

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002

10352 HOUSE LABOR & COMMERCE

8672

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**HB**

**496**

# Alaska State Legislature

Co-Chair  
House Finance Committee  
Subcommittee Chair  
Environmental Conservation  
Courts



*Representative William K. Williams*

**Sponsor Statement for HB 496**

*During Session:*  
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## **Public Utilities Exempt From Regulation**

**“An Act providing that a utility or electric operating entity owned and operated by a political subdivision of the state competing directly with a telecommunications utility is not subject to the Alaska Public Utilities Regulatory Act.”**

HB 496 allows a municipality to continue to self-regulate its municipally owned utilities even if another utility enters into competition with it.

Alaska law presently provides that a municipally owned utility is exempt from rate regulation by the Regulatory Commission of Alaska (“RCA”). However, the exemption is lost if another utility enters into competition with the municipally owned utility. The municipally owned utility loses its exemption even if the competing utility is not rate regulated in any way.

The result of competition between a municipally owned utility and a non-rate regulated utility under present law would require the municipally owned utility to become fully rate regulated by the RCA while its competition could be completely unregulated.

HB 496 attempts to level the playing field. HB 496 continues the exemption for municipal utilities in the face of competition except when the competition is from a fully rate regulated utility. At that point, the municipal utility loses its exemption and both the municipal utility and the competing utility would become fully rate regulated by the RCA.

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# STATE OF ALASKA

DEPARTMENT OF COMMUNITY AND  
ECONOMIC DEVELOPMENT  
REGULATORY COMMISSION OF ALASKA

TONY KNOWLES, GOVERNOR

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ANCHORAGE ALASKA 99501-2450  
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March 5, 2002

The Honorable Ben Stevens, Chairman  
Senate Labor & Commerce Committee  
Alaska State Legislature  
State Capitol, MS 301  
Juneau, Alaska 99801-1182

RE: SB 324 (An Act providing that a utility or electric operating entity owned and operated by a political subdivision of the state competing directly with a telecommunications utility is not subject to the Alaska Public Utilities Regulatory Act)

Dear Senator Stevens:

The Regulatory Commission of Alaska has reviewed SB 324, which provides that a utility or electric operating entity owned and operated by a political subdivision of the state competing directly with a telecommunications utility is not subject to the Alaska Public Utilities Regulatory Act. The RCA is not taking a position in support of or in opposition to this legislation. We believe it presents policy issues that are within the legislature's province. We do not anticipate any fiscal impact on the agency from this bill. RCA will not submit a fiscal note for SB 324.

My participation in a telephone rate case hearing today makes it difficult to participate in the scheduled hearing for this bill. However, I would be happy to answer any questions you may have regarding the RCA and its role.

Sincerely,

REGULATORY COMMISSION OF ALASKA



G. Nanette Thompson  
Chair

cc: Deborah Sedwick, DCED Commissioner  
Sally Saddler, DCED

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HE 496  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
 Title Public Utilities Exempt from Regulation BRU Regulatory Commission of Alaska (399)  
 Component Regulatory Commission of Alaska  
 Sponsor Representative Williams  
 Requester House Labor & Commerce Component No. 2417

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

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill has no fiscal impact on the operations of this agency.

Prepared by: Nan Thompson, Chair Phone 907-276-6222  
 Division Regulatory Commission of Alaska Date/Time 4/2/02 3:41 PM  
 Approved by: Deborah B. Sedwick, Commissioner Date 4/2/2002  
 Agency Department of Community & Economic Development

Amendment No. 1

Page 2, Line 3

Delete: "company"

Insert: "operating entity"

This is a technical change to conform the terminology used in the legislation on page 2, line 3 to the terminology in the existing statute on page 1, line 8.



## KETCHIKAN PUBLIC UTILITIES

2830 TONGASS AVENUE

KETCHIKAN, ALASKA 99901-5742

TELEPHONE: 907-225-1000  
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MUNICIPALLY OWNED  
ELECTRIC TELEPHONE WATER

### TESTIMONY OF JIM VOETBERG IN SUPPORT OF HB 496

Good afternoon. My name is Jim Voetberg, and I am the Assistant City Manager of the City of Ketchikan. I also serve as the Assistant General Manager for Ketchikan Public Utilities ("KPU"). I am here to speak in support of HB 496.

This bill will allow a municipality like the City of Ketchikan to continue to regulate its utilities, including its telephone utility, even if it faces competition from another telecommunications company. This is important to us and we strongly support it.

#### A. State of Ketchikan's Economy.

As many of you know, the Ketchikan economy is very fragile and has faltered for some time. Many of you are aware that the Ketchikan pulp mill, the community's largest employer, closed its doors in 1997, resulting in the loss of over 500 jobs. The saw mill has also closed its doors. Gateway Forest Products' veneer mill has filed a Chapter 11 petition, jeopardizing another 80 jobs. The Ketchikan area payroll has decreased 21% from 1990-1999; wages have decreased 13% from 1990-1999; and Ketchikan's per capita income has decreased 8% from 1990-1999.<sup>1</sup> While we remain optimistic that a new economy in Ketchikan will emerge, one that is more diverse and stronger than before, the fact remains that the

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<sup>1</sup> These statistics are from *Southeast Alaska's Economy*, Presented to the Southeast Conference on September 19, 2001 by the McDowell Group, Inc.

Ketchikan community is going through a very difficult and painful transition.

**A. Tools Available To Help Rebuild Ketchikan's Economy.**

The City of Ketchikan believes that to strengthen our economy, local government needs various tools to build the infrastructure that businesses are demanding, in order to compete on a worldwide basis. Ketchikan is fortunate in that one of the tools it has to help rebuild the community's economic base is ownership and regulatory authority of its utilities. As you may know, the City of Ketchikan has owned, operated and regulated various public utilities for over 50 years, including telephone, water, electric, wastewater collection and treatment and solid waste collection and disposal.

As an example of utilizing our utility as a tool for economic development, the City through its electric utility and as a member of the Four Dam Pool, recently completed the purchase of four formerly owned state hydroelectric projects. Divestiture, in part, not only assures residents and businesses in Ketchikan, power at an affordable rate, but funds the PCE Endowment for the benefit of the State's rural electric consumers. Furthermore, through efforts to construct the Swan Lake-Lake Tyee Intertie, the City is working toward insuring its electrical power rates remain low and that there is sufficient capacity to attract new industries which may be looking to locate in Ketchikan. Without this tool of local ownership and regulatory control of the electric utility, such economic development enhancements could not have occurred.

Similarly, the City through its KPU Telecommunication Division has made the investments necessary to insure that the community does not fall behind in the ever changing world of telecommunications and that businesses can compete in the worldwide market. In addition to basic telephone service, the KPU Telecommunication Division

provides enhanced services such as call-waiting, call forwarding and caller ID; it provides dial-up internet services and most recently has begun offering high speed DSL. We are particularly proud of our high speed DSL, as this is another example of an economic development tool local government has used to attract and maintain businesses in Ketchikan.

C. City of Ketchikan's Stewardship and Operation of Public Utilities.

While an important economic tool, the City of Ketchikan's stewardship over its public utilities is not strictly geared toward economic development. Nor is its stewardship driven by profits. KPU does not target or cherry pick the high revenue customers while ignoring marginal or low revenue customers. Rather, KPU is a community owned utility whose regulatory oversight is made by locally elected officials and whose decisions on how it provides services is based on the community's best interest.

For example, KPU has installed several remote Customer Service Area terminals, allowing for the deployment of fiber from KPU's central office to within 15,000 feet of 90% of all residents located on the roaded areas of Ketchikan. This will allow KPU to offer high speed Internet service to nearly all residents of the community. And, in its 2002 budget, KPU plans to install an additional four miles of fiber to the end of the road system north of the City and directly into the North Point Higgins Elementary School, allowing the elementary school to be directly connected with the School District's data network. As another example, last year KPU with the advancement of new technology was able to install a wireless point to point telecommunication system that allowed a pocket of residences located across Tongass Narrows, just south of the airport on Gravina Island, to receive telephone service.

The point I want to stress is that local ownership, control and regulatory oversight has allowed the City to not only provide quality services to the community, but has permitted the City to use its utility as a tool to assist in economic development of a fragile economy.

**D. Importance Of This Legislation.**

This legislation is important to the City of Ketchikan in its efforts to continue to offer high-quality service to its residents while encouraging economic development. This legislation has been narrowly crafted to ensure that competition amongst utilities is not hampered and that competition occurs on a level playing field. Without this legislation, should the City of Ketchikan face competition from another telecommunications company such as a wireless provider, the City will likely lose the ability to regulate its telephone utility as well as all of its other utilities. Here is why:

**E. Alaska Law.**

Alaska law provides that where a municipality owns and operates a public utility, the municipality may regulate the terms and conditions governing the provision of that public utility service. AS 42.05.711(b). Other than obtaining a certificate from the Regulatory Commission of Alaska ("RCA"), municipalities have full control over the provision of public utility service. This is why Ketchikan has been able to operate and regulate its public utility services for over 50 years.

However, regulatory authority changes if a municipal utility faces competition. Current Alaska law also provides that if a municipal utility faces competition, then all of the municipalities' utilities become fully subject to the jurisdiction of the RCA. AS

42.05.711(b)(2). The only exception to this rule is if the RCA grants an exemption.

If Ketchikan becomes subject to the jurisdiction of the RCA, competition will not be on a level playing field. The RCA fully rate regulates all incumbent local exchange companies subject to its jurisdiction. This means that each company's rates are based on their costs, and those costs are established through lengthy and very expensive rate proceedings. Rate cases can cost hundreds of thousands of dollars, and can take years to process. Moreover, as a fully rate regulated company, we would not be able to change our rates quickly in order to meet customer needs or to respond to the marketplace. Instead, the City would only be able to change its rates through expensive filings with the RCA and even then, we would have to obtain approval through a process which can be very time consuming.

By contrast, the RCA has never rate regulated a new entrant such as a wireless telephone provider. New entrants receive light regulatory treatment. They post new rates that become effective in a matter of days, and their rates are not cost-based. This means that the new entrant can price its services at whatever level it wishes, including just below ours, without having to spend hundreds of thousands of dollars on a rate case. And, the new entrant can raise or lower its rates without proving anything to the Commission.

The current State Statute does not serve the interests community residents and it is not good for the City of Ketchikan. Ratepayers benefit from competition when competition is on a level playing field. If one carrier is heavily regulated and the other is not, the lightly regulated entity can price its services just under the rates of its highly regulated competitor to gain market share. Such prices are not necessarily the lowest possible rates and are not necessarily as low as the rates would be given unfettered competition. Establishing a level

playing field aids the public because competition results in the highest level of service at the lowest possible price when, but only when, the marketplace is allowed to function properly.

Having the City of Ketchikan's Telephone Division fully rate regulated, while having a competitor lightly regulated if at all, is not good for the City of Ketchikan. The City has done an excellent job bringing high quality telecommunication service to our residents and businesses through investing in our infrastructure. If we become regulated by the RCA, we estimate that our overall annual utility costs will increase by nearly \$ 700,000 due to regulatory fees to the RCA, the need to hire more staff and more consultants to meet the RCA's regulatory requirements. That will almost certainly result in rate increases and in fewer dollars being available to invest in new infrastructure and new services.

Moreover, we strongly object to being hamstrung in our ability to compete. Principles of fairness and regulatory parity provide that this statute should be amended when a municipality faces competition from a telecommunications company.

**F. The Proposed Legislation.**

This legislation makes a small change to AS 42.05.711(b)(2). As it is currently written, any time a municipally-owned utility faces any competition, all of the City's utilities become subject to the jurisdiction of the RCA. In terms of telecommunication services, Ketchikan is the only municipally owned telecommunication provider in the state. In the event a partially or non-regulated telecommunication provider competing with services provided by KPU, all of Ketchikan's utilities are subject to becoming regulated. The proposed legislation simply allows the City of Ketchikan to continue to regulate its utilities, including its telephone utility, if it faces competition from another telephone company that may or may not be

regulated.

We believe that this amendment helps to ensure that there is a level playing field in the event another telecommunications company enters the Ketchikan market and competes with the City of Ketchikan's Telephone Division. By allowing the City of Ketchikan to continue to regulate its telephone utility, as it has done for over 50 years, it ensures that the City is not subjected to heavy regulation, which is not comparably applied to its competition. Only in this way can consumers truly benefit from competition.

**A. Comments from opponents.**

Opponents of this legislation may argue that it eliminates competition or that Ketchikan has some hidden agenda. First of all, there is no hidden agenda. The City, representing the citizens of our community, believes that regulatory control of its utility is better managed at the local level than at the State level. Second, it is no secret that the economy in Ketchikan is fragile and that local governmental entities are looking at any tools they can utilize to insure the economic survival of our community.

Federal law allows rural exemptions for telecommunication competition services because it is often in the public's best interest for one company to provide quality and reliable telecommunication services to rural Americans. This only makes sense as it prohibits competitors from cherry picking high revenue customers while leaving low revenue customers to the incumbent. It cannot be stressed enough. Competition only works when there exists a level playing field.

**A. Closing.**

In closing, I wish to stress the importance of this relatively small change to

AS42.05.711(b)(2) to the community of Ketchikan. The City looks to the State to allow it to preserve local control as it has had for over 50 years and to insure that local government has the tools it needs to better server our community and better assist in turning Ketchikan's economy around.

Thank you for your time, and I'm happy to answer any questions you may have.

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
Bill Version: SB 324  
(S) Publish Date: 3/6/02

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
Title Public Utilities Exempt from Regulation BRU Regulatory Commission of Alaska (399)  
Component Regulatory Commission of Alaska  
Sponsor Senator Taylor  
Requester Senate Labor & Commerce Component No. 2417

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

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
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Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: 0.0  
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill has no fiscal impact on the operations of this agency.

Prepared by: Nan Thompson, Chair Phone 907-276-6222  
Division: Regulatory Commission of Alaska Date/Time 3/6/02 2:24 PM  
Approved by: Deborah B. Sedvick, Commissioner Date 3/6/2002  
Agency: Department of Community & Economic Development

**HB**

**504**

# ALASKA STATE LEGISLATURE

Representative Pete Kott, Chair  
Representative Brian Porter  
Representative Vic Kohring  
Representative Carl Morgan  
Representative Lesil McGuire  
Representative Ethan Berkowitz  
Representative Reggie Joule



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## House of Representatives Rules Committee

### Sponsor Statement for HB 504

Since statehood, when the Alaska Wage & Hour Act was adopted, it was commonly understood that some Alaskan businesses, such as fisheries, operate under unique circumstances. In response, for authorized occupations that customarily furnish board & lodging, The Act includes a mechanism for some flexibility in terms of the minimum wage.

