressing the needs of youth and adults that includes use of
7 cessation aids such as a nicotine patch or a nicotine gum tobacco
8 substitute;

9 (B) youth-based efforts that involve youth in the design and
10 implementation of tobacco control efforts;

11 (C) anti-tobacco counter-marketing targeting both youth and
12 adult populations designed to communicate messages to help prevent youth
13 initiation of tobacco use, promote cessation among tobacco users, and
14 educate the public about the lethal effects of exposure to secondhand
15 smoke;

16 (D) tobacco use surveys of youth and adult populations
17 concerning knowledge, awareness, attitude, and use of tobacco products;
18 and

19 (E) an enforcement component.

Alaska State Legislature

Senator Robin Taylor

District A

State Capitol Rm 30, Juneau, Alaska 99801-1182 Phone (907)465-3873 Fax (907)465-3922



Memorandum

To: Legis Legal

Fm: Jim Pound

Re: HB 37

Via fax: 2029

Date: 4/12/00

Please make the following changes to Senate CS for CS for HB 37 regarding today's action by the Senate Judiciary Committee and prepare bill for Rules.

Work Draft 1-LS 0247\T (Ford) 4/11/00 was adopted and amended. Amendment 1-LS0247\T.2 was passed as written.

With that change the bill is ready to go.

Thank you

Jim Pound

ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chair
Sen. Rick Halford, Vice-Chair
Sen. Dave Donley
Sen. John Torgerson
Sen. Johnny Ellis



State Capitol
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Senate Judiciary Committee

To: Legis. Legal
Fm: Jim Pound
Re: Judiciary Amendments
Date: 4/10/00

J.P.
Fax: 2029

Please make the following changes regarding today's action by the Senate Judiciary Committee.

HB 37- Please redraft 1-LS0247\Y (Ford) with the following amendments and return to Jim Pound or Sue Mossgrove.

Page 5 line 7- cessation aids such as a nicotine patch or a nicotine gum (tobacco) substitute.

Page 5 line 12 initiation of tobacco use, promote cessation among tobacco users (current smokers), and

Just FYI they are looking for language on Page 4 line 8 to upgrade from a violation to possible a misdemeanor.

HNR HB37Y
PENALTY

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

LEGAL SERVICES

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

WOLF & STRONG
FAX # 6735

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 11, 2000

SUBJECT: Restricting sale of cigarettes - (SCS CSHB 37() Version "Y")

TO: Representative Norman Rokeberg
Attn: Tom

FROM: Michael F. Ford *M.F.F.*
Legislative Counsel *AS 45.50.471*

You have asked for a description of the penalty contained in subsection (h) in Sec. 2 of the draft SCS for HB 37. This provision makes a violation of AS 43.70.075(g) an unfair trade practice under the provisions of AS 45.50.471. An unfair trade practice is subject to several statutes intended to preclude or halt the practice, including investigation by the attorney general (AS 45.50.495), civil injunction process (AS 45.50.501), private and class actions (AS 45.50.531), and private injunctive relief (AS 45.50.535). I would also point out that a person who is injured by an unfair trade practice is entitled to treble damages (AS 45.50.531(a)) and to costs and full reasonable attorney fees if they are the prevailing party (AS 45.50.537(a)). In short, making a violation of AS 43.70.075(g) an unfair trade practice does trigger significant potential penalties for the offender.

Nevertheless, the legislature could also impose a criminal sanction for a violation of AS 43.70.075(g). For example the violation could constitute a class B or class A misdemeanor, or even a felony. A class B misdemeanor has a maximum fine of \$1,000 and a maximum jail time of 90 days. A class A misdemeanor has a maximum fine of \$5,000 and a maximum jail time of one year.

Please contact me if you have further questions.

MFF:pljr
00-133.plm

AMENDMENT

Passed

OFFERED IN THE SENATE

TO: SCS CSHB 37(JUD), Draft Version "T"

1 Page 4, following line 13:

2 Insert a new subsection to read:

3 "(j) A person who violates (g) of this section is guilty of a class B
4 misdemeanor."

adds to UNFAIR TRADE

MEMORANDUM

State of Alaska

Department of Revenue, Office of the Commissioner

TO: Senate Judiciary Committee
c/o Sen. Robin Taylor

DATE: March 30, 2000

PHONE: 465-5469

FROM: Larry Persily
Deputy Commissioner

SUBJECT: HB 37

The Department of Revenue's major concern with SCS CSHB37 is the proposed amendment to AS 45.53. The Legislature last year adopted AS 45.53, which is a model statute offered to states to protect their payments under the nationwide Master Settlement Agreement (MSA) with the major tobacco companies. If a state adopted the model statute "without modification or addition and not in conjunction with any other legislative or regulatory proposal," the statute would be recognized as a "qualifying statute." **States without a qualifying statute are subject to an adjustment factor in the MSA that could cost Alaska all of its payments under the settlement.**

If the manufacturers who signed the MSA lose market share to manufacturers who did not sign the agreement, states without qualifying statutes will lose payments under the MSA. The adjustment is allocated among states without a qualifying statute. If Alaska is the only state without a qualifying statute, the entire nationwide adjustment would be allocated to Alaska. (Alaska's payment under the MSA for FY 2000 is projected at almost \$22 million.)

The adjustment is triggered when the participating manufacturers lose more than 2% of their market share to nonparticipating manufacturers. The National Association of Attorneys General expect this could happen as early as the year 2000.

Again, any modification to AS 45.53 would make it an unqualified statute and potentially jeopardize our entire payment under the MSA. The Department of Revenue is opposed to any modification to AS 45.53.

We have one other recommendation: The words "required to be" need to be added to AS 43.70.075 (g) as follows:

(g) a person who is required to hold a business license endorsement under this section, or who is required to be licensed or agrees to be licensed under AS 43.50.010, or an agent or employee of the person, may not ...

Adding those three words ensures that this new statute is applicable to everyone who is required to have a license whether or not they have one.

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE COMMITTEE, CHAIRMAN
JUDICIARY COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON UTILITY RESTRUCTURING, MEMBER
SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT &
TOURISM, MEMBER



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PHONE: (907) 465-4968
FAX: (907) 465-2040

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

Representative Norman Rokeberg

Sponsor Statement

SCS CSHB 37 (HES)

“An Act relating to restricting sale of cigarettes and to smoking education programs administered by the Department of Health and Social Services”

SCS CSHB 37 authorizes: comprehensive smoking education, tobacco use prevention and tobacco control program, ensures that the programs will be administered by non-State contractor(s). The Alaska Department of Health and Social Services will monitor private tobacco settlement contracts. This is not intended to add to the State of Alaska bureaucracy. It also contains provisions to bolster tobacco control enforcement efforts in Alaska. This legislation was introduced to ensure a fair allocation of the estimated \$669 million tobacco settlement monies (subsequently revised to \$816 million) that Alaska will receive under the tobacco settlement.

According to the Alaska Tobacco Control Alliance, **SMOKING IS THE LEADING CAUSE OF DEATH IN ALASKA**, about 500 Alaskans die every year from smoking-related illnesses. Alaska has one of the highest smoking rates in the country-110,000 smokers-and more than 80 percent of Alaskans who smoke report that they want to quit. We need to lend a hand to those who want to quit, and prevent people-our youth, in particular-from starting this potentially deadly habit.

CSHB37 outlines a comprehensive tobacco control program based on the Center for Disease Control's guidelines. Similar programs in California and Massachusetts have yielded remarkable results: cigarette consumption in California has declined 40% overall, and smoking in Massachusetts has decreased by 31%. Alaska is long overdue for such a program. The sooner we implement it, the sooner we can save lives and reduce the costs to individuals and the State for smoking-related illnesses.

Additionally, this bill prohibits sales of cigarettes in groups of less than 20, not

in their original packaging, and not properly labeled for sale in the United States. By strengthening tobacco control enforcement, these provisions help support the comprehensive program.

It is the sponsor's intention that upon passage of this bill, contractual agreements will be made with organizations such as the American Lung Association of Alaska, the American Cancer Society, and the Alaska Native Health Board to implement the program. The Department of Health and Social Services will be responsible for oversight; we do not need to contribute to government bureaucracy by burdening the State with additional programmatic duties.

This bill will be a valuable tool in shaping the future of all Alaskans-whether they be young or old, smokers or not-by improving their overall health, decreasing smoking-related medical costs, protecting our future generations from the negative effects of smoking, and even saving lives.

I urge you to support this legislation.

ED2:01/31/00

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS

LABOR & COMMERCE COMMITTEE, CHAIRMAN
JUDICIARY COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON UTILITY RESTRUCTURING, MEMBER
SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT & TOURISM, MEMBER

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us



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FAX: (907) 465-2040

Representative Norman Rokeberg

Many organizations and individuals support the use of tobacco funds for the program outlined in House Bill 37. The following is a list of those who have sent messages and letters of support:

American Cancer Society
American Heart Association
American Lung Association
Alaska Native Health Board
American Industrial Hygiene Association, Midnight Sun Section
Alaska Academy of Physician Assistants
Alaska Dental Society
Alaska State Dental Hygienists' Association
Rena Anderson, RDH
Alaska Association of Elementary School Principals
Alaska Women's Resource Center
Southeast Alaska Regional Health Consortium
Native Village of Gambell
Office of Health Nations
Recovery Center, Ketchikan General Hospital
"Haa Gaaw aat lax-ee" (The Drum Dancers)
Juneau Tobacco Prevention Network
Anchorage School Board
Cordova Public Schools
Teens Against Tobacco Use
Judy Downs, RN, Safe and Drug Free Schools
Jane Combs, PHN (for Barrow's public health nurses and self)
Dr. Hal Post, UAA, retired
Judith Bendersky, Public Health Educator
Christina Reagle
Evelyn Williams
Paul Barrett

My office has also received numerous POMs from individuals favoring the use of tobacco settlement funds for tobacco control and cessation programs.

Protect Kids from Tobacco

uite 204 • Anchorage, Alaska 99503 • (907) 277-8696 • Fax: (907) 263-2073

Generators:

This Plan for the Future was developed by the Alaska Tobacco Control Alliance to provide a blueprint for dramatically reducing tobacco-caused addiction, disease, and death in Alaska. It incorporates proven strategies and expert recommendations for an effective, comprehensive statewide tobacco control program.

During the Hickel Administration, Alaska adopted a goal to reduce smoking prevalence to no more than 15% by the year 2000. We're not going to reach that goal, not in this century. But that doesn't mean we should give up. As Dr. Michael Eriksen, director of the CDC Office on Smoking and Health said, *"The challenge is to put into place what we know works. To do anything less is to turn our backs on the health of future generations."*

Another reason not to give up is because we now have the resources to fight tobacco and win. Those resources are in the form of tobacco industry payments to Alaska, amounting to over \$25 million a year for 25 years. With this money, we have a historic opportunity to make sure that the past does not become the future.

Citizens To Protect Kids from Tobacco supports using at least 30% of the tobacco settlement payments to fund an ongoing, comprehensive tobacco control program. We ask that you consider the following points:

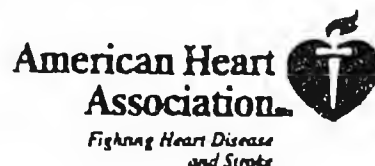
Tobacco company payments should go to fight tobacco company harms. The tobacco companies' payments to Alaska for past tobacco-related harm to the state should be used to reduce the amount of damage tobacco use will cause Alaska and its citizens in the future.

The public supports using tobacco settlement money for tobacco control. In a pre-election poll of likely Alaska voters, 77% said that about half or more of the settlement funds should be spent on programs to reduce smoking.

Tobacco is the biggest killer in Alaska. One out of five deaths in the state are caused by smoking. More than 4,000 Alaskan kids under age 18 become new daily smokers each year.

A comprehensive statewide tobacco control strategy would dramatically reduce smoking and other tobacco use in Alaska. We know from the experience in other states that investing substantial resources in tobacco prevention and cessation programs pays off. The money is not wasted.

New tobacco control spending will save Alaska money. Tobacco use costs the Alaskan economy \$150 million each year in direct health care costs alone. This figure is



CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education & Early Development
State of Alaska

Citizens To Protect Kids from Tobacco

1057 W. Fireweed Lane, Suite 204 • Anchorage, Alaska 99503 • (907) 277-8696 • Fax: (907) 263-2073

March 8, 1999

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The **impact** of

— **tobacco** in **Alaska** —

Tobacco use is the leading cause of preventable death in Alaska. One out of five deaths in the state are attributable to smoking.

- Approximately 500 Alaskans die each year from smoking-related causes.
- Cigarettes kill more Americans each year than alcohol, AIDS, murders, suicides, car accidents, cocaine, heroin, and fires combined.
- Deaths related to cigarette smoking include a portion of cardiovascular disease; cancers of the lung, larynx, oral cavity, esophagus, pancreas, bladder, kidney, and cervix; chronic bronchitis, emphysema, and other respiratory deaths.
- Alaska's smoking rate among adults is 26.7% (1997). Among high school students, the rate is 36.5% (1995). State goals (Healthy Alaskans 2000) call for reducing the smoking prevalence among both youth and adults to no more than 15%.
- More than 80% of Alaskans who smoke report that they want to quit.
- Studies show that most smokers don't receive cessation advice from doctors and are confused about the best strategies for quitting.

