

ALASKA LEGISLATURE COMMITTEE FILES, 2005-2006

11869 SENATE JUDICIARY

Un-intended consequence:

In order to see newly constructed rental properties on the market they must be financially viable. The single family home has a very low profit margin as a rental when constructed by owners with freelance labor and some donated personal time. That small margin becomes a deficit when the project is undertaken by a homebuilder general contractor because no time can be donated, a portion must be set aside for profit and the regulatory costs for the general contractor must be borne by the project. This route will result in a home that can barely support market sale prices and cannot support a profit margin as a rental home. So these enforcement measures for existing law may very well result in an absence of new construction in the single family rental market (heavily utilized by our military).

This example would also apply to a smaller project like adding an apartment over a garage.

This enforcement action will greatly reduce the availability of cheap willing local labor in the free market.

It will stretch the recourses of consumers for projects and has to result in less overall economic activity.

Critical language references:

Page four, exemption #8 is problematic for anyone who wants to hire an 8101 licensee if there overall project is of any large size. The licensee is subject to fines in most hiring situations and therefore unavailable. Also an insurance requirement is cited for any work over \$2,500 dollars. The policy alone would be over \$2000 dollars a year IF available at all.

Page 2, section 2, a/b/c/d/ are switching the burden of proof and trying to delay access to courts.

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Pg 5, line 21, applicability, A & B seem to be in direct conflict.

AMENDMENT

OFFERED IN THE SENATE

TO: SCSCSHB81(L&C)

- 1 Page 4, lines 17- 18:
- 2 Delete "when the work is only part of a larger or major operation, whether undertaken
- 3 by the same or a different contractor, or"
- 4 Insert "[WHEN THE WORK IS ONLY PART OF A LARGER OR MAJOR
- 5 OPERATION, WHETHER UNDERTAKEN BY THE SAME OR A DIFFERENT
- 6 CONTRACTOR, OR] "

110 N. Cushman St. Ste 101 Fairbanks, Alaska 99701
Phone: (907) 452-4148 Fax (907) 450-3348



Fax

To: Senate Judiciary Committee **From:** Nancy Kelly

Fax: 465-8717-5241 **Pages:** 12

Phone: **Date:** 4/27/05

Re: Written Testimony HB 81 **CC:**

Urgent For Review Please Comment Please Reply Please Recycle

• Comments:

Back up testimony from today's hearing in HB 81 – requested by the Chair.

Thank you!

1ST

PREF: V.P. R.K.F. AMMENDMENT

TRAFFIC. CIVIL AMENDMENT (S.W. 26)

Main points

NOT HONORABLE BELIEVE IT OR NOT... USE YOUR

- This bill ^{EFFECTIVELY} outlaws independent laborers on all major construction sites. This is a man's lively hood that you are seeking to restrict by passing this bill without substantial amendments. You are outlawing the mere act of accepting small amounts of work (under \$5000 dollars) from contractors or owner-builders or local landlords. How can any perceived gain of this bill be worth that price?
- This bill installs massive enforcement measures against people earning a living. It creates a very big citation power for the department of labor. * The accused, in this case, should at least have the same protections ~~that are~~ ^{THAT ARE OFFERED} for a simple speeding citation??? Even if you are caught speeding, you have the right to ask for a trial before a jury or magistrate. Give me one good reason why a man who has his livelihood threatened should not have the same rights afforded to a traffic ticket case? Why shouldn't the department have to provide some type of legal proof to fine a man \$1500 bucks a day for going to work?
- This bill should have major modification or die in this committee. The backers of this bill have finally realized that years of state red tape has made their situation bad. But, instead of fixing ~~that~~ ^{THAT} situation, they have proposed that making someone else's situation just as bad, will solve the problem!!

Members of the committee... that kind of reasoning is not RIGHT, NOT ALASKAN, NOT LOGICAL and forgive me for possibly offending the minority but, it SURE AIN'T REPUBLICAN!

I HOPE TO GOD IT AIN'T DEMOCRAT IETHER? My apologies to the democrat members. No offense intended.

I am only left with one question after all the time spent on this bill...

Why are the backers and the legislature so intent on kicking independent labor off of every substantial jobsite in Alaska; AND, if they dare go to work

HUGGINS / FRENCH / THERIAULT / GUESS / SEIKINS

pg 1

anyway, taking their right to trial away?

I would very much appreciate the opportunity to answer questions during committee debate on this bill as the unofficial ranking expert on this piece of legislation.

Thank you mr Chairman, I will remain here for the duration of debate.

Testimony submitted by: Todd Larkin

1466 REDMOND AVE.
NORTH POLE, AK 99705

24-LS0144(LJ)
Mischel
4/22/05


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NECESSARY AND FAIR CHANGES TO HB81 AND EFFECTED LAW

Here are a few points to get at if you want to talk about specific amendments. Go ahead and read through it to familiarize yourself with the location of each point in the bill. I have page and line references in each.

1. the language that speaks to advertising on page 4, line 21 needs to be more specific. It should only allow for a violation when the advertising: "clearly indicates to the public that the person is a construction contractor, home builder or specialty trade contractor..." other than handyman or general labor Svc.,
-  2. Labor/handyman svcs should be allowed to perform under \$5000 dollars of work for any customer including fully licensed contractors or owner builders. This practice is precluded on page 4, line 18. The "L.1" amendment should be adopted. The remaining sentence would ensure that an "independent laborer" could not simply break up the same job into \$5000 dollar chunks and skirt the law.
3. The proposed 2 year time-span requirement between projects at the top of page 5 should have an exemption for rental property. An Alaskan property owner must commit substantial finances to rental projects. To ask Alaskans to either pay the highest possible price through a contractor or stretch their capitol over long terms to comply with law, is no choice at all. Seniors will be hurt the most by this "2 year" requirement because if they plan to convert their retirement savings to income by building several rentals, they must transition in a short amount of time or be without income. The entire idea of limiting how often a person can better

their financial status by sweat equity, is borderline communist.
And totally anti-Alaskan.



4. Page 2, paragraphs b) and c) are very troubling. These fines are just like traffic tickets (but way bigger). They should be challengeable in court before a magistrate just like traffic tickets. We do not need to create new government positions and legal recourse should not be delayed, regardless. If the department has proof of wrongdoing then they can present it to the lower court and the inspector who issued the ticket should have to appear. This satisfies the stated intent of not having to rely on the department of law or the AG's office. The references to "administrative hearings" should be deleted and replaced with district court language. No "administrative hearings"!

5. A statutory warranty should be created. Let the builders write it and then put it in statute. Everyone lives under the same warranty language so no one can claim that the requirements are unfair. This might actually protect consumers if that is a real goal.

6. Jobs valued at under \$5000 dollars for labor AND MATERIALS, do not support or justify an insurance policy. If they did, then the "licensed and insured" tradesmen contractors would be accepting those small jobs. Most are not bidding or accepting these small jobs. Therefore, the language requiring insurance over \$2500 on page 4 lines 23-25 should be deleted.

If you need more, give me a call. These are the main changes that should be made for now. Some are changes to existing law so that when the new enforcement actions are approved, regular folks and independent labor won't be criminals.

Todd

378-8633

FACT SHEET FOR HB 81

- **Clarification:** The term "handyman license" does not exist in statute; a nickname given to the 8101 license category. The 8101 license is for "unclassified services" and is more truly described as an independent laborer's license. It was originally referred to as an "unclassified specialty contractor" and allowed a laborer to contract his/her personal labor out to various customers from home owners, to general contractors, to landlords, and so on. The nickname, however, has been taken literally and now the legislature is trying to create the "handyman" while putting independent labor out of business.
- **Clarification:** Most of the problems with HB81 relate to the proposed enforcement of what is already prohibited in law. Most consumers and license holder were never aware that their daily practices were in violation of law because the law lacked enforcement. Since HB81 seeks to enforce very poorly written law with unreasonable methods, the underlying law must now be addressed.

Now onto the bill basics:

- Sponsored by Representative Tom Anderson of Anchorage along with Representative Harry Crawford (Democrat). *Despite winning the house by 36 to 2 votes, it has picked up no other sponsors.*
- HB 81 was brought at the urging of HBA Department of Labor and possibly other interests.
- Implicitly discriminates against one of two groups: The bill is either suggesting that "Bush Alaska" consumers are not worth "protecting"; Or, that the urban populations are too ignorant to decide who to contract with for projects. It's unclear which group receives the greater insult, but each are affected.

- HB 81 seeks to enforce current (poorly written) law by switching the burden of proof to the accused and levying a \$1000-\$1500 dollar daily fine on workers in the \$20per hr - \$45per hr pay range.
- Gives new ticketing/prosecution powers to the department of Labor and the department of economic development.
- Delay citizen access to the state courts
- Further regulates home inspections and subjects the inspectors to fines in specific circumstances. *Compliance leads to higher administrative and construction costs.*
- Doubles the existing length of time between owner built projects to 2 years. (fines apply).
- In short, HB 81 would make it illegal for an Alaskan to build and sell his/her home in a timeframe he sees fit in accordance to his livelihood and impose "state wisdom".
- Regulates every state citizen except registered contractors.
- Prohibits owner builders from building a house in all but, two circumstances i.e. you must exhaust several years of your time or retirement to build inexpensively or spend vastly more money to hire registered contractors if time is a problem. (fines apply)
- If the citizen wants to build a rental home early they must seek permission from Department of labor. (fines apply)
- If you or a fully licensed and insured contractor engaged in any project worth over \$5000 dollars, an "8101" license holder is prohibited from doing even \$1 dollar worth of work for you. (this is

in the existing law that HB81 seeks to enforce. It is the "poorly written" section I previously mentioned). (fines apply)

- potentially raises building costs approximately 40% for the consumer that had intended to invest there savings or retirement in several real estate projects for rental income over a short period, without a general contractor.
- revises and increases criminal penalty for building to a class B Misdemeanor (see attached statutes).

A few unstated results:

- One unstated result of this bill is reduced available labor by prohibiting (8101) workers from assisting in major repair or construction.
- Another unstated result of HB81 is raising costs to consumers (substantially) i.e. if I (an 8101 licensee) were to fully comply, my rates (currently \$30 per hr) would probably move up to \$45 per hour or if an owner builder were forced to hire a General contractor, a \$100,000 dollar project would quickly move to \$140,000 dollars (round numbers)
- Another unstated result of HB81 is to remove the existing financial incentive for building a house without a general contractor. These savings sometimes mean the difference between building and owning a home or continuing to rent.
- Another unstated result of HB81 is to raise housing costs statewide by limiting (in most cases) building activity to the most expensive method available. That method is fully licensed insured and bonded general contractors. They are not the most expensive because of greed but, because of the costs of workers compensation, general liability, performance bonding and employee overhead. Your \$160,000 dollar home project would have around \$60,000 dollars in requirements and modest profit over the costs of labor and materials.

Some falsehoods:

- **HB81 will protect consumers.** This is totally unfounded. The consumer who does not have the money to hire the fully licensed trade or general contractor will either complete projects on their own with no expertise at all or they will begin to hire totally unlicensed "under the table" labor that may have even greater disadvantages than the 8101 license holder.
- **HB81 will ensure that construction will not be performed by "unlicensed" or "improperly licensed" workers.** This is flawed logic. Very few workers on a construction site are licensed but, they perform most of the work. What happens is that the general and subcontractors have the necessary licenses and insurance to allow their UNLICENSED employees to do the work. Now I ask you: what is the difference whether a general contractor has his unlicensed employee do the work or a self employed laborer? None, the general is liable for the work in both cases.
- **If homes and large projects are handled exclusively by general contractors, poor construction and consumer complaints will stop...** Does anyone really believe that statement?
- **Competition from unlicensed contractors is hurting fully licensed contractors.** This is false for two reasons. First, most contractors will admit that they have more work than can be finished and; second, the cost burdens of regulation and insurance are the real damaging factors, not competition.
- **Workman's compensation coverage is unavailable to some workers.** This statement may or may not be true but, is totally unrelated to HB81 and irrelevant.
- **This bill absolutely does not change any of the laws affecting "handymen."** True but, deceiving because there are no handyman laws on the books at all.
- **The current route for enforcement will clog up the court systems.** I cannot recall even one case that has made it to court so it must be false to suggest that current practices will clog the courts.

Un-intended consequence:

In order to see newly constructed rental properties on the market they must be financially viable. The single family home has a very low profit margin as a rental when constructed by owners with freelance labor and some donated personal time. That small margin becomes a deficit when the project is undertaken by a homebuilder general contractor because no time can be donated, a portion must be set aside for profit and the regulatory costs for the general contractor must be borne by the project. This route will result in a home that can barely support market sale prices and cannot support a profit margin as a rental home. So these enforcement measures for existing law may very well result in an absence of new construction in the single family rental market (heavily utilized by our military).

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Alaska State Legislature

Please enter into the record my testimony to the Senate Judiciary

committee on HB 81, dated April 27, 2005
bill/ subject committee name

In my experience for 25 years as a laborer and carpenter in the residential building sector, I have seen many owners build their own houses from the ground up. I suspect the vast number of these projects that occur each year is not realized by anyone. I believe it makes a very strong impact on our economy. Even more so in a small community, I live in such a community right now.

Most of the time owner builders do a good job, are knowledgeable about building science to do a good job. There is nothing wrong with these homes selling on the market within 1 year. Neither is it necessary for the owner to live in it before selling. Extending the requirement to two years is unrealistic and interferes with the liberty of two categories of people.

The laborer and carpenter who is hired to build for the owner has inherent rights and liberties to work. The owner has these same rights and liberties to build and sell at a profit if he can. Liberty is at stake here!

Our country is founded on free market. It is therefore ultimately the buyers responsibility to make a wise purchase.

We must not seek to constrain the fundamental liberties and rights of one class to secure the economic nest-egg of another class.