AS 23.10.085 (c) provides that "the regulations may permit deductions by an employer from the minimum wage to employees for the reasonable cost as determined on an occupation basis, of furnishing board or lodging if board or lodging is customarily furnished by the employer & used by the employee."

Because of a conventionally modest minimum wage, the fishery business had no reason to assert the statutory option laid out in AS 23.10.085. As a matter of course, fisheries businesses pay their workers at, or slightly above the minimum wage for their regular 8-hour day, plus ample overtime paid at time and a half. In addition to their earnings, fishery workers are customarily furnished room and board for the term of their employment.

For the past 40 years, that arrangement worked quite well for both the fishery employer and employee. Today, the minimum wage is poised to increase by 26.5% with annual adjustments for the cost of living and Alaska's beleaguered fisheries industry faces unprecedented financial disaster on all fronts. As a consequence, this industry must now rely on the Wage & Hour Act and its enabling Regulations and claim that limited exemption from the anticipated minimum wage of \$7.15.

The Wage and Hour Act authorizes deductions by an employer from the minimum wage payable to employees for the reasonable cost for furnishing board or lodging that is customarily provided. The enabling Regulations allow wages below the minimum wage, based upon a written agreement at the time of hire, for the reasonable cost (without profit to the employer) of furnishing board and lodging. However, the Regulations, as written, do not allow the wage deduction for board and lodging unless there are alternative public accommodations available to the employees.

For example, the Regulations allow for a cannery to pay less than the minimum wage in communities with alternate public housing but neglect the truly remote work sites. While Ketchikan has alternate public housing, Egegik may not. In order to insure that the fisheries business can rely on the intent of the Wage & Hour Act, the Regulations need to be cleaned up and compiled into a new section of the statute.

HB 504 codifies the language from 8 AAC 15.160 (d) to provide

- the fishery employer and employee to contract the hourly wage
- a minimum wage deduction for the reasonable cost board and lodging for fishery businesses that customarily provide those accommodations to their employees.

Note: This is a limited exemption but not an exclusion from the minimum wage requirement. The employee is covered by all other protections of the Wage and Hour Act, such as overtime, record keeping, collective bargaining.

# ALASKA STATE LEGISLATURE

Representative Pete Kott, Chair  
Representative Brian Porter  
Representative Vic Kohring  
Representative Carl Morgan  
Representative Lesil McGuire  
Representative Ethan Berkowitz  
Representative Reggie Joule



Alaska State Capitol  
Juneau, AK 99801-1182  
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## House of Representatives Rules Committee

HB 504

### Sectional analysis

AS 23.10 – Alaska's Wage and Hour Act is amended by adding a new section dealing with wages paid to employees in a fisheries business.

**Sec. 23.10.072. Wages for fisheries businesses.**

- Based upon a written agreement between employer & employee, an employer engaged in a \*fisheries business may pay less than the minimum wage to their employee for the reasonable cost of room and board the employer furnishes to the employee, if
- the cost to the employee for the use of the employer's board & lodging facilities is reasonable & without profit to the employer; and
- The board & lodging facilities are customarily furnished by the employer & used by the employees.

\* as defined in AS 43.75.290, a "fisheries business" means a person who engages in processing fisheries resources for sale by freezing, cooking, salting, or other method and includes but is not limited to canneries, cold storages, freezer ships, and processing plants.

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(3) require and subpoena from an employer a statement in writing, when the director or the representative considers it necessary, of hours worked by and the wages paid to each person in the employ of the employer, and the commissioner may require the employer to make the statement under oath;

(4) question an employee in a place of employment during work hours with respect to the wages paid and the hours worked by the employees;

(5) compel the attendance of witnesses and the production of books, papers, and documents by subpoena when necessary for the purpose of a hearing or investigation provided for in AS 23.10.050 — 23.10.150. (§ 6(2) ch 171 SLA 1959)

**Sec. 23.10.085. Scope of administrative regulations.** (a) The director may adopt, amend, or rescind administrative regulations not inconsistent with the purposes and provisions of AS 23.10.050 — 23.10.150 that are necessary for the administration of AS 23.10.050 — 23.10.150.

(b) The regulations may, without limiting the generality of (a) of this section, define terms used in AS 23.10.050 — 23.10.150, and restrict or prohibit industrial homework or other acts or practices that the director finds appropriate to carry out the purpose of AS 23.10.050 — 23.10.150, or to prevent the circumvention or evasion of AS 23.10.050 — 23.10.150.

(c) The regulations may permit deductions by an employer from the minimum wage applicable under AS 23.10.050 — 23.10.150 to employees for the reasonable cost, as determined by the director on an occupation basis, of furnishing board or lodging if board or lodging is customarily furnished by the employer and used by the employee. (§ 6(3) ch 171 SLA 1959)

NOTES TO DECISIONS

This section and AS 23.10.095 constitute a delegation of authority from the legislature to the agency to formulate policies, leaving to the agency's discretion the issue whether federal definitions of "regular rate of pay" and other terms can be applied consistently with AS 23.10.050 — 23.10.150. Dresser

Indus., Inc. v. Alaska Dep't of Labor, 633 P.2d 1716, 72 L. Ed. 2d 137 (1982).

Applied in Alaska Int'l Indus., Inc. v. Musarra, 633 P.2d 1240 (Alaska 1979).

**Sec. 23.10.090. Administrative procedures.** Regulations adopted or hearings conducted under AS 23.10.050 — 23.10.150 shall be adopted or conducted and be subject to judicial review in accordance with AS 44.62 (Administrative Procedure Act). (§ 6(4) ch 171 SLA 1959)

NOTES TO DECISIONS

Cited in Dayhoff v. Temsco Helicopters, Inc., 772 P.2d 1085 (Alaska 1989).

**Sec. 23.10.095. Adoption of federal regulations.** The commissioner may adopt regulations and interpretations that are made by the administrator of the Wage and Hour Division of the federal Department of Labor and that are not inconsistent with AS 23.10.050 — 23.10.150. (§ 6(5) ch 171 SLA 1959)

NOTES TO DECISIONS

This section and AS 23.10.085 constitute a delegation of authority from the legislature to the agency to formulate policies, leaving to the agency's discretion the issue whether federal definitions of "regular rate of pay" and other terms can be applied

consistently with Alaska's Wage and Hour Act. Dresser Indus., Inc. v. Alaska Dep't of Labor, 633 P.2d 1716, 72 L. Ed. 2d 137 (1982).

**Sec. 23.10.100. Employer's records.** (a) The commissioner shall require the employer to maintain records of at least three years at the address, and occupation of each employee, and other payroll records for each employee, and other payroll records. (b) The commissioner or the employer's records at the address, and occupation of each employee, and other payroll records, and the commissioner shall have access to the records. The commissioner has the right to require the employer to produce the records.

Public policy interest and burden of proof. If an employee produces sufficient evidence to show that the amount and extent of the wages paid to the employee was improperly compensated, the burden shifts to the employer to come forward with sufficient evidence to negate the reasonable inference drawn from the employee's evidence that the burden of proof in an action under the Wage and Hour Act is not binding on the court in a proceeding to determine the amount of wages payable.

**Sec. 23.10.105. Posting of notices.** The commissioner shall keep a copy of the notices posted in a conspicuous place where the employee is employed. An employer who fails to post the notices upon request without charge. (§ 8 ch 171 SLA 1959)

**Sec. 23.10.110. Remedies.** (a) An employee who is liable to an employer for overtime compensation, as determined by the commissioner, shall be entitled to an additional equal amount of overtime compensation. (b) An action to recover from an employer is liable may be maintained by the employee or by an agent or representative of the employee. The action shall be filed in the court in which the claim is made, or in the court in which the amount to which the employee is entitled is less than the amount to which the employee is entitled. The commissioner may take an action to enforce the claim if necessary to collect the claim. (c) The court in an action brought under this section, reasonable attorney's fees, and costs of actions brought under this section shall be paid by the commissioner to the Department of Labor. (d) In an action brought under this section, reasonable attorney's fees, and costs of actions brought under this section shall be paid by the commissioner to the Department of Labor.

(d) In an action under (a) or (b) of this section, reasonable attorney's fees, and costs of actions brought under this section shall be paid by the commissioner to the Department of Labor. (e) In an action brought under this section, reasonable attorney's fees, and costs of actions brought under this section shall be paid by the commissioner to the Department of Labor.

nci. To qualify for the exemption, all the requirements set out in ch. 5 of this title relating to the

er this section will not be less than 75 established under AS 23.10.065.

imum wages for full-time students Fair Labor Standards Act of 1938, as implemented in 29 C.F.R. 519.1 — yment subject to the provisions of ster 68)

AS 23.10.085

**FOR SEARCHING FOR PLACER**

The exemption from AS 23.10.050 — .055(10) applies to those activities "cutting" and does not apply once devel- a known mineral source has begun.

AS 23.10.085

**FOR INDIVIDUALS UNDER 18**

**EMPLOYEES.** The exemption from ed by AS 23.10.055(11) does not apply at individual normally within the employed in excess of 30 hours. (Eff.

AS 23.10.085

**ING THE NUMBER OF EMPLOY-**

23.10.060(d)(1). In determining the employer employs for purposes of a corporation who actively engage in employees will be counted regardless of orked. (Eff. 12/9/78, Register 68; am

AS 23.10.085

**NING OPERATIONS.** (a) For pur-

ing season" means the cumulative operations are carried on during a 20 weeks.

the payment for overtime under gaged in small mining operations is

available to the employer for an aggregate of 14 weeks, commencing on the first day the mine begins active operations in a calendar year. Periods during which the mine is not actively engaged in mining operations for reasons including assessment work and repair or construction of buildings or equipment are not part of the exemption period.

(c) Repealed 9/28/85.

(Eff. 12/9/78, Register 68; am 9/28/85, Register 95; am 4/29/99, Register 150)

Authority: AS 23.05.060 AS 23.10.060 AS 23.10.085

**ARTICLE 4. REDUCTION OF WAGES.**

Section	Section
160. Deductions from an employee's wages	165. Purchase of uniform or equipment

**8 AAC 15.160. DEDUCTIONS FROM AN EMPLOYEE'S**

**WAGES.** (a) AS 23.10.085(c) does not limit the right of an employer and employee to enter into a written agreement to provide for deductions of monetary obligations of an employee. Requiring or inducing an employee to return or give up any part of the compensation to which the employee is entitled, whether by force, intimidation, or threat of dismissal from employment, or by any other manner, is prohibited. A written agreement for deductions payable to the employer or person acting in the employer's behalf or interest is not valid if it would have the effect of reducing an employee's wage rate below the statutory minimum wage or overtime rates, or if it would require an employee to reimburse the employer for any of the following:

- (1) customer checks returned due to insufficient funds or any other reason;
- (2) non-payment for goods or services as a result of theft or credit default;
- (3) cash or cash register shortages unless the employee admits, willingly and in writing, to having personally taken the specific amount of cash that is alleged to be missing;
- (4) lost, missing, or stolen property, unless the employee admits willingly and in writing, to having personally taken the specific property alleged to be lost, missing, or stolen; or
- (5) damage or breakage costs unless clearly due to willful conduct of the employee and the employee has acknowledged responsibility in writing.

(b) Nothing in (a) of this section prohibits deductions from earnings based on a written agreement, if the employer has been directed by the employee to pay a sum for the benefit of that employee to a creditor, donee, or other third party. Neither the employer nor any person acting

in the employer's behalf or interest may derive any profit or benefit from the transaction.

(c) Nothing in (a) of this section prohibits deductions from earnings based on a written agreement to reimburse an employer for transportation from the place of hire to the place of employment if the deduction does not

- (1) reduce the employee's wages below the statutory minimum; or
- (2) reduce the overtime compensation rate below one and one-half times the contractual rate of pay.

(d) Nothing in (a) of this section prohibits deductions from earnings, based on a written agreement, to reimburse an employer for the reasonable cost of furnishing board and lodging, if

- (1) alternative public board and lodging facilities are accessible to the worksite and the employee has declined to use such facilities;
- (2) the board and lodging facilities of the employer are customarily furnished by the employer and used by the employees; and
- (3) the cost to the employee for the use of the employer's board and lodging facilities, is reasonable and without profit to the employer.

(e) Unless the employer and the employee have executed a written agreement as described in (d) of this section, at the time of hire, the employer is prohibited from seeking to retroactively deduct the cost of board and lodging as an offset against wages due upon termination or wage deficiencies subject to collection by the department.

(f) The director will make the determination regarding the cost of board and lodging under (d)(3) of this section. The determination will be made in accordance with 29 C.F.R. 531.3 — 531.5 and 531.29 — 531.35.

(g) An employer may deduct an amount from the wages of an employee as a security deposit to ensure the return, in clean and in a state of good repair, of uniforms or equipment issued by the employer, if

- (1) the deduction is based on a written agreement;
- (2) the total deposit does not exceed the cost of the item; and
- (3) the deduction does not reduce the employee's wage below the statutory minimum, or reduce the employee's overtime compensation below one and one-half times the contractual rate of pay.

(h) An employer shall give each employee a statement of earnings and deductions for each pay period. The statement of earnings and deductions must contain

- (1) employee's rate of pay;
- (2) gross wages;
- (3) net wages;
- (4) the beginning and ending dates of the pay period and the weekly hours actually worked during the period;
- (5) repealed 9/28/85;

... may derive any profit or benefit

... prohibits deductions from earnings to reimburse an employer for transportation or lodging costs if the deduction is below the statutory minimum; or compensation rate below one and one-half times the minimum wage.

... prohibits deductions from earnings, to reimburse an employer for the cost of board and lodging, if such facilities are accessible to the employee and he has declined to use such facilities; and if such facilities of the employer are customarily used by the employees; and if such facilities are available and without profit to the employee.

... prohibits deductions from earnings, to reimburse an employer for the cost of board and lodging, if such facilities are accessible to the employee and he has declined to use such facilities; and if such facilities of the employer are customarily used by the employees; and if such facilities are available and without profit to the employee.

... the employee have executed a written agreement under this section, at the time of hire, the employer may retroactively deduct the cost of such deductions against wages due upon termination or termination by the department.