Passive smoking/secondhand smoke

- Smoking can cause spontaneous abortion in pregnant women who smoke, as well as premature birth and low birth weight infants. Maternal smoking can cause Sudden Infant Death Syndrome.
- Secondhand smoke kills approximately 54,000 Americans each year, making it the third leading cause of death in the country. For every eight smokers killed by tobacco, one non-smoker dies too (60 each year in Alaska).

Tobacco addiction starts with kids

- Tobacco addiction almost always starts in childhood or adolescence. The average age of smoking initiation is 14.5. Almost 90% of smokers start before the age of 19.
- The number of American teenagers taking up smoking as a daily habit jumped 73% between 1988 and 1996. Youth smoking and smokeless tobacco use rates in Alaska are higher than in the U.S. as a whole.
- Four thousand Alaskan kids join the ranks of daily cigarette smokers each year.

Smokers need help in quitting

- Researchers widely regard nicotine to be as addictive as heroin or cocaine.

The economic burden of tobacco

- Total medical expenditures attributable to smoking amount to over \$70 billion a year in the U.S. In Alaska, these expenditures total \$154 million annually. Of this total, Medicaid pays about \$23 million.
- Additional direct health care expenditures caused by tobacco include the costs related to exposure to secondhand smoke, smoking-caused fires, and smokeless tobacco use. These costs are believed to total in the tens of millions of dollars.
- Other non-health costs by tobacco include work productivity losses and direct residential and commercial property losses from fires caused by smoking.

(over)—

The Alaska **Tobacco Control** Program

Executive Summary

Components of the proposed comprehensive tobacco control program for Alaska are:

- Community Programs – \$2 million
- Cessation Programs – \$1.4 million
- Counter-marketing – \$1 million
- School-based Programs – \$750,000
- Tobacco-free Partnership Projects – \$1.8 million
- Enforcement – \$600,000
- Program Development, Management, and Evaluation – \$650,000

TOTAL: \$8.2 million

BACKGROUND

Investing in tobacco prevention and cessation **WORKS**, saving lives and dollars. The clearest evidence of this comes from California and Massachusetts, two states that have invested significant resources (from tobacco tax revenues) to fund comprehensive tobacco control programs.

In California, which has the longest-running tobacco control program, **cigarette consumption has declined by more than 40%** since 1988. In Massachusetts, a 25¢ tax increase and large, comprehensive tobacco control program have reduced smoking consumption by 31% since 1994.

The federal Centers for Disease Control and Prevention has analyzed the experience in California, Massachusetts, and other states to identify **components of effective state tobacco control programs and recommend funding levels** to achieve tobacco use reduction goals in each state.

For Alaska, **CDC guidelines** specify a lower estimate of \$8.7 million and an upper estimate of \$17.7 million annually for comprehensive tobacco prevention and control. The **Alaska Tobacco Control Alliance** has studied the CDC guidelines as well as information from other sources and developed a tobacco control plan funded at \$8.2 million annually (minimum level).

ATCA's plan for preventing tobacco-caused addiction, disease, and death in Alaska calls for a **broad-based collaborative effort** involving state and

local policy makers, the professional health care community, businesses, educators, parents, and children. Major goals are to prevent children from becoming addicted to tobacco, help youth and adults who want to quit, and protect nonsmokers from secondhand smoke. The ATCA plan incorporates **proven strategies** for tobacco use reduction.

In November 1998, **Alaska joined a multi-state settlement with the tobacco industry** that is expected to provide \$669 million over the next 25 years. The ATCA plan for tobacco control could be funded with less than a third of the average annual payment from the settlement.

Alaska's share of the multi-state settlement includes **an extra \$200 million** that was negotiated to cover the costs associated with implementing a comprehensive tobacco control program.

Revenue from tobacco sources in Alaska (tobacco taxes and settlement payments) will soon exceed \$70 million annually. However, the state currently spends only \$200,000 from general fund revenues for tobacco control efforts.

In a **statewide survey of registered voters** conducted in October 1998, 77% of respondents said that at least half of the tobacco settlement money coming to Alaska should be used for programs to reduce tobacco use.

The Alaska **Tobacco Control** Program

Program Components

The seven essential components of a comprehensive tobacco control program are:

COMMUNITY PROGRAMS

Community efforts to change public attitudes and behaviors about tobacco represent a key component in any comprehensive program to reduce tobacco addiction. Such efforts must involve as many community members as possible in planning and carrying out public awareness campaigns and other activities to promote tobacco-free social norms. Coordination and technical assistance will ensure that community partners are accountable for effective project implementation.

CESSATION PROGRAMS

The vast majority of smokers want to quit. Those who succeed greatly reduce their risk of smoking-related disease and early death. In addition, helping adults to quit smoking protects their children from the dangers of secondhand smoke and can reduce the number of newborn babies who suffer or die as a result of "passive smoking." Cessation programs that include counseling and pharmaceutical support can increase success rates dramatically. Other components of a statewide tobacco control program, such as community-based projects and a high profile media campaign, will help motivate smokers to take advantage of cessation services.

TOBACCO-FREE PARTNERSHIP PROJECTS

Within this component, a variety of external partners will expand project reach and impact by targeting at-risk populations, incorporating tobacco prevention and cessation efforts within other health programs, and providing critical networking, communications, technical assistance, and research services from outside the state bureaucracy. Like the Quit Line and counteradvertising campaign, these projects are statewide in scope.

COUNTERMARKETING

No one knows better than the tobacco industry the power of advertising and product promotion. Health advocates can use these same tools with powerful impact. Research shows that tobacco countermarketing promotes quitting, decreases the likelihood of initiation, and supports school and community efforts to create tobacco-free social norms.

SCHOOL-BASED PROGRAMS

While almost all children know that "smoking is bad for you," this fact alone has not prevented a dramatic increase in youth smoking since 1988. The Centers for Disease Control and Prevention has evaluated school-based tobacco prevention programs and issued guidelines for choosing and implementing an effective program. When these guidelines are followed, a school-based program can reduce smoking prevalence significantly.

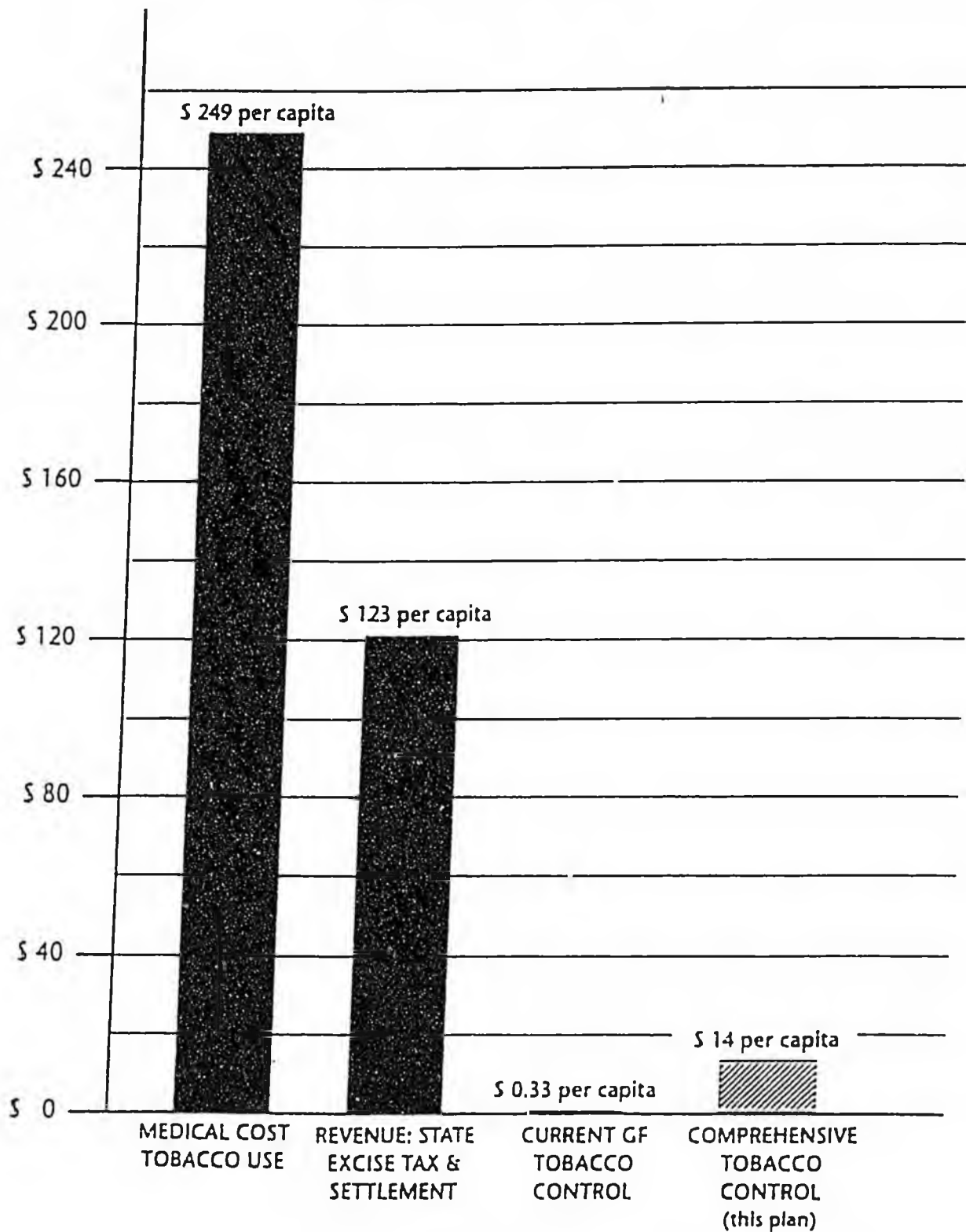
ENFORCEMENT

Enforcement of tobacco control policies enhances their efficacy both by deterring violations and by sending a message to the public that community leadership believes the policies are important. Existing laws and new laws in the areas of youth access, tax compliance, and clean indoor air all require enforcement for maximum impact.

PROGRAM DEVELOPMENT, MANAGEMENT, and EVALUATION

Ultimate accountability for the wise use of state tobacco control program dollars must rest with the Alaska Department of Health and Social Services. A comprehensive statewide program cannot work smoothly and effectively without sufficient investment in program planning and coordination. Likewise, surveillance and evaluation provide critical feedback and help ensure accountability.

ALASKA: THE COST OF TOBACCO USE, STATE TOBACCO REVENUE,
CURRENT GENERAL FUND SPENDING for TOBACCO CONTROL,
and PROPOSED SPENDING, ATCA PLAN
(annual, per capita)



Why Alaska Should Use Its Tobacco Settlement Money To Support A New Comprehensive Statewide Tobacco Control Strategy

Alaska has already begun deciding how to use the millions of dollars it will receive each year from the settlement agreement with the tobacco companies. While some state legislators and others might be tempted to direct those new funds to a tax cut or to other favorite projects or causes, the arguments for directing a substantial portion of the settlement payments to establish a comprehensive statewide tobacco control strategy are overwhelming. It would substantially reduce smoking and other tobacco use, save thousands of lives and millions of dollars, dramatically improve public health, and do more to help Alaska and its citizens than any other option.

Tobacco Company Payments Should Go To Fight Tobacco Company Harms. The tobacco companies' payments to Alaska for past tobacco-related harm to the state should be used to reduce the amount of damage tobacco use will cause Alaska and its citizens in the future -- and that means using settlement funds to sharply curtail smoking and other tobacco use throughout the state, especially among children.

The Public Supports Using Tobacco Settlement Money For Tobacco Control. In a pre-election poll of likely Alaska voters, 77% said that about half or more of the settlement funds should be spent to reduce smoking among kids (with only 1% saying that none of the funds should be so used). Similarly, in a recent nationwide poll, 84 percent of the respondents favored spending the money their state receives to reduce tobacco use among kids, including more than two-thirds (69%) who "strongly favor" spending the money for this purpose.

The Smoking Problem Is Big And Getting Worse. Approximately 27 percent of adult men and 25 percent of adult women in Alaska are current smokers, along with 36 percent of all high school students. While adult smoking has generally been declining in recent years, the number of kids who are smoking has been increasing steadily throughout the 1990s, and has only just experienced a small decline. Underage smoking remains at historically high levels, and over the past 10 years the number of kids under 18 who become daily smokers each year has increased by more than 70 percent. In Alaska alone, more than 4,000 kids under 18 become new daily smokers each year.

A Comprehensive Statewide Tobacco Control Strategy Would Dramatically Reduce Smoking And Other Tobacco Use In Alaska. California and Massachusetts have already initiated tobacco control campaigns that have reduced overall smoking levels within their borders at a faster rate than elsewhere in the country. Similarly, while youth smoking rates were going up nationwide, in California and Massachusetts they either declined or increased much more slowly -- despite significant reductions to both states' tobacco control efforts and despite aggressive tobacco company efforts to dampen the impact of the state programs.