Signed: Patrick Anthony Dalton

Testifier

Sell

Representing (Optional)

PO Box 1413 Delta Junction Alaska 99737

Address

895 5011

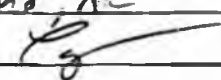
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Public Opinion Message

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This form must be completely filled out. You may phone, fax, or deliver your POM to any LIO.

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Mr. / Ms. / Mrs. Mr	First name Paul	MI. K	Last name Verhagen	Jr. / Sr. / III
Group affiliation (if applicable)			(Optional telephone number) 707-932-5430	
Mailing address Box 563 Nenana, AK			Zip code 99760	
Residence (if not address if different from mailing address) 10 Verhagen way, Nenana, AK			Zip code 99760	
Email address paul.verhagen@legis.ak.net		Signature 		Date 4/25/05

To: Put a in the appropriate box(es).

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HB or SB CSHB	Bill number 81	and check one:	<input type="checkbox"/> Support	OR enter a general Subject (LIO staff may modify):
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Our	family	business	concerns	of	5
building	sheds	and	garages	for	10
4-wheelers,	snowmobiles,	etc.	Our	teenage	15
boys	are	the	laborers.	This	20
is	how	they	earn	their	25
money	is	raising	spiraling	costs	30
have	pushed	our	prices	over	35
\$5000.	have	not	contractors	and	40
have	not	advertised	as	such.	45
Please	vote	against	CSHB 81	Thanks	50

Public Opinion Message

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<input type="checkbox"/>	Community & Regional Affairs (cra)	<input type="checkbox"/>	Berkowitz (ber)	<input type="checkbox"/>	Cowdery (coy)
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<input type="checkbox"/>	Fish (fsc)	<input type="checkbox"/>	Harris (har)	<input type="checkbox"/>	B. Stevens (ste)
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		<input type="checkbox"/>	Neuman (neu)	<input type="checkbox"/>	
		<input type="checkbox"/>	Olson (oll)	<input type="checkbox"/>	
		<input type="checkbox"/>	Ramras (rar)	<input type="checkbox"/>	
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		<input type="checkbox"/>	Seaton (san)	<input type="checkbox"/>	
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		<input type="checkbox"/>	Weyhrauch (weh)	<input type="checkbox"/>	
		<input type="checkbox"/>	Wilson (wls)	<input type="checkbox"/>	

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CSHB	81	<input checked="" type="checkbox"/> Amend	Oppose		(LIO staff may modify):

Message: Your PRINTED message cannot exceed 50 words or contain any vulgar language.

My	Father	Say's	"Teach	a	5
boy	construction	skills	and	he	10
will	become	a	doctor	or	15
lawyer.	He	has	a	large	20
family	and	has	taught	us	25
construction	skills	every	summer	w/o	30
having	to	be	a	contractor.	35
please	don't	take	away	great	40
opportunities	for	families	please	Amend	45
the	limit.	to	\$15,000	Thank's	50

Public Opinion Message

Please contact your local Legislative Information Office (LIO) to send POMs.
A listing of LIOs can be found at <http://www.legis.state.ak.us/legaff/lio/lio1st.htm>

This form must be completely filled out. You may phone, fax, or deliver your POM to any LIO.

From: Please **PRINT** the information below. This form must be signed by the sender.

Mr. / Ms. / Mrs. Mr.	First name Josh	MI. K.	Last name Verhagen	Jr. / Sr. / III
Group affiliation (if applicable)				Daytime telephone number 907-822-5238
Mailing address Box 563 Nensana AK				Zip code 99752
Residence (street) address if different from mailing address 10 Verhagen Way, Nensana, AK				Zip code 99752
Email address paul.verhagen@prodigy.net		Signature <i>Paul Verhagen</i>		Date 4/25/05

To: Put a in the appropriate box(es).

	Committees	House members	Senate members
<input type="checkbox"/>	<input type="checkbox"/> Community & Regional Affairs (cra)	<input type="checkbox"/> Anderson (ade)	<input type="checkbox"/> Bunde (bun)
<input type="checkbox"/>	<input type="checkbox"/> Finance (fin)	<input type="checkbox"/> Berkowitz (ber)	<input type="checkbox"/> Cowdery (coy)
<input type="checkbox"/>	<input type="checkbox"/> Health, Ed., & Social Services (hes)	<input type="checkbox"/> Chenault (che)	<input type="checkbox"/> Davis (dab)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Judiciary (jud)	<input type="checkbox"/> Ciesna (dis)	<input type="checkbox"/> Dyson (dys)
<input type="checkbox"/>	<input type="checkbox"/> Labor & Commerce (l&c)	<input type="checkbox"/> Coghill (cog)	<input type="checkbox"/> Ellis (ell)
<input type="checkbox"/>	<input type="checkbox"/> Resources (res)	<input type="checkbox"/> Crawford (crf)	<input type="checkbox"/> Elton (elt)
<input type="checkbox"/>	<input type="checkbox"/> Rules (rts)	<input type="checkbox"/> Croft (cro)	<input type="checkbox"/> French (fre)
<input type="checkbox"/>	<input type="checkbox"/> State Affairs (sta)	<input type="checkbox"/> Dahlstrom (dal)	<input type="checkbox"/> Green (gre)
<input type="checkbox"/>	<input type="checkbox"/> Transportation (tra)	<input type="checkbox"/> Elkins (eln)	<input type="checkbox"/> Guess (gue)
<input type="checkbox"/>	Other:	<input type="checkbox"/> Foster (fos)	<input type="checkbox"/> Hoffman (hof)
<input type="checkbox"/>	Other:	<input type="checkbox"/> Gara (gar)	<input type="checkbox"/> Huggins (hug)
		<input type="checkbox"/> Gardner (gas)	<input type="checkbox"/> Kookash (kos)
		<input type="checkbox"/> Gatto (gal)	<input type="checkbox"/> Olson (ols)
		<input type="checkbox"/> Gruenberg (gru)	<input type="checkbox"/> Seekins (sek)
		<input type="checkbox"/> Guttenberg (gtt)	<input type="checkbox"/> Stedman (smn)
		<input type="checkbox"/> Harris (har)	<input type="checkbox"/> B. Stevens (ste)
		<input type="checkbox"/> Hawker (haw)	<input type="checkbox"/> G. Stevens (stg)
		<input type="checkbox"/> Holm (hol)	<input type="checkbox"/> Theriault (thr)
		<input type="checkbox"/> Joubert (jou)	<input type="checkbox"/> Wagoner (wag)
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		<input type="checkbox"/> Neuman (neu)	
		<input type="checkbox"/> Olson (oll)	
		<input type="checkbox"/> Ramras (rar)	
		<input type="checkbox"/> Rokeberg (rok)	
		<input type="checkbox"/> Salmon (sae)	
		<input type="checkbox"/> Samuels (sal)	
		<input type="checkbox"/> Seaton (sar)	
		<input type="checkbox"/> Stolze (stz)	
		<input type="checkbox"/> Thomas (thm)	
		<input type="checkbox"/> Weyhrauch (weh)	
		<input type="checkbox"/> Wilson (wls)	

Subject: Fill out the boxes below **OR** enter a Subject.

HB or SB CSHB	Bill number 81	and check one:	<input checked="" type="checkbox"/> Support	<input type="checkbox"/> Oppose	<input type="checkbox"/> Amend	OR enter a general Subject (LIO staff may modify):
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Message: Your **PRINTED** message cannot exceed 50 words or contain any vulgar language.

we	earn	money	each	summer	5
to	help	pay	for	college	10
by	working	for	our	family	15
business	building	sheds	and	garages	20
for	ATV's	due	to	rising	25
costs	some	of	our	buildings	30
that	used	to	sell	for	35
under	\$2500	now	sell	for	40
over	\$5000	please	vote	against	45
CSHB 81	Thank	you.			50

HB

85

SENATE COMMITTEE REPORT

DATE: 4/5/05

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered CS FOR HOUSE BILL NO. 85(JUD)

HB 85 PRESCRIBED MEDICATION FOR STUDENTS

"An Act relating to self-administration and documentation of certain types of medication prescribed to a child attending school."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
SCS House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

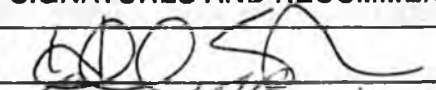
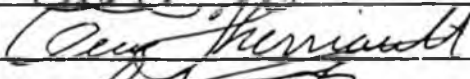
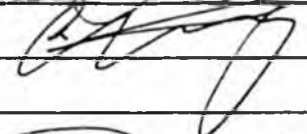
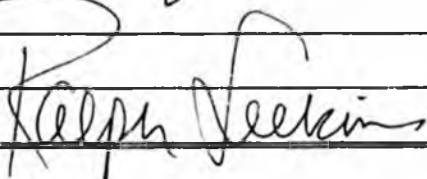
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
	X			
	X			
	X			
CHAIR: 	✓			

24-LS0367J
Mischel
4/22/05

SENATE CS FOR CS FOR HOUSE BILL NO. 85()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES MEYER, Seaton, McGuire, LeDoux, Kerttula, Gara, Gardner, Dahlstrom, Lynn

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to self-administration and documentation of certain types of
2 medication prescribed to a child attending school."

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

4 * Section 1. AS 14.30 is amended by adding a new section to read:

5 **Article 2A. Pupil Health.**

6 **Sec. 14.30.141. Self-administration and documentation of medication. (a)**

7 A public school shall permit the self-administration of medication by a pupil for
8 asthma or anaphylaxis if, during the current school year, the pupil's parent or guardian
9 provides the school

10 (1) written authorization for the self-administration of the medication;

11 (2) written certification from the pupil's health care provider that the

12 pupil

13 (A) has asthma or a condition that may lead to anaphylaxis;

14 (B) has received instruction in the proper method of self-

1 administration of the medication; and

2 (C) has demonstrated to the health care provider the skill level
3 necessary to use the medication and any device that is necessary to administer
4 the medication as prescribed;

5 (3) a release of liability for the school and its employees or agents for
6 injury arising from the self-administration or storage of the medication;

7 (4) an agreement to indemnify and hold harmless the school and its
8 employees or agents for any claims arising out the self-administration or storage of the
9 medication;

10 (5) a written treatment plan that is signed by the pupil's health care
11 provider for the pupil for managing asthma or anaphylaxis episodes, a list and dosage
12 of medications needed during school hours, and permission for and instruction on
13 storage of the medication at school; and

14 (6) any other documentation required by the school that is consistent
15 with this section.

16 (b) The public school shall provide written notification to the pupil's parent or
17 guardian of the school's absence of liability related to the self-administration of
18 medication under this section.

19 (c) A pupil who is permitted to self-administer medication under this section
20 shall be permitted to carry and ^{to} store with the school nurse or other designated school
21 official an inhaler or autoinjectable epinephrine, or both, at all times.

22 (d) If a student uses the student's prescribed medication in a manner other than
23 as prescribed, disciplinary action according to school codes may be imposed upon the
24 student. The imposed disciplinary action may not limit or restrict the student's
25 immediate access to the student's prescribed medication.

26 (e) In this section, "health care provider" means a licensed physician,
27 advanced nurse practitioner, physician assistant, village health aide, or pharmacist
28 operating within the scope of the health care provider's authority.

AMENDMENT

#5

OFFERED IN THE HOUSE
TO: CSHB 85(JUD)

- 1 Page 1, line 2, following "**attending**":
- 2 Insert "**public**"
- 3
- 4 Page 1, line 7, following "A":
- 5 Insert "public"
- 6
- 7 Page 2, line 15:
- 8 Delete "The"
- 9 Insert "A public"



REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

Sponsor Statement

CS for House Bill 85

“An Act relating to self-administration and documentation of certain types of medication prescribed to a child attending school.”

Of the 20 million Americans with asthma, 6.3 million are children under the age of 18. This chronic condition is the cause of 728,000 emergency room visits, 214,000 hospitalizations and 223 deaths annually among children.

The “Asthmatic School-children’s Treatment and Health Management Act” passed by Congress in 2004 directed the Secretary of Health and Human Services to give preference when awarding grants to states that authorize the self-administration of medication to treat students’ asthma or anaphylaxis. Over thirty states have passed legislation to comply with the federal act.

House Bill 85 requires that schools permit students to self-administrate medication for asthma, anaphylaxis. A school must permit self-administration if:

- The school receives written authorization from a parent or legal guardian for the self-administration of the medication;
- Written certification from a pupil’s health care provider;
- Release of liability for the school and its employees or agents for injury arising from self-administration.
- A treatment plan is filed with the school.
- An agreement to indemnify and hold harmless the school and its employees for claims arising from self-administration.

In return, schools shall provide a written notice to the pupil’s parent or guardian of the school’s absence of liability related to the self-administration of medication covered by HB 85.

Asthma and allergy related illnesses can be potentially life threatening and the current prohibition on self-administration in schools puts children at risk. HB 85 is an important step toward addressing a major risk to our children’s health.

(Updated 3/07/05)

CS FOR HOUSE BILL NO. 85(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/9/05

Referred: Rules

Sponsor(s): REPRESENTATIVES MEYER, Seaton, McGuire, LeDoux, Kerttula, Gara, Gardner, Dahlstrom, Lynn

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to self-administration and documentation of certain types of
2 medication prescribed to a child attending school." *title change*

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

4 * Section 1. AS 14.30 is amended by adding a new section to read:

5 **Article 2A. Pupil Health.**

6 **Sec. 14.30.141. Self-administration and documentation of medication. (a)**

7 A school shall permit the self-administration of medication by a pupil for asthma or
8 anaphylaxis if, during the current school year, the pupil's parent or guardian provides
9 the school

- 10 (1) written authorization for the self-administration of the medication;
- 11 (2) written certification from the pupil's health care provider that the

12 pupil

13 (A) has asthma or a condition that may lead to anaphylaxis;

14 (B) has received instruction in the proper method of self-

1 administration of the medication; and

2 (C) has demonstrated to the health care provider the skill level
3 necessary to use the medication and any device that is necessary to administer
4 the medication as prescribed;

5 (3) a release of liability for the school and its employees or agents for
6 injury arising from the self-administration of the medication;

7 (4) an agreement to indemnify and hold harmless the school and its
8 employees or agents for any claims arising out the self-administration of the
9 medication;

10 (5) a written treatment plan for the pupil for managing asthma or
11 anaphylaxis episodes, ~~and~~ a list and dosage of medications needed during school hours
12 that is signed by the pupil's health care provider; and

13 (6) any other documentation required by the school that is consistent
14 with this section.