... determination regarding the cost of such deductions under this section. The determination will be made by the department. C. 531.3 — 531.5 and 531.29 —

... an amount from the wages of an employee to ensure the return, in clean and in a usable condition, of any uniform or equipment issued by the employer,

... on a written agreement; not exceed the cost of the item; and reduce the employee's wage below the minimum wage; or the employee's overtime compensation below the contractual rate of pay. The employer shall furnish each employee a statement of earnings and deductions for each pay period. The statement of earnings and deductions shall include the following information:

... including dates of the pay period and the amount of wages paid during the period;

- (6) repealed 9/28/85;
- (7) federal income tax deductions;
- (8) Federal Insurance Contribution Act deductions;
- (9) Alaska Employment Security Act contributions;
- (10) board and lodging costs;
- (11) advances; and
- (12) other authorized deductions. (Eff. 12/9/78, Register 68; amended 9/28/85, Register 95; amended 4/29/99, Register 150)

Authority: AS 23.05.060 AS 23.10.065 AS 23.10.095  
AS 23.10.060 AS 23.10.085

**8 AAC 15.165. PURCHASE OF UNIFORM OR EQUIPMENT.** An employer may not require an employee to purchase a uniform or equipment if

- (1) the uniform or equipment is required by the federal state, or local safety or health codes, or
- (2) the nature of the employer's business requires the use of either uniform or equipment
  - (A) is distinctive and advertises or is associated with the products or services of the employer; and
  - (B) cannot be worn or used during normal social activities of the employee. (Eff. 9/28/85, Register 95; amended 4/29/99, Register 150)

Authority: AS 23.05.050 AS 23.10.085 AS 23.10.095  
AS 23.10.065

**ARTICLE 5. PROCEDURES RELATING TO VIOLATIONS, INVESTIGATIONS, OR HEARINGS.**

Section 175. (Repealed)	Section 180. Investigations, conferences and persuasion
----------------------------	--

**8 AAC 15.175. ASSIGNMENT OF CLAIMS.** Repealed 9/28/85.

**8 AAC 15.180. INVESTIGATIONS, CONFERENCES AND PERSUASION.** (a) The labor standards and safety division will investigate potential violations of AS 23.10.050 — 23.10.150 on its own motion.

(b) If, after an investigation, the division finds that probable cause exists for believing that a violation of AS 23.10.050 — 23.10.150 has occurred, it will attempt to correct the unlawful practice by conference and persuasion as follows:

- (1) the division will provide the employer believed to have violated AS 23.10.050 — 23.10.150 with a copy of the assignment or a description of the alleged violation and inform the employer of the results of its investigation; and

# FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB 504  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Department: Labor and Workforce Development  
Title: Minimum Wage for Workers in Fisheries BRU: Labor Standards & Safety  
Component: Wage & Hour  
Sponsor: House Rules  
Requester: House L&C Component Number: 345

## Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	52.8	52.8	52.8	52.8	52.8	52.8
Travel	5.0	5.0	5.0	5.0	5.0	5.0
Contractual	9.3	9.3	9.3	9.3	9.3	9.3
Supplies	3.5	3.5	3.5	3.5	3.5	3.5
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>70.6</b>	<b>70.6</b>	<b>70.6</b>	<b>70.6</b>	<b>70.6</b>	<b>70.6</b>

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

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

## FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	70.6	70.6	70.6	70.6	70.6	70.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>70.6</b>	<b>70.6</b>	<b>70.6</b>	<b>70.6</b>	<b>70.6</b>	<b>70.6</b>

Estimate of any current year (FY2002) cost: None

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

### POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See Attached Analysis.

Prepared by: Richard A. Mastriano, Director Phone: 269-4919  
Division: Labor Standards & Safety Date/Time: 3/22/02 9:23 AM  
Approved by: Ed Flanagan, Commissioner Date: 03/22/02  
Agency: Department of Labor and Workforce Development

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

BILL NO. HB 504

ANALYSIS: (continued)

This bill amends AS 23.10 by adding a new section concerning wages for fisheries businesses. The amendment allows employers engaged in fisheries businesses, as defined in AS 43.75.290, to deduct from the applicable minimum wage paid to an employee the costs associated with board and lodging. These deductions are based on a written agreement with the employee, and the costs of board and lodging are to be reasonable and without profit to the employer. Additionally, the board and facilities are those customarily furnished by employers and used by employees.

The "reasonable costs and without profit" would be subject to interpretation and would require close oversight on the part of the department. At least one new Wage and Hour Investigator position in Anchorage will be necessary to conduct the complex audits required to determine actual costs to the employer for the purpose of validating a deduction. In order to perform these audits, the investigator will have to travel to the employer's business locations where employees are housed to verify the charged expenses.

**HB**

**505**



Alaska State Legislature

- Interim (May-Dec.) -  
10928 Eagle River Rd., Suite 140  
Eagle River, Alaska 99577  
☎ (907) 694-6683  
FAX (907) 694-1015

- Session (Jan.-May) -  
Alaska State Capitol  
Juneau, Alaska 99801-1182  
☎ (907) 465-2199  
FAX (907) 465-4587

Toll free (800) 342-2199

## REPRESENTATIVE FRED DYSON

### HB 505—MENTAL HEALTH PROFESSIONALS SPONSOR STATEMENT

The growth of Alaska's clinical mental health profession is a commendable response to the needs of our state's youth and adults, and to Alaska's mental health system as a whole. More safety is needed for our citizens who experience acute psychiatric crises. Currently, in many regions of our state, there is a shortage of mental health professionals who are authorized to respond to a variety of significant public safety circumstances. Because of the limited focus of the current Title 47 definitions, many licensed professionals who are qualified to aid these Alaskans are not authorized to do so. HB 505 addresses this concern by updating the statutory definition of 'mental health professional,' resulting in an increase in the efficacy of Alaska's mental health system.

HB 505 expands the definition of 'mental health professional' to include (1) a licensed marital and family therapist, (2) a licensed professional counselor, (3) a licensed clinical social worker, and (4) a person who is trained and experienced and who is in the process of qualifying for licensure. This updates the current Title 47 definition, which was composed before the establishment of licensing standards for these master-level clinicians.

The broadening of the 'mental health professional' definition will increase the number of licensed, master-level professionals who will be (1) authorized to evaluate prisoners for psychological or psychiatric treatment, (2) authorized to evaluate minors who may need to be confined to, or released from, a residential treatment center, (3) liable to report incidents of harm, and (4) authorized to perform civil commitments.

- E-mail -  
Representative\_Fred\_Dyson  
@Legis.state.ak.us

- Internet -  
<http://www.akrepublicans.org>

## Comparison Chart for Mental Health Disciplines covered under HB505

License Requirement	Psychologist	Psych. Assoc.	LCSW	LMFT	LPC
Education	Ph.D. from program approved by Board	MA from program approved by the Board	MS from program approved by the Board	MA from a Regional Accrediting agency (Specifies course work)	MA from a National or Regional Accrediting Agency (60 total graduate hours)
No Improper Conduct or Investigations in other states	Not engaged in dishonorable conduct	Not engaged in dishonorable conduct	Of good moral character	Has not engaged in conduct that is grounds for disciplinary sanctions	Not under investigation in this or another jurisdiction, & has not had any license suspended or revoked
Post Graduate Supervised Experience	1 year	2 years	2 years or 3000 hours	1500 clinical contact hours, 100 hours of individual supervision, 100 hours of group supervision	3000 hours of clinical contact, 1000 hours of face to face counseling, 100 hrs face to face supervision
Exam Required	Yes	Yes	Yes	Yes	Yes
Professional References	5 required by regulation	2 required by regulation	3	1 verification of supervised experience & fitness	2 references and 1 verification of employment for 2 years
Practice Definitions	Diagnosis Treatment Emotional/Mental Disorders  Individual group	Dependent on experience  and training	Diagnosis Treatment Mental & Emotional Disorders Individuals, families, groups, communities	Diagnosis Treatment Mental & Emotional Disorders  Individuals, families, groups	Diagnosis Treatment  Mental & Emotional Disorders Individual, group, and organizations

**For details please see Statutory Definitions of Alaska's Mental Health Disciplines document**

*Prepared by DHSS - based on current law*

**Subject: Support of HB 505**

Date: Fri, 15 Mar 2002 14:21:28 -0900

From: "Traci Wiggins" <rmha@mtaonline.net>

To: <Jason\_Hooley@legis.state.ak.us>, <Representative\_Lisa\_Murkowski@legis.state.ak.us>, <Representative\_Andrew\_Halero@legis.state.ak.us>, <Representative\_Pete\_Kott@legis.state.ak.us>, <Representative\_Kevin\_Meyer@legis.state.ak.us>, <Representative\_Norman\_Rokeberg@legis.state.ak.us>, <Representative\_Harry\_Crawford@legis.state.ak.us>, <Representative\_Joe\_Hayes@legis.state.ak.us>, <Senator\_Robin\_Taylor@legis.state.ak.us>, <Senator\_Dave\_Donley@legis.state.ak.us>, <Senator\_John\_Cowdery@legis.state.ak.us>, "Gene Therriault" <Senator\_Gene\_Therriault@legis.state.ak.us>, <Senator\_Johnny\_Ellis@legis.state.ak.us>

Good Day, Everyone:

This email is in support of HB 505, the bill that more thoroughly defines the term "Mental Health Professional".

Although a person may be unqualified to provide mental health services due to personal characteristics, the actual educational levels that are included in this bill more accurately define the current practice in the field of mental health services. It also provides more choices to those agencies, especially rural agencies, that find it impossible to persuade a psychologist or psychiatrist to lead their mental health programs and live in rural Alaska.

Thank you for your consideration. Have a great day!

Traci Wiggins, Executive Director  
Railbelt Mental Health & Addictions  
PO Box 159  
Nenana, AK 99760  
907-832-5557  
rmha@mtaonline.net

**Subject: hb505**

**Date: Wed, 20 Mar 2002 08:00:07 -0900**

**From: Sally Donaldson <donaldss@jsd.k12.ak.us>**

**To: Jason\_Hooley@legis.state.ak.us**

Hello Jason,

I would like to express my support for HB505. I'm a licensed professional counselor and school counselor at Dzantik 'i Heeni Middle School in Juneau. Many of my colleagues in smaller communities do a great deal of counseling outside the school setting. HB505 would include them in the language of a professional mental health clinician and enable them to further assist people in their community.

Thank you,

Sally Donaldson, Counselor  
Dzantik 'i Heeni Middle School  
10014 Crazy Horse Drive  
Juneau, AK 99801

donaldss@jsd.k12.ak.us

March 14, 2002



Senator Gary Wilken  
Room 514  
Alaska Senate Office Building  
Juneau, Alaska 99801

Re: SB 302

Dear Senator Wilken:


I wish to strongly recommend the inclusion of Licensed Professional Counselors (LPC) in the definition of "mental health professional" as discussed in SB 302.

Licensed Professional Counselors in the State of Alaska are required to have a minimum of a Master's Degree in counseling, have completed a certain number of supervised hours as a counselor and pass a nationally recognized exam. Additionally, Licensed Professional Counselors are required to annually complete professional development courses to maintain license currency in the State of Alaska.

Our national organization, the American Counseling Association, defines Professional Counselors as: "An employee of or independent contractor for an institution ... whose official responsibilities include counseling to the members of the institution's community and who is functioning within the scope of his/her license or certification..."

Licensed Professional Counselors in the State of Alaska currently meet standards similar to all of the other professions included in SB 302; they also provide similar professional health care services.

Thank You,

  
Jeannette E. Lawson  
President, Alaska Counseling Association

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# The TRUST

The Alaska Mental Health Trust Authority

March 1, 2002

The Honorable Gary Wilken  
Alaska Senate  
State Capitol, Room 514  
Juneau, AK 99801-1182

Dear Senator Wilken:

I am writing to you to thank you for your sponsorship of SB302, the bill to change the definition of mental health professionals (MHP). The Trust supports updating the definition to include all the licensed mental health professions and experienced practitioners seeking licensure. The proposed definition increases access to vital, often lifesaving services for the beneficiaries of the Trust. In recent years we have been privy to many anecdotal reports of beneficiaries suffering hardships and indignities due to the lack of services in rural and urban locations. Service providers speak to the difficulties of meeting the current MHP definition requirements for hiring staff.

The Trust is actively supportive of addressing the recruitment and retention issues that impact Alaska's health care professions and providers that serve the needs of Alaska's youth and adults who are experiencing acute psychiatric crisis in our communities, who protect and safeguard vulnerable adults from harm, and who treat mentally ill adults in correctional facilities. We understand that this definition change increases the pool from which professionals can be hired by over 40% of licensed practitioners, and significantly more who are currently working toward licensure.

Sincerely,



Jeff Jesse  
Executive Director

Cc: Board of Trustees

# ALASKA MENTAL HEALTH BOARD

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TONY KNOWLES, GOVERNOR  
STATE OF ALASKA

431 N. Franklin, Suite 200  
Juneau, Alaska 99801  
Office: (907) 465-3071  
Fax: (907) 465-3079

February 28, 2002

The Honorable Gary Wilken  
Alaska Senate  
State Capitol, Room 514  
Juneau, AK 99801-1182

Dear Senator Wilken:

The Alaska Mental Health Board (AMHB) wishes to convey to you its position on SB 302. As the entity tasked by state law with planning, evaluation, and advocacy for public mental health services in Alaska, the AMHB works regularly and closely with a wide range of stakeholders in that system. The Board considered the issues prompting the bill and agrees with the Department of Health and Social Services that the time is ripe to update the statutory definition of a mental health professional. The benefits of increasing the pool of licensed professionals that meet professional standards are clear. Civil commitment based on mental health issues is a serious matter. The State's responsibility to ensure that the professionals that perform the evaluations that initiate the commitment process are qualified to do so seems clear to us. The current situation under which evaluations in many cases must be conducted by providers that cannot be licensed because they are not defined as mental health professionals should be rectified.

The AMHB appreciates your willingness to sponsor this needed legislation. Please let us know if we can assist as the bill makes its way through the Legislature. Thank you for this opportunity to comment.

Respectfully,

/s/ Richard Rainery

Richard Rainery  
Executive Director

**Subject: SB 302**

**Date: Sun, 24 Feb 2002 08:16:22 -0800 (PST)**

**From: Sally Donaldson <sallyannbd@yahoo.com>**

**To: Senator\_Gary\_Wilken@legis.state.ak.us**

Senator Wilkin,

Please support SB302, as it includes licensed professional counselors, marital and family therapists and clinical social workers under the term "mental health professional".

This bill will enable qualified, licensed professional mental health care providers, especially in rural Alaska, to care more inclusively for those who need services.