New Tobacco Control Spending Will Save Lives. Tobacco use is responsible for more deaths than alcohol, auto accidents, AIDS, suicides, murders, and illegal drugs combined. Each year, about 400 people die from smoking-related causes in Alaska, and countless others suffer from tobacco-related disease and distress, including many of those exposed to second hand smoke. If current smoking trends are not reversed, roughly 17,000 of the children currently alive in the state will eventually die from smoking-related causes. Directing tobacco settlement monies to tobacco control can reduce this unnecessary disease, misery, and death -- and there is no better investment Alaska can make to save lives and improve public health.

New Tobacco Control Spending Will Save Alaska Money. Public and private direct expenditures in Alaska to treat health problems caused by smoking annually total roughly \$150 million, with the state government paying approximately \$20 million every year in cigarette-related Medicaid expenditures. Alaska and its citizens annually pay millions more for health care relating to smokeless tobacco use, cigar and pipe smoking, and exposure to second hand smoke. Beyond these direct health expenditures are tobacco-related labor costs and lost productivity (e.g., tobacco-related sick days); damage and loss from cigarette-related fires; and tobacco-related maintenance and cleaning expenses. An aggressive statewide tobacco control strategy would reduce all of these tobacco-related costs and save the state, its businesses, and its citizens many millions of dollars each and every year.

Nickel And Diming The Problem Won't Work. Significantly reducing tobacco use in Alaska requires substantial investment in a sustained and comprehensive multi-year tobacco control strategy. Anything less will not effectively counter the addictive power of nicotine or the tobacco companies' advertising and marketing expenditures (more than \$11 million per year in Alaska). Existing tobacco control efforts throughout the country show that the best way to reduce tobacco use, other than raising prices, is to take full advantage of a wide range of proven effective measures, including counter advertising, school and community-based prevention and cessation programs, the enhanced enforcement of laws prohibiting the sale of tobacco products to kids, and the firm maintenance of smoke-free workplaces and public areas. While any one of these tobacco control measures can reduce tobacco use by itself, they work much more powerfully and effectively when done together.

Relying On The Settlement Agreement's Tobacco Control Provisions Won't Work. Although the tobacco settlement contains some useful restrictions on tobacco marketing, they will not, by themselves, significantly hinder the tobacco industry's ability to market to kids. Similarly, the new national public education campaign financed by the multi-state settlement can significantly reduce tobacco use only if it is accompanied by strong state tobacco control efforts. Put simply, the tobacco settlement can dramatically cut tobacco use in Alaska only if the state uses its tobacco company payments to finance new tobacco control initiatives.

If The State Doesn't Do It, No One Else Will. Because of a special provision in the settlement agreement, until 2003 the tobacco companies' payments to Alaska will be reduced by any new federal funding made available to the state for tobacco control efforts that comes from an increase in the federal tobacco tax or from any other new charges against the tobacco companies. Consequently, it is highly unlikely that Congress will direct any new federal tobacco control funding to Alaska for some time.

Adequately Funding A Comprehensive Statewide Tobacco Control Strategy Would Still Leave Plenty Of Settlement Funding For Other Purposes. The U.S. Centers for Disease Control and Prevention estimates that adequately funding a comprehensive tobacco control effort in Alaska requires \$8 to \$17 million per year in new funding. Accordingly, Alaska could create a strong new tobacco control program and still have roughly \$10 million or more per year available for other purposes. Moreover, by increasing its tax on cigarettes (currently 100¢ per pack), one of the best ways to reduce tobacco use, Alaska could secure even more funding for tobacco control and other worthwhile initiatives.

Directing Settlement Payments To Tobacco Control Will Not Waste Money. Tobacco control efforts throughout the country have been carefully researched and evaluated. Accordingly, Alaska could easily direct its settlement payments to support only those types of tobacco control initiatives that have established track records and follow available research findings on how to maximize beneficial results. To further enhance cost effectiveness, Alaska could also require that all of its new tobacco control activities be carefully monitored and evaluated, both to avoid fraud and abuse and to continue to improve program performance.

sources

Puffing data on using tobacco settlement payments for new tobacco control efforts from state-specific and national pools of liability voters conducted for the National Center for Tobacco-Free Kids, by Mission Design PublicAffairs/Media Research in early October 1998, and by Merrill Lynch Television in early November 1998, respectively.

For state-specific data on deaths caused by smoking, smoking and smoked tobacco use rates, and other tobacco-related information, see Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, State Tobacco Control Highlights 1997 (<http://www.cdc.gov/nccdphp/dpba/statetob.html>). See also, CDC, "State-Specific Prevalence Among Adults of Current Cigarette Smoking and Smokers' Tobacco Use and Per Capita Tax-Paid Sales of Cigarettes - United States, 1997," Morbidity and Mortality Weekly Report 47(43): 922-926 (November 6, 1998); "1995 Alaska Youth Risk Behavior Survey"; CDC, "State-Specific Prevalence of Cigarette Smoking Among Adults, and Children's and Adolescents' Exposure to Environmental Tobacco Smoke - United States 1996," Morbidity and Mortality Weekly Report 46(44): 1030-1043 (November 7, 1997); CDC, "Smoking Attributable Mortality and Years of Potential Life Lost - United States, 1984" (with editors updates for 1990-1994), Morbidity and Mortality Weekly Report 46(20): 444-451 (May 23, 1997). For projected smoking deaths among today's youth, see CDC, "Projected Smoking-Related Deaths Among Youth - United States," Morbidity and Mortality Weekly Report 45(44): 971-974 (November 8, 1996).

For state-specific data on smoking-related health expenditures and smoking-related medical expenditures, see L. Miller, et al., "State Estimates of Total Medical Expenditures Attributable to Cigarette Smoking, 1993," Public Health Reports 113: 447-58 (September/October 1998). See also, L. Miller, et al., "State Estimates of Medicaid Expenditures Attributable to Cigarette Smoking, Fiscal Year 1993," Public Health Reports 113: 140-151 (March/April 1998).

For additional information on tobacco-related costs, see U.S. Department of the Treasury, The Economic Costs of Smoking in the U.S. and the Benefits of Comprehensive Tobacco Legislation (1998) (<http://www.treas.gov/press/releases/docstocobacco.pdf>); F.J. Chaloupka and K.E. Warner, "The Economics of Smoking," in J. Newhouse and A. Culyer (eds), The Handbook of Health Economics (in press); CDC, Morbidity and Mortality Weekly Report 46(44) (November 7, 1997); CDC, Making Your Workplace Smokefree: A Decision Maker's Guide (1996); D. Madani, "The Costs and Benefits of Smoking Restrictions: An Assessment of the Smoke-Free Environment Act of 1993 (H.R. 3434)," U.S. Environmental Protection Agency report submitted to the Subcommittee on Health and the Environment, Committee on Energy and Commerce, U.S. House of Representatives (April 1994); P. Brigham and A. McGuire, "Progress Toward a Fire-Safe Cigarette," Journal of Public Health Policy 16(4): 433-439 (1995); E.K. Adams and C.L. Melvin, "Costs of Maternal Conditions Attributable to Smoking During Pregnancy," American Journal of Preventive Medicine 15(3): 212-19 (October 1998); CDC, "Medical Care Expenditures Attributable to Cigarette Smoking During Pregnancy," Morbidity and Mortality Weekly Report 46(44) (November 7, 1997); J.J. Stoddard and B. Gray, "Maternal Smoking and Medical Expenditures for Childhood Respiratory Illness," American Journal of Public Health 87(2): 265-269 (February 1997).

For nationwide data on smoking trends see CDC, Tobacco Use Among High School Students - United States, 1997; Morbidity and Mortality Weekly Report 44(12): 229-233 (April 3, 1998); Institute for Social Research, University of Michigan, Measuring the Future Study (1998) (<http://www.isr.umich.edu/hrm/fmindex.html>); CDC, "Incidence of Initiation of Cigarette Smoking - United States, 1955-1996," Morbidity and Mortality Weekly Report 47(39): 837-40 (October 9, 1998).

For evaluations of the Massachusetts and California comprehensive state tobacco control strategies, see T. Pechacek and M. Eriksen, Office of Smoking and Health, CDC, "Efficacy of Comprehensive Tobacco Control Programs: California and Massachusetts" (in press); J. Pierce, et al., "Has the California Tobacco Control Program Reduced Smoking?" Journal of the American Medical Association 280(10): 893-899 (September 9, 1998); T. Hu, et al., "Reducing Cigarette Consumption in California: Tobacco Taxes vs. an Anti-Smoking Media Campaign," American Journal of Public Health 85: 1218-1222 (September 1995); ABI Associates, Independent Evaluation of the Massachusetts Tobacco Control Program: Fourth Annual Report, January 1994 to June 1997 (1998); J.P. Pierce, et al., Tobacco Control in California: Who's Winning the War? An Evaluation of the Tobacco Control Program 1989-1996 (Univ. of California, San Diego 1998).

CDC estimates on how much Alaska would have to spend to implement a comprehensive statewide tobacco control program are from Office on Smoking and Health, CDC, "State Comprehensive Tobacco Prevention and Control Guidelines" (October 1998). Information on the states' tobacco settlement receipts from the website of the National Association of Attorneys General <http://www.naag.org>, and related links.

December 31, 1999

Tobacco fund should help anti-smoking efforts

By ERIC F. MYERS

Each day tobacco kills another Alaskan with cancer, emphysema, stroke, heart disease, premature birth, AIDS and other causes. Tobacco use is by far the greatest cause of preventable death. Nothing else even comes close.

If this were simply a matter of reckless adults making foolish choices, it would be one thing, but that's not the case. Nearly all tobacco use starts in childhood at the average age of 14½. Even while the tobacco tax increase enacted two years ago is working as intended, some 14,000 Alaskans 18 and under who are alive today will become addicted and will die prematurely from tobacco-caused illness if present trends are not reversed. That's why



nicotine addiction is considered a "pediatric disease."

There are also economic effects. Tobacco-caused illness costs Alaskans \$150 million in needless medical costs, expenses paid by smokers and nonsmokers alike through increased insurance rates and higher health care expenses.

As compensation for these human and economic harms, Alaska joined in a settlement with the tobacco industry last November that will provide the state \$669 million over the next 25 years. The tobacco industry settlement is not a "windfall" — the roughly \$27 million per year Alaska

will receive is a direct result of thousands of Alaska deaths from tobacco addiction. Most importantly, the settlement provides the opportunity to prevent the past from becoming the future.

How many more Alaska kids are addicted and eventually killed by the tobacco industry is now up to the state Legislature. In the state House, Rep. Norm Hokeberg is working to make sure settlement money is invested in tobacco use prevention and cessation. Sen. Sean Parnell is leading efforts in the Senate.

But the going is tough, and many legislators say "we can't afford a new program" on tobacco use prevention and cessation. That tobacco control efforts are considered a "new program" pro-

vides the most disturbing insight of all, for it acknowledges that we've done so little to stop the needless parade of deaths. To date, Alaska has invested virtually nothing to prevent tobacco addiction (cigarette tax revenues go into the school construction fund, not for tobacco control efforts).

A statewide coalition of health organizations has developed a plan that would involve investing 30 percent of the tobacco settlement funds in comprehensive tobacco prevention and cessation efforts. A statewide poll shows that 84 percent of Alaskans support using settlement funds this way. There is no more fundamental purpose of state government than to protect public health. Experienced in California, Massachu-

setts, Oregon and Florida proves that tobacco prevention programs work. We know we can save thousands of lives while avoiding needless costs. But only if we try. To not use the settlement funds for tobacco use prevention amounts to disregarding the thousands of deaths that have gone before and turning our backs on thousands of kids, the tobacco industry's victims of the future.

If there were an infectious disease killing one additional Alaskan each day, we know the Legislature would rush to combat such a threat. That's just the case with tobacco. The distinction is that the "infections" are taking place via expensive and sophisticated marketing and the lethal effects of tobacco use are de-

layed many years.

In just the five months since Alaska joined the settlement, more than 150 Alaskans have died from tobacco-caused illnesses. Tomorrow another Alaskan will die from tobacco, someone the following day and the day after that.

You can change that by contacting your legislators and insisting that the tobacco settlement be used with a priority on tobacco use prevention and cessation. Don't let the tobacco industry addict a whole new generation.

Can we afford to invest in tobacco control? With the lives of 14,000 Alaska kids at stake, we can't afford not to.

J. Eric F. Myers serves on the board of the American Cancer Society in Anchorage.

4/6/99

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Supplant the cigarettes

Officials from several states squeezed an immense settlement from tobacco companies last year using a cost argument. It costs government to treat people with tobacco ailments, the officials said, so government has a right to collect. Pay up, they told the tobacco companies, or we will pursue you as far as our courts can carry us. The companies paid.

Now the states, including Alaska, must decide what to do with the money. The honorable thing would be to spend a substantial chunk on an anti-tobacco campaign.