15 (b) The school shall provide written notification to the pupil's parent or
16 guardian of the school's absence of liability related to the self-administration of
17 medication under this section.

18 (c) A pupil who is permitted to self-administer medication under this section
19 shall be permitted to carry and store with the school nurse an inhaler or autoinjectable
20 epinephrine, or both, at all times.

21 (d) If a student uses the student's prescribed medication in a manner other than
22 as prescribed, disciplinary action according to school codes may be imposed upon the
23 student. The imposed disciplinary action may not limit or restrict the student's
24 immediate access to the student's prescribed medication.

25 (e) In this section, "health care provider" means a licensed physician, licensed
26 nurse, physician assistant, village health aide, or pharmacist.

Nothing in this section shall

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 85(HES)
 (H) Publish Date: 2/18/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Education & Early Development
 Title: *An Act relating to self-administration and documen- RDU: TLS
tation of certain types of medication prescribed to a child Component: Student & School Achievement
 Sponsor: Representative Meyer
 Requester: House HES Component No.: 2796

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	0.0	*	*	*	*	*
Miscellaneous						
TOTAL OPERATING	0.0	*	*	*	*	*

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Section 14.30.141 states that a school shall permit self-administration of medication by a pupil for asthma, anaphylaxis, or other potentially life-threatening illnesses, under specific conditions and with written authorization and certification. The Department of Education & Early Development identifies no department costs at this time.

Prepared by: Barbara Thompson, Director Phone 465-8727
 Division: Teaching & Learning Support Date/Time 2/8/05 4:24 PM
 Approved by: Karen Rehfeld, Deputy Commissioner Date 2/8/2005
 Agency: Education & Early Development

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 85(JUD)
 (H) Publish Date: 3/9/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Education & Early Development
 Title: An Act relating to self-administration and documen- RDU: TLS
tion of certain types of medication prescribed to a child Component: Student & School Achievement
 Sponsor: Representative Meyer
 Requester: House HES Component No.: 2796

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Section 14.30.141 states that a school shall permit self-administration of medication by a pupil for asthma, anaphylaxis, or other potentially life-threatening illnesses, under specific conditions and with written authorization and certification. The Department of Education & Early Development identifies no department costs at this time.

Prepared by: Barbara Thompson, Director
 Division: Teaching & Learning Support
 Approved by: Karen Rehfeld, Deputy Commissioner
 Agency: Education & Early Development

Phone: 465-8727
 Date/Time: 2/22/05 3:35 PM
 Date: 02/22/2005

LEGAL SERVICES

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

COPY

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FAX (907) 465-2029
Mail Stop 3101


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

MEMORANDUM

January 24, 2005

SUBJECT: HB 85 (Work Order No. 24-LS0367\G)

TO: Representative Kevin Meyer
Attn: Mike Pawlowski

FROM: Jean M. Mischel
Legislative Counsel 

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Requires public elementary and secondary schools to allow the self administration by a student of medications needed to treat asthma, anaphylaxis and other potentially life-threatening illness if certain conditions are met. Imposes annual documentation, indemnification, and release requirements on the parent or guardian of a student who wishes to self-administer medication while at school.

JMM:jad
05-047.jad

Changes to HB 85 in CS HB 85 version 24-LS 0367\Y

HB 85

1.) Page 2, line 19:
"shall be permitted to carry an inhaler.."

2.) Page 2, line 20—26: *underlined deleted*
"times as long as the pupil does not endanger any person through the misuse of the inhaler. Misuse of an inhaler includes exceeding the prescribed dosage of the medication. An inhaler includes metered-dose, breath-activated, and dry powder inhalers, and spacers and holding chambers. (d) The school may confiscate a self-administered medication if a pupil misuses the medication."

3.) To page 2, line 27-28: *replaced*
"advanced nurse practitioner.....public health nurse."

4.) Not included in HB85

CSHB 85

1.) To page 2, line 19: *inserted*
"shall be permitted to carry and store with the school nurse an inhaler..."

2.) Page 2, lines 20-24: *replaced with*
"times. (d) If a student uses the student's prescribed medication in a manner other than as prescribed, disciplinary action according to school codes may be imposed upon the student. The imposed disciplinary action may not limit or restrict the student's immediate access to the student's prescribed medication."

3.) Page 2, lines 25-26: *replaced with*
"licensed nurse"

4.) Page 2, lines 26: *added*
"pharmacist"

LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM

April 6, 2005

SUBJECT: Effect of HB 85 on Private Schools (CSHB 85(JUD)
Work Order No. 24-LS0367\Y)

TO: Representative Kevin Meyer
Attn: Mike Pawlowski

FROM: Jean Mischel
Legislative Counsel

You have asked whether CSHB 85(JUD) applies to private schools, and if not, whether a private school may choose to comply with the Act, should it become law, and receive what is construed as the immunity protections provided in the bill. The bill requires a school to permit self administration of certain prescribed medication by a student under a specified procedure. The procedure includes the provision of a release of liability and a hold harmless agreement to the school.

In my opinion, HB 85 does not expressly apply to private schools and, while a private school is not otherwise precluded from following an identical procedure as contained in HB 85 to allow for self administration of medication by a student at the school, it is inaccurate to say that the bill would voluntarily apply to the school and therefore afford additional protection. However, if the procedures in the bill are followed, the school would have acquired a release and indemnity agreement from the parents of the school that presumably would afford the school protection from civil liability if drafted correctly.

There is a type of exemption for religious and private schools from government regulation under AS 14.45.100. The exemption is quite narrow and reads as follows:

AS 14.45.100. EXEMPTION. A religious or other private school that complies with AS 14.45.100 - 14.45.130 is exempt from other provisions of law and regulations relating to education except law and regulations relating to physical health, fire safety, sanitation, immunization, and physical examinations.

A "private school" is defined in AS 14.45.200 as a school that accepts no state or federal funds.

Representative Kevin Meyer

April 6, 2005

Page 2

The exemption under AS 14.45.100 pertains to laws and regulations relating to education and specifically requires only those private schools that choose to comply with AS 14.45.100-14.45.300 to comply with other laws and regulations relating to health and safety. The exemption walks a fine line between competing constitutional interests including protecting public health, safety and welfare and prohibiting interference with free exercise of religion and establishment issues raised by over regulation. It may be argued under the police powers of the state that all private schools, whether in compliance with AS 14.45.100-14.45.300 or not, may be regulated for the benefit of the health, safety and welfare of the students and staff.

The exemption only requires compliance with a specific list of health and safety laws. The list does not include medication other than immunizations though the term "physical health" may be read broadly to include the administration of a select few prescription medications taken by some students. The question really is one of degree.

HB 85 does not even affect all students - only those who need asthma and anaphylactic medication and whose parents are willing to go through the documentation process required by the bill. Does HB 85 relate so strongly to a need to protect the health and welfare of students that it should be applied to all public and private school students, in the face of a potential First Amendment challenge? The legislature has made this judgment call in other instances.

For example, the legislature expressly extended the Safe School Zone Act to private schools under AS 11.61.210. A principal of a public or private school is required to train students in emergency safety drills under AS 14.03.140. In addition, a provision allowing for the search of school lockers by peace officers and other appropriate persons was cross-referenced for voluntary private school applicability under AS 14.43.190.

HB 85's effect is not expressly applicable to private schools by either a reference to private schools or the addition of a cross-reference in AS 14.45.100-14.45.300 as has been done in the past to make the legislative intent clear. Notably, a federal law encouraging states to allow self-administration of medication by students for preferential receipt of federal funds does not extend to private schools.

Absent an amendment to the bill to expressly apply the self-administration of medication procedure to private schools, it is doubtful that a court would apply the provision to private schools either for voluntary or mandatory compliance. Even if a court found that HB 85's procedure relates to "physical health" under AS 14.45.100, the exemption only requires compliance when the private school elects to meet other standards under AS 14.45.100-14.45.300. If a court found that HB 85's procedures otherwise fall within the police powers of the state, then the procedures could be mandated, a result I think that the private schools wish to avoid.

I can recommend a few changes to this bill to allow for voluntary compliance by a private school if that is the intent of this bill. Without a change, the applicability to a private

Representative Kevin Meyer

April 6, 2005

Page 3

school is questionable. A private school could, it seems to me, set up its own procedures allowing self-administration of medication in the school that include a release and indemnity agreement without the passage of HB 85.

If I may be of further assistance, please advise.

JMM:lmb

05-107.lmb

American Academy of Pediatrics

DEDICATED TO THE HEALTH OF ALL CHILDREN™


RECEIVED
JAN 18 2005

BY:.....

Alaska Chapter

Chapter President
 Thomas J Porter, MD, FAAP
 3800 Matthews Drive
 Anchorage, AK 98518
 907/346-9911

January 13, 2005

Chapter Vice-President
 Jodyne Buttz, MD, FAAP
 3840 Providence Drive, Suite 405
 Anchorage, AK 98508-4828
 907/563-3423
 Fax: 907/563-1170
 E-mail: jbuttz@alaska.net

Dear sir or madam:

Chapter Secretary-Treasurer
 Ruth A Bazel, MD, PhD, FAAP
 4385 Rendezvous Circle
 Anchorage, AK 98504
 907/728-5271
 Fax: 907/728-7285
 E-mail: RSTZGL@EARTHLINK.NET

The Alaska Chapter of the American Academy of Pediatrics wishes to provide support to the Alaska Asthma Coalition's efforts to encourage Alaska legislation this year allowing elementary and secondary school students to self administer medication for asthma or anaphylaxis under specified conditions.

Chapter Executive Director
 Janice T Tower
 7645 Galloway Street
 Anchorage, AK 98507
 907/346-8028
 Fax: 907/346-8028
 E-mail: jtower@alaska.net

The ability for students to use safe and effective medication for these conditions in school, as they do out of school, has been a recommendation for years of the American Academy of Pediatrics (Committee on School Health, Guidelines for the Administration of Medication in School Pediatrics; 112 (3): 697-699, September, 2003) and the American Academy of Allergy, Asthma, and Immunology (Policy Statement, Anaphylaxis in schools and other child-care settings, *Journal of Allergy and Clinical Immunology*; 102 (2): 173-176, August, 1998). Now with financial encouragement of the federal government through the Asthmatic Schoolchildren's Treatment and Health Management Act of 2004, which provides preference for certain grants, states with this legislation, the time has come in Alaska for action. Furthermore 35 states already have these laws in place.

Warm regards,

Thomas J. Porter, MD, FAAP
 President
 American Academy of Pediatrics, Alaska Chapter



Allergy & Asthma Network

Mothers of Asthmatics

February 1, 2005

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol, Room 515
Juneau, AK 99801

Dear Representative Meyer:

Founded in 1985, Allergy & Asthma Network Mothers of Asthmatics (AANMA) strives to eliminate suffering and death due to asthma and allergies through education, advocacy, community outreach, and research. For the last decade, the organization assisted state and federal lawmakers to secure students' rights to carry and self-administer prescribed lifesaving asthma and anaphylaxis medications while at school and school-sponsored activities. Today, we thank you for your leadership in sponsoring HB 85, potentially lifesaving legislation for Alaska students living with asthma and anaphylaxis.

Breathing is a right, not a privilege. Physicians prescribe lifesaving medications to patients, and with parental support, train students how to use these medications in a life-threatening emergency. However, not all schools protect students' rights to carry and self-administer emergency medications. Tragically, inconsistent school policies have led to student deaths across the country. In many cases, it has taken a student's death and subsequent lawsuit to prompt statewide legislation protecting students' rights.

On October 30, 2004, President signed HR 2023, the Asthmatic Schoolchildren's Treatment and Health Management Act of 2004, into law. States with laws protecting students will receive asthma-related funding preference from the federal government.

Bill HB 85 will qualify the state for this preference, create a uniform self-administration policy for all Alaska schools, and enable students to focus on learning. Alaska will join the nearly 20 states currently protecting these vital student rights. We commend you for your leadership and support of Alaska students living with asthma and anaphylaxis.

On behalf of students who just want to breathe, thank you!