Thank you for your attention to this important matter.

Sincerely,  
Sally Donaldson, LPC, School Counselor  
Juneau

---

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Yahoo! Sports - Coverage of the 2002 Olympic Games  
<http://sports.yahoo.com>

Please support SB302

**Subject: Please support SB302**

**Date: Tue, 19 Feb 2002 23:27:58 EST**

**From: CathrynMFS@aol.com**

**To: Senator\_Gary\_Wilken@legis.state.ak.us**

Dear Senator Wilken:

I am a licensed professional counselor working in Anchorage. SB302 will provide Alaskans with better, more accessible mental health care by authorizing professionals with the proper training to perform civil commitments and other necessary services. It also provides accountability to the public that these critical functions are carried out in an ethical and effective manner. Rural areas in particular are in great need of professional services and these services are currently being limited by outdated legislation. Please support Alaskans by supporting SB302 and working for its speedy passage.

Thank you,  
Cathryn Simon  
12320 Tracy Rd., Apt. A  
Anchorage, AK 99516

SB 302

**Subject:** SB 302

**Date:** Wed, 20 Feb 2002 14:31:11 -0900

**From:** "Judith Anne Morotti" <jmorotti@northstar.k12.ak.us>

**To:** Senator\_Gary\_Wilken@legis.state.ak.us

Dear Senator Wilken,

I write to urge you to support SB 302. It is important to have

licensed professional counselors available for all Alaskans. This bill provides Alaskans, especially those in rural areas access to mental health care.

Thank you, Judith Morotti, M.Ed.

**Subject:** SB302

**Date:** Thu, 21 Feb 2002 15:03:14 -0900

**From:** Jim Lorence <jlorence@crsd.k12.ak.us>

**To:** Senator\_Gary\_Wilken@legis.state.ak.us

Dear Senator Wilken: I support SB302 because I see that it will provide more access to mental health services in rural Alaska. Living in the Copper River area, it is often difficult for people to get into places like Matsu or Anchorage to obtain the services they need. This bill, by recognizing all clinical mental health disciplines as being valid for carrying out important services, will make it much easier for people in our area to access the mental health services they need.

Sincerely,

Jim Lorence, Guidance Counselor, Copper River School District

**Subject: SB 302 / Please Support**

**Date:** Wed, 20 Feb 2002 09:50:59 -0900

**From:** "Shawn Marsh" <shawn\_c\_marsh@hotmail.com>

**To:** Senator\_Gary\_Wilken@legis.state.ak.us

Senator Wilken,

I am writing today to respectfully encourage you to support SB 302. This bill advocates a change in the definition of "mental health professional" to include a variety of well qualified occupational groups in Alaska. As a lifelong Alaskan and National Certified Counselor (NCC), I believe this change is clearly in the best interest of consumers (e.g. provides improved access to qualified professionals) and clinicians (e.g. increased accountability).

Thank you for your time and consideration in this matter.

Sincerely,

Shawn Marsh, M.Ed.

National Certified Counselor

Mental Health Clinician

Fairbanks, Alaska

(907) 488-8230

---

Chat with friends online, try MSN Messenger: [Click Here](#)

**Subject:** SB302

**Date:** Wed, 20 Feb 2002 22:13:42 -0900

**From:** "Kelly Seman" <kellyseman@hotmail.com>

**To:** Senator\_Gary\_Wilken@legis.state.ak.us

Dear Senator Wilkens -

I would like to express my support for SB302 which will broaden the definition of a "Mental Health Professional" in the state of Alaska. I am currently a Licensed Professional Counselor in both the state of Montana and Alaska. While living in Montana I worked for community mental health and was considered a mental health professional. I conducted evaluations for involuntary commitments and provided crisis services. When I moved to the state of Alaska two years ago I was surprised to learn that the LPC was not well recognized and my skills could not be utilized because of this. I believe many jobs have remained unfilled because of the narrow definition of "Mental Health Professional", especially in rural areas. I hope you will consider supporting this bill. Thank you for your time.

Sincerely,

Kelly Seman-Ewalt , LPC #318

---

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**Susitna Family Services**

Vivian C. Finlay, M.Ed.

Licensed Marriage and Family Therapist

Clinical Member: The American Association  
For Marriage & Family Therapy

2/22/02

Please see attached information  
sheet written by Anne Henry LPC

Dear Senator Wilken,

I have just reviewed a copy of SB 302.

I wanted you to know that I am in full support  
of this bill. In private practice I may not be in  
a position to address the populations mentioned  
in the bill, however, I believe more of us  
experienced mental health practitioners should  
be "allowed" to address these situations.

I have been in practice for 26 years, 15 of  
these have been in my own practice in  
Wasilla. I believe I have a wealth of experience  
with clients. I also am an Approved Supervisor  
for Marriage and Family Therapists, so I may  
supervise clinical people who may be addressing  
the populations listed in SB 302.

I see absolutely no reason, from a clinical  
competency basis, why all mental health professionals  
are not being treated equally in the state of  
Alaska. We all may come from different training  
backgrounds, but we all treat and serve similar  
mental health needs.

Sincerely,

Vivian C. Finlay

P.O. Box 872433 • Wasilla, Alaska 99687 • (907) 373-6006

cc. Senator Lyda Green - please schedule a hearing on  
this bill as soon as possible Thank you, Vivian C. Finlay

The original statutory definition for "mental health professional" (MHP) was written into Title 47, when psychiatrists, physicians, psychologists, master's level psychologists (psychological associates) and psychiatric nurses were the only licensed mental health professions. At that time, master's level social workers were not licensed, but were acknowledged under the definition and allowed to do civil commitment evaluations if they had "substantial experience". Since then, the clinical mental health field has expanded to license social workers, marital and family therapists (MFT), and professional counselors (LPC).

In addition to the use of the mental health professional definition for persons evaluating adults in acute psychiatric crisis and facing mental health commitment, the definition also applies to those working with incarcerated adults with mental illnesses, youth in the custody of the Divisions of Family and Youth Services or Juvenile Justice, and with vulnerable adults in a variety of health care settings.

Licensing these professional mental health clinicians is critical to the public safety, and to hold accountable people working with vulnerable populations. Today, there are not enough people within the current definition of a mental health professional licensed to do this work. At the same time, there are hundreds of licensed professionals who do not fall within the current definition and cannot do the work.

This bill changes the definition of MHP to acknowledge the licensing of clinical social workers (LCSW), MFTs and LPCs, and makes provisions for those working toward licensure. By including experienced master's level clinicians working toward licensure, the bill also increases the capacity of our mental health system to protect Alaska's youth and adults who are experiencing acute psychiatric crisis in our communities, to protect and safeguard vulnerable adults from harm, and to treat mentally ill adults who are incarcerated.

Changing the definition of MHP would increase the number of trained professionals working in the field who are:

- required to report incidents of harm to vulnerable adults;
- allowed to provide mental health treatment to prisoners;
- authorized to evaluate children and minors in custody for appropriateness to be placed in secure residential treatment centers;
- eligible to work in one of the 140 jobs at community mental health centers where emergency evaluations are done on individuals experiencing a crisis, to determine suicidality, homicidality and grave disability in preparation for a judge's decision on appropriateness for mental health civil commitment to a hospital in Fairbanks, Anchorage or Juneau.

**Subject: Sponsor SB302**

**Date: Mon, 25 Feb 2002 08:35:28 -0900**

**From: "Lynn Paterna" <lypaterna@acsalaska.net>**

**To: <Senator\_Gary\_Wilken@legis.state.ak.us>**

February 23, 2002

Dear Senator Wilken:

Please sponsor SB302. I strongly support his bill, because the original statutory definition for "mental health professional" (MHP) was written into Title 47, when psychiatrists, physicians, psychologists, master's level psychologists (psychological associates) and psychiatric nurses were the only licensed mental health professions. At that time, master's level social workers were not licensed, but were acknowledged under the definition and allowed to do civil commitment evaluations if they had "substantial experience". Since then, the clinical mental health field has expanded to license social workers, marital and family therapists (MFT), and professional counselors (LPC).

In addition to the use of the mental health professional definition for persons evaluating adults in acute psychiatric crisis and facing mental health commitment, the definition also applies to those working with incarcerated adults with mental illnesses, youth in the custody of the Divisions of Family and Youth Services or Juvenile Justice, and with vulnerable adults in a variety of health care settings.

Licensing these professional mental health clinicians is critical to the public safety, and to hold accountable people working with vulnerable populations. Today, there are not enough people within the current definition of a mental health professional licensed to do this work. At the same time, there are hundreds of licensed professionals who do not fall within the current definition and cannot do the work.

This bill changes the definition of MHP to acknowledge the licensing of clinical social workers (LCSW), MFTs and LPCs, and makes provisions for those working toward licensure. By including experienced master's level clinicians working toward licensure, the bill also increases the capacity of our mental health system to protect Alaska's youth and adults who are experiencing acute psychiatric crisis in our communities, to protect and safeguard vulnerable adults from harm, and to treat mentally ill adults who are incarcerated.

Changing the definition of MHP would increase the number of trained professionals working in the field who are:

- required to report incidents of harm to vulnerable adults;
  
- allowed to provide mental health treatment to prisoners;
  
- authorized to evaluate children and minors in custody for appropriateness to be placed in secure residential treatment centers;
  
- eligible to work in one of the 140 jobs at community mental health centers where emergency evaluations are done on individuals experiencing a crisis.
  
- judge's decision on appropriateness for mental health civil commitment to a hospital in Fairbanks, Anchorage or Juneau.

I am the President-elect of the Alaska Counseling Association and a family therapist who works with families at risk of losing their children because of neglect and abuse. I daily realize the tremendous help I and my mental health colleagues provide for Alaska's families and children. Please sponsor SB302.

Thank you,

Lynn S. Paterna, MS, LPC

Family Therapist

Robert D. Schultz  
3406 Glacier Hwy  
Juneau, AK 99801

March 4, 2002

Re: SB302

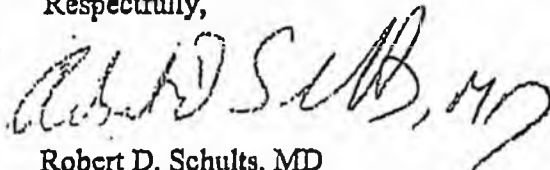
Dear Senator Wilkins:

This letter is written in strong support of the addition of marital and family therapists licensed by the Board of Mental Health and Family Therapy, Professional Counselors licensed by the board of Professional Counselors, Clinical Social Workers licensed by the Board of Social Work Examiners and a person with a Masters Degree in the field of Mental Health and who has at least 24 months of post masters, working experience in the field of Mental Illness, who is in the process of qualifying for licensure by a board named above and who is working under the supervision of a type of license listed in SB 302 to be able to be listed as Mental Health Professionals under the statute.

This will recognize the people's skills and ability for help, get the work done which requires a mental health professional such as relating to the evaluation of prisoners who may need psychological or psychiatric treatment for the purpose of statutes relating to the evaluation of children in need of aid and delinquent minors who may need to be confined in a secure residential psychiatric treatment center or who should be released from such a center, for the purpose of statutes requiring certain professionals to report the possibility that a vulnerable adult has been abused or neglected, and for the purpose of statutes relating to mental health civil commitments.

Thank you for your interest in this matter

Respectfully,



Robert D. Schultz, MD  
Psychiatrist

two bills currently in process

**Subject: two bills currently in process**

**Date: Fri, 1 Mar 2002 17:01:44 -0900 (AKST)**

**From: Dan and Ann Swift <dswift@ptialaska.net>**

**To: Senator\_Gary\_Wilken@legis.state.ak.us**

Dear Gary,

I am writing you about two bills currently under consideration in the Legislature.

SB 302 - Thank you for introducing this bill. As a public member of the licensing board for marital and family therapists, I see the need for expanding the definition of mental health professional. As you are probably aware, there is a great shortage of mental health professionals in this state and, unfortunately, no shortage of people with mental health problems.

I have seen the care with which our board scrutinizes all applications for licensure and the process of supervision for those who have not yet had sufficient hours of practice to be licensed. (Marital and family therapists are mental health professionals, not simply marriage counselors. An applicant for licensure must have a masters or doctorate degree in a mental health field, as well as three years of practice, supervised by an accredited supervisor.) By including in this bill those "working under the supervision of a . . . licensee," more people likely will be able to access the services of mental health professionals.

SB 182 - I urge you to vote against this bill. It would certainly impact the most vulnerable Alaskans. Cutting funds to help the poor, elderly and disabled would not likely save much money--and the little the state might save would seem a lot to those affected by the cuts.

Thank you, Ann Swift

3181 Anella Ave.  
Fairbanks, AK 99709

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 505  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Health & Social Services  
 Title: RELATING TO THE DEFINITION OF MENTAL HEALTH BRU: Community Mental Health Grants  
PROFESSIONAL Component: General Comm Mental Hlth Gmts  
 Sponsor: HOUSE (HES)  
 Requestor: \_\_\_\_\_ Component Number: 307

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

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( 0 )</b>						
---------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Othe (Specify Type--do not abbrevia						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: \_\_\_\_\_

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

HB505 changes the definition of MHP by adding the licensed disciplines of clinical social worker, marital and family therapist and professional counselor, and allowing experienced unlicensed master's level mental health graduates who are seeking licensure, and are supervised by a licensed MHP to do the work of an MHP. This bill increases access to mental health services to several different consumer populations by increasing the pool of prospective employees in a time of shortage. It also encourages licensure of experienced individuals, which increases the quality and accountability of the professions serving vulnerable Alaskans.

This bill has no fiscal impact.

Prepared by: Sarah Brinkley, Admin Manager Phone 465-3167  
 Division: Mental Health & DD Date/Time 03/20/2002  
 Approved by: Elmer A. Lindstrom, Deputy Commissioner Date 03/21/2002  
 Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

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## MHP Evaluation for Ex Parte

1. Person experiences a mental health crisis and needs an evaluation for possible admittance to a mental health hospital.
2. A "mental health professional" is called in to conduct an ex parte evaluation.
3. The evaluator must work in a hospital (a doctor or psychiatrist) or be employed at a state-funded community mental health center.
4. The evaluation is to determine if the person has a mental illness and, as a result, is suicidal, homicidal or "gravely disabled", each of these criteria require there to be an indication of real, imminent risk. Examples of "grave disability" are an individual who stops eating and is near starvation because they hear voices that say someone has poisoned the food, or they are so delusional that they are at risk of freezing to death because they have no awareness of their bodies needs for survival.
5. If the mental health professional determines the person fits this criteria and the individual refuses voluntary hospitalization, a call is placed to a consulting psychiatrist or physician.
6. If the consulting psychiatrist or physician concurs that the person is at risk, the mental health professional contacts a judge.
7. Upon hearing the results of the evaluation, the judge makes the decision as to whether or not there is sufficient criteria to initiate an ex parte hold of the individual for up to 72-hours for purposes of obtaining a full psychiatric evaluation done by a psychiatrist.
8. If there continues to be sufficient risk of harm, a court hearing is held to determine the appropriateness for a civil commitment.
9. Anytime throughout this process if the person no longer meets the commitment criteria, the individual is released from the hospital.