If the state is so concerned about how much tobacco is costing our society that it will coerce millions from the tobacco companies, then the state ought to use that coerced money to reduce tobacco's use.

After all, that was the real goal of all this legal maneuvering, right? Let's stick to it.

The state of Alaska expects to receive a staggering \$669 million from the settlement during the next 25 years. That's about \$26 million a year on average.

Few in Juneau seem interested in applying any substantial chunk of this money to solving the problem, though. Legislators have proposed no increase in spending on tobacco education. The governor asked for \$3 million.

A coalition of anti-smoking groups has created a plan that would spend about \$8 million. They developed the plan by looking at what has worked in other states. It's a credible proposal and deserves support.

Of course, one can argue that the state could reasonably apply the tobacco money elsewhere in the budget. For example, it could help offset the increases in Medicaid spending. Some of those increases are presumably related to smoking (although some studies have concluded that the government's overall health care costs are actually reduced by smoking because smokers die sooner and faster).

But Medicaid just deals with the end result. If we were so concerned about smoking that we forced tobacco companies to pay government penalties, then we ought to make sure our government spends those penalties in a way that discourages that behavior. Anything less gives the government a bizarre financial interest in the continuance of such behavior.

Let's put our money where our mouths are. The dollars will supplant a few cigarettes.

To: Alaska legislators

From: Citizens To
Protect Kids from
Tobacco

(Cancer Society
Heart Association
Lung Association
AK Native Health Board)

FY 1



Healthwise by Andrea Rock

Quitting Time for Smokers

New products and programs can quadruple your chances of success.

IF YOU'RE among the millions of smokers who resolve to quit each New Year's Day, only to find yourself a few days later dejectedly puffing away, take heart. A revolution in medical understanding of how smokers get hooked has led to new approaches to quitting that can increase your chances of success from the 5% typical of cold-turkey quitters to 20% or more. And at least part of the \$206 billion tobacco settlement will go to funding programs to help you.

Recent studies provide clues to why breaking an addiction to nicotine is so difficult—even more difficult than kicking heroin or cocaine, according to Steven Adelman, medical director of substance abuse services for Harvard Vanguard Medical Associates. Nicotine stimulates brain cells to release a pleasure-inducing chemical called dopamine. "Each puff of a cigarette is a hit, a neurobiological mini-orgasm that is repeated millions of times, which explains why smokers yearn for that experience much longer than people addicted to many other pleasure-giving substances," Adelman says.

To still quitters' cravings, doctors and counselors have come to rely on various forms of nicotine replacement—from the now familiar skin patches to the cigarette-like Nicotrol Inhaler introduced last year. And the new drug Zyban targets the pathways of nicotine addiction in the brain, rather than replacing nicotine. The table at right details the cost, side effects and percentages of smokers

who are still off cigarettes a year after quitting while using each of these products. Although you may see ads touting a product's success among those who've used it for a month or two, the one-year success rate is the best indicator of effectiveness, says Richard Merrick, whose 10-week smoking-cessation program at Kaiser Permanente in Harbor City, Calif. has an astounding 57% one-year quit rate.

How Zyban helps

Richard E. Hurt, director of the Mayo Clinic's \$3,000 eight-day inpatient program, which has helped 43% of its severely addicted clients kick the habit, generally recommends that smokers start taking Zyban—the first pill to be approved by the FDA as a smoking-cessation aid—about a week before they plan to quit.

The drug, which is also sold as an antidepressant called Wellbutrin SR (the initials stand for sustained release), lessens the desire to smoke by raising dopamine levels in the brain, just as cigarettes do. Zyban also whittles the average quitter's five-pound weight gain.

Zyban has no effect on 15% to 20% of smokers who try it, says Linda Ferry, a researcher at Loma Linda University School of Medicine, who first discovered that the drug helped people quit smoking. Experts suggest giving Zyban a one-month trial; most people take it for 12 weeks. Some health plans don't cover Zyban, but a few less than forthcoming smokers have gotten around that by asking doctors to diagnose them with depression and prescribe Wellbutrin SR, which is generally covered.

TOOLS FOR THE WOULD-BE NONSMOKER

Consult your doctor before using any nicotine-replacement product, particularly if you have heart disease or are taking medication for asthma or depression.

Product	How it works	One-year quit rate	Monthly cost
Nicorette gum	Average smoker chews six to nine pieces daily; each piece has 4mg of nicotine. Side effect: jaw pain	2% to 15%	\$120
Nicotine-replacement patches (Nicoderm and Nicotrol are both sold over the counter; other brands are sold by prescription only)	Smokers apply skin patches daily, absorbing doses of nicotine that range from 7mg to 21mg. Side effect: skin irritation	10% to 15%	108
Nicotrol Nasal Spray (prescription only)	Delivers 0.5mg per spray; can be used daily for up to six months. Nicotine hits bloodstream faster than gum, patch or inhaler.	10% to 15%	120
Nicotrol Inhaler (prescription only)	Patient puffs on plastic mouthpiece containing nicotine cartridge to receive 4mg of nicotine, or about one-third the blood level delivered by a cigarette.	10% to 15%	160
Zyban (prescription only)	Two tablets a day changes brain chemistry to relieve cravings. Also reduces weight gain that occurs after quitting. Side effects: dry mouth, insomnia and a one in 1,000 risk of seizure	23%	\$84 to \$100

Source: See Schiffman of the University of Pittsburgh; Hurt, Mayo Clinic; Adelman, Harvard Vanguard Medical Associates; Ferry, Loma Linda University School of Medicine; and Consumer Products, Standard and Glass Institute

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PERSONAL INTEREST

Healthwise continued

Because Zyban carries a slight (one in 1,000) risk of seizures, Harvard Vanguard's Adelman prefers starting patients off with a nicotine patch. But for smokers who find they crave the ritual and hand-to-mouth activity of smoking, nicotine gum, the inhaler or nasal spray may work better, he says. The nasal spray gets nicotine into your system fastest, while the inhaler most closely replicates the act of smoking. The gum's advantage is that it's available without a prescription; most smokers will need the 4mg version.

To help the most intractable smokers, specialists now combine Zyban with nicotine-replacement products, using double patches or patches plus gum or an inhaler. "Most patches deliver only half the nicotine a smoker would get from one pack a day. So some may find nico-



5%
Your chances
of success if you
quit cold turkey

tine replacement hasn't worked well simply because they're being underdosed," says the Mayo Clinic's Hurt. Some doctors keep patients on the products for several months rather than the 10 to 12 weeks most manufacturers recommend.

But to avoid dangerously high blood pressure or nicotine overdosing (40mg to 60mg is considered lethal, but individual tolerances can vary), combining products or straying from dosage instructions should be done only under a doctor's supervision. And while nicotine replacement is safer than smoking, new studies from the University of Minnesota suggest that using nicotine replacement for more than three to six months may damage blood and lung cells, possibly leading to artery disease, bronchitis or both.

Why you may need a support group
"Smoking is a way of coping with stress as well as of obtaining pleasure, so break-

CHRISTOPHER LIMON/STOCK MARKET

ing that psychological addiction is just as crucial as eliminating the physical one," says Bonnie Spring, a University of Illinois-Chicago psychologist whose programs achieve long-term quit rates of 40% or more. Adding some form of counseling to your quitting plan is essential, says Richard Merrick. Participants in his highly successful Kaiser Permanente program attend Nicotine Anonymous meetings (+15-750-0328). Merrick says that the group, which applies Alcoholics Anonymous principles to smokers, is the best of the many low-cost or free groups because it offers long-term support. If Nicotine Anonymous doesn't meet in your area, both the American Cancer Society (800-227-2345) and the American Lung Association (800-586-4872) sponsor counseling programs of four to eight weeks' duration.

What's coming

In the research pipeline now are several drugs that, like Zyban, target brain chemistry. There are also novel forms of nicotine replacement, including an under-the-tongue tablet and a lollipop. The market for these drugs is expanding at a rapid pace. In 1998, sales of over-the-counter nicotine-replacement products exceeded \$568 million, according to Information Resources, a Chicago-based marketing research firm. That's nearly double total sales in 1996, when these products first became available over the counter. Prescriptions are soaring too. Sales for the 12 months that ended September 1998 totaled \$184.4 million, up 154% from the previous year, according to LMS Health, a health-care information company in Plymouth Meeting, Pa.

Using smoking-cessation aids as part of a plan you develop with an experienced doctor makes you more likely to reap their full benefits. First, though, talk to your health plan. About 75% of HMOs now cover smoking-cessation products and programs, which may be provided by the plan itself. You can also locate a physician who specializes in smoking cessation by calling the 3,200-member American Society of Addiction Medicine (301-656-3920).

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HB

43

STATE OF ALASKA
1999 LEGISLATIVE SESSION

FISCAL NOTE

Bill Version: HB 43

(H) Publish Date: 3/5/99

Revision Date: _____ Dept. Affected: Community & Regional Affairs
 Title: An Act relating to police training surcharges BRU: _____
imposed for violations of municipal ... Component: _____
 Sponsor: REPRESENTATIVE DAVIS
 Requestor: House CRA Committee COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 00	FY 01	FY 02	FY 03	FY04	FY 05
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0

REVENUE FUND SOURCE: | _____ | _____ | _____ | _____ | _____ | _____

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF-MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current (FY99) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

Enactment of this legislation would not have significant fiscal impact on the department.

Prepared by: Remond Henderson Director Phone: 465-4709
 Division: Division of Administrative Services Date: 2.22.99
 Approved by Commissioner: [Signature] Date: 2.22.99

Agency: Community & Regional Affairs

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FISCAL NOTE

No: 2

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Bill Version: HB 43
 (H) Publish Date: 3/5/99

Revision Date: 2-23-99 Dept. Affected: Department of Public Safety
 Title: An Act... relating to police training surcharges BRU: _____
 Sponsor: Rep. Davis Component: Alaska Police Standards Council
 Requestor: (H) C&RA COMPONENT SERIAL NO. 0519

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

OPERATING	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
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CHANGE IN REVENUES () Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GE Match						
1004 GE						
1005 GE/Program Receipts						
1006 GE/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

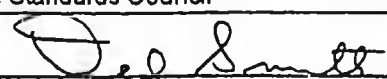
Estimate of current year (FY 00) impact: \$ -0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

The purpose of HB 43 is to amend (section 1) AS 12.55.039 for clarification of surcharges that are imposed on violations of a municipal ordinance if that ordinance imposes a criminal penalty for its violation; (section 2) AS 29.25.074, to specify that a municipality cannot enforce a penalty for the violation of an ordinance unless it has authorized the imposition of the surcharge set out in AS 12.55.039.

Prepared By: Laddie Shaw Phone: 465-4378
 Division: Alaska Police Standards Council Date: 2-23-99
 Approved by Commissioner:  Date: 2-25-99
 Agency: Ronald L. Otte, Dept. of Public Safety

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SENATE COMMITTEE REPORT

DATE: 5/10/99

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 2-3-00

Judiciary Committee considered HOUSE BILL NO. 43

"An Act relating to police training surcharges imposed for violations of municipal ordinances."

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>W. D. Doolittle</i>	✓		
		<i>J. G. Ellis</i>	✓		
<i>[Signature]</i>	✓				
CHAIR: <i>Alvin L. Taylor</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

#3 Public Safety	1/28	✓	

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 43

Revision Date 1/28/00 Dept. Affected Public Safety
 Title An Act... relating to police training surcharges BRU APSC
 Component: APSC
 Sponsor Representative Davis
 Requester S. JUD Component No. 519

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING						

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

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

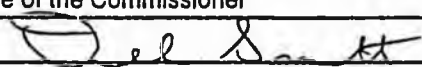
Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

The purpose of HB 43 is to amend (section 1) AS 12.55.039 for clarification of surcharges that are imposed on violations of a municipal ordinance if that ordinance imposes a criminal penalty for its violation; (section 2) AS 29.25.074, to specify that a municipality cannot enforce a penalty for the violation of an ordinance unless it has authorized the imposition of the surcharge set out in AS 12.55.039.

Prepared by: Royce Weller, Special Assistant Phone 465-4322
 Division Office of the Commissioner Date/Time 1/28/00 12:00 PM
 Approved by:  Date 1-31-00
 Agency Commissioner Ronald L. Otte, Dept. of Public Safety

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HOUSE BILL NO. 43

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE DAVIS

Introduced: 1/19/99

Referred: Community and Regional Affairs, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to police training surcharges imposed for violations of municipal**
2 **ordinances."**

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

4 *** Section 1.** AS 12.55.039(a) is amended to read:

5 (a) In addition to any fine or other penalty prescribed by law, a defendant who
6 pleads guilty or nolo contendere to, forfeits bail for, or is convicted of a

7 (1) felony shall be assessed a surcharge of \$100;

8 (2) violation of a misdemeanor offense under AS 28.33.030, 28.33.031,
9 AS 28.35.030, or 28.35.032, or a violation of a municipal ordinance comparable to a
10 misdemeanor offense under AS 28.33.030, 28.33.031, AS 28.35.030, or 28.35.032 and
11 adopted under AS 28.01.010, shall be assessed a surcharge of \$75;

12 (3) misdemeanor or a violation of a municipal ordinance if a sentence
13 of incarceration may be imposed for the misdemeanor or ordinance violation, other
14 than a provision identified in (2) of this subsection, shall be assessed a surcharge of

1 \$50;

2 (4) misdemeanor for which a sentence of incarceration may not be
3 imposed. a violation or an infraction under state law, or [A MISDEMEANOR OR] a
4 violation of a municipal ordinance imposing a penalty authorized by
5 AS 29.25.070(a) if a sentence of incarceration may not be imposed for the
6 [MISDEMEANOR OR] ordinance violation, shall be assessed a surcharge of \$10 if the
7 fine or bail forfeiture amount for the offense is \$30 or more.