With warm regards,

Marissa Magnetti
Advocacy Network Coordinator

Sandra Fusco-Walker
Patient Advocate

School Boards United

The 52 member districts of the Association of Alaska School Boards met in district forums during the AASB Legislative Fly-In on February 13, 2005 and considered the following bills pending before the Alaska Legislature:

Bill/Topic	REAA/Rural Districts	Municipalities	Large Districts
Education Funding HB 1 - Base Student Allocation increase	\$4,995 minimum level in FY05, but not adequate	\$4,995 minimum, but not adequate	\$4,995 minimum, but not adequate
PERS/TRS funding (inside foundation)	Support	Support	Support
Early Funding HB 20, SB 13, SB 23	Support, but need option of supplemental	Support March 15, but need option of supplemental	Support, but need option of supplemental
Limit administrative expenses SB 57	Oppose	Oppose	Oppose
School Construction Debt HB 13	Support	Support	Support
School Safety HB 41 Min. 60 days for assault	Support	Support	Support
HB 88, SB 65 Waive minors into adult court	Monitor	Support	Monitor
SB 10 Remove cap on damage awards for vandalism	Monitor	Support	Support
Student Health HB 3 - Scoliosis tests	Oppose	Oppose	Oppose
HB 85 Self-administer drugs	Support	Support	Support
SB4 SB 35 First aid classes	Oppose	Oppose	Oppose
SB 48 Psychotropic Drugs	Oppose	Oppose	Oppose
HB 128 Physical fitness task force	Monitor	Monitor	Oppose
Teacher Recruitment SB 24, SB 31, SB 61	Support	Support	Support

Talking Points on Education Bills

Education Funding HB 1	\$4,995 minimum needed to provide education mandated by NCLB and higher costs Continue the positive investment trend line established in 2004 Districts already hurting from years of under-funding Many districts already at local funding cap Federal education cuts and under-funding will impact schools
PERS/TRS funding	Appreciate governor's initiative to fund at 100 percent; keep inside formula
Early Funding HB 20, SB 13, SB 23	Good idea to help district planning, but when revenues are available late in session, education should be at the table
Limit Administrative Expenses SB 57	30 percent ceiling is already unrealistic; 32 districts secured waivers this year
School Construction Debt HB 13	Districts have identified \$580 million in construction needs; governor requesting only \$30 million in FY 06 school repairs
School Safety HR 41, HB 88, HB 65, SB 10	School employees must be protected and our schools must be safe from violent acts. But legislature should be careful about removing discretion from the hands of school officials and the courts.
Student Health HB 85, HB 3, SB 4, SE 35, SB 48, HB 128	Districts are skittish about more unfunded mandates from the state and federal government. It makes sense to allow students to carry and self-administer allergy and asthma drugs (HB 85). We will monitor other bills as they move through the process.
Teacher Recruitment SB 24, SB 31, SB 61	Retire-rotate law has helped many districts cope with personnel emergencies & teacher shortages. Cost to the retirement program has been minimal. It's a local option that should be extended.



t/ 907-274-0827
f/ 907-272-0292

2207 East Tudor Rd, Suite 34
Anchorage, AK 99507-1069
www.aknurse.org
aknurse@aknurse.org

Testimony of Patricia Senner MS, RN, ANP
Chair Legislative Committee
Alaska Nurses Association
HB 85
February 15, 2005

The Alaska Nurses Association would like to express their support of HB 85, "an Act relating to self-administration and documentation of certain types of medication prescribed to a child attending school"

The Nurses Association emailed a copy of this Bill to nurses throughout the state. The responses we received back were all supportive of the legislation

This legislation mandates a practice that has already been in place in the Anchorage School District, so there has been practical experience with implementation of the Bill's mandates. The school nurses we consulted on both the elementary and high school level stated that they had not encountered any serious problems with student's carrying their own medication.

We did receive numerous comments that some student's, with more serious disease, should be required to also have an inhaler left with the school nurse. As you might imagine, student's frequently forget to bring their inhalers to school, or the inhalers run out of medication and the student forgets to tell their parents. There must be some corollary to Murphy's law that when the student forgets their inhaler is when they need it most.

It might be advisable that a section be added to the bill that would allow the school district to require a student to provide a back-up inhaler to be left in the office. Most school's already have back up epi pens on hand because they can never tell which student might have an anaphylactic reaction to something in the environment.

Thank you for this opportunity to respond to this bill.

National Association of School Nurses

POSITION STATEMENT

Epinephrine Use in Life-Threatening Emergencies

HISTORY:

An increasing number of students and school staff have life-threatening allergies. Exposure to the affecting allergen can trigger anaphylaxis. Anaphylaxis requires prompt medical intervention with an injection of epinephrine.

DESCRIPTION OF ISSUE:

Avoidance, early recognition, and prompt treatment are essential to the management of life-threatening allergies. There are students and school staff who have known life-threatening allergies, as well as those who have not been identified. Prompt intervention with epinephrine is vital to saving lives.

RATIONALE:

Medication and emergency policies in school districts must be developed with the safety of all students and staff in mind. Easy access to and correct use of epinephrine are necessary to avoid life-threatening complications.

CONCLUSION:

It is the position of the National Association of School Nurses that school nurses supervise the management and treatment of life-threatening allergies. The self-managed administration of epinephrine should be evaluated on a case-by-case basis by the school nurse, the parent, the health care provider, and the student. Written permission from the parent and health care provider must be obtained for students with known life-threatening allergies who will self-medicate.

An individual health care plan that includes continuous monitoring, emergency plans, and evaluation should be written by the school nurse and maintained for every student with prescribed epinephrine. The school nurse should provide training for school staff in the recognition of life-threatening allergic reactions and, if appropriate, in the administration of pre-filled, single dose epinephrine prescribed for these students.

School districts must establish direction for handling episodes of anaphylaxis in students and staff with no previous history of life-threatening allergies. State laws

pertaining to nursing practice will impact the need for protocols or standing orders.

References/Resources:

Gold, M.S. and Sainsburg, R. "First Aid Anaphylaxis Management in Children Who Were Prescribed an Epinephrine Autoinjection Device (Epi-Pen)", *Journal of Allergy and Clinical Immunology*, July 2000: 106(1 Pt. 1): 171-6, Cit IDS PMID: 10887321 UI: 20347070.

Weller, John, "Anaphylaxis in the General Population: A Frequent and Occasionally Fatal Disorder That is Under Recognized", *Journal of Allergy and Clinical Immunology*, August 1999, part 1, vol. 104, No. 2, p271-273.

Dibs, S. D. and Baker, M.D., "Anaphylaxis in Children: A Five Year Experience", *Pediatrics* 1997, 99:e7.

Masoud, Froudi, Alshedri, Mohammed, Hummel, David, and Chaim M. Raifmon. "Anaphylaxis and Epinephrine Auto-Injector Training: Who Will Teach the Teachers?" *Journal of Allergy and Clinical Immunology*, July 1999, vol. 104, No. 1, p. 190-193.

American Academy of Allergy, Asthma, and Immunology, 611 East Wells Street, Milwaukee, WI 53202

Asthma and Allergy Foundation of America (AAFA), 1233 20th Street, NW, Suite 402, Washington, DC 20036.

www.SchoolAsthma.com

Adopted: November, 2000



National Association of School Nurses

1416 Park Street, Suite A
Castle Rock, CO 80109
303-663-2329
303-663-0403 Fax
Toll Free: 866-627-6767

POSITION STATEMENT

The Use of Asthma Inhalers in the School Setting

HISTORY:

The number of diagnosed cases of asthma is increasing each year. Inhaled Medication is frequently used to manage the condition and treat acute exacerbation.

DESCRIPTION OF ISSUE:

Early recognition and prompt treatment of symptoms are vital to the management of asthma.

RATIONALE:

School district medication policies must be developed with the safety of all students in mind. Easy access to and correct use of asthma inhalers are necessary to avoid serious respiratory complications secondary to acute exacerbation and to improve the quality of life of students with asthma.

CONCLUSION:

It is the position of the National Association of School Nurses to support the self-management of asthma, including the use of prescribed, inhaled medications on a case-by-case basis with parent, physician, school nurse, and if appropriate, student involvement. Self-managed administration of inhaled medication for asthma must be evaluated by the school nurse. Written permission from the parent and physician must be obtained. A written individual health care plan that includes continuous monitoring and evaluation by the school nurse must be maintained for every student who self-administers prescribed inhaled medications.

Adopted: June 1993
Revised: June 1999

Medication Survey

A survey of Alaska school districts shows no consistent policy in allowing students to carry and administer their own medication for asthma and anaphylactic episodes. And while 14 districts indicated support for such a policy allowing self-administration of medication, nine districts expressed opposition.

The survey by AASB was conducted following introduction of House Bill 85 requiring public schools to permit students to administer their own medication for asthma, anaphylaxis (allergic reactions to food or insect bites) and other potentially life-threatening illnesses. Sponsored by Rep. Kevin Meyer, R-Anchorage, the bill requires written authorization from a parent or guardian and a health care provider.

Ten districts that responded to the survey said they currently allow students to carry and use asthma inhalers and/or an auto-injector syringe. Several require parental or physician permission.

Eleven districts reported requiring students to keep any such device in the custody of a school nurse or other trained staff member. Two districts allow inhalers but not syringes, while three allow auto-injectors but not inhalers.

When asked if they would support a measure such as HB 85, nine districts indicated no. One district said they were currently in a dispute with parents demanding that staff administer insulin to their child.

Among the 14 districts that indicated support for the bill, one district said it would welcome any law absolving their schools of liability for students treating themselves.

"The inhaler is much easier to administer, and all but the very youngest of students know how to use them and they keep them at their desks or in accessible lockers," the district reported.

HB 85 was referred for the Health, Education and Social Services Committee and the Judiciary Committee.



Quick Survey on Self-administration of Medications

DUE DATE: 02/08/05

Legislation (House Bill 85) has been introduced to require public schools to allow students to self-administer medication for the treatment of asthma, anaphylaxis (allergic reactions to insect bites or food) and other potentially life-threatening illnesses. The bill contains various requirements for written authorization from parents and health-care professionals, as well as assurances that schools will not be held liable for any misuse of the medication.

In preparation for public hearings on the bill, AASB is taking a quick survey to answer the following questions:

- 1. Is it your district policy for students who carry an asthma inhaler or auto-injector syringe to turn those devices into the school office or nursing station?

Asthma Inhaler Yes _____ No _____

Auto-injector Syringe Yes _____ No _____

- 2. If yes to either, who is authorized to dispense such medication?

School nurse _____ Office aide _____
Secretary _____ Classroom teacher _____
Site administrator _____ Other _____

- 3. Has your district had any recent incidences in which a student had a severe asthma attack or anaphylactic episode? Can you describe the circumstances briefly?

- 4. Would your district support a change in state law that allows students to carry and self-administer medication with an asthma inhaler or self-injector syringe?

Yes _____ No _____

District	Question #1		Question #2					
	Asthma Inhaler	Auto-Injector Syringe	School Nurse	Secretary	Site Administrator	Office Aide	Classroom Teacher	Other
Unalaska City	N	N						
Valdez City	Y-Items are kept in the office and students come to the office to take their medication	Y-Items are kept in the office and students come to the office to take their medication						X-Student will medicate in the presence of school office staff or principal.
Wrangell City	Y	Y		X	X			
Yupik	Y	Y		X	X			
Totals: 32	14 No, 17 Yes, 1 No/Yes	12 No, 18 Yes, 1 No/Yes, 1 Case by Case	8	15	13	2	6	4

District	Question #3		Description of asthma attack or anaphylactic episodes	Question #4		N/A Uncertain
	Yes	No		Yes	No	
Aleutians East		X		X		
Anchorage	X		MIDDLE school district where asthma had no inhaler- paramedics gave meds; student recovered	X		
Bering Strait		X				X
Cardova		X			X	
Delta/Grceely		X		X		
Denali Borough		X			X	
Dillingham City		X			X	
Fairbanks	X		An elementary student with asthma used an inhaler but was not getting relief, the child was transported to the hospital. Our district is supplying all schools with pulse-oximeters for the nurse's use.	X- See comment		
Galena		X			X	
Haines Borough				X		
Hydaburg City		X		X		
Iditarod Area		X			X	
Juneau Borough	X		Student did not respond in inhaler. Parent was called and transported student to doctor.		X	
Kake City		X				X
Kodiak Peninsula	X		Asthma attacks are not uncommon in our district		X	
Klawock City		X		X		
Kodiak Island		X		X- Needs to address age-appropriateness		
Kuspuk		X		X		
Lake & Peninsula		X		X		
Mat-Su Borough	X		One on the playground, and one on the bus			X
Nome City	X		left their device at home. The parent was contacted and			
Northwest Arctic		X		X		
Pitbelof		X		X		
Sitka Borough		X			X- syringe	
Shagway City		X		X		
Southeast Island		X		X		
Southwest Region		X			X	
Tanana		X			X	

District	Question #3			Question #4		
	Yes	No	Description of asthma attack or anaphylactic episodes	Yes	No	N/A Uncertain
Unalaska City		X		X		
Valdez City	X		Students have had attacks, but they have been able to come to the office to take their medication.	X - See comment		
Wrangell City		X			X	
Yupik		X				X - Needs to be based on individual needs
Totals: 32	7	24		16	11	4



and willingness to treat potential victims of bioterror. *Health Aff.* 2003; 22(5):189-197.

69. Altman LK. Asian medics stay home, imperiling respirator patients. *New York Times*. March 21, 2003:A6.

70. T Herrick. Some hospitals plan to rebuff bioterror cases. *Wall Street Journal*. April 16, 2003:B1, B5.

71. Zuger A, Miles SH. Physicians, AIDS, and occupational risk: historic traditions and ethical obligations. *JAMA*. 1987;258:1924-1928.

72. Amundsen DW. Medical deontology and pestilential disease in the late Middle Ages. *J Hist Med Allied Sci*. 1977;32:403-421.

73. Zuger A. In times of turmoil, canon call for doctors often goes unanswered. *New York Times*. February 11, 2003:F5.

74. Connolly C. Bush smallpox inoculation plan near standstill; medical professionals cite possible side effects, uncertainty of threat. *Washington Post*. February 24, 2003:A6.

75. Cottlieb J. Medical workers waver on smallpox shots. Available at: <http://www.ph.ucla.edu/epi/bioter/medworkerswaver.html>. Accessed June 1, 2004.

76. *Planning Considerations for Health and Medical Services Response to Nuclear/Biological/Chemical Terrorism*. Washington, DC: Department of Health and Human Services; 1996:2.