### Mental Health Professional

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#### Current Definition

1. Licensed Psychiatrist
2. Licensed Physician
3. Licensed Clinical Psychologist
4. Licensed Psychological Associate
5. Registered Nurse with a Master's Degree in Psychiatric Nursing
6. Any Type of Social Worker with a Master's Degree and Experience

#### SB 302 New Definition

1. Licensed Psychiatrist
2. Licensed Physician
3. Licensed Clinical Psychologist
4. Licensed Psychological Associate
5. Registered Nurse with a Master's Degree in Psychiatric Nursing
6. Licensed Clinical Social Worker
7. Licensed Marital and Family Therapist
8. Licensed Professional Counselors
9. Master-level clinician, with experience, under supervision and seeking licensure

## Initial Civil Commitment for Ex Parte

1. Person experiences a mental health crisis and needs an evaluation for possible admittance to a mental health hospital.
2. A "mental health professional" is called in to conduct an ex parte evaluation.
3. The evaluator must work in a hospital (a doctor or psychiatrist) or be employed at a state-funded community mental health center.
4. The evaluation is to determine if the person has a mental illness and, as a result, is suicidal, homicidal or "gravely disabled", each of these criteria require there to be an indication of real, imminent risk. Examples of "grave disability" are an individual who stops eating and is near starvation because they hear voices that say someone has poisoned the food, or they are so delusional that they are at risk of freezing to death because they have no awareness of their bodies needs for survival.
5. If the mental health professional determines the person fits this criteria and the individual refuses voluntary hospitalization, a call is placed to a consulting psychiatrist or physician.
6. If the consulting psychiatrist or physician concurs that the person is at risk, the mental health professional contacts the judicial officer on call.
7. Upon hearing the results of the evaluation, the judicial officer makes the decision as to whether or not the testimony of the mental health professional is sufficient to support a judicial finding that the statutory criteria (threat of harm to self, others or grave disability) have been met. If the judicial officer determines that the testimony is sufficient, the judicial officer will enter a verbal and written order allowing the individual to be held at an evaluation facility for up to 72-hours so that a full psychiatric evaluation can be done by a psychiatrist. This what is commonly known as an ex parte order. This order is provided to the individual and states that there is probable cause to find that the individual is suffering from a mental illness and as a result of that illness they are a threat to self, others, or gravely disabled. This order also appoints the public defender to represent the individual if further proceedings are needed.
8. If at anytime during this process if the individual no longer meets the commitment criteria, the individual is released from the hospital.

## Mental Health Professional

### Current Definition

1. Licensed Psychiatrist
2. Licensed Physician
3. Licensed Clinical Psychologist
4. Licensed Psychological Associate
5. Registered Nurse with a Master's Degree in Psychiatric Nursing
6. Any Type of Social Worker with a Master's Degree and Experience

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  8. Licensed Professional Counselors
  9. Master-level clinician, with experience, under supervision and seeking licensure
-

**HB**

**512**



**REPRESENTATIVE**  
**ELDON MULDER**  
**STATE HOUSE**  
**MULDOON & FORT RICHARDSON**

Co-Chair, House Finance Committee \* Co-Chair, Joint Armed Services Committee

**SPONSOR STATEMENT**

**HB512**  
**Unfair Cigarette Sales Act**

**House Bill 512** encourages fair and honest competition and to safeguard the public against unfair, dishonest and fraudulent business practices existing in transactions involving the sale of cigarettes in the wholesale and retail trades in the state.

This bill creates a general trade practice regulation prohibiting sales below cost. The law considers the practice of selling below cost to attract patronage a form of deceptive advertising, which diverts business from dealers who maintain a fair pricing policy, ultimately resulting in lessened competition and market disruption.

Among the exceptions included in House Bill 512, allowances are made for matching a competitor's price, or if the sales are for clearance of damaged goods and in final liquidation sales.

In the 39 states that now have an unfair sales law, enforcement of violations of the Act are generally prompted by written complaints submitted by merchants competing with the alleged violator. Staff reviews the complaints for applicability of the statute and prioritizes the investigations base on potential market injury. Investigations consist of interview with witnesses, and reviews of financial documents, such as invoices, shipping manifests, and records of price changes. Upon conclusion of the data collection phase, investigators draft reports and recommendations to a supervisor for a determination and a call for appropriate action.

The basic purpose of HB 512 is to prevent predatory pricing and to ensure fair competition among both the retail and wholesale distributors of cigarettes in the state.

22-LS1646\F  
Ford  
4/26/02

**CS FOR HOUSE BILL NO. 512( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SECOND LEGISLATURE - SECOND SESSION**

BY

Offered:  
Referred:

Sponsor(s): HOUSE FINANCE COMMITTEE

**A BILL**  
**FOR AN ACT ENTITLED**

1 "An Act relating to cigarette sales; and providing for an effective date."

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

3 \* Section 1. The uncodified law of the State of Alaska is amended by adding a new section  
4 to read:

5 SHORT TITLE. This Act may be known as the Unfair Cigarette Sales Act.

6 \* Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to  
7 read:

8 INTENT. It is the intent of this Act to

9 (1) encourage fair and honest competition and to safeguard the public against  
10 unfair, dishonest, deceptive, destructive, and fraudulent business practices existing in  
11 transactions involving the sale of, offer to sell, or inducement to sell cigarettes in the  
12 wholesale and retail trades in the state;

13 (2) prohibit the advertising, offering for sale, or sale of cigarettes below cost  
14 in the wholesale or retail trades with the intent of injuring competitors or destroying or  
15 substantially lessening competition as an unfair and deceptive trade practice;

1 (3) promote the general welfare and public interest through the prohibition of  
2 unfair cigarette sales.

3 \* **Sec. 3.** AS 43.50 is amended by adding new sections to read:

4 **Article 5. Unfair Cigarette Sales.**

5 **Sec. 43.50.460. Sale at less than cost; rebate in price.** (a) A person licensed  
6 or required to be licensed under AS 43.50.010, 43.50.035, or AS 43.70.075 may not,  
7 with intent to injure competitors or destroy or substantially lessen competition,

8 (1) advertise, offer to sell, or sell, at retail or wholesale, cigarettes at  
9 less than cost to the person; or

10 (2) offer a rebate in price, give a rebate in price, offer a concession of  
11 any kind, or give a concession of any kind or nature in connection with the sale of  
12 cigarettes.

13 (b) A retailer may not induce or attempt to induce or procure or attempt to  
14 procure

15 (1) the purchase of cigarettes at a price less than the cost to a  
16 wholesaler;

17 (2) a rebate, concession, or patronage dividend of any kind or nature in  
18 connection with the purchase of cigarettes.

19 (c) Evidence of advertisement, offering to sell, or sale of cigarettes by a  
20 person licensed or required to be licensed under AS 43.50.010, 43.50.035, or  
21 AS 43.70.075 at less than cost, or evidence of an offer of a rebate in the price, the  
22 giving of a rebate in price, offer of a concession, or the giving of a concession of any  
23 kind or nature in connection with the sale of cigarettes, or the inducing, attempt to  
24 induce, the procuring, or the attempt to procure the purchase of cigarettes at a price  
25 less than cost to a person licensed or required to be licensed under AS 43.50.010,  
26 43.50.035, or AS 43.70.075 is prima facie evidence of intent to injure competitors and  
27 to destroy or substantially lessen competition.

28 (d) A person licensed or required to be licensed under AS 43.50.010,  
29 43.50.035, or AS 43.70.075 who violates the provisions of this section is guilty of a  
30 class B misdemeanor.

31 **Sec. 43.50.470. Sale at less than cost; with gift or concession.** In all

1 advertisements, offers for sale, or sales involving two or more items when at least one  
2 of the items is cigarettes at a combined price, and in all advertisements, offers for sale,  
3 or sales involving the giving of any gift, concession, or coupon of any kind in  
4 conjunction with the sale of cigarettes, the wholesaler's or retailer's combined selling  
5 price may not be below the cost to the wholesaler or the cost to the retailer,  
6 respectively, of the total of all articles, products, commodities, gifts, and concessions  
7 included in the transactions, except that, if any articles, products, commodities, gifts or  
8 concessions, are not cigarettes, the basic cost shall be determined as provided under  
9 AS 43.50.520.

10 **Sec. 43.50.480. Sale to another person.** When a person sells cigarettes to  
11 another person, the seller is not required to include in the selling price the cost to the  
12 seller, but the purchaser, upon resale to a retailer, is required to include the cost to the  
13 seller in the selling price.

14 **Sec. 43.50.490. When provisions of law not applicable.** The provisions of  
15 AS 43.50.460 - 43.50.570 do not apply to

16 (1) a sale at wholesale or retail made in an isolated transaction and not  
17 in the usual course of business;

18 (2) a sale at wholesale or retail made where cigarettes are advertised,  
19 offered for sale, or sold in a bona fide clearance sale for the purpose of discontinuing  
20 trade in the cigarettes, and the advertising, offer to sell, or sale states the reason for the  
21 sale and the quantity of the cigarettes advertised, offered for sale, or to be sold;

22 (3) a sale at wholesale or retail made where cigarettes are advertised,  
23 offered for sale, or sold as imperfect or damaged, and the advertising, offer to sell, or  
24 sale states the reason for the sale and the quantity of the cigarettes advertised, offered  
25 for sale, or to be sold;

26 (4) a sale at wholesale or retail made where cigarettes are sold upon  
27 the final liquidation of a business;

28 (5) a sale at wholesale or retail made where cigarettes are advertised,  
29 offered for sale or sold by a fiduciary or other officer acting under the order or  
30 direction of a court; and

31 (6) the resale of cigarettes purchased from sales under (3) and (5) of

1 this section.

2 **Sec. 43.50.500. Sales at price to meet competition.** A wholesaler may  
3 advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price  
4 of a competitor who is rendering the same type of service and is selling the same  
5 article at cost to a competing wholesaler. A retailer may advertise, offer to sell, or sell  
6 cigarettes at a price made in good faith to meet the price of a competitor who is selling  
7 the same article at cost to a competing retailer. The price of cigarettes advertised,  
8 offered for sale, or sold under the exceptions specified under AS 43.50.490 may not be

9 (1) considered the price of a competitor;

10 (2) used as a basis for establishing prices below cost; or

11 (3) considered the price of a competitor for purposes of this section if  
12 established at a bankruptcy sale.

13 **Sec. 43.50.510. Contracts in violation of law are illegal.** A contract, express  
14 or implied, made by a person in violation of the provisions of AS 43.50.460 -  
15 43.50.570 is illegal and void.

16 **Sec. 43.50.520. Determination of cost.** (a) In determining cost to the  
17 wholesaler and retailer, a court shall consider as establishing the cost evidence tending  
18 to show that a wholesaler or retailer complained against under a provision of  
19 AS 43.50.460 - 43.50.570 purchased the cigarettes involved in the complaint at a  
20 fictitious price, or upon terms, in a manner, or under invoices, in a manner that  
21 conceals the true cost, discounts, or terms of purchase. The court shall also consider  
22 evidence of the normal, customary, and prevailing terms and discounts in connection  
23 with other sales of a similar nature in the trade area or state.

24 (b) The basic cost of cigarettes as determined by the department from the  
25 manufacturer's list price is considered competent evidence in a court action or  
26 proceeding as tending to prove actual cost to the wholesaler or retailer complained  
27 against. A party against whom the basic cost as determined by the department is  
28 introduced in evidence has the right to offer evidence tending to prove any inaccuracy  
29 of the basic cost or any state of facts that would impair its probative value. In the  
30 absence of the manufacturer's list price for a particular brand of cigarettes, the  
31 department may determine the basic price of the cigarettes from the average price of

1 cigarettes for other similar brands for which the department does have the  
2 manufacturer's list price.

3 (c) In the absence of proof of the actual cost to a competing wholesaler or the  
4 competing retailer, actual cost may be presumed to be the basic cost to the wholesaler  
5 or the basic cost to the retailer as determined by the department from the  
6 manufacturer's list price.

7 (d) A manufacturer shall provide the department with a current price list for  
8 all brands of cigarettes of the manufacturer and shall notify the department within 10  
9 days before a price increase takes effect.

10 **Sec. 43.50.530. Determination of cost of cigarettes purchased outside of**  
11 **ordinary channels of trade.** In establishing the basic cost of cigarettes to a  
12 wholesaler or retailer, the invoice cost or the actual cost of cigarettes purchased at a  
13 forced, bankrupt, or closeout sale, or other sale outside the ordinary channels of trade  
14 may not be used.

15 **Sec. 43.50.540. Injunction.** (a) The department or a person injured by a  
16 violation or who would suffer from any threatened violation of AS 43.50.460 -  
17 43.50.570 may maintain an action to prevent, restrain, or enjoin the violation or  
18 threatened violation. If, in the action, a violation or threatened violation of  
19 AS 43.50.460 - 43.50.570 is established, the court may enjoin and restrain or  
20 otherwise prohibit the violation or threatened violation, and the court shall assess the  
21 costs of reasonable attorney fees against the defendant. In the action it is not  
22 necessary that actual damages to the plaintiff be alleged or proved, but, if actual  
23 damages are alleged and proved, the plaintiff, in addition to injunctive relief and costs,  
24 including reasonable attorney fees, may recover actual damages.

25 (b) If injunctive relief is not requested or required, a person injured by a  
26 violation of AS 43.50.460 - 43.50.570 may maintain an action for damages in the  
27 appropriate court.

28 **Sec. 43.50.550. Administration of AS 43.50.460 - 43.50.570.** (a) The  
29 department

30 (1) shall administer AS 43.50.460 - 43.50.570;

31 (2) may adopt regulations relating to the administration and

1 enforcement of AS 43.50.460 - 43.50.570;

2 (3) may determine basic cost of cigarettes to wholesalers and retailers  
3 from information obtained from manufacturers;

4 (4) may, after reasonable notice and hearing, revoke or suspend a  
5 license issued under AS 43.50.010 or 43.50.035 to a person who refuses or neglects to  
6 comply with a provision of AS 43.50.460 - 43.50.570.