8 * Sec. 2. AS 29.25.074(a) is amended to read:

9 (a) A municipality may not enforce a penalty for violation of an ordinance
10 for which a surcharge is required to be imposed under AS 12.55.039 [FINE OF \$30
11 OR MORE OR IMPRISONMENT IS PRESCRIBED AS A PENALTY] unless the
12 municipality authorizes the imposition of and provides for the collection of the
13 surcharge [REQUIRED TO BE IMPOSED UNDER AS 12.55.039]. The surcharge
14 shall be deposited into the general fund of the state and accounted for under
15 AS 37.05.142. Subject to appropriation, the legislature may reimburse a municipality
16 that collects a surcharge required to be imposed under AS 12.55.039 for the cost to the
17 municipality in collecting the surcharge and transmitting the surcharge to the state.
18 The reimbursement may not exceed 10 percent of the surcharge collected and
19 transmitted to the state.



ALASKA STATE LEGISLATURE

REPRESENTATIVE GARY DAVIS

HOUSE BILL 43

SPONSOR STATEMENT

An act relating to police training surcharges imposed for violations of municipal ordinances

House Bill 43 is a housecleaning measure that clarifies the intent of legislation passed in 1998 expanding the types of crimes for which a surcharge is imposed and increasing the amount of the surcharge applied to convictions of criminal offenses.

This surcharge is imposed on both state and municipal criminal law violations. The surcharges collected are deposited in the Police Training Fund, which is used to provide training to the law enforcement and corrections community of the state.

The first section of House Bill 43 rephrases AS 12.55.039(a)(4) to state that a surcharge is imposed on violations of municipal ordinances having a penalty authorized by AS 29.25.070(a), the statute which authorizes municipalities to impose *criminal* penalties.

The second section of House Bill 43 states that if a municipality has not authorized the imposition of the surcharge, it may not enforce penalties on criminal violations of municipal ordinances.

HB43ss012700

Session: State Capitol, Juneau, AK 99801 • Phone 907/465-2693 or 800/463-2693 • Fax 907/465-3835
Interim: 145 Main St. Lp., Ste. 223, Kenai, AK 99611 • Phone 907/283-7095 or 907/224-2051 • Fax 907/283-3075
Email: Representative_Gary_Davis@legis.state.ak.us

Sponsor Statement



ALASKA STATE LEGISLATURE

REPRESENTATIVE GARY DAVIS

HOUSE BILL 43

SECTIONAL ANALYSIS

An act relating to police training surcharges imposed for violations of municipal ordinances

- Section 1: Amends AS 12.55.039, Surcharges, subsection (a)(4) to clarify that surcharges are imposed on violations of a municipal ordinance if that ordinance imposes a criminal penalty for its violation.
- Section 2: Amends AS 29.25.074, Surcharges, subsection (a) to specify that a municipality cannot enforce a penalty for the violation of an ordinance unless it has authorized the imposition of the surcharge set out in AS 12.55.039.

HB43/sa/020199

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Email: Representative Gary Davis@legis.state.ak.us

Sectional Analysis

- (2) make written findings of the facts considered in
- (A) finding the existence of aggravating or mitigating factors and in assigning a value to those factors; and
- (B) determining the defendant's gross and daily net incomes.
- (d) When imposing a sentence of a day fine, the court may permit the payment of the day fine in specified installments or within a certain period of time, provided the entire day fine is paid within 180 days of imposition.
- (e) A sentence imposing a day fine shall be considered a civil judgment for the day fine. The Department of Law shall enforce the judgment and may utilize any procedure available for the enforcement of civil judgments. If the Department of Law uses the civil process of the court to enforce or collect a day fine, the department shall be awarded costs and attorney fees.
- (f) The Alaska Court System shall evaluate and prepare a report every two years not later than February 1 on the use of day fines and their effectiveness. The court system shall notify the legislature that the report is available. The report must include
- (1) a comparison of the number of defendants receiving a day fine as a sentence with the number of other defendants, eligible to receive a day fine, who receive another sentence;
- (2) a comparison of the recidivism rates between defendants receiving a day fine with other defendants,
- (A) eligible for a day fine, who receive another sentence; and
- (B) not eligible for a day fine, who receive another sentence;
- (3) the potential savings to the state from the number of defendants who are eligible to receive a sentence of imprisonment, and who receive a day fine, assuming those defendants would have been sentenced to a term of imprisonment;
- (4) the amount of day fines collected, the success rate of collections, and the number of cases requiring civil process to collect the day fine; and
- (5) recommendations concerning expansion or restriction of the use of day fines, including proposals for legislation.
- (g) Money collected under this section shall be deposited into the general fund and separately accounted for under AS 37.05.142. The annual estimated balance in the account maintained under AS 37.05.142 for day fines collected under this section may be appropriated by the legislature as follows: (1) 25 percent of the annual estimated balance for grants and claims paid by the Council on Domestic Violence and Sexual Assault; (2) 25 percent of the annual estimated balance for grants and claims paid by the Violent Crimes Compensation Board; and (3) the balance for any lawful purpose. Nothing in this subsection creates a dedicated fund. (§ 5 ch 79 SLA 1994; am § 6 ch 21 SLA 1995)

Postponed repeal of subsection (f). — Section 7, ch. 79, SLA 1994 repeals (f) of this section, effective February 2, 2004.

Cross references. — For effect of enactment of this section on Alaska Rule of Criminal Procedure 32, see § 6, ch. 79, SLA 1994 in the Temporary and Special Acts.

Effect of amendments. — The 1995 amendment, effective August 8, 1995, in the first sentence of the

introductory language of subsection (f), substituted "prepare a report every two years" for "report every two years to the legislature" and added the second sentence.

Legislative history reports. — For House letter of intent relating to CSHB 119(JUD) am, from which ch. 79, SLA 1994, which enacted this section derived, see 1993 House Journal 1413.

Sec. 12.55.039. Surcharge. (a) In addition to any fine or other penalty prescribed by law, a defendant who pleads guilty or nolo contendere to, forfeits bail for, or is convicted of a

- (1) felony shall be assessed a surcharge of \$100;
- (2) violation of a misdemeanor offense under AS 28.33.030, 28.33.031, AS 28.35.030, or 28.35.032, or a violation of a municipal ordinance comparable to a misdemeanor offense under AS 28.33.030, 28.33.031, AS 28.35.030, or 28.35.032 and adopted under AS 28.01.010, shall be assessed a surcharge of \$75;

(3) misdemeanor or a violation of a municipal ordinance if a sentence of incarceration may be imposed for the misdemeanor or ordinance violation, other than a provision identified in (2) of this subsection, shall be assessed a surcharge of \$50;

(4) violation or an infraction under state law or a misdemeanor or a violation of a municipal ordinance if a sentence of incarceration may not be imposed for the misdemeanor or ordinance violation shall be assessed a surcharge of \$10 if the fine or bail forfeiture amount for the offense is \$30 or more.

(b) A court may not fail to impose the surcharge required under this section. The surcharge may not be waived, deferred, or suspended. A court may allow a defendant who is unable to pay the surcharge required to be imposed under this section to perform community work under AS 12.55.055(c) in lieu of the surcharge.

(c) The surcharge shall be paid within 10 days of imposition or such shorter period of time as ordered by the court. Failure to pay the surcharge is punishable as contempt of court. Proceedings to collect the surcharge may be instituted by the state, the municipality, or by the court on its own motion.

(d) Money collected under this section shall be deposited into the general fund and accounted for under AS 37.05.142. (§ 2 ch 119 SLA 1994; am § 4 ch 56 SLA 1998)

Cross references. — For legislative findings and purpose in connection with the enactment of this section, see § 1, ch. 119, SLA 1994 in the Temporary and Special Acts.

Effect of amendments. — The 1998 amendment, effective August 27, 1998, rewrote subsection (a).

Effective dates. — Section 7, ch. 119, SLA 1994 makes this section effective January 1, 1996.

Editor's notes. — With respect to subsection (d), § 10, ch. 56, SLA 1998 provides the following: "Notwithstanding the requirements of AS 12.55.039(d) and AS 37.05.142 that surcharges collected under AS 12.55.039 be accounted for separately, the Alaska Court System shall deposit money collected under AS 12.55.039 in the general fund and shall, by February

1 of each year, provide to the Department of Administration, to the Legislative Budget and Audit Committee, and to each house of the legislature an estimate of the money collected under AS 12.55.039 for that fiscal year."

Section 11, ch. 56, SLA 1998 provides a repeal date for § 10, ch. 56, SLA 1998 as follows: "Section 10 of this Act is repealed on the earlier of (1) the date that the Alaska Court System has the capability to separately track and account electronically for money collected under AS 12.55.039, or (2) June 30, 2002. The executive director of the Alaska Court System shall notify the lieutenant governor and the revisor of statutes when the electronic capability described in this section has been obtained."

Sec. 12.55.040. Increased punishment for habitual criminal after conviction of petty larceny or misdemeanor involving fraud. [Repealed, § 21 ch 166 SLA 1978.]

Sec. 12.55.045. Restitution. (a) The court may order a defendant convicted of an offense to make restitution as provided in this section, including restitution to the victim or other person injured by the offense, to a public, private, or private nonprofit organization that has provided or is or will be providing counseling, medical, or shelter services to the victim or other person injured by the offense, or as otherwise authorized by law. In determining the amount and method of payment of restitution, the court shall take into account the

(1) public policy that favors requiring criminals to compensate for damages and injury to their victims; and

(2) financial burden placed on the victim and those who provide services to the victim and other persons injured by the offense as a result of the criminal conduct of the defendant.

(b) An order of restitution under this section does not limit any civil liability of the defendant arising from the defendant's conduct.

(c) If a defendant is sentenced to pay restitution, the court may grant permission for the payment to be made within a specified period of time or in specified installments.

(d) In any case, including a case in which the defendant is convicted of a violation of AS 11.46.120 — 11.46.150 and the property is commercial fishing gear as defined in AS 16.43.990, the court shall consider the victim's loss and may order restitution that may include compensation for loss of income.

- enactments regulating lobbying 42 ALR3d 1046
- Validity of statute or ordinance forbidding pharmacist to advertise prices of drugs or medicines. 44 ALR3d 1301.
- Validity and construction of statute or ordinance respecting employment of women in places where intoxicating liquors are sold. 46 ALR3d 369
- Validity and construction of statute or ordinance regulating or prohibiting self-service gasoline filling stations 46 ALR3d 1393.
- Operation of nude-model photographic studio as offense 48 ALR3d 1313
- Validity and construction of statute or ordinance forbidding treatment in health clubs or massage parlors by persons of the opposite sex. 51 ALR3d 936
- Validity of municipal regulation more restrictive than state regulation as to time for selling or serving intoxicating liquor. 51 ALR3d 1061.
- Validity and construction of regulations dealing with misrepresentation in the sale of Kosher food. 52 ALR3d 959.
- Validity of municipal ordinances regulating time during which restaurant business may be conducted. 53 ALR3d 942.
- Modern status of the law as to validity of statutes or ordinances requiring notice of tort claim against local governmental entity. 59 ALR3d 93.
- Validity and construction of curfew statute, ordinance, or proclamation 59 ALR3d 321. 53 ALR4th 1056
- Validity and construction of statute or ordinance prohibiting commercial exhibition of maimed or disfigured persons. 62 ALR3d 1237.
- Application of city ordinance requiring license for laundry to supplier of coin-operated laundry machines intended for use in apartment building 65 ALR3d 1296.
- Application of statute or regulation dealing with registration or carrying of weapons to transient non-resident: 65 ALR3d 1253
- Larceny as within disorderly conduct statute or ordinance. 71 ALR3d 1156.
- Validity and construction of ordinance prohibiting roof signs. 76 ALR3d 1162.
- Validity and construction of statute or ordinance proscribing solicitation for purposes of prostitution, lewdness, or assignation — modern cases. 77 ALR3d 519.
- Validity of statutes, ordinances, and regulation requiring the installation or maintenance of various bathroom facilities in dwelling units. 79 ALR3d 716.
- Validity and construction of statute or ordinance restricting outdoor rate advertising by motels, motor courts, and the like. 80 ALR3d 740.
- Validity of state or local regulation dealing with resale of tickets to theatrical or sporting events. 81 ALR3d 655.
- What constitutes "sale" of liquor in violation of statute or ordinance. 89 ALR3d 551.
- Validity and construction of statute or ordinance prohibiting desecration of church. 90 ALR3d 1128.
- Validity and construction of statute or ordinance specifically criminalizing passenger misconduct on public transportation. 78 ALR4th 1127.
- Validity and construction of statute, ordinance, or regulation applying to specific dog breeds, such as "pit bulls" or "bull terriers." 80 ALR4th 70.
- Validity, construction, and effect of juvenile curfew regulations. 83 ALR4th 1056.
- Laws regulating begging, panhandling, or similar activity by poor or homeless persons. 7 ALR5th 455.
- Validity and construction of statutes or ordinances imposing civil or criminal penalties on alarm system users, installers, or servicers for false alarms. 17 ALR5th 825.
- Governmental regulation of place of amusement, entertainment, or recreation as violating rights of owner or operator under equal protection clause of Federal Constitution's Fourteenth Amendment — Supreme Court cases. 104 L Ed 2d 1078.