77. Sepkowitz KA. Occupationally acquired infections in health care workers. *IL Ann Intern Med*. 1996;125:917-928.

78. Centers for Disease Control and Prevention. Interim domestic guidance for management of exposures to severe acute respiratory syndrome (SARS) for health-care and other institutional settings. April 12, 2003. Available at: <http://www.cdc.gov/ncidod/sars/exposureguidance.htm>. Accessed May 7, 2003.

79. Centers for Disease Control and Prevention. Update: US Public Health Service guidelines for the management of occupational exposures to HBV, HCV, and HIV and recommendations for post-exposure prophylaxis. *MMWR CDC Surveill Summ*. 2001;50(RR-11):1-52.

80. Sepkowitz KA. Tuberculosis and the health care worker: a historical perspective. *Ann Intern Med*. 1994;120:71-79.

81. Snider G. Tuberculosis then and now: a personal perspective on the last 50 years. *Ann Intern Med*. 1997;126:237-243.

82. Christopher WC. Health care pro-

fessionals and treatment of HIV-positive patients: is there an affirmative duty to treat under common law, the Rehabilitation Act, or the Americans with Disabilities Act? *J Legal Med*. 1999;20:67.

83. Potential patients. In: *Code of Medical Ethics of the American Medical Association*. Chicago, Ill: American Medical Association; 2002. Policy E 10.05.

84. Clark CC. In harm's way: AMA ethics and the duty to treat. *J Med Philos*. In press.

85. JD Arras. The fragile web of responsibility: AIDS and the duty to treat. *Hastings Center Rep*. 1988;18(suppl):10-20.

86. Daniels N. Duty to treat or right to refuse? *Hastings Center Rep*. 1988;21:36-46.

87. Roper Survey Research Associates. *Great American TV Poll No. 4*. Vol 2002. Princeton, NJ: Princeton Survey Research Associates; 1991. Available at: http://headlines.usa.net/healthpollreport/templates/reference.php?page=16_1991_02&feature=feature2. Accessed June 1, 2004.

88. Freedman B. Health professions, codes, and the right to refuse to treat HIV-infectious patients. *Hastings Center Rep*. 1988;18(suppl):20-25.

89. Health and Public Policy Commit-

tee, American College of Physicians, and the Infectious Diseases Society of America. Position paper: acquired immune deficiency syndrome. *Ann Intern Med*. 1986;104:575-581.

90. American Medical Association. Declaration of professional responsibility: medicine's social contract with humanity. December 4, 2001. Available at: <http://www.ama-assn.org/go/declaration>. Accessed October 22, 2003.

91. Huber S, Wynia MK. When pestilence prevails: physician responsibilities in epidemics. *Am J Bioethics*. 4:1W5-W11.

92. Council on Ethical and Judicial Affairs of the American Medical Association. Ethical issues involved in the growing AIDS crisis. *JAMA*. 1998;259:1360-1361.

93. 1912 Code of Medical Ethics of the American Medical Association. In: Baker RB, Caplan AL, Emanuel LE, Latham SR, eds. *The American Medical Ethics Revolution*. Baltimore, Md: Johns Hopkins University Press; 1999.

94. Smallpox Emergency Personnel Protection Act of 2003. Pub L No. 108-20. Signed April 30, 2003. 97. Thinking about smallpox [editorial]. *Washington Post*. December 5, 2002:A34.

Asthma Inhalers in Schools: Rights of Students with Asthma to a Free Appropriate Education

Sherry Everett Jones, PhD, JD, MPH, and Lani Wheeler, MD

Students who possess and self-administer their asthma medications can prevent or reduce the severity of asthma episodes. In many states, laws or policies allow students to possess and self-administer asthma medications at school.

In the absence of a state or local law or policy allowing public school students to possess inhalers and self-medicate to treat asthma, 3

federal statutes may require public schools to permit the carrying of such medications by students: the Individuals With Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act. Local policies and procedures can be based on these federal laws to ensure that students with asthma can take their medicines as needed.

(*Am J Public Health*. 2004;94:1102-1108)

MORE THAN 6 MILLION AMERICAN children aged younger than 18 years have asthma, making it one of the most common chronic diseases among children.¹ In 2001, more than 4 million children younger than 18 years had an asthma episode

in the previous year (a rate of 57/1000), suggesting that many young people with asthma may not have their asthma under control.¹ As many as an estimated 1.4% of all American children experience some level of limitation owing to asthma, such as an inability (or limited ability) to engage in school or play activities.² Young people with asthma miss an estimated



14 million days of school each year because of the disease,² and some children's school performance consequently suffers.⁴

Provided parents or guardians and a health care provider, preferably with input from the child's school and especially the school nurse, deem it appropriate for a student to self-medicate and have granted authorization, it is beneficial to students with asthma to have unobstructed access to their medication before, during, and after school.^{5,6} Students who self-administer their asthma medications can prevent or reduce the severity of asthma episodes.⁷ However, some schools perhaps as part of a drug use prevention program or in hopes of minimizing liability claims, do not allow students to carry their inhalers in school.^{8,9} In 2000, students were allowed to self-medicate with prescription inhalers in 68% of all schools nationwide (79% of middle/junior and senior high schools).¹⁰

Restrictions on students carrying their inhalers may preclude the immediate use of medication at the onset of symptoms. For example, the room in which the medication is kept may be too far from the student's classroom or playing field, some students may believe it is too disruptive to go to another part of the school building to take their medication,¹¹ and many students are embarrassed about needing to take medications.¹² Restrictions on the use of inhalers may ultimately compromise medication adherence, increase the risk of a full-blown asthma episode, and cause unnecessary suffering, emergency

treatment, and asthma-related school absences.^{2,8,13}

In 2000, approximately 223 children aged 0 through 17 years died as a result of asthma (a rate of 0.3/100 000).¹ Furthermore, asthma results in substantial increased use of the health care system. In 2000, children aged 0 through 17 years had an estimated 4.6 million asthma-related outpatient visits to doctors' offices and hospital outpatient departments (a rate of 649/10 000), approximately 728 000 asthma-related emergency department visits (a rate of 104/10 000), and approximately 21 000 asthma-related hospitalizations (a rate of 30/10 000).¹ Asthma-related missed school days among children aged 5 through 17 years resulted in an estimated cost of \$726.1 million in caretakers' time lost from work.¹⁴

By knowing the rights of students with asthma, school administrators, educators, physicians, and other health care providers can help ensure that students have appropriate access to medications. This article explores state laws and policies that allow students to carry and self-administer asthma inhalers in school and federal statutes that may, under certain circumstances, require schools to allow students to do so.

STATE LAWS AND POLICIES ALLOWING INHALERS

As of April 2004, 38 states allow self-medication among students at school. Twenty-three states (Alabama,¹⁵ Delaware,¹⁶ Florida,¹⁷ Georgia,¹⁸ Illinois,¹⁹

Kentucky,²⁰ Maine,²¹ Massachusetts,²² Michigan,²³ Minnesota,²⁴ Mississippi,²⁵ Missouri,²⁶ New Hampshire,²⁷ New Jersey,²⁸ New York,²⁹ Ohio,³⁰ Oklahoma,³¹ Rhode Island,³² Tennessee,³³ Texas,³⁴ Utah,³⁵ Virginia,³⁶ and Wisconsin³⁷) have enacted legislation specifically to allow students with asthma to possess and self-administer inhaled asthma medications while at school.

These laws require parental consent and permission from a physician or other health care provider. Also, the School Health Policies and Programs Study 2000 found that an additional 10 states (Kansas, Louisiana, Maryland, Nebraska, New Mexico, North Dakota, South Carolina, South Dakota, Vermont, and Washington) have adopted policies allowing students to self-medicate at school with prescription inhalers.³⁸ Five other states (California,³⁹ Connecticut,⁴⁰ Indiana,⁴¹ Iowa,⁴² and Oregon⁴³) have laws broadly providing for the self-administration of medications. Because state laws are often changing, interested readers can access the National Conference of State Legislatures Web site to monitor legislative action related to asthma, including self-medication laws (<http://www.ncsl.org/programs/esnr/asthmamain.htm>).

ASTHMA AS A DISABILITY: FEDERAL STATUTES

In the absence of a state or local law or policy allowing students to possess inhalers and self-medicate, health care providers and parents might be able to

use 1 of 3 federal statutes that, under certain circumstances, will provide the legal justification requiring schools to allow students with asthma to do so. Those laws are the Individuals With Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and Title II of the Americans With Disabilities Act (Title II of ADA).

INDIVIDUALS WITH DISABILITIES EDUCATION ACT

The purpose of IDEA is to partially fund states to develop special education programs "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living."⁴⁴

IDEA applies only to children who meet the definition of a *child with a disability*, that is, a child with "mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as emotional disturbance), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and who, by reason thereof, needs special education and related services" (italic added).⁴⁵

The implementing regulations further define *other health impairment* as "having limited strength, vitality or alertness, in-



cluding a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—(i) *Is due to chronic or acute health problems such as asthma . . .*; and (ii) Adversely affects a child's educational performance (italic added).⁴⁶

To be classified as disabled under IDEA, a child with asthma must fall under the *other health impairment* category and require special education because of the asthma or have some other disabling condition under IDEA and require special education because of that disability. In either case, modifications must be made for that student that are determined necessary by the child's individual education program team and allow the student to receive a "free appropriate public education" (defined as education and related services provided at the public's expense, which meet the standards of the state educational agency, include an appropriate preschool, elementary, or secondary school education in the state involved, and are consistent with the student's individual education plan⁴⁷), including "related services" designed to meet the child's unique needs.^{44,48-50} Such related services might include allowing a student to carry an asthma inhaler.

SECTION 504 OF THE REHABILITATION ACT OF 1973

The purpose of Section 504 is to eliminate discrimination on the basis of a disability: "No otherwise qualified individual with a

disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. . . ."⁵¹

Under this law, *disability* is more broadly defined than under IDEA and, consequently, covers a large number of youths with disabilities who attend federally funded programs not covered under IDEA. The federal regulations promulgated under Section 504 define a disabled person as one who "(i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment."⁵² The term *physical impairment* encompasses respiratory disorders or conditions. *Major life activities* refers to functions such as caring for oneself, breathing, and learning.⁵² Section 504 is broader than IDEA because it applies to not only the education program, but also to other nonacademic and extracurricular activities.^{53,54}

As with IDEA, the regulations promulgated under Section 504 require school districts to provide a "free appropriate public education" to children with disabilities.⁵⁵ In the context of Section 504, this requirement means that "the provision of regular or special education and related aids and services . . . designed to meet individual educational needs of handicapped persons [must be as adequate as those designed to meet] the needs of

nonhandicapped persons. . . ."⁵⁶

Of note, some case law is in conflict with the Section 504 regulations requiring a free appropriate education. Some courts, including the US Supreme Court, have held that Section 504 does not impose an obligation for a free appropriate public education despite federal regulations to the contrary.⁵⁷ What this conflict means for future lawsuits is unclear. In accordance with the language of Section 504, courts consistently hold, however, that Section 504 requires that schools make reasonable accommodations to allow disabled students to gain equal access to educational opportunities provided at that school.⁵⁷

TITLE II OF THE AMERICANS WITH DISABILITIES ACT

ADA extends Section 504 to public accommodations in the private sector and state and local public agencies that do not receive federal funding (the discussion of which is beyond the scope of this article).⁵⁸ In the context of disabled students attending public schools, Section 504 and Title II of ADA are similar. Title II of ADA prohibits any public entity (e.g., public schools) from discriminating on the basis of a disability.^{59,60} Congress intended Title II of ADA and its implementing regulations to be consistent with Section 504,^{54,61-63} although the federal regulations and the US Department of Education, Office for Civil Rights have interpreted Section 504 more broadly than Title II of ADA.⁵⁷ Under both

Section 504 and Title II of ADA, recipients of federal funds and public entities must address the disability-related needs of disabled students so they can participate in services or programs to the extent necessary to avoid discrimination.⁶⁴ The definition of *disability* under Title II of ADA is identical to that of Section 504. Under the regulations of Title II of ADA, a school must "make reasonable modifications in policies."⁶⁴ A school that refuses to administer medication because of a student's disability would be in violation of Title II of ADA.⁶⁶

HOW THESE FEDERAL STATUTES HAVE BEEN APPLIED

A clear demarcation indicating at what point a child's asthma rises to the level of a disabling condition is not available. Presumably, when a child's asthma significantly interferes with breathing, the child would be considered to have a disability.⁵⁸ Parents and the child's health care provider, along with teachers, the school nurse, and other school officials, are in the best position to evaluate the effect a child's asthma has on a child's health and academic performance. Gelfman and Schwab recommend that health professionals document the following: "(1) how the disability interferes with 1 or more life functions (e.g., breathing, learning); (2) how the disability affects the student's functioning (e.g., energy level, exercise needs, medication effects, etc); and (3) what individualized



supports or accommodations in school the student requires in order to access an appropriate education.^{54,55,56,57}

When a child's asthma is disabling to the extent that the child needs "special education and related services,"^{55,56} under IDEA a school is obligated to offer that student sufficient specialized services (e.g., allowing a student to carry an asthma inhaler) so that the student may benefit from his or her education.^{50,54} During 2000–2001, the US Department of Education estimated that 292 000 children aged 3 to 21 years were served under IDEA as a result of a disability categorized as "other health impairment."⁵⁵ The US Supreme Court, in *Cedar Rapids Community School District v Garret F*, established that under IDEA, those services may go as far as providing a full-time, one-on-one nurse or health assistant.⁵⁸ If a student has no other disability and the student's asthma does not affect his or her educational performance, IDEA does not apply.⁵⁷ However, students who need access to an asthma inhaler because their asthma places a substantial limitation on major life activities (i.e., the child is disabled because of his or her medical condition) but do not need special education remain qualified under Section 504 and Title II of ADA^{68,69} and may avoid being labeled as children who need special education.