7 (b) The Department of Community and Economic Development may, after  
8 reasonable notice and hearing, revoke or suspend a license issued under AS 43.70.075  
9 to a person who refuses or neglects to comply with a provision of AS 43.50.460 -  
10 43.50.570.

11 **Sec. 43.50.560. Presumptions applicable to determination of cost.** For  
12 purposes of AS 43.50.460 - 43.50.570,

13 (1) the basic cost of cigarettes is equal to the lower of the two  
14 following amounts:

15 (A) the invoice cost of cigarettes, less all trade discounts except  
16 customary discounts for cash, plus the full face value of any tax that may be  
17 required by this chapter if not already included in the invoice cost of the  
18 cigarettes to the wholesaler or retailer; or

19 (B) the lowest replacement cost of cigarettes to the wholesaler  
20 or retailer, within 30 days before the date of sale, in the quantity last  
21 purchased, within or before the 30-day period, less all trade discounts except  
22 customary discounts for cash, plus the full face value of any tax that may be  
23 required by this chapter if not already included in the invoice cost of the  
24 cigarettes to the wholesaler or retailer;

25 (2) the cost to the wholesaler is equal to the basic cost of the cigarettes  
26 acquired by the wholesaler plus the cost of doing business by the wholesaler, as  
27 evidenced by the standards and methods of accounting regularly employed by the  
28 wholesaler, and includes labor costs, rent, depreciation, selling costs, maintenance of  
29 equipment, delivery costs, all types of licenses, taxes, insurance, and advertising;

30 (3) in the absence of proof of a lesser or higher cost of doing business  
31 by the wholesaler making the sale, the cost of doing business by the wholesaler is

1 presumed to be four percent of the basic cost of the cigarettes to the wholesaler, plus  
2 cartage to the retail outlet if performed or paid for by the wholesaler; the cartage cost,  
3 in the absence of proof of a lesser or higher cost, is presumed to be one-half of one  
4 percent of the basic cost of the cigarettes to the wholesaler; a fraction of a cent used in  
5 computing the amount of the cartage or cost of doing business shall be rounded off to  
6 the next highest cent;

7 (4) the cost to the retailer is equal to the basic cost of the cigarettes  
8 plus the cost of doing business by the retailer; the cost of doing business may be  
9 proven by the standards and methods of accounting regularly employed by the retailer  
10 and must include labor costs, rent, depreciation, selling costs, maintenance of  
11 equipment, delivery costs, all types of licenses, taxes, insurance, and advertising;

12 (5) in the absence of proof of a lesser or higher cost of doing business  
13 by the retailer making the sale, the cost of doing business by the retailer is presumed to  
14 be six percent of the basic cost of cigarettes to the retailer; a fraction of a cent used in  
15 computing the cost of doing business shall be rounded off to the next highest cent.

16 **Sec. 43.50.570. Definitions.** In AS 43.50.460 - 43.50.570,

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

18 (2) "department" means the Department of Revenue;

19 (3) "manufacturer" has the meaning given in AS 43.50.170;

20 (4) "retailer" has the meaning given in AS 43.50.170;

21 (5) "sale" has the meaning given in AS 43.50.170;

22 (6) "sell at retail," "sale at retail," or "retail sale" means a sale for  
23 consumption or use made in the ordinary course of trade or usual conduct of the  
24 seller's business;

25 (7) "sell at wholesale," "sale at wholesale," or "wholesale sale" means  
26 a sale made in the ordinary course of trade or usual conduct by a wholesaler to a  
27 retailer for the purpose of resale;

28 (8) "wholesaler" means a person licensed under AS 43.50.010 or  
29 43.50.035 and who sells cigarettes to a retailer for the purpose of resale.

30 \* **Sec. 4.** This Act takes effect July 1, 2002.



Corporate  
P.O. Box 8112, Ketchikan, AK 99901  
(907) 225-5040 (907) 225-2231 fax

April 17, 2002

Randy Ruaro  
Representative Williams Office  
State Capitol  
Juneau, AK 99801-1182

RE: HN 512 Unfair Cigarette Sales Act

Dear Randy:

Thanks for taking the time to meet with me last week on HB 429 regarding the State's issuance of a proposed cigarette tax stamp. I appreciate you setting up the appointment for me to meet with Representative Williams. I know that time is precious as you near the end of the session so the opportunity to meet directly with Bill is appreciated.

During the preparation for my testimony to the Labor and Commerce Committee on HB 429 I stumbled across HB 512. While the outcome of HB 429 is important to me and has financial implications to our business I believe that the passage of HB 512 would be very helpful to the independent Alaska businesses engaged in the wholesale and retail trades.

I was very excited when you told me that you had contacted Dale Anderson from Representative Muldor's office and asked him to schedule a hearing on HB 512. Right after your visit with Dale I received a call from Amy Erickson from the House Labor and Commerce Committee informing me of the scheduling request from Representative Muldor's office. The hearing on HB 512 is scheduled for 3:15 on 4/26/02. Thank you for your assistance in getting this bill scheduled for a public hearing.

As we discussed during our 4/11/02 meeting in Juneau I am enclosing language that we would like to get inserted into HB 512. I am not sure of the best place to work this into the bill, so I will leave it to you and your staff to find the appropriate place to insert this into the legislation. This language is the same information that I left with Representative Williams during our meeting. If you have any questions or need additional information regarding the intent of this language please give me a call.

Thanks again for all of your assistance. I will be in touch with you the first part of next week.

Sincerely yours,

Michael J. Elerding  
President

enc

It shall be unlawful for a cigarette manufacturer or distributor to, directly or indirectly (1) require a retailer to allocate a percentage of any retailers space available for stocking, display, signage or advertising of the manufacturer's or distributors products; or (2) require a retailer to allocate space for stocking, display, signage or advertising of such products as a condition to the retailer receiving consumer promotions or consumer price discounts; or (3) restrict or limit a retailers stocking, display, promotion, pricing or advertising of any manufacturers or distributors products.

April 25, 2002

To: Rep. Lisa Murkowski,  
Chair of House Labor & Commerce Committee

From: Rep. Peggy Wilson

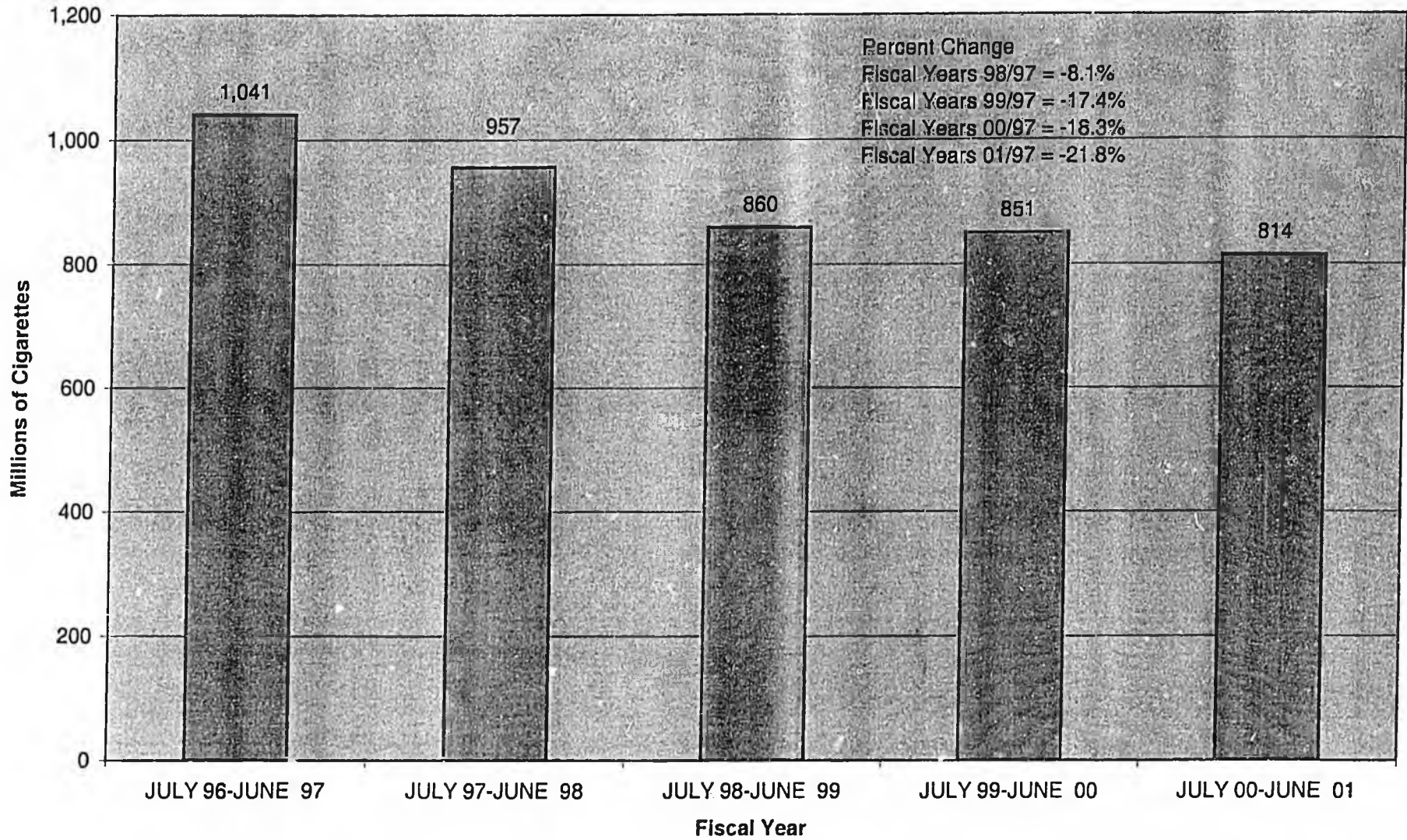
Re: HB 512

I received a call from Ben Curtis, a business owner in Wrangell, who asked that I pass his opinions on HB 512 on to the House Labor & Commerce Committee. He does not plan to testify before the Committee but wanted his opinions known.

Mr. Curtis believes there should be a level playing field for the sale of cigarettes. It is now sometimes cheaper for Ben to buy cigarettes from Wall-Mart or Costco than from his supplier. He was told that HB 512 as written asks for 6% above cost. Ben strongly feels this should be 12 or 15% above cost so small business people could have some margin for profit.