Sec. 29.25.010. Acts required to be by ordinance. (a) In addition to other actions that this title requires to be by ordinance, the governing body of a municipality shall use ordinances to

- (1) establish, alter, or abolish municipal departments;
- (2) provide for a fine or other penalty, or establish rules or regulations for violation of which a fine or other penalty is imposed;
- (3) provide for the levying of taxes;
- (4) make appropriations, including supplemental appropriations or transfer of appropriations.
- (5) grant, renew, or extend a franchise;
- (6) adopt, modify, or repeal the comprehensive plan, land use and subdivision regulations, building and housing codes, and the official map;
- (7) approve the transfer of a power to a first or second class borough from a city;
- (8) designate the borough seat;
- (9) provide for the retention or sale of tax-foreclosed property;
- (10) exempt contractors from compliance with general requirements relating to payment and performance bonds in the construction or repair of municipal public works projects within the limitations set out in AS 36.25.025; this paragraph applies to home rule and general law municipalities.

(b) This section does not grant authority, but requires the governing body to use ordinances in exercising certain of its powers. (§ 8 ch 74 SLA 1985)

Sec. 29.25.060. Resolutions. (a) The governing body shall provide for the maintenance of a permanent file of resolutions that have been adopted.

(b) This section applies to home rule and general law municipalities. (§ 8 ch 74 SLA 1985)

NOTES TO DECISIONS

Cited in *Lazy Mt. Linc Club v. Matanuska-Susitna Borough Bd. of Adjustment & Appeals*, 904 P.2d 373 (Alaska 1995).

Sec. 29.25.070. Penalties. (a) For the violation of an ordinance, a municipality may by ordinance prescribe a penalty not to exceed a fine of \$1,000 and imprisonment for 90 days. For a violation that cannot result in incarceration or the loss of a valuable license, a municipality may allow disposition of the violation without court appearance and establish a schedule of fine amounts for each offense.

(b) The municipality or an aggrieved person may institute a civil action against a person, including a minor as provided in AS 29.25.072, who violates an ordinance. In addition to injunctive and compensatory relief, a civil penalty not to exceed \$1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. On application for injunctive relief and a finding of a violation or a threatened violation, the superior court shall grant the injunction. Each day that a violation of an ordinance continues constitutes a separate violation.

(c) The penalties authorized under this section may be imposed only if copies of the ordinance are made available for distribution to the public at no more than cost.

(d) This section does not apply to an ordinance adopted under AS 04.11.501(c).

(e) The municipality shall provide written notice to the commissioner of health and social services or to the commissioner's designee of the commencement of a civil enforcement action for the violation of an ordinance under (b) of this section against a minor. Unless the commissioner and the municipality have negotiated an agreement making other arrangements for the municipality to provide the notice required by this subsection, the municipality shall provide the notice by mailing a copy of the citation or other document setting out the notice of the commencement of the civil enforcement action. This subsection applies to home rule and general law municipalities.

(f) In this section, "minor" means a person under 18 years of age. (§ 8 ch 74 SLA 1985; am § 16 ch 80 SLA 1986; am § 11 ch 76 SLA 1987; am § 65 ch 101 SLA 1995; am §§ 2, 3 ch 107 SLA 1998)

Effect of amendments. — The 1995 amendment, effective July 1, 1995, made a section reference substitution in subsection c.

The 1998 amendment, effective July 1, 1998, in-

serted ", including a minor as provided in AS 29.25.072," in the first sentence in subsection (b) and added subsections (e) and (f).

NOTES TO DECISIONS

Punishment for failure to list taxable property authorized. — A city had the power to enact an ordinance requiring a taxpayer to file a statement under oath listing all personal property at its just and fair value, and a former, similar provision provided the authority to prescribe its punishment, including fine and imprisonment. *City of Anchorage v. Campbell*, 105 F. Supp 517 (D Alaska 1952).

An act may be made a penal offense under both state statute and municipal ordinance. *Guidoni v. Wheeler*, 230 F. 93 (9th Cir. 1916), decided under former, similar law.

Ordinance may impose penalties on class of persons. — While an ordinance which made an act done by one penal and imposed upon another no penalty for a like act done under like circumstances could not receive judicial sanction for the reason that it was unjust and unreasonable, the same could not be said of discrimination by municipal authority against a whole class of persons who were lawfully regarded as proper subjects for police regulation, such as persons without occupation or visible means of support. *Guidoni v. Wheeler*, 230 F. 93 (9th Cir. 1916), decided under former, similar law.

Sec. 29.25.072. Civil penalties for violation of municipal ordinances by minors. (a) Except as otherwise provided in this section, the enforcement under AS 29.25.070(b) of a civil penalty against a minor for violation of a municipal ordinance shall be heard in the district court in the same manner as for similar allegations brought against an adult, except that the minor's parent, guardian, or legal custodian shall be present at all proceedings unless the court excuses the parent, guardian, or legal custodian from attendance for good cause.

(b) If provision is made by ordinance for use of a hearing officer to decide enforcement of a civil penalty under AS 29.25.070(b), allegations against a minor for a civil penalty under a municipal ordinance may be assigned to a hearing officer for the municipality for decision.

(c) An action for a civil penalty filed against a minor under this section does not give rise to the right to a trial by jury or to counsel appointed at public expense. (§ 4 ch 107 SLA 1998)

Effective dates. — Section 59, ch. 107, SLA 1998 provides that this section applies to all offenses committed on or after July 1, 1998.

Editor's notes. — Section 57, ch. 107, SLA 1998

Sec. 29.25.074. Surcharge. (a) A municipality may not enforce an ordinance for which a fine of \$30 or more or imprisonment is prescribed as a penalty unless the municipality authorizes the imposition of and provides for the collection of the surcharge required to be imposed under AS 12.55.039. The surcharge shall be deposited into the general fund of the state and accounted for under AS 37.05.142. Subject to appropriation, the legislature may reimburse a municipality that collects a surcharge required to be imposed under AS 12.55.039 for the cost to the municipality in collecting the surcharge and transmitting the surcharge to the state. The reimbursement may not exceed 10 percent of the surcharge collected and transmitted to the state.

(b) This section applies to home rule and general law municipalities. (§ 8 ch 56 SLA 1998)

Revisor's notes. — This section was enacted as AS 29.25.072. Renumbered in 1998. which enacted this section, took effect on August 27, 1998.

Effective dates. — Section 3, ch. 56, SLA 1998.

Sec. 29.25.075. Collection of penalties. The court may collect for a municipality any monetary penalty or surcharge or item to be forfeited as a result of the violation of an ordinance. The supreme court may prescribe by rule the fees to be charged by all courts to municipalities for providing collection services under this section. (§ 47 ch 36 SLA 1990; am § 9 ch 56 SLA 1998)

Effect of amendments. — The 1998 amendment, effective August 27, 1998, inserted "surcharge or" in the first sentence.

Sec. 29.25.080. Breast-feeding. A municipality may not enact an ordinance that prohibits or restricts a woman breast-feeding a child in a public or private location where the woman and child are otherwise authorized to be. In a municipal ordinance, "lewd conduct," "lewd touching," "immoral conduct," "indecent conduct," and similar terms do not include the act of a woman breast-feeding a child in a public or private location where the woman and child are otherwise authorized to be. Nothing in this section may be construed to authorize an act that is an offense under a municipal ordinance that establishes an offense with elements substantially equivalent to the elements of an offense under AS 11.61.123. This section is applicable to home rule and general law municipalities. (§ 4 ch 78 SLA 1998)

**KENAI PENINSULA BOROUGH**

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DALE BAGLEY
MAYOR

January 31, 2000

Senator Robin Taylor, Chair
Senate Judiciary Committee
Members of Senate Judiciary Committee
State Capital Building, Room 30
Juneau, AK 99801

Re: House Bill 43 relating to police training surcharges imposed for violations of municipal ordinances

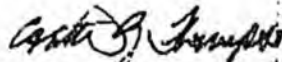
Dear Senator Taylor and Members of the Senate Judiciary Committee:

The Kenai Peninsula Borough administration supports passage of HB 43. Section 1 addresses our concern that the existing language of AS 12.55.039(a) could be read to require the borough to collect this surcharge for civil penalties as well as criminal penalties. For example, we currently collect civil penalties for failure to file sales and personal property tax returns. The proposed amendment to paragraph (a) would clarify that this only relates to criminal penalties.

Our second concern is that the existing language in AS 29.25.074(a) could be read to prevent a municipality from enforcing an entire ordinance unless it also authorizes this surcharge. For example, our entire sales tax code is essentially one ordinance. We support the amendment in Section 2 of HB 43 as it would clarify that only the penalty provision in an ordinance would not be enforceable without the underlying surcharge.

The Kenai Peninsula Borough supports training of law enforcement officers and thanks you for the opportunity to comment on this measure.

Yours very truly,


Colette G. Thompson
Borough Attorney

CGT:jgf

KETCHIKAN GATEWAY BOROUGH

Office of the Borough Attorney • 344 Front Street • Ketchikan, Alaska 99901

Scott A. Brandt-Ertcheen
Borough Attorney

(907) 228-6635

Fax: (907) 247-6625

January 29, 1999

Deborah L. Davidson
Legislative Aide
145 Main Street, Lp., 223
Kenai, Alaska 99611



Dear Ms. Davidson:

Thank you for the copy of the proposed House Bill 43 provided with your letter dated January 22, 1999. Like many other communities, the Ketchikan Gateway Borough found it necessary to adopt a change to its municipal code last fall in order to address the enforcement difficulty created by the new AS 29.25.074.

Your letter indicates that there are two problems that HB 43 seeks to address: 1) application of AS 29.25.074 to civil enforcement actions; and 2) the risk that a municipal ordinance could be declared invalid for failure to impose the statutorily required surcharge.

While I concur that these two issues should be addressed, and while the Ketchikan Gateway Borough has largely avoided the problem for the present by enacting a surcharge provision as required, I am concerned about the civil/criminal penalty distinction.

The Ketchikan Gateway Borough Code, like that in many other communities, contains a catch-all penalty section which states, in essence, that any violation of the code is subject to punishment through "a fine of up to \$500.00, or up to 30 days imprisonment, or both such fine or imprisonment." A copy of Ketchikan Gateway Borough Code section 1.10.030 as it appeared prior to the addition of the surcharge is attached. By comparison, Anchorage Municipal Code section 1.45.010, as of my most recent supplement, had a general penalty of \$300.00 or 30 days imprisonment. My copy of Fairbanks North Star Borough Code section 1.04.010 provides for a \$1000.00 fine, imprisonment of up to 90 days, or both.

Letter to Deborah L. Davidson
January 27, 1999
Page 2


Because each code violation thus carries with it a potential incarceration, unless a specific penalty is provided for which does not include incarceration, the terminology "misdemeanor or a violation of municipal ordinance" on line 12 of the bill will impact more municipal offenses than may be intended. AS 11.81.900 defines a misdemeanor as a crime for which a sentence of imprisonment for a term of more than one year may not be imposed. If misdemeanor is intended to apply to all offenses for which any period of incarceration under a year maybe imposed, even if that period is a maximum of thirty to ninety days, then the ~~the~~ \$50.00 surcharge would apply to all municipal code violations under the Ketchikan Gateway Borough code, except for those violations which specifically provide for a penalty that does not include incarceration.

I would suggest that the higher \$50.00 surcharge only be applied where the period of incarceration may be greater than 6 months. Otherwise, a \$50.00 fine for firecrackers, for example, would potentially include a \$50.00 surcharge.

If you have questions regarding this letter, please contact me at your convenience.

Sincerely,

KETCHIKAN GATEWAY BOROUGH



Scott A. Brandt-Erichsen
Borough Attorney

Enclosure

cc:

Georgianna Zimmerle, Borough Manager w/o encl.
Sue Bethel, Borough Clerk w/o encl.
Geoffrey Bullock, KGB Lobbyist w/o encl.
Gerald Lee Sharp, Esq., Preston, Gates & Ellis w/o encl.
Michael Gatti, Attorney for Mat-Su Borough w/o encl.
Ardith Lynch, Attorney for Fairbanks North Star Borough w/o encl.
Colette Thompson, Attorney for Kenai Peninsula Borough w/o encl.