To succeed in a Section 504 or Title II of ADA claim alleging that an accommodation was not granted, the claimant must show that the accommodation was de-

nied because of the student's disability (i.e., was discriminatory).^{54,70,71} In *East Helena (MT) Elementary School District # 9*, the school district refused to either administer or ensure that the student took asthma medication prescribed and filled by a naturopathic physician.⁷⁰ Instead, the school offered to allow a family member to administer the child's medication. In refusing to administer the medication, the school district was following a state law that prohibited the administration of medication unless the prescription was filled by a pharmacist. In that case, the court upheld the policy because the refusal applied to all students regardless of disability status.

Similarly, in *DeBord v Board of Education of the Ferguson-Florissant School District*⁵⁴ and *Davis v Francis Howell School District*,⁷¹ schools refused to administer a prescription medication (methylphenidate [Ritalin] for attention deficit hyperactivity disorder) because the doses exceeded that recommended by the *Physicians' Desk Reference*. Both school districts had policies prohibiting schools from administering such prescriptions, although both were willing to let a parent or designee come to the school to administer the medication. The schools argued that the policies were to protect students' health and minimize potential liability. Courts in both cases found that because the school policies were neutral and applied to all students regardless of disability status, no discrimination had taken place. *DeBord*, *Davis*, and *East Helena* are examples of situ-

ations in which the claimant could not show that the school district's refusal to accommodate the child was based solely on a disability; therefore, no violations of Section 504 or Title II of ADA were found.^{54,70,71}

Although some school policies that forbid staff to administer medications to students have been upheld by courts if uniformly applied, it is unlikely that a "no medications" policy (i.e., a policy that denies the administration of any and all medications at school) applied to all students would stand up in court because those policies have the effect of denying children with disabilities the free appropriate public education to which they are entitled under IDEA and perhaps Section 504, or reasonable accommodations under Section 504 and Title II of ADA.^{57,72,73} A free appropriate public education must be specifically designed to meet the unique needs of the child,⁷⁴ and consequently, related services, including medications, must accompany that design.^{55,56,66} Likewise, under Section 504, health services provided as part of related services must be individually evaluated and prescribed.⁵⁸

INDIVIDUAL EDUCATION PROGRAMS

Under IDEA, a "child with a disability" must be provided with an appropriate individualized educational program (IEP).^{49,75} Federal regulations promulgated under Section 504 indicate that schools may use IEPs or other plans as a means of meeting free appropriate public education re-

quirements included in those regulations⁵⁹ (whether Section 504 includes such requirements is less clear⁵⁷). An IEP is a written statement designed to identify a child's educational needs and other programs and related services the child requires to progress in the general curriculum.⁴⁹ IEPs are developed by an IEP team that typically includes the disabled child's parents, regular and special education teachers, and other representatives from the local education agency who are best suited to assist the child in meeting his or her educational needs.⁴⁹ A school nurse may be part of the IEP team when school health services (e.g., administration of medications) are necessary.⁷⁶ This team, created specifically for each individual child, ensures that all aspects of the child's educational and related services needs are tailored to that child. This team, along with consultation from the child's health care provider, is best equipped to determine on a case-by-case basis whether self-medication using asthma inhalers is appropriate.

For students with asthma, an *asthma management plan* (Table 1) is an appropriate part of an IEP.⁵ Health care providers give instructions on how best to manage the child's asthma during the school day. For a student with asthma, it is helpful if part of the IEP (or 504 plan or individual health service plan or asthma management plan) includes specific information about where, when, and how each asthma medication is to be taken, including when medication possession



TABLE 1—Elements of Typical Asthma Management Plan

- Student's asthma history
- Student's asthma symptoms
- How to contact student's health care provider and parent or guardian
- Signatures of physician and parent or guardian permitting use of medications in school
- List of factors that make student's asthma worse
- Student's best peak flow reading (if student uses peak flow monitoring)
- List of student's asthma medications
- Student's treatment plan, including actions school personnel can take to help handle asthma episodes

Source: NIH Publication 95-3651.⁵

and self-administration provisions are appropriate.

It is best if asthma management plans are on file in the school office or health services office and available to teachers and coaches. From a legal perspective, it is recommended that the asthma management plan include parental permission for the plan to be shared with relevant school personnel to avoid possible violations of the Family Education Rights and Privacy Act of 1974 (FERPA), which prohibits the unauthorized disclosure of confidential information in education records (including school health records in most cases).^{77,78} However, under FERPA education records may be released to school officials without written consent of students' parents, including to teachers within the educational institution or local education agency, who have a "legitimate educational interest."⁷⁹ Under FERPA, it is important to note a narrow emergency exception whereby a school may disclose personally identifiable information to appropriate parties in connection with an emergency

if knowledge of the information is necessary to protect the health or safety of the student.^{77,80}

OVERCOMING POTENTIAL DISADVANTAGES

Although many advantages to self-medication exist, families and schools need to recognize some theoretically possible disadvantages of students' being responsible for carrying and administering their own medication. These disadvantages can be minimized, however. First, students may unintentionally leave their inhalers at home or misplace their inhalers at school. One possible solution is to keep a spare inhaler in a school nurse's office or health room.

Second, self-medication may make it more difficult for the school to keep medication records. Such documentation ensures that medication adherence can be communicated to parents and children's health care providers; documentation might be required as part of an IEP or Section 504 plan or might be recommended by school boards as a way to

monitor the health and safety of students. To solve this problem, schools could require that students report each inhaler use to a school nurse or record each medication use in a diary.

Third, students may not be well educated about when to take their medications.⁸¹ may be embarrassed to take their medications in front of peers,⁸ or may lack the maturity to use their medications appropriately (e.g., most elementary school students). Health care providers and parents are primarily responsible for teaching children about administering asthma medications and determining on a case-by-case basis whether the student has reached a level of maturity necessary for self-medication. School-based programs can supplement student education by helping students with asthma understand their disease and the importance of asthma self-management^{82,85} as well as destigmatize the need for using asthma inhalers during the school day.⁸³

CONCLUSION

Not all students with asthma have their asthma under good control.^{1,4} Patient education and medical management about the proper use of asthma medication are crucial to preventing asthma morbidity and mortality.^{86,87} For optimal asthma management, it is important that students with asthma not be denied appropriate access to their medications in school.^{5,8,11,88,89} Many states have laws or policies that allow students to self-medicate with

asthma inhalers at school (there is no evidence on whether state laws or policies are more effective to ensure immediate access for students in schools). In addition, 3 federal laws require schools to accommodate students whose asthma qualifies as a disability under IDEA, Section 504, or Title II of ADA. Such accommodations may include allowing students to carry their asthma inhalers so they can self-medicate as indicated in their asthma management plan. Of note, the US Department of Education, Office of Safe and Drug-Free Schools has issued guidance clarifying that "a student's prescription drugs, and related equipment, are not illegal drugs and are not prohibited by the [Safe and Drug-Free Schools and Communities Act]."⁹⁰

Although these laws and policies are important, they cannot provide an individualized answer to asthma management. Ideally, parents or guardians, the child's health care provider, and school personnel, including the school nurse, will work together as a team to determine the best way to manage a student's asthma in school. Table 2 outlines some factors that should be considered in determining the appropriateness of self-carrying and self-administering inhalers in school. For example, whether a child with asthma should be permitted to self-medicate ought to be determined on a case-by-case basis, based on a child's abilities and interest and maturity and the situation at the school. When that team deems the child skilled and mature enough, the student with



TABLE 2—Elements to Consider When Determining Appropriateness of Self-Carrying and Self-Administering of Inhaler Medication in Schools

Student factors

- Asthma severity and morbidity (hospitalizations, emergency department visits, severe episodes, types of triggers)
- Student's asthma knowledge, attitude, skills, and behavior (awareness of asthma signs and symptoms, desire to self-carry inhaler, willingness to self-administer and report use of inhaler, understanding of importance of not sharing inhaler with other students, correct peak flow and inhaler technique)
- History of asthma episodes at school
- Adherence to school rules regarding medication administration
- Inhaler self-carrying experience in other settings (child care, camp, after-school care, at friends' homes)

Family factors

- Desire of parents/guardians for student to self-carry and self-administer medications with an inhaler
- Collaboration of parents/guardians with school team; permission for physician and school to share information

School factors

- Health staff availability (whether or not there are full-time school nurses or health assistants)
- School size (whether or not there is quick and easy access to health room)
- Ability to reduce student's triggers at school
- Proximity and availability of inhalers from local emergency medical services

Health care provider factors

- Completion of physician's or other health care provider's written asthma management plan and all required forms
- Student's education by physician or other health care provider about asthma generally, controlling asthma, and proper use of inhalers, spacers, and peak flow meters
- Assessment by physician or other health care provider of student's technique for inhaler, spacer, and peak flow meter use

asthma should be allowed to keep asthma inhalers in his or her possession^{11,68} to reduce the chances of a full-blown asthma episode, asthma-related school absences, and the need for emergency medical care.^{6,66,67} Some students may not want or need to carry their inhalers, for example, when the school building is very small and health staff are available during all school hours. Each student needs individual as-

essment as part of the implementation of that student's personal asthma management plan.

In some circumstances, parents may need assistance from the child's physician or other health care provider in advocating for the student to gain the right to self-carry an asthma inhaler. By knowing the rights of students with asthma, physicians and other health care providers can help ensure that students

have appropriate access to medications at school. An informed health care provider can bring to the attention of school administrators and educators, as well as parents, the legal requirements of schools with students with asthma, and the benefits of self-administration and adequate control of asthma (e.g., improved health and fewer school absences). For example, health care providers can obtain parental permission to send a written asthma management plan to schools including specific guidance about the student's skill and maturity regarding self-administering the asthma inhaler. They can personally contact the principal if there is reluctance to permit self-carrying of inhalers. Students are more likely to be able to control their asthma when school personnel, parents or guardians, and health care providers know about disability laws and about appropriate asthma management. ■

About the Authors

The authors are with the Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Division of Adolescent and School Health, Atlanta, Ga.

Requests for reprints should be sent to Sherry Everett Jones, PhD, MPH, JD, Centers for Disease Control and Prevention, 4770 Buford Hwy NE, Mail Stop K-33, Atlanta, GA 30341 (e-mail: sce2@cdc.gov).

This article was accepted November 19, 2004.

Contributors

S. Everett Jones collected, analyzed, and synthesized the literature and wrote the article. L. Wheeler assisted in synthesizing the literature and contributed to the writing the article.

References

1. National Center for Health Statistics. Asthma prevalence, health care use and mortality, 2000–2001. 2003. Available at: <http://www.cdc.gov/nchs/products/pubs/pubd/hesata/asthma/asthma.htm>. Accessed March 10, 2004.
2. Newacheck PW, Halfon N. Prevalence, impact, and trends in childhood disability due to asthma. *Arch Pediatr Adolesc Med*. 2000;154:287–293.
3. Mannino DM, Homa DM, Akinbami LJ, Moorman JE, Gwynn C, Redd S. Surveillance for asthma—United States, 1980–1999. *MMWR Surveill Summ*. 2002;51(SS-1):1–13.
4. Diette GB, Markson L, Skinner EA, Nguyen TT, Algotz-Bergstrom P, Wu AW. Nocturnal asthma in children affects school attendance, school performance, and parents' work attendance. *Arch Pediatr Adolesc Med*. 2000;154:923–928.
5. *Asthma and Physical Activity in the School*. Washington, DC: US Department of Health and Human Services, National Institutes of Health, National Heart, Lung, and Blood Institute; 1995. NIH publication 95–3651. Available at: http://www.nhlbi.nih.gov/health/public/lung/asthma/phy_asth.htm. Accessed October 28, 2003.
6. *Action on Asthma*. Washington, DC: American Lung Association; 2001.
7. *Guidelines for the Diagnosis and Management of Asthma: Expert Panel Report 2*. Washington, DC: US Department of Health and Human Services, National Institutes of Health, National Heart, Lung, and Blood Institute; 1997. NIH publication 97–4051.
8. Yeatts K, Maier W, Shy C. Asthma inhaler use and barriers in a population-based sample of African American and white adolescents. *Ann Allergy Asthma Immunol*. 2000;84:94–100.
9. McCarthy AM, Kelly MW, Reed D. Medication administration practices of school nurses. *J Sch Health*. 2000;70:371–376.
10. Centers for Disease Control and Prevention. School Health Policies and Programs Study 2000 fact sheet: health services. 2002. Available at: http://www.cdc.gov/nccdphp/dash/shpps/factsheets/Is01_health_services.htm. Accessed March 10, 2004.
11. *Pediatric Asthma: Promoting Best Practice. Guide for Managing Asthma in Children*. Milwaukee, Wis: American