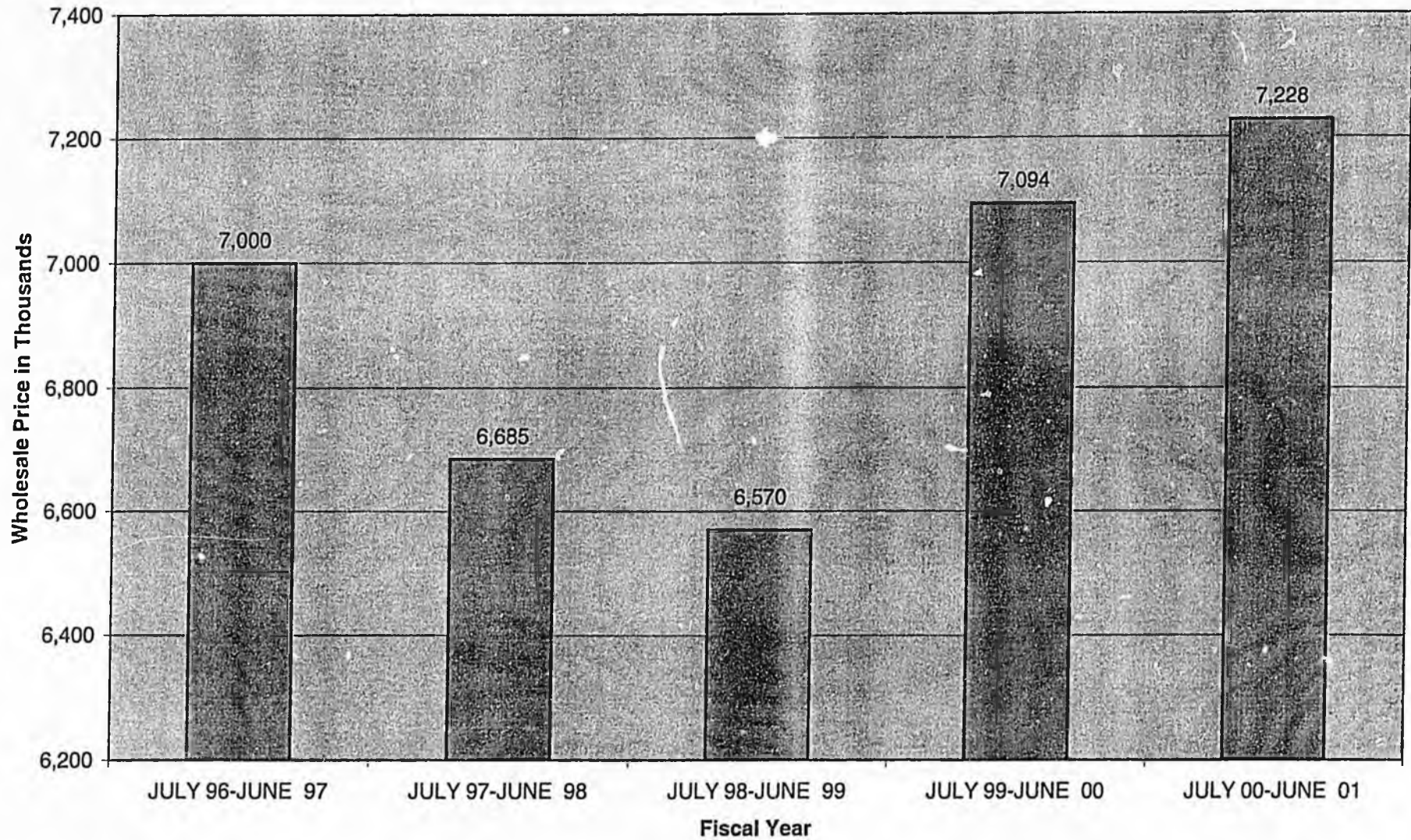
### Reported Taxable Cigarettes

Note: Tax increased from \$.29/pack to \$1.00/pack on 10/1/97



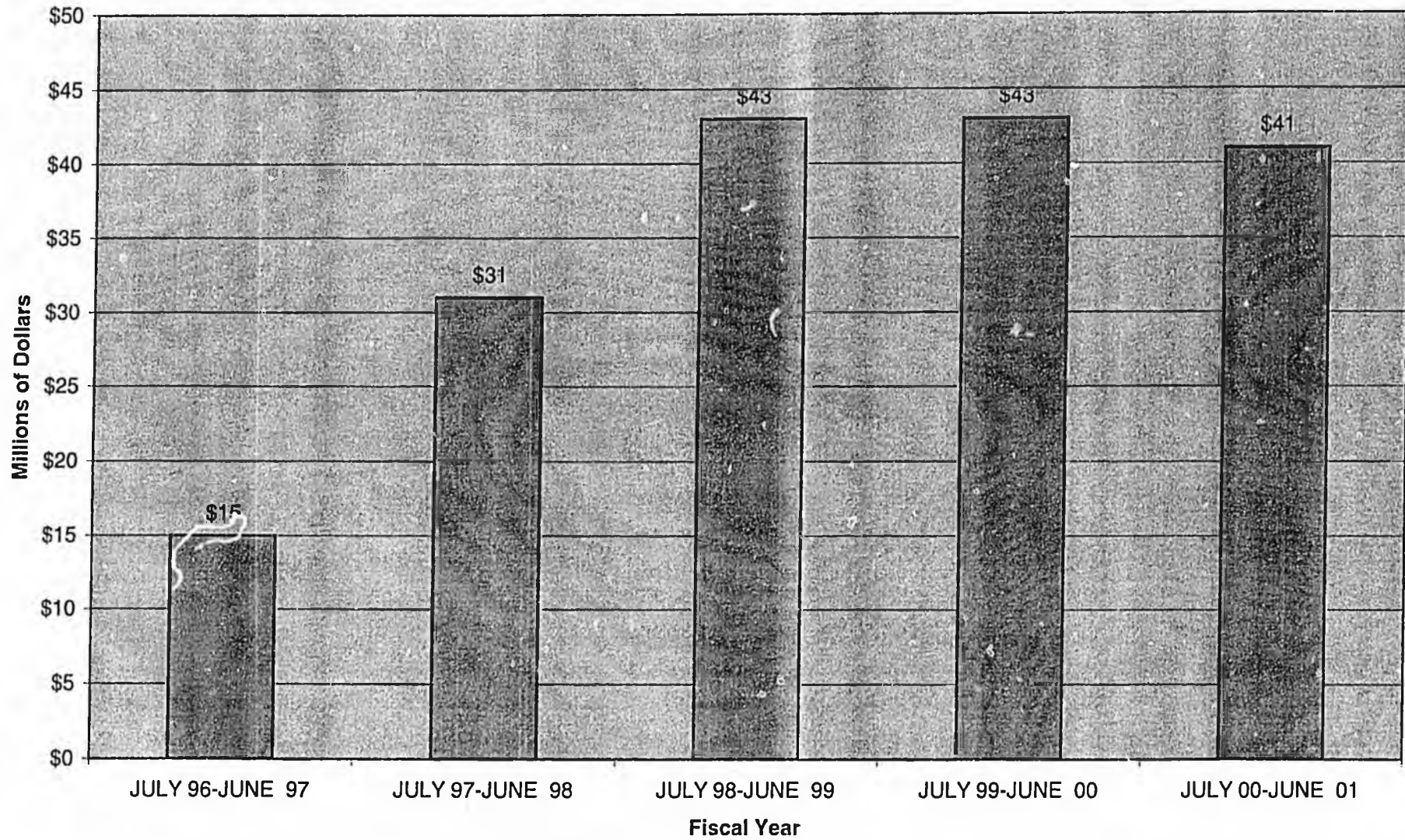
### Reported Taxable Value of Other Tobacco Products (OTP)

Note: Tax increased from 25% to 75% of Wholesale Price on 10/1/97



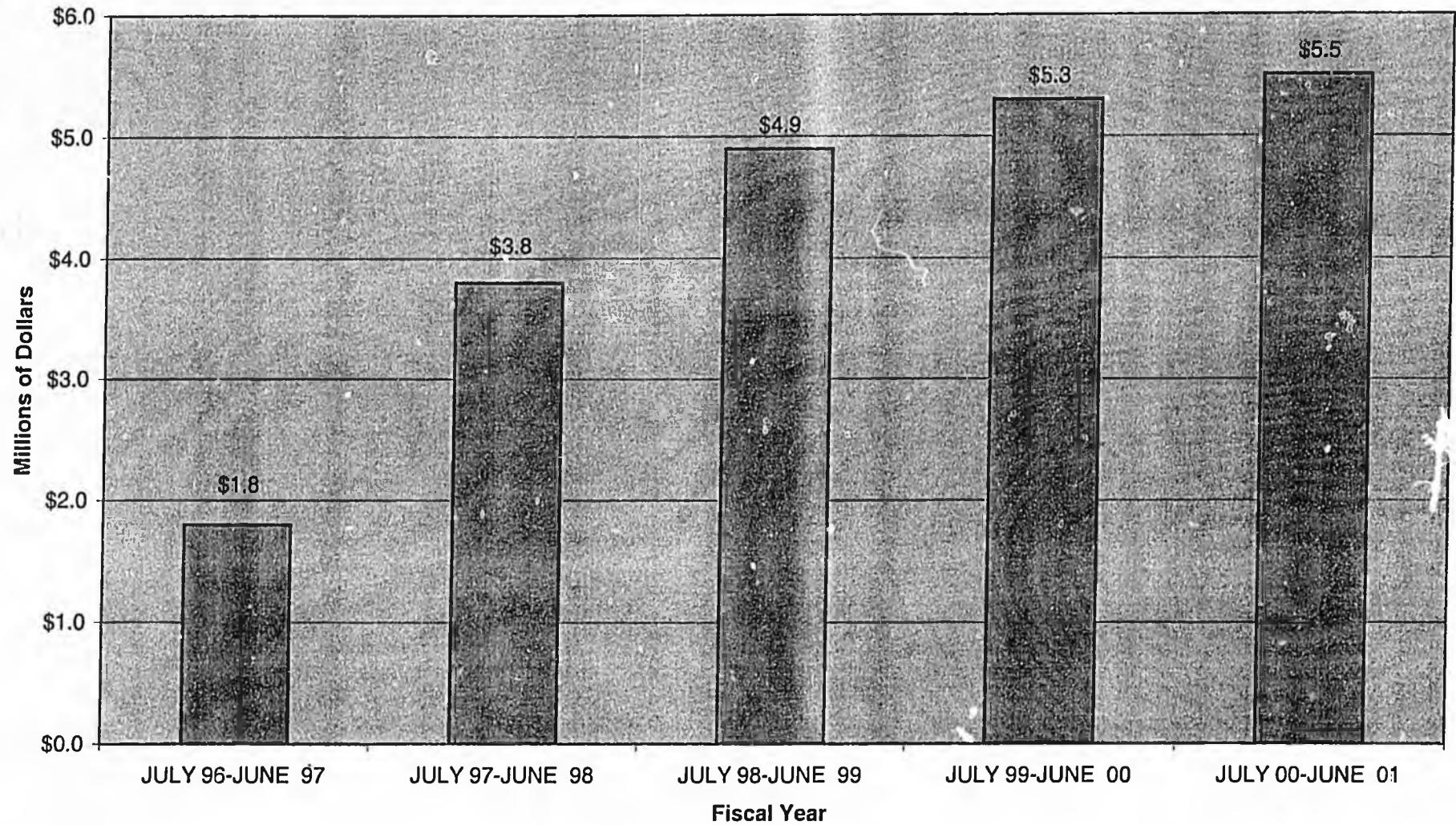
### Actual Cigarette Excise Tax Revenues

Note: Tax increased from \$.29/pack to \$1.00/pack on 10/1/97



### Actual Other Tobacco Products (OTP) Excise Tax Revenues

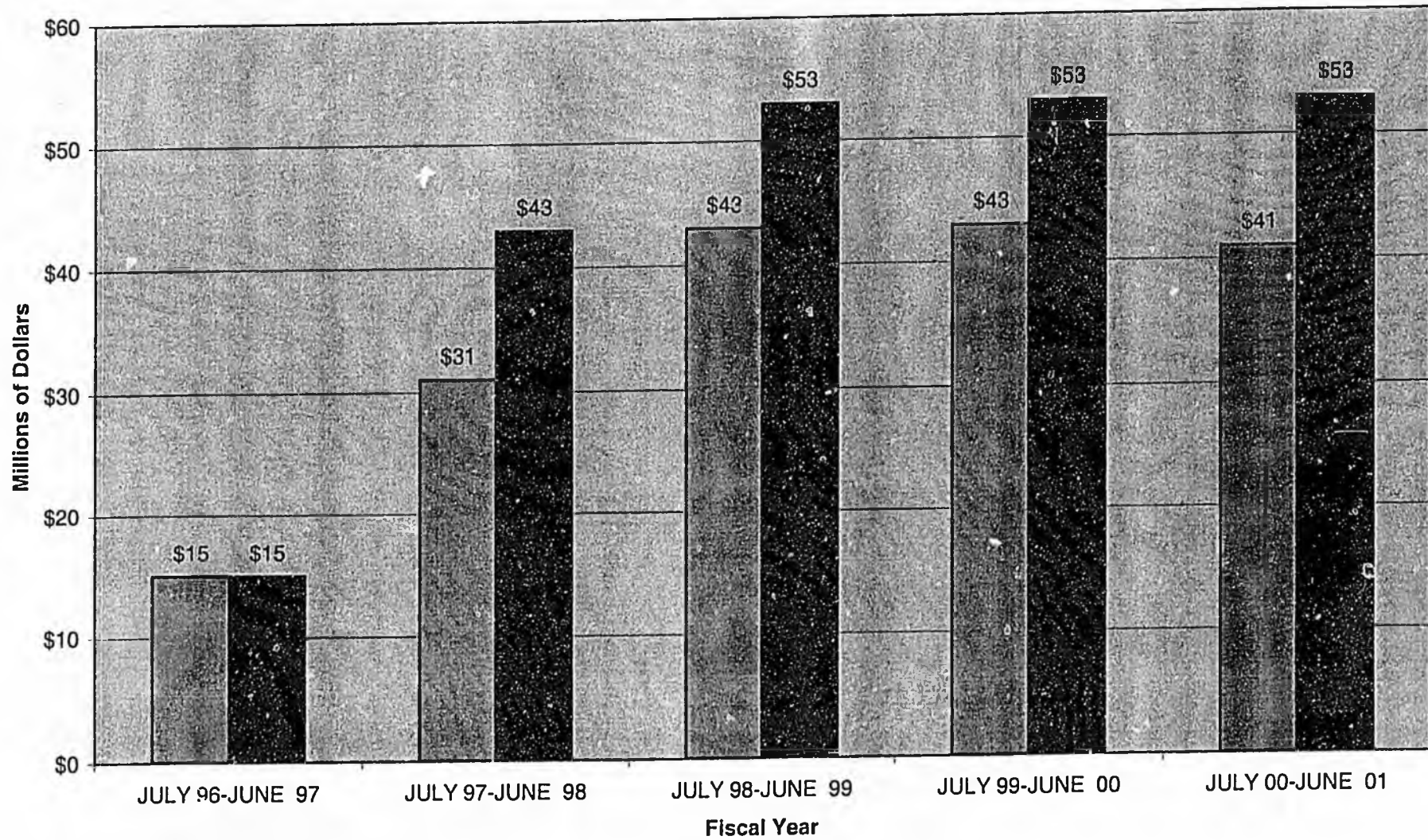
Note: Tax increased from 25% to 75% of wholesale price on 10/1/97



### Comparison of Cigarette Excise Tax Revenues

Actual Revenues

Revenues Based on Cigarette Volumes Prior to Tax Increase



CIG CHART DATA

CIGS. JUNE-JANUARY 4 YEARS			OTP JUNE-JANUARY 4 YEARS		
(mill. of cigs.)			(thousands \$)		
96	94	94,344,762	1996-06	613	613,428
97	107	106,663,442	1997-06	787	786,515
98	85	84,618,601	1998-06	613	612,528
99	86	86,160,415	1999-06	693	693,180
00	76	75,916,490	2000-06	702	701,766
01	72	72,288,194	2001-06	742	741,518
96	105	104,642,869	1996-07	712	712,376
97	127	126,691,590	1997-07	703	703,353
98	81	80,688,524	1998-07	606	606,088
99	80	80,376,545	1999-07	605	605,362
00	72	72,147,900	2000-07	694	693,536
01	76	75,611,791	2001-07	772	771,538
96	96	95,518,636	1996-08	606	606,433
97	133	133,171,038	1997-08	608	608,242
98	76	76,215,845	1998-08	593	593,315
99	87	87,330,038	1999-08	721	721,406
00	79	78,843,433	2000-08	614	614,147
01	77	77,375,115	2001-08	696	696,035
96	83	83,185,867	1996-09	590	589,823
97	215	214,539,962	1997-09	1,111	1,111,231
98	77	77,528,014	1998-09	580	580,048
99	69	68,811,968	1999-09	672	671,876
00	65	65,030,546	2000-09	652	651,833
01	64	63,766,460	2001-09	619	619,025
96	88	88,117,835	1996-10	547	546,677
97	26	26,526,045	1997-10	457	457,100
98	70	70,092,887	1998-10	476	475,528
99	70	69,538,072	1999-10	555	555,191
00	76	76,412,859	2000-10	604	604,392
01	71	71,046,792	2001-10	757	757,415
96	77	77,354,500	1996-11	504	504,129
97	31	30,713,190	1997-11	354	354,045
98	76	75,803,577	1998-11	556	556,328
99	73	73,099,104	1999-11	593	593,155
00	61	60,668,106	2000-11	539	539,107
01	68	67,545,590	2001-11	572	571,793
96	79	78,909,154	1996-12	510	510,060
97	45	44,753,576	1997-12	462	462,030
98	71	70,754,744	1998-12	443	443,052
99	59	59,043,809	1999-12	533	533,217
00	69	69,470,776	2000-12	467	467,096
01	53	52,725,710	2001-12	575	575,143
97	79	79,377,355	1997-1	465	465,203