HICKS, BOYD, CHANDLER & FALCONER

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February 18, 1999

VIA FACSIMILE - (907) 465-3835

Ms. Deborah L. Davidson
Legislative Aide
to Representative Gary Davis
State Capitol
Juneau, AK 99801

RE: Comments to HB 43

Dear Ms. Davidson:

Thank-you for inviting my comments to HB 43 introduced by Representative Davis. Indeed, there is a need to revisit the 1998 amendment to AS 12.55.039. I represent a number of municipalities throughout the State. We learned to our chagrin last year that the surcharge amendment, which we assumed had only been intended to apply to municipal traffic violations, applied to every municipal violation, civil or criminal.

The 1998 revisions have forced municipalities to scurry to revise their codes so that the courts will assess fines imposed under municipal ordinance for zoning, sales tax, animal control and similar violations. For instance, in Nome, Judge Esch would not assess a fine for curfew violations until the City could provide him with a copy of the amending ordinance. In several cases, municipalities have had to pass more than twenty (20) amendments to their respective codes to authorize the collection of the surcharge now required to be imposed by AS 12.55.039.

Here are our comments on the proposed legislation:

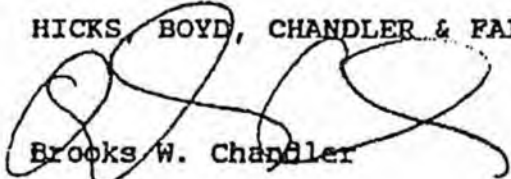
Section 1. I recommend adding the word "criminal" before the word "penalty" to avoid a possible ambiguity.

Ms. Deborah L. Davidson
February 18, 1999
Page 2

Section 2. Thank you for this amendment. Last year's legislation created a possible loophole to enforcement of a zoning ordinance, for instance, only because there was no surcharge to any penalty associated with the zoning ordinance. This amendment solves this unintended result. On behalf of our municipal clients, I appreciate the efforts of Representative Davis.

Very truly yours,

HICKS, BOYD, CHANDLER & FALCONER



Brooks W. Chandler

BWC/lhf

Lee@lawberg.biz



MATANUSKA-SUSITNA BOROUGH

350 EAST DAHLIA AVENUE, PALMER, ALASKA 99645-6488
BOROUGH ATTORNEY'S OFFICE

MICHAEL GATTI
BOROUGH ATTORNEY

PHONE (907) 745-9677

February 25, 1999

Representative Gary Davis
Alaska House of Representatives
State Capitol
Room 513
Juneau, AK 99801-1182

Re: HB 43

Dear Representative Davis:

I am writing in response to Legislative Aide Deborah L. Davidson's January 22, 1999, correspondence seeking comments on HB 43, which was introduced to address the concerns of municipalities that the mandatory surcharge requirement in the legislation swept with a broader brush than intended and could potentially impact municipal enforcement if the surcharge were not adopted. In accordance with HB 43, the Matanuska-Susitna Borough adopted Ordinance Serial No. 98-134, amending its penalties and violations section of the code to require the imposition of the surcharge to be collected by the borough for the police training fund. A copy of the borough's adopted code section is attached for your information.

-- After the passage of HB 43, the borough was concerned about the language of the bill, which apparently prohibited the enforcement of an ordinance for which a surcharge is required, if the surcharge was not imposed pursuant to HB 43. The borough felt it was somewhat ironic that a municipality could not enforce an ordinance unless it collected a surcharge for police training. While the borough certainly supports the benefits of trained law enforcement officers, it believes that any language that would prohibit the enforcement of a municipal ordinance for the failure to collect the surcharge is not well considered.

Municipalities adopt ordinances to address concerns affecting the public's health, safety, and welfare that may be enforced in their discretion to protect that interest. Any legislation that would somehow eliminate or reduce a municipality's discretion to

February 25, 1999

Page 2

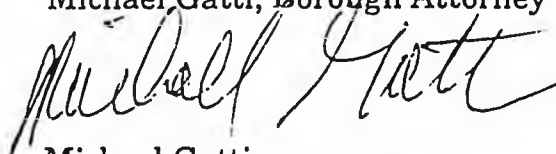
enforce its ordinances is a direct imposition on a municipality's broad powers delegated to it by statute. The existing language of AS 29.25.074 prohibiting ordinance enforcement should be repealed and the proposed language of HB 43 Sec. 2 should not be adopted. Instead, collection of the surcharge should be based upon the mandatory legislative direction to the municipality to collect the surcharge (by the use of the word "shall) which in the borough's opinion should be sufficient to compel the collection of the surcharge. The limitation of a municipalities enforcement options is thus eliminated and the surcharge should be collected based on the affirmative duty to do so.

I must also concur with the comments presented by Ketchikan Gateway Borough Attorney, Scott Brandt-Erickson, in his January 29, 1999 correspondence. A misdemeanor is specifically defined in AS 11.81.900 and means a crime for which a sentence of imprisonment for a term of more than one year may not be imposed. Like the Ketchikan Gateway Borough, the Matanuska-Susitna Borough has a system of citations that imposes fines but not imprisonment for a violation and are considered by the borough to be infractions. Under the proposed language on line 12 of page 1 and line 2 of page 2, confusion with regard to this term could arise.

In summary, it appears that the bill requires some additional consideration in order to remediate earlier interpretations of HB 43. Please call if you have any questions.

Very truly yours,

MATANUSKA-SUSITNA BOROUGH
Michael Gatti, Borough Attorney



Michael Gatti

MG:drm

Atts.

cc: Scott Brand-Erickson,
Ketchikan Gateway Borough
Kevin Ritchie,
Alaska Municipal League

W:\SHARED\DEBRAM\CORR\12-23-99 hb43 ltr.wpd

By: M. Scott
Introduced: 9/15/98
Public Hearing: 9/23/98
Adopted: 9/23/98

**MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 98-134**

AN ORDINANCE AMENDING MATANUSKA-SUSITNA BOROUGH 1.45 VIOLATIONS,
ENFORCEMENTS, AND PENALTIES BY ADDING SECTION 1.45.045 AUTHORIZING
THE IMPOSITION OF A STATE-IMPOSED SURCHARGE ON CERTAIN PENALTIES.

BE IT ENACTED:

* Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the borough code.

* Section 2. Amendment of chapter. MSB 1.45 is hereby amended by adding a new section to read as follows:

1.45.045 PENALTY SURCHARGE AUTHORIZATION AND COLLECTION.

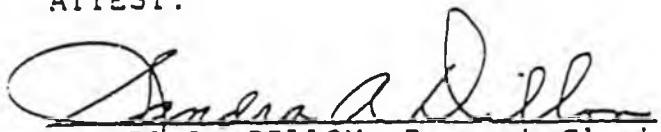
The surcharge required to be imposed pursuant to AS 12.55.039 is authorized and shall be imposed as a surcharge on penalties imposed for the violation of an ordinance, code provision, or regulation of the Matanuska-Susitna Borough brought under a citation or criminal complaint that would require a proceeding in the Alaska court system if the defendant were to enter a plea of not guilty. The court may impose and collect the surcharge on all penalties imposed by the court or fines and bail forfeitures that are paid to the court.

Section 3. Effective date. Ordinance Serial No. 98-134 shall take effect upon adoption by the borough assembly.

ADOPTED by the Matanuska-Susitna Borough Assembly this 29th day of September, 1998.


DARCIE K. SALMON, Borough Mayor

ATTEST:


SANDRA A. DILLON, Borough Clerk

(SEAL)



Fairbanks North Star Borough

Office of the Mayor

809 Pioneer Road

P.O. Box 71267

Fairbanks, Alaska 99707-1267

907/459-1300

Fax 907/459-1100

Email mayor@co.fairbanks.ak.us

March 4, 1999

The Honorable Gary Davis
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Re: HB 43

Dear Representative Davis:

Thank you for your letter of January 22 regarding HB 43. We appreciate your willingness to revisit the police training surcharge on violations of municipal ordinances.

We agree that the addition of the phrase "a penalty for violation of" in AS 29.25.074(a) (HB 43, p.2, line 9) would be helpful. It is possible that a municipality could choose to request an injunction (rather than a fine) to enforce an ordinance, and the failure to impose a surcharge should not cause the entire ordinance to be found invalid.

We would, however, like to request that the legislature exempt from the surcharge municipalities such as the Fairbanks North Star Borough that have no law enforcement powers, and therefore no police training program. The borough does not appear eligible to receive surcharge funds from the Alaska police training fund, since AS 18.65.225 authorizes appropriations to "municipalities that conduct their own police training programs."

The only violations for which the Fairbanks North Star Borough has routinely imposed penalties are on animal control citations. Since September, 1998, this borough has collected \$100 in surcharges, an average of \$20 per month. The cost

Letter to Representative Davis

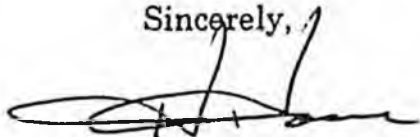
March 4, 1999

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of accounting, collection, and transmitting this minimal amount is hardly cost-effective for either the borough or the state.

While we appreciate the concept of requiring offenders to contribute toward the cost of police training, the legislation passed last year imposed an additional burden on the borough without any apparent benefit.

Sincerely,

A handwritten signature in black ink, appearing to read "Hank Hove", written over a horizontal line.

Hank Hove
Mayor

HH:rlf

PERKINS COIE LLP

1029 WEST THIRD AVENUE, SUITE 300 - ANCHORAGE, ALASKA 99501-1970
TELEPHONE: 907 279-8561 • FACSIMILE: 907 276-3108

GORDON J TANG
TANG@PERKINSCOIE.COM

February 4, 1999

Via Facsimile

Representative Gary Davis
State Capitol
Juneau, AK 99801

Re: House Bill 43

Dear Representative Davis:

I want to thank you and your staff for inviting me to comment on House Bill 43, which relates to Chapter 56 SLA 1998. This bill addresses the police training surcharges imposed for violation of municipal ordinances.

As a city attorney for seven Alaska cities, I see big problems with AS 29.25.074, which provides:

(a) A municipality may not enforce an ordinance for which a fine of \$30 or more or imprisonment is prescribed as a penalty unless the municipality authorizes the imprisonment of and provides for the collection of the surcharge required to be imposed under AS 12.55.039. The surcharge shall be deposited into the general fund of the state and accounted for under AS 37.05.142. Subject to appropriation, the legislature may reimburse a municipality that collects a surcharge required to be imposed under AS 12.55.039 for the cost to the municipality in collecting the surcharge and transmitting the surcharge to the state. The reimbursement may not exceed 10 percent of the surcharge collected and transmitted to the state.

(b) This section applies to home rule and general law municipalities. (§ 8 of 56 SLA 1998)

[09901-0001/AA990330.019]

Representative Davis
February 4, 1999
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As I look at these statutes, I see no purpose whatsoever for AS 29.25.074, and I especially see no reason why the legislature should choose to render a municipal ordinance unenforceable in these circumstances. AS 12.55.039, which imposes the surcharge, is completely self-sufficient. It effectively imposes the surcharge, and a city or other municipality does not need to do any more to have the state collect the surcharge. AS 29.25.074(a) is simply superfluous.

Furthermore, something needs to be done to effect proper implementation of this law. One of the cities I represent was told by the local magistrate that the court system (a state agency) would collect the surcharge and pay it over to the city. Why doesn't the court system pay the money directly to the state general fund, where it must go according to statute? When the state pays it to the city, then the city must receive, account for, and then pay it right back to the state, all at an administrative expense that is not sufficiently covered by the 10 percent reimbursement clause. What is the point to this circuitous route of money handling? It is causing at least one city manager considerable aggravation.

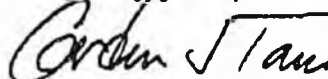
What am I missing here? What is the concern that AS 29.25.074 is supposed to address? Is there a concern that a municipality will itself collect a surcharge pursuant to an ordinance enforcement program that does not include the court system? If that is the issue, then it should be addressed in plain terms by requiring the city to pay over any directly collected surcharges to the state. There is no need to impose the draconian measure of rendering all municipal ordinances unenforceable if the municipality fails to adopt a surcharge that is already effectively imposed by state law. In my view, HB 43 does nothing to improve AS 29.25.074. There is no practical difference between making the ordinance unenforceable or making the penalty unenforceable.

As enacted in 1998, AS 29.25.074 just doesn't make any sense to me. And I am afraid that HB 43, section 2, just doesn't solve the problems I see. I urge the legislature to seriously consider repealing AS 29.25.074 in its entirety. I don't see that anything would be missing -- the surcharge would continue to be collected under the authority of AS 12.55.039, which by its own terms clearly applies to violations of municipal ordinances.

Representative Davis
February 4, 1999
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Again, thank you for sending me a copy of this bill and giving me a chance to have my say.