- Academy of Allergy, Asthma and Immunology: 1999.
12. *Tips to Remember: Childhood Asthma*. Milwaukee, Wis: American Academy of Allergy, Asthma and Immunology; 2003. Available at: <http://www.aaaai.org/patients/publicedmat/tips/childhoodasthma.stm>. Accessed March 10, 2004.
 13. Lenny W. The burden of pediatric asthma. *Pediatr Pulmonol Suppl* 1997; 15:13-26.
 14. Weiss KB, Sullivan SD, Lyttle CS. Trends in the costs of illness for asthma in the United States, 1985-1994. *J Allergy Clin Immunol* 2000;106:493-499.
 15. Ala Code §16-1-39 (2003).
 16. Code Del Reg §14-800 (Weil's 2002).
 17. Fla Stat Ann §1002.20 (2002).
 18. OCGA §20-2-774 (2002).
 19. 105 Ill Comp Stat §5/22-30 (2003).
 20. Ky Rev Stat Ann §158-834-158.836 (Michie 2002).
 21. Maine 2003 Me Laws 531.
 22. Mass Regs Code tit 105, §210.006 (2003).
 23. Mich Comp Laws Ann §380.1179 (West 2002).
 24. Minn Stat §§121A.22-121A.221 (2002).
 25. Miss Code Ann §41-79-31 (2004).
 26. Mo Rev Stat §167.627 (West 2002).
 27. NH Rev Stat Ann 200:46 (2003).
 28. NJ Stat Ann §18A:40-12.3 (West 2002).
 29. NY Educ Law §916 (McKinney 2002).
 30. Ohio Rev Code Ann §3313.716 (Anderson 2002).
 31. 2003 Okla Sess Laws SB 343.
 32. RI Gen Laws §16-21-22 (2002).
 33. Tennessee 2004 Tenn Pub Acts 493.
 34. Tex Educ Code Ann §38.013 (2002).
 35. Utah 2004 Utah SB 32.
 36. Va Code Ann §22.1-274.2 (2002).
 37. Wis Stat §118.291 (2002).
 38. Centers for Disease Control and Prevention. State policy report: results from the School Health Policies and Programs Study 2000. 2003. Available at: http://www.cdc.gov/nccdphp/dash/shpps/summaries/health_serv/table3_6.htm. Accessed March 10, 2004.
 39. California Calif Code Regs tit 5 §605 (2004).
 40. Conn Agencies Regs §10-212e-4 (2003).
 41. Ind Code §20-8.1-5.1-7.5 (2004).
 42. Iowa Admin Code 281-41.12(11) (2004).
 43. Or Rev Stat §339.869 (2001).
 44. 20 USCA §1400(d) (2003).
 45. 20 USCA §§1401(3)(A)(i) and (ii) (2003).
 46. 34 CFR §300.7(b)(9) (2003).
 47. 20 USCA §1401(b) (2003).
 48. 34 CFR §§300.346-300.347 (2003).
 49. 20 USCA §1414(d) (2003).
 50. 34 CFR §300.24(a) (2003).
 51. 29 USCA §794 (2003).
 52. 34 CFR §104.3 (2003).
 53. 34 CFR §§104.4(a) and (b)(1) (2003).
 54. DeBord v Bd of Educ of the Ferguson-Florissant Sch Dist, 126 F3d 1102 (8th Cir 1997).
 55. 34 CFR §104.33 (2003).
 56. 34 CFR §104.33(b)(1) (2003).
 57. National Council of School Attorneys. *School Law in Review 2000*. Alexandria, Va: National School Boards Association; 2000.
 58. Gelfman MHB, Schwab NC. Discrimination in school: §504, ADA, and Title IX. In: Schwab NC, Gelfman MHB, eds. *Legal Issues in School Health Services*. North Branch, Minn: Sunrise River Press; 2001:335-371.
 59. 42 USCA §12101 et seq. (2003).
 60. 28 CFR §35.130 (2003).
 61. Pottgen v Missouri St High Sch Activities Ass'n, 40 F3d 926 (8th Cir 1994).
 62. McPherson v Michigan High Sch Athletic Ass'n Inc, 119 F3d 453 (6th Cir 1997).
 63. Urban v Jefferson County Sch Dist R-1, 89 F3d 720 (10th Cir 1996).
 64. Fort Zumwalt Sch Dist v Clynes, 119 F3d 607 (8th Cir 1997).
 65. US Department of Education, National Center for Education Statistics. Digest of education statistics, 2002. Table 52. Children 3 to 21 years old served in federally supported programs for the disabled, by type of disability: 1976-77 to 2000-2001. Available at: <http://nces.ed.gov/programs/digest/d02/tables/dt052.asp>. Accessed March 9, 2004.
 66. Cedar Rapids Cmty Sch Dist v Garret F, 526 US 66 (1999).
 67. Jefferson County Bd of Educ, 29 Indiv with Disabilities Educ Law Rep 690 (1998).
 68. Magruder L. Asthma inhalers in the classroom, or not? *J Law Educ* 2001;30:171-179.
 69. North East (TX) Indep Sch Dist, 31 Indiv with Disabilities Educ Law Rep 217 (1999).
 70. East Helena (MT) Elementary Sch Dist # 9, 29 Indiv with Disabilities Educ Law Rep 796 (1998).
 71. Davis v Francis Howell Sch Dist, 138 F3d 754 (8th Cir 1998).
 72. Bd of Educ of the Hendrick Hudson Cent Sch Dist v Rowley, 458 US 176 (1982).
 73. Culver City (CA) Unified Sch Dist, 16 Educ for the Handicapped Law Rep 673 (1990).
 74. 20 USCA §1400(d) (2003).
 75. 20 USCA §1401(b)(d) (2003).
 76. Irving Indep Sch Dist v Tatro, 468 US 883 (1984).
 77. 20 USCA §1232g (2003).
 78. Gelfman MHB, Schwab NC. School health records and documentation. In: Schwab NC, Gelfman MHB, eds. *Legal Issues in School Health Services*. North Branch, Minn: Sunrise River Press; 2001:297-316.
 79. 20 USCA §1232g(b)(1) (2003).
 80. 34 CFR §99.36(a) (2003).
 81. Scarfone RJ, Capraro GA, Zorc JJ, Zhao H. Demonstrated use of metered-dose inhalers and peak flow meters by children and adolescents with acute asthma exacerbations. *Arch Pediatr Adolesc Med* 2002;156:378-383.
 82. Meurer JR, McKenzie S, Mischler E, Subichin S, Malloy M, George V. The Awesome Asthma School Days program: educating children, inspiring a community. *J Sch Health* 1999;69:63-68.
 83. Yawn BP, Algart-Bergstrom PJ, Yawn RA, et al. An in-school CD-ROM asthma education program. *J Sch Health* 2000;70:153-159.
 84. Horner SD. Using the Open Airways curriculum to improve self-care for third grade children with asthma. *J Sch Health* 1998;68:329-333.
 85. Gregory EK. Empowering students on medication for asthma to be active participants in their care. *J Sch Nursing* 2000;16:20-27.
 86. Lurie N, Bauer EJ, Brady C. Asthma outcomes at an inner-city school-based health center. *J Sch Health* 2001;71:9-16.
 87. Weiss KB, Cergen PJ, Hodgson TA. An economic evaluation of asthma in the United States. *N Engl J Med* 1992; 326:862-866.
 88. National Heart, Lung, and Blood Institute, National Asthma Education and Prevention Program. How asthma friendly is your school? *J Sch Health* 1998;68:167-168.
 89. American School Health Association. Resolution: school based asthma management. Available at: <http://www.ashaweb.org/resolutions.html>. Accessed October 28, 2003.
 90. US Department of Education, Office of Safe and Drug-Free Schools. Safe and Drug-Free Schools and Communities Act state grants: guidance for state and local implementation of programs. 2004. Available at: <http://www.ed.gov/programs/dvpformula/guidance.doc>. Accessed March 15, 2004.

Calendar No. 784

108TH CONGRESS }
2d Session }

SENATE

{ REPORT
108-394

ASTHMATIC SCHOOLCHILDREN'S TREATMENT AND HEALTH MANAGEMENT ACT OF 2004

OCTOBER 8, 2004.—Ordered to be printed

Mr. GREGG, from the Committee on Health, Education, Labor, and Pensions, submitted the following

R E P O R T

[To accompany S. 2815]

The Committee on Health, Education, Labor, and Pensions, to which was referred the bill (S. 2815) to give preference regarding States that require schools to allow students to self-administer medication to treat that student's asthma or anaphylaxis, and for other purposes, having considered the same, reports favorably thereon without an amendment and recommends that the bill do pass.

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I. PURPOSE AND NEED FOR LEGISLATION

According to reports of the Centers for Disease Control and Prevention (CDC) and the National Institutes of Health (NIH), of 20 million Americans with asthma, 6.3 million are children under 18 years of age. This chronic condition is the cause of 728,000 emergency room visits, 214,000 hospitalizations and 223 deaths annually among children. It also accounts for 14 million missed schools

days each year. The CDC reports indicate that working parents of children with asthma lose an estimated 1 billion dollars in productivity annually. Unfortunately, the number of persons with asthma has doubled in the United States during the past 15 years.

Consistent with the goals of the Healthy People 2010, the CDC-directed National Asthma Program is based on three public health strategies; (1) tracking, collecting and analyzing data on an ongoing basis to understand the "who, what, and where" of asthma; (2) interventions including translation of scientific information into public health practices to reduce the burden of asthma including school based strategies for children, and (3) partnerships with stakeholders in developing, implementing and evaluating local asthma control programs. The CDC recommends development of asthma friendly school environments designed to help students manage their asthma through a coordinated approach.

The National Asthma Education and Prevention Program, coordinated by the National Heart, Lung and Blood Institute, published a resolution recommending that schools adopt policies for the management of asthma that encourage the active participation of students in the self-management of their condition and allow for the most consistent, active participation in all school activities. In 2002, a committee of experts organized by Rand Corporation for improving childhood asthma outcomes also recommended that the Secretary of the Health and Human Services (HHS) consider giving states incentives to adopt policies that address the needs of children with asthma.

Schools should be a safe place where children learn and play; that should be true for children with asthma also. Thirty-one states have laws protecting the rights of asthmatic children to carry and self-administer metered-dose inhalers. Nineteen states expand this protection to include auto-injectable epinephrine. Furthermore, additional states have pending legislation to allow children to carry their inhalers and anaphylaxis medication at school. Experts, including the NIH and CDC report that self-administration of asthma medication reduces unnecessary emergency room visits, reduces missed school days, promotes participation in school activities and even saves lives. However, many schools do not allow and many states do not require schools to allow students to manage their asthma during school hours. The goal of this legislation is to build on the successful momentum that many states are currently experiencing in implementing comprehensive and effective asthma-related programs in schools.

II. SUMMARY

The bill, as passed by the committee, requires that the Secretary of Health and Human Services, in making any grant to States that is asthma-related, shall give preference to any State with statutory or regulatory provisions described in the proposed bill. The State must require each public elementary and secondary school to grant an authorization for self-administration of asthma medication if the student has demonstrated the skill level necessary to use the asthma medication and any device that is necessary to administer the medication. The State must also require schools to grant an authorization for self-administration of the asthma medication in accordance with a written treatment plan prescribed by the health care

practitioner with documentation from parents. The authorization granted to asthmatic children to possess and use medications must extend to any school sponsored activity such as before-school and after-school activities, and transit to and from school and school-sponsored activities. The plan must be renewed annually and the back up medication, if provided by parents or guardians, must be kept at a student's school in a location easily accessible to the student in event of an emergency.

The grant preferences are to apply to public-health-oriented, asthma-related grants to States generally awarded by the CDC. The bill gives the Secretary the discretion to determine which asthma-related grants to States would receive preference described in the Act. NIH grants to researchers or grants from other agencies to health care institutions for basic and clinical research, or diagnostic and therapeutic innovation, surveillance and epidemiology, and community approaches by health care institutions to achieve reduction in asthma-related morbidity and mortality are not made through States and will not be affected by this bill. The committee does not intend for this legislation to have an adverse funding impact on current grants and continuation funding of those grants solely due to a lack of statutory or regulatory provisions described in this legislation.

The bill includes a rule of construction that states that nothing in the subsection creates a cause of action or in any other way increases or diminishes the liability of any person under the law. The purpose of this rule is to address concerns of school administrators about potential increase in their liability, for example from errors in self-administration of drugs by asthmatic children that may result from the provisions of this bill.

The amendment made by this statute shall apply to grants made on or after the date that is 9 months after the date of the enactment of this Act. This will allow time for any State that currently does not have appropriate statutes or regulations in place to make necessary changes in their statutes. The committee anticipates that 9 months is sufficient time for any State to put in place provisions necessary to meet the conditions of the Act.

The bill expresses the sense of the Senate in commending the CDC for creating strategies for addressing asthma in a coordinated school program and encourages all schools to review the CDC recommendations and adopt the policies that best meet their students' needs.

III. HISTORY OF LEGISLATION AND VOTES IN COMMITTEE

On July 14, 2004, the House Committee on Energy and Commerce, reported favorably a bill (H.R. 2023) to give preferences to states that require schools to allow students to self-administer medication to treat their asthma or anaphylaxis. On September 20, 2004, Senator DeWine (for himself) and Senators Corzine, Durbin and Kennedy introduced S.2815, which is identical to H.R.2023 as passed by the House committee. The committee passed the bill (S.2815) by unanimous consent on September 22, 2004.

IV. EXPLANATION OF THE BILL AND COMMITTEE VIEWS

The committee intends to ensure that asthmatic children are able to remain healthy, attend schools and participate in learning and play activities. To achieve these goals, they should be able to take the medications prescribed by their health care providers. Schools should be aware of the management plan prescribed by the child's physician and keep the back-up medication where the child can have access to it in the event of emergency.

The bill, as passed by the committee, will build on the successful momentum that many States are currently experiencing in developing asthma-related programs in schools. Federal asthma-related grants will be awarded by the Secretary to assist these States in continuing to develop effective asthma-related programs in the school system. Preference for those grants will go to States with demonstrated, comprehensive, and effective asthma programs-including provisions regarding self-medication in schools. The committee notes that this legislation does not affect whether States pass laws that require schools to allow self-medication for diseases and health conditions other than asthma and anaphylaxis.

V. COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 27, 2004.

Hon. JUDD GREGG,
*Chairman, Committee on Health, Education, Labor and Pensions,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2815, the Asthmatic Schoolchildren's Treatment and Health Management Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Tim Gronniger (for federal costs), and Leo Lex (for the state and local impact).

Sincerely,

ELIZABETH ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

S. 2815—Asthmatic Schoolchildren's Treatment and Health Management Act of 2004

S. 2815 would modify the Public Health Service Act by directing the Secretary of Health and Human Services, in making any asthma-related grant to a state, to give preference to states that require schools to permit students to self-administer medication for asthma and anaphylaxis.