CIG CHART DATA

98	46	46,334,443	1998-1	429	429,128
99	54	54,357,026	1999-1	471	471,189
00	68	68,457,233	2000-1	558	558,197
01	65	64,969,321	2001-1	560	560,256
02	75	74,801,340	2002-1	576	576,121
97	71	70,885,314	1997-2	480	480,286
98	46	46,062,218	1998-2	452	451,907
99	60	60,130,008	1999-2	471	470,514
00	55	55,021,063	2000-2	487	487,243
01	56	55,797,200	2001-2	553	552,553
97	85	84,778,728	1997-3	572	572,233
98	59	59,140,802	1998-3	522	522,178
99	76	76,028,654	1999-3	595	594,865
00	75	74,924,052	2000-3	569	569,297
01	66	65,778,146	2001-3	544	544,026
97	83	83,391,887	1997-4	595	595,051
98	66	65,993,502	1998-4	469	468,728
99	62	62,335,961	1999-4	509	508,517
00	61	60,752,280	2000-4	517	517,190
01	64	63,786,651	2001-4	621	620,692
97	88	87,710,606	1997-5	632	632,419
98	78	78,286,670	1998-5	505	505,250
99	71	71,181,496	1999-5	577	577,122
00	78	77,907,804	2000-5	582	581,581
01	69	68,637,988	2001-5	638	637,542

JULY 96-JUNE 97	1,041	1,040,536,193	JULY 96-JUNE 97	7,000	7,001,205
JULY 97-JUNE 98	957	956,831,687	JULY 97-JUNE 98	6,685	6,685,720
JULY 98-JUNE 99	860	861,277,151	JULY 98-JUNE 99	6,570	6,569,746
JULY 99-JUNE 00	851	851,178,458	JULY 99-JUNE 00	7,094	7,095,481
JULY 00-JUNE 01	814	813,831,120	JULY 00-JUNE 01	7,228	7,226,698

Percent Change FY 98/97	-8.1%	-8.0%			
Percent Change FY 99/97	-17.4%	-17.2%	perc. diff fy 99/fy97		-6.2%
Percent Change FY 00/97	-18.3%	-18.2%	perc. diff fy 00/fy99		1.3%
Percent Change FY 01/97	-21.8%	-21.8%	perc. Diff fy 01/fy00		3.2%

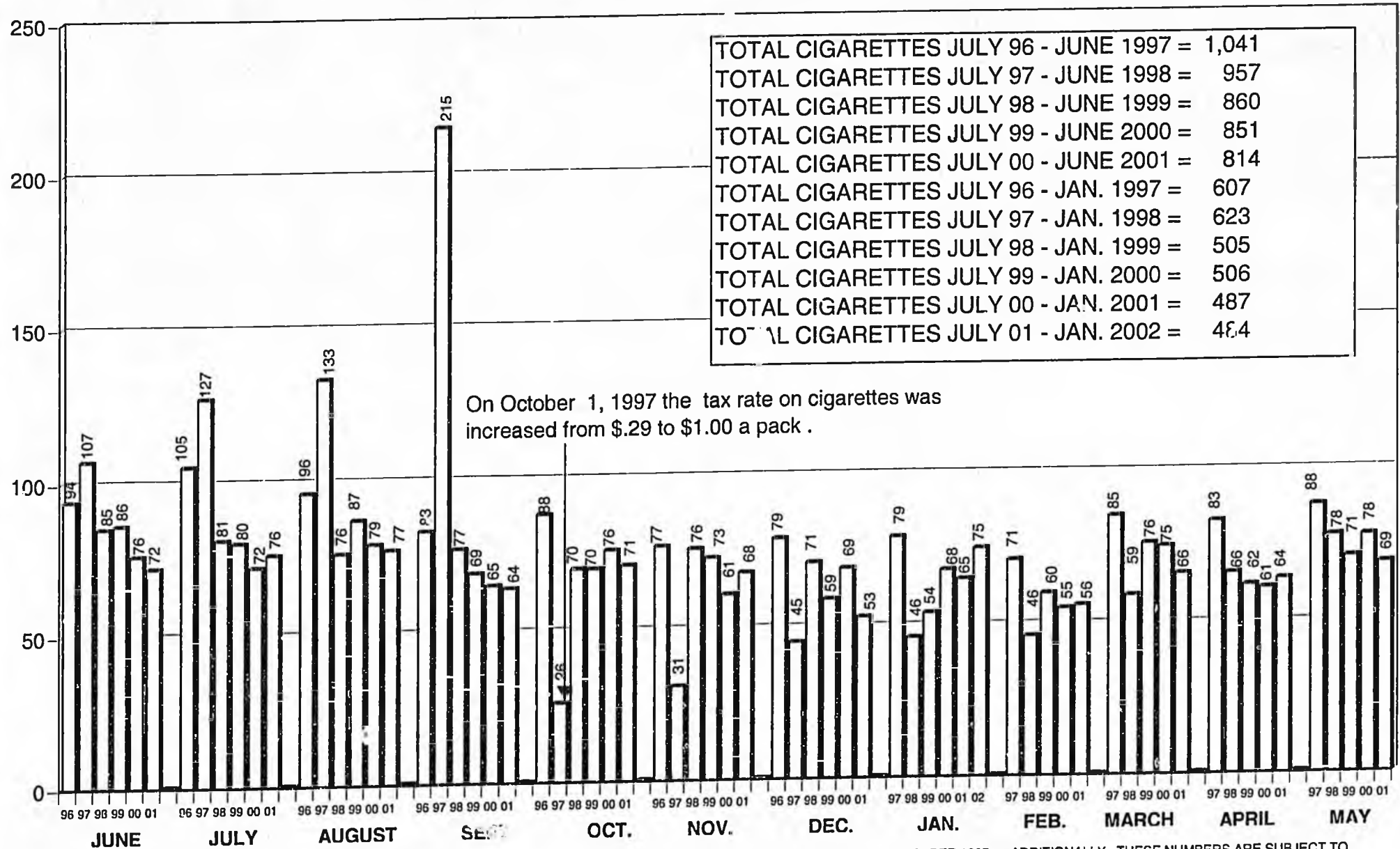
JULY 96-JAN. 97	607	607,106,216	JULY 96-JAN. 97	3,934	3,934,701
JULY 97-JAN. 98	623	622,729,894	JULY 97-JAN. 98	4,124	4,125,129
JULY 98-JAN. 99	505	505,440,617	JULY 98-JAN. 99	3,725	3,725,548
JULY 99-JAN. 00	506	506,656,769	JULY 99-JAN. 00	4,237	4,238,404
JULY 00-JAN. 01	487	487,542,941	JULY 00-JAN. 01	4,130	4,130,367

CIG CHART DATA

JULY 01-JAN. 02	484	482,872,798	JULY 01-JAN. 02	4,567	4,567,070
perc. diff jul-dec. 98/96		-16.7%	perc. diff jul-dec. 98/96		-5.3%
perc. diff jul-dec. 99/96		-16.5%	perc. diff jul-dec. 99/96		7.7%
perc. diff jul-oct. 00/96		-19.7%	perc. diff jul-oct. 00/96		5.0%
perc. diff jul-oct. 01/96		-20.5%	perc. diff jul-oct. 01/96		16.1%

ALASKA DEPARTMENT OF REVENUE  
TAX DIVISION

NUMBER OF TAXABLE CIGARETTES: ACTUALS JULY 1996 - JAN. 2002  
MILLIONS OF CIGARETTES



CAUTION: COMPARISONS SHOULD BE DONE WITH CARE BECAUSE OF THE EXTENSIVE STOCKPILING THAT TOOK PLACE FROM JUNE - SEPTEMBER 1997. ADDITIONALLY, THESE NUMBERS ARE SUBJECT TO CHANGE DUE TO LATE OR AMMENDED RETURNS.

OTP CHART DATA

96	613	613,428	June	\$151,006
97	787	786,515		\$196,629
98	613	612,528		\$459,396
99	693	693,180		\$519,886
00	702	701,766		\$526,437
01	742	741,518		\$555,878
96	712	712,376	July	\$178,094
97	703	703,353		\$175,838
98	606	606,088		\$454,566
99	605	605,362		\$454,022
00	694	693,536		\$520,247
01	772	771,538		
96	606	606,433	August	\$151,608
97	608	608,242		\$152,061
98	593	593,315		\$445,118
99	721	721,406		\$541,055
00	614	614,147		\$460,679
01	696	696,035		
96	590	589,823	September	\$147,457
97	1,111	1,111,231		\$277,237
98	580	580,048		\$435,036
99	672	671,876		\$503,907
00	652	651,833		\$489,005
01	619	619,025		
96	547	546,677	October	\$136,670
97	457	457,100		\$343,242
98	476	475,528		\$356,181
99	555	555,191		\$416,397
00	604	604,392		\$515,631
01	757	757,415		
96	504	504,129	November	\$126,032
97	354	354,045		\$268,550
98	556	556,328		\$416,609
99	593	593,155		\$444,866
00	539	539,107		\$404,330
01	572	571,793		
96	510	510,060	December	\$127,515
97	462	462,030		\$346,522
98	443	443,052		\$332,009
99	533	533,217		\$399,914
00	467	467,096		\$350,426
01	575	575,143		
97	465	465,203	January	\$116,301
98	429	429,128		\$318,640

OTP CHART DATA

99	471	471,189		\$353,252
00	558	558,197		\$418,648
01	560	560,256		\$420,729
02	576	576,121		

97	480	480,286	February	\$120,072
98	452	451,907		\$338,944
99	471	470,514		\$353,112
00	487	487,243		\$365,432
01	553	552,553		\$415,246

97	572	572,233	March	\$143,058
98	522	522,178		\$391,270
99	595	594,865		\$446,148
00	569	569,297		\$426,973
01	544	544,026		\$408,420

97	595	595,051	April	\$148,763
98	469	468,728		\$351,026
99	509	508,517		\$381,321
00	517	517,190		\$387,893
01	621	620,692		\$465,200

97	632	632,419	May	\$158,105
98	505	505,250		\$374,888
99	577	577,122		\$425,149
00	582	581,581		\$436,186
01	638	637,542		\$478,157

JULY 96-JUNE 97	7,000	7,001,205	JULY 96-JUNE 97	\$1.8	\$1,750,304
JULY 97-JUNE 98	6,685	6,685,720	JULY 97-JUNE 98	\$3.8	\$3,797,614
JULY 98-JUNE 99	6,570	6,569,746	JULY 98-JUNE 99	\$4.9	\$4,918,387
JULY 99-JUNE 00	7,094	7,095,481	JULY 99-JUNE 00	\$5.3	\$5,321,730
JULY 00-JUNE 01	7,228	7,226,698	JULY 00-JUNE 01	\$5.5	\$5,483,948

perc. diff fy 99/fy97	-6.2%
perc. diff fy 00/fy99	1.3%
perc. Diff fy 01/fy00	3.2%

JULY 96-DEC. 96	3,934	3,934,701
JULY 97-DEC. 97	4,124	4,125,129
JULY 98-DEC 98	3,725	3,725,548
JULY 99-DEC. 99	4,237	4,238,404
JULY 00-DEC. 01	4,130	4,130,367
JULY 01-DEC. 01	4,567	4,567,070

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 512  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
 Title: Unfair Cigarette Sales BRU: Revenue Operations  
 Component: Tax Division  
 Sponsor: House Finance Committee  
 Requester: Labor and Commerce Committee Component Number: 2476

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

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	70.0	70.0	70.0	70.0	70.0	70.0
Travel	2.5	2.5	2.5	2.5	2.5	2.5
Contractual	52.0	52.0	52.0	52.0	52.0	52.0
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	4.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>129.5</b>	<b>125.5</b>	<b>125.5</b>	<b>125.5</b>	<b>125.5</b>	<b>125.5</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF	129.5	125.5	125.5	125.5	125.5	125.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>129.5</b>	<b>125.5</b>	<b>125.5</b>	<b>125.5</b>	<b>125.5</b>	<b>125.5</b>

Estimate of any current year (FY2002) cost: 0.0

**POSITIONS**

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

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

(Also, please see attached analysis)

**Operating Expenditures** -- We do not currently complete cigarette cost surveys. In fact, the Department of Revenue only receives information from approximately 18 retailers that import cigarettes into the state. Alaska currently has more than 1,700 cigarette retailers. A statewide survey to identify the "lowest cost to a retailer" would involve surveying this entire group. We received a rough estimated cost of \$50,000 from the McDowell Group Inc. to complete a statewide survey of cigarette retailers. We assume for this fiscal note that such a survey is conducted once a year. Additionally, we are requesting an appeals officer to conduct investigations, to supervise the survey contractors, to work with retailers and wholesalers, and to enforce the provisions of this Act.

Prepared by: Johanna Bales Phone 269-6628  
 Division: Tax Division Date/Time Apr. 25, 2002  
 Approved by: Larry Persily, Deputy Commissioner Date Apr. 25, 2002  
 Agency: Department of Revenue

For distribution information, call the Governor's Legislative Office

**Department of Revenue**

**HB 512 - Unfair Cigarette Sales - Bill Analysis (April 25, 2002)**

**Page 2 of 3**

**Bill Language:** The language of this bill does not adequately reflect cigarette sales practices and licensing in the state. This bill only affects those cigarette licensees holding wholesaler-distributor licenses. The Department issues several other license types, i.e. direct-buying retailer, distributor, manufacturer, and vending machine operator. Since the language in this bill does not include these license types, licensees holding these types of licenses would not be subject to the Unfair Cigarette Sales Act. The majority of our current licensees are direct-buying retailers and distributors. The bill language should be amended to include all license types.

**Bill Codification:** This bill would insert the Unfair Cigarette Sales Act into the Nonparticipating Manufacturer Statute (AS 45.53). Under the tobacco Master Settlement Agreement (MSA), Alaska was required to pass AS 45.53 to ensure there would be no reductions in Alaska's payments under the MSA. Alaska currently receives approximately \$25 million in MSA payments each year. If Alaska modifies or amends AS 45.53, those modifications and amendments must be approved by the four original cigarette manufacturers that signed the MSA. If the changes are not approved, Alaska could lose some or all of its annual payments under the MSA. Therefore, the Unfair Cigarette Sales Act should not be placed in AS 45.53.

**Operating Expenditures:** We are requesting an appeals officer (Range 20) position to fulfill the requirements of this bill. We are also requesting \$5,500 a year in travel, supplies and contractual to support this position and a one-time cost of \$4,000 for equipment. This individual will be responsible for all investigations, working with retailers, wholesalers and the public, contract supervision and enforcement. We are also requesting \$50,000 in contractual costs for an annual survey of retailers.

**Program Summary:** The program will consist of collecting, compiling and analyzing cost data secured from persons licensed with both the Department of Revenue and the Department of Community and Economic Development to sell cigarettes in the state.

**Revenue:** No additional revenue will be generated from this bill.