Very truly yours,


Gordon J Tans

GJT:go

HB

45

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. CSHB 45 (FIN) AM

Revision Date/Time (Note if correction) _____ Dept. Affected Office of the Governor
 Title Relating to initiative and referendum petitions BRU Elective Operations
 Component Elections
 Sponsor Representative Williams
 Requester Senate Judiciary Committee Component No. 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual	3.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	3.0	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	3.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	3.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of required programming changes to the Voter Registration and Election Management System (VREMS) and testing of the changes prior to implementation into the production environment.

Prepared by: Gail Fenumia Phone 465-3935
 Division Division of Elections Date/Time 1/13/00 12:50 PM
 Approved by: Gov. Governor Fran Ulmer Date 01/13/2000
 Agency Office of the Lieutenant Governor

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SENATE COMMITTEE REPORT

DATE: 5/16/99

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 2-3-00

Judiciary Committee considered CS FOR HOUSE BILL NO. 45(FIN) am

"An Act relating to initiative and referendum petitions; and providing for an effective date."

and recommends:

- be replaced with S CS CSHB45 (Jud)
- 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>John Brown</i>	✓		
		<i>Waive only</i>		✓	
		<i>JR Ellis</i>		✓	
CHAIR: <i>Adrian L. Taylor</i>		CHAIR:	✓		

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
<i>*2 Gov. Div. Elections</i>	<i>2/1</i>		<i>2.0</i>

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

HB 45

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3800
FAX: (907) 465-2075

December 10, 1999

The Honorable Fran Ulmer
Lieutenant Governor
Office of the Lieutenant Governor
P.O. Box 110015
Juneau, AK 99811-0015Re: Effect of *Buckley v. American Constitutional
Law Foundation* on State of Alaska Initiative
Statutes
A.G. file no: 663-99-0171
1999 Op. Att'y Gen. No. 2

Dear Lt. Governor Ulmer:

I. Introduction

We have prepared this opinion to advise you and your staff about the effect on Alaska statutes of a recent United States Supreme Court decision. The decision is *Buckley v. American Constitutional Law Foundation*, 119 S. Ct. 636, 142 L. Ed. 2d 599, 67 U.S.L.W. 4043 (1999), in which the Court invalidated certain requirements set out in Colorado law regarding initiative petitions. This is important to Alaska because the *Buckley* case will affect some of Alaska's laws on initiative petitions. The holding of *Buckley* leads to the conclusion that a few of Alaska's laws governing initiatives are clearly unconstitutional, and that these laws should therefore be amended and not enforced until the constitutional defects are cured.¹

¹ As you will see from the discussion below, the Court's holding in *Buckley* as applied to certain of Alaska's election statutes satisfies the requirements of our supreme court's holding in *O'Callaghan v. Coghill*, 888 P.2d 1302, 1304 (Alaska 1995) (executive branch may abrogate a statute which is clearly unconstitutional under a United States Supreme Court decision dealing with a similar law, without having to wait for another court decision specifically declaring the statute unconstitutional).

The Honorable Fran Ulmer, Lieutenant Governor
A.G. File No: 663-99-0171

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II. *Buckley* Invalidates Requirements on Residency, Identification Badges, and Reporting of Payments to Individual Petition Circulators

The Court in *Buckley* invalidated three types of requirements for initiative petitions set out in Colorado's statutes and constitution. First, the Court struck down the requirement that initiative petition circulators be registered voters. *Buckley*, 119 S. Ct. at 644. Second, the Court invalidated the requirement that initiative petition circulators wear identification badges containing the circulator's name. *Buckley*, 119 S. Ct. at 646. Third, the Court invalidated the requirement that proponents of an initiative report to the state the names and addresses of all paid circulators and the amounts paid to each circulator. *Id.* at 647. The Court found that the three controls at issue were excessively restrictive of political speech, in violation of the First Amendment to the United States Constitution.

III. Impact of *Buckley* Decision on Alaska Law Regarding Initiatives

A. Registered Voter Requirement

There are a number of provisions in Alaska's constitution and statutes that may be affected by the holding of *Buckley* invalidating the requirement that initiative petition circulators be registered voters. First, Alaska law requires that persons who sponsor, sign, or circulate initiative petitions be "qualified voters," and part of the test for being a qualified voter is that the person be registered to vote. An explanation of "qualified voter" is set out in two places. Alaska Statute 15.05.010, entitled "voter qualification," provides that

A person may vote at any election who

- (1) is a citizen of the United States;
- (2) is 18 years of age or older;

The Honorable Fran Ulmer, Lieutenant Governor
A.G. File No: 663-99-0171

December 10, 1999
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(4) has been a resident of the state and of the election district in which the person seeks to vote for at least 30 days just before the election; and

...

(6) *has registered before the election as required under AS 15.07 and is not registered to vote in another jurisdiction.*

(Emphasis added.) Similarly, AS 15.60.010, entitled "definitions," provides:

(25) "qualified voter" means a person who has the qualification of a voter and is not disqualified as provided by art. V, sec. 2, of the state constitution and AS 15.05.030.

However, the scope of *Buckley*'s prohibition on requiring that an initiative petition circulator be a registered voter is not entirely clear. First, it is unclear whether the *Buckley* Court meant to include petition signers as well as circulators in its holding on this point. The Alaska Constitution and Alaska statutes require that initiative petition signers and circulators be "qualified voters."² The constitutional provisions addressing the requirements for an initiative petition are article XI, sections 2 and 3.³ The statutes requiring that qualified voters sign and circulate an

² There are similar requirements for a referendum set out in the constitutional provisions referenced below and in Alaska Statutes 15.45.250 - 15.45.465.

³ The Alaska Constitution, article XI, section 2, sets out the requirements for an application for an initiative or referendum as follows:

An initiative or referendum is proposed by an application containing the bill to be initiated or the act to be referred. The application shall be signed by not less than one hundred *qualified voters* as sponsors, and shall be filed with the lieutenant governor. If he finds it in proper form he shall so certify. Denial of certification shall be subject to judicial review.

(Emphasis added.)

The Alaska Constitution, article XI, section 3, sets out the requirements for a petition for an initiative or referendum as follows:

(continued. . .)

The Honorable Fran Ulmer, Lieutenant Governor
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initiative petition are AS 15.45.030(2), AS 15.45.060, AS 15.45.100, AS 15.45.120, AS 15.45.130(5), and AS 15.45.140.

Under *O'Callaghan*, 888 F.2d 1304, the holding of *Buckley* should be read narrowly and limited to its express terms. Under the language set out in *Buckley*, the Court struck down the requirement that petition circulators be registered voters. The Court did not address the issue of a requirement set out in state law that persons who sign an initiative petition application be registered voters.⁴ Therefore, Alaska could retain the requirements set out in the Alaska Constitution and statutes that petition signers be qualified voters. However, it is clear that Alaska may not retain the requirement that petition circulators be qualified voters. The Court in *Buckley* suggested that the requirement that petition circulators be registered be replaced with a requirement that the circulators provide an affidavit demonstrating that they are residents of the state. *Id.* at 644.⁵

Under this limiting analysis, article XI, sections 2 and 3, of the Alaska Constitution would stand. Similarly, the following statutes would stand: AS 15.45.030, AS 15.45.060, AS 15.45.100, AS 15.45.120, AS 15.45.130(5), and AS 15.45.140. However, AS 15.45.110(a)

(...continued)

After certification of the application, a petition containing a summary of the subject matter shall be prepared by the lieutenant governor for circulation by the sponsors. If signed by *qualified voters*, equal in number to ten per cent of those who voted in the preceding general election and resident in at least two-thirds of the election districts of the State, it may be filed with the lieutenant governor.

(Emphasis added.)

⁴ In *Buckley* the Colorado law challenged did require that persons who signed initiative petitions be "registered electors" at the time of signing. *Id.* at 119 S. Ct. 640-641 n. 7.

⁵ However, the Court expressly reserved judgment on the question of whether an actual statutory residency requirement would be permissible. Until there is authority to the contrary it is not clear that the Court would invalidate the residency requirement.

The Honorable Fran Ulmer, Lieutenant Governor
A.G. File No: 663-99-0171

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requiring that petition circulators be sponsors would be clearly unconstitutional because of the requirement that sponsors be registered voters. Instead, under *Buckley*, Alaska could impose a requirement that petition circulators provide an affidavit that they are state residents, rather than registered voters. Similarly, many parts of AS 15.45.130 would be clearly unconstitutional because of the requirement that petition circulators be sponsors. Again, the sponsor requirement could be replaced by a requirement that the petition circulators provide an affidavit that they are Alaska residents. We suggest that your staff prepare an administrative regulation to address this matter. Under the regulation an initiative petition circulator could establish Alaska residency either by demonstrating that he or she was a registered voter or by submitting an affidavit attesting to residency in Alaska.

B. Identification Badge Requirement

The *Buckley* Court invalidated the requirement that initiative petition circulators wear identification badges containing the circulators' names. Alaska Statute 15.45.110(b) provides that "a sponsor shall display identification containing the sponsor's name when circulating a petition." Thus, AS 15.45.110(b) is clearly unconstitutional under *Buckley*.

C. Requirement That Payment to Individual Petition Circulators be Reported

The *Buckley* court struck down a requirement that ballot initiative proponents who pay circulators file a final report disclosing information specific to each paid circulator, including the circulators' names and addresses and the total amount paid to each circulator. In contrast, unpaid petition circulators were not required to disclose their names or other information. *Id.* at 646. The *Buckley* Court also invalidated the requirement that initiative proponents file a monthly report containing the names and addresses of each paid circulator and the amount of money paid and owed to each circulator during the month in question. Alaska Statute 15.45.130(8) includes a requirement

The Honorable Fran Ulmer, Lieutenant Governor
A.G. File No: 663-99-0171

December 10, 1999
Page 6

that all sponsors file an affidavit containing the petition circulator's name and whether the circulator has or will receive payment for collection of signatures. Alaska's requirements are not the same as those invalidated in *Buckley*. In Alaska, all sponsors, paid or unpaid, must disclose their names. Those sponsors who did receive payment for petition circulation only need identify the fact of payment, not the amount. Therefore, the requirement of identifying the petition circulators by name is not clearly unconstitutional under *Buckley*.

Similarly, it is unclear whether the requirement of identifying whether petition circulators are paid or unpaid is unconstitutional under the holding of *Buckley*, noted above. The requirement set out in AS 15.45.130(8) is not identical to the requirements invalidated in *Buckley*. The Court in *Buckley* left open the question of whether the state could require petition circulators to disclose whether they were paid or unpaid. *Id.* at 646. Therefore, although it is a fairly close question, we would advise that the requirement set out in AS 15.45.130(8), that the sponsor's affidavit state whether petition circulators are paid or unpaid, is not clearly unconstitutional. Finally, the remaining language set out in AS 15.45.130(8) requiring identification of each person or organization that has paid or agreed to pay the sponsor for collection of signatures is allowable under *Buckley*. *Id.* at 647.

IV. Corrective Action in Light of *Buckley*

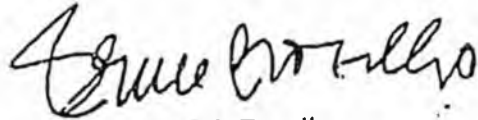
The next consideration is determining what action the state should take regarding the Alaska statutes that are clearly unconstitutional under *Buckley*. First, we recommend that corrective legislation be introduced to cure the constitutional defects. During this past legislative session we worked with the Division of Elections on legislation to update the elections code. This legislation was introduced as HB 163 and SB 120. We are available to work with your staff to add provisions to one of these bills that will address the constitutional problems with the initiative provisions of the

The Honorable Fran Ulmer, Lieutenant Governor
A.G. File No: 663-99-0171

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elections code in light of *Buckley*. Second, for the reasons set out in this opinion we advise you not to enforce the statutes discussed above as we have concluded they are "clearly unconstitutional."

Sincerely,



Bruce M. Botelho
Attorney General

BMB:bw

cc: Janet Kowalski, Director
Division of Elections
Office of the Lieutenant Governor

*moved
by Janssen
adopted
2/2/00*

1-LS0254V ✓
Kurtz
1/24/00

SENATE CS FOR CS FOR HOUSE BILL NO. 45()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE WILLIAMS

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to initiative, referendum, and recall petitions; and providing for
2 an effective date."

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

4 * Section 1. AS 15.45.110(a) is amended to read:

5 (a) The petitions may be circulated throughout the state [ONLY BY A
6 SPONSOR AND] only in person.

7 * Sec. 2. AS 15.45.110(c) is amended to read:

8 (c) A circulator [SPONSOR] may not receive payment or agree to receive
9 payment that is greater than \$1 a signature, and a person or an organization may not
10 pay or agree to pay an amount that is greater than \$1 a signature, for the collection of
11 signatures on a petition.

12 * Sec. 3. AS 15.45.110(e) is amended to read:

13 (e) A person or organization that violates (c) or (d) [(b) - (d)] of this section
14 is guilty of a class B misdemeanor.