The bill would not change the purposes for which the Secretary makes asthma-related grants. CBO estimates that enacting S. 2815 would not have a significant effect on the federal budget. Enacting S. 2815 would not affect direct spending or revenues.

S. 2815 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act, but it would alter conditions for the Children's Asthma Treatment Grants Program and other asthma-related grants, giving preferences to

states who allow schoolchildren to self-administer asthma medication. While the bill would not alter the total amount of grants available, the new preference could change the distribution of funds among states.

The CBO staff contacts are Tim Gronniger (for federal costs), and Leo Lex (for the state and local impact. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

VI. REGULATORY IMPACT STATEMENT

The committee has determined that there will be de minimus changes in the regulatory burden imposed by the bill.

VII. APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104-1, the Congressional Accountability Act (CAA) requires a description of the application of this bill to the legislative branch. This bill does not amend any act that applies to the legislative branch.

VIII. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The short title of the Act is "Asthmatic School Children's Treatment and Health Management Act of 2004".

Section 2. Findings

The Section 2 reviews the findings of the Congress with respect to prevalence of asthma, and the impact of this chronic disease on the use of health care facilities, attendance at schools, and costs. The section reviews the current status of regulation in states and problems encountered by children who attend schools that do not allow self-management of asthma. These problems, in addition to missed school days, include many instances of illness, emergency room visits, hospitalization, and death. The section provides a rationale for the bill.

Section 3. Preference for States that allow students to self-administer medication to treat asthma and anaphylaxis

Section 399L of the Public Health Service Act (42 U.S.C. 280g) is amended by redesignating subsection (d) as subsection (e) and inserting after the subsection (c) a subsection (d) to include the following.

The Secretary, in awarding any grant under this section or any other grant that is asthma-related (as determined by the Secretary) to a State, shall give preference to any State that satisfies specific criteria. The State must require each public elementary and secondary school to grant an authorization for self-administration of asthma medication in accordance with a written treatment plan prescribed by the health care practitioner with documentation from parents including documents related to liability. The authorization extends to any school sponsored activity such as before-school and after-school activities. The plan must be renewed annually and the back up medication, if provided by parents or guardians, must be kept at a student's school in a location easily accessible to the stu-

dent in event of an emergency. The authorization must be effective only for the same school and the same year for which it is granted and renewed by the parent or guardian each subsequent school year.

The section will be applicable after 9 months from the date of enactment to allow States to pass appropriate legislation.

Section 4. Sense of Congress commending CDC for its strategies for addressing asthma within a coordinated school health programs

The section commends the CDC for identifying and creating strategies for addressing asthma with a coordinated school program for schools to address asthma and encourages all schools to review these policies to meet the needs of their student population.

IX. CHANGES IN EXISTING LAW

In compliance with rule XXVI paragraph 12 of the Standing Rules of the Senate, the following provides a print of the statute or the part or section thereof to be amended or replaced (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

PUBLIC HEALTH SERVICE ACT

* * * * *

PART P—ADDITIONAL PROGRAMS

SEC. 399L. CHILDREN'S ASTHMA TREATMENT GRANTS PROGRAM.

(a) **AUTHORITY TO MAKE GRANTS.—**

(1) **IN GENERAL.—*** * *

* * * * *

(d) **PREFERENCE FOR STATES THAT ALLOW STUDENTS TO SELF-ADMINISTER MEDICATION TO TREAT ASTHMA AND ANAPHYLAXIS.—**

(1) **PREFERENCE.—***The Secretary, in awarding any grant under this section or any other grant that is asthma-related (as determined by the Secretary) to a State, shall give preference to any State that satisfies the following:*

(A) **IN GENERAL.—***The State must require that each public elementary school and secondary school in that State will grant to any student in the school an authorization for the self-administration of medication to treat that student's asthma or anaphylaxis, if—*

(i) *a health care practitioner prescribed the medication for use by the student during school hours and instructed the student in the correct and responsible use of the medication;*

(ii) *the student has demonstrated to the health care practitioner (or such practitioner's designee) and the school nurse (if available) the skill level necessary to use the medication and any device that is necessary to administer such medication as prescribed;*

(iii) the health care practitioner formulates a written treatment plan for managing asthma or anaphylaxis episodes of the student and for medication use by the student during school hours; and

(iv) the student's parent or guardian has completed and submitted to the school any written documentation required by the school, including the treatment plan formulated under clause (iii) and other documents related to liability.

(B) SCOPE.—An authorization granted under subparagraph (A) must allow the student involved to possess and use his or her medication—

(i) while in school;

(ii) while at a school-sponsored activity, such as a sporting event; and

(iii) in transit to or from school or school-sponsored activities.

(C) DURATION OF AUTHORIZATION.—An authorization granted under subparagraph (A)—

(i) must be effective only for the same school and school year for which it is granted; and

(ii) must be renewed by the parent or guardian each subsequent school year in accordance with this subsection.

(D) BACKUP MEDICATION.—The State must require that backup medication, if provided by a student's parent or guardian, be kept at a student's school in a location to which the student has immediate access in the event of an asthma or anaphylaxis emergency.

(E) MAINTENANCE OF INFORMATION.—The State must require that information described in clauses (iii) and (iv) of subparagraph (A) be kept on file at the student's school in a location easily accessible in the event of an asthma or anaphylaxis emergency.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection creates a cause of action or in any other way increases or diminishes the liability of any person under any other law.

(3) DEFINITIONS.—For purposes of this subsection:

(A) ELEMENTARY SCHOOL AND SECONDARY SCHOOL.—The terms 'elementary school' and 'secondary school' have the meanings given to those terms in section 9101 of the Elementary and Secondary Education Act of 1965.

(B) HEALTH CARE PRACTITIONER.—The term 'health care practitioner' means a person authorized under law to prescribe drugs subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act.

(C) MEDICATION.—The term 'medication' means a drug as that term is defined in section 201 of the Federal Food, Drug, and Cosmetic Act and includes inhaled bronchodilators and auto-injectable epinephrine.

(D) SELF-ADMINISTRATION.—The term 'self-administration' means a student's discretionary use of his or her prescribed asthma or anaphylaxis medication, pursuant to a

prescription or written direction from a health care practitioner.

* * * * *

○



V 907-274-0827
 // 907-272-0292

2207 East Tudor Rd, Suite 34
 Anchorage, AK 99507-1069
 www.aknurse.org
 aknurse@aknurse.org

Testimony on CS for HB 85
 Patricia Senner RN
 Alaska Nurses Association
 April 22, 2005

Mr. Chairman, my name is Patricia Senner and I am chair of the Alaska Nurses Association's legislative committee and I am testifying today in favor of CS for HB 85.

Before the start of the legislative session the Nurses Association circulated a draft copy of HB 85 to nurses around the state. The nurses were universally in favor of the bill, especially since the bill reflects current practice in the Anchorage School District. The nurses did have one request for a stipulation which is not in the current draft of the bill.

Students with asthma, and other allergic conditions, vary widely in the severity of their disease. It is not uncommon for students to forget their inhalers at home, or to forget to check to make sure their inhalers still contain medication. For a student with mild asthma this is not a big problem, but it can be much more serious for a student with a more severe condition.

We would like to propose that a section be included that states that the health care provider can stipulate that a student has a more serious condition and must leave an inhaler or epinephrine pen with the school nurse in addition to carrying one on them.

We also have some difficulties with the definition of health care provider. I don't think that schools would feel comfortable having only the local pharmacist, who may not know a student, authorize the student to carry an inhaler or epi pen. We suggest that the definition of healthcare provider be changed to include only licensed physicians, advanced nurse practitioners, physician assistants and village health aides since all these people have prescriptive authority or delegated prescriptive authority.

Thank you for this opportunity to testify.

Post-It® Fax Note		7671	Date	# of pages
To	Rick Meyers		From	Michelle ADAM
Co./Dept.			Co.	
Phone #			Phone #	
Fax #			Fax #	

HB

88

SENATE COMMITTEE REPORT

DATE: 4/11/05

FURTHER: Finance

DATE TYPED _____
IN TO OFFICE: _____

Judiciary Committee considered CS FOR HOUSE BILL NO. 88(RLS)

HB 88 CRIM LAW:MINORS, SCHOOLS, DRUGS, SENTENCES

"An Act relating to certain weapons offenses involving minors; relating to the definition of 'recreation or youth center' for purposes of misconduct involving a controlled substance; to aggravating factors in sentencing for certain offenses committed on school grounds, on a school bus, at a school-sponsored event, or in administrative offices of a school district; to mitigating factors in sentencing for a defendant's assistance to authorities to detect, apprehend or prosecute other persons who committed an offense; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
 Same Title
 New Title

SCS House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

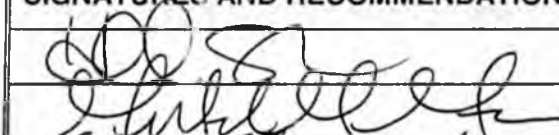
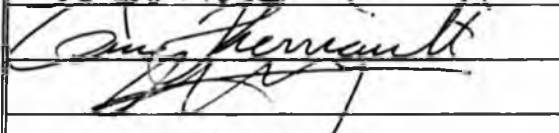
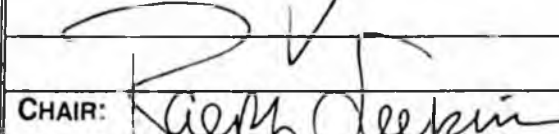

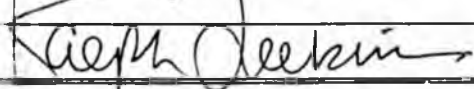
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
			✓	
			✗	
	✗			
	✗			
CHAIR: 	✓			

24-GH1096S
Luckhaupt
4/22/05

**SENATE CS FOR CS FOR HOUSE BILL NO. 88(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to certain weapons offenses involving minors; relating to the definition
2 of 'recreation or youth center' for purposes of misconduct involving a controlled
3 substance; to aggravating factors in sentencing for certain offenses committed on school
4 grounds, on a school bus, at a school-sponsored event, or in administrative offices of a
5 school district; to mitigating factors in sentencing for a defendant's assistance to
6 authorities to detect, apprehend, or prosecute other persons who committed an offense;
7 and providing for an effective date."

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

9 * Section 1. AS 11.71.900(20) is amended to read:

10 (20) "recreation or youth center" means a building, structure, athletic
11 playing field, or playground

12 (A) run or created by a municipality or the state to provide
13 athletic, recreational, or leisure activities for minors; or

(B) operated by a public or private organization licensed to provide shelter, training, or guidance for minors.

* Sec. 2. AS 12.55.155(c) is amended by adding a new paragraph to read:

(31) the offense is a violation of AS 11.41 or AS 11.46.400 and the offense occurred on school grounds, on a school bus, at a school-sponsored event, or in the administrative offices of a school district if students are educated at that office; in this paragraph,

(A) "school bus" has the meaning given in AS 11.71.900;

(B) "school district" has the meaning given in AS 47.07.063;

(C) "school grounds" has the meaning given in AS 11.71.900.

* Sec. 3. AS 12.55.155(d)(12) is amended to read:

(12) after commission of the offense for which the defendant is being sentenced, the defendant assisted authorities to detect, apprehend, or prosecute other persons who committed an offense;

* Sec. 4. AS 47.12.030(a) is amended to read:

(a) When a minor who was at least 16 years of age at the time of the offense is charged by complaint, information, or indictment with an offense specified in this subsection, this chapter and the Alaska Delinquency Rules do not apply to the offense for which the minor is charged or to any additional offenses joinable to it under the applicable rules of court governing criminal procedure. The minor shall be charged, held, released on bail, prosecuted, sentenced, and incarcerated in the same manner as an adult. If the minor is convicted of an offense other than an offense specified in this subsection, the minor may attempt to prove, by a preponderance of the evidence, that the minor is amenable to treatment under this chapter. If the court finds that the minor is amenable to treatment under this chapter, the minor shall be treated as though the charges had been heard under this chapter, and the court shall order disposition of the charges of which the minor is convicted under AS 47.12.120(b). The provisions of this subsection apply when the minor is charged by complaint, information, or indictment with an offense

(1) that is an unclassified felony or a class A felony and the felony is a crime against a person;

1 (2) of arson in the first degree; [OR]

2 (3) that is a class B felony and the felony is a crime against a person in
3 which the minor is alleged to have used a deadly weapon in the commission of the
4 offense and the minor was previously adjudicated as a delinquent or convicted as an
5 adult, in this or another jurisdiction, as a result of an offense that involved use of a
6 deadly weapon in the commission of a crime against a person or an offense in another
7 jurisdiction having elements substantially identical to those of a crime against a
8 person, and the previous offense was punishable as a felony; in this paragraph, "deadly
9 weapon" has the meaning given in AS 11.81.900(b); or

10 (4) that is misconduct involving weapons in the first degree under

11 (A) AS 11.61.190(a)(1); or

12 (B) AS 11.61.190(a)(2) when the firearm was discharged
13 under circumstances manifesting substantia¹ and unjustifiable risk of
14 physical injury to a person.

15 * Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 APPLICABILITY. Sections 1 - 4 of this Act apply to acts committed on or after the
18 effective date of this Act.

19 * Sec. 6. This Act takes effect July 1, 2005.



HB 88

FRANK H. MURKOWSKI
GOVERNOR
GOVERNOR@GOV.STATE.AK.US

P.O. Box 110001
JUNEAU, ALASKA 99811-0001
(907) 465-3500
FAX (907) 465-3532
WWW.GOV.STATE.AK.US

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 18, 2005

4600 4187
7-2089

The Honorable John Harris
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Harris.

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill, the School Violence Prevention Act of 2005, that addresses certain weapons violations by children and assault and other crimes by adults in schools. Violence by students and adults in schools is simply unacceptable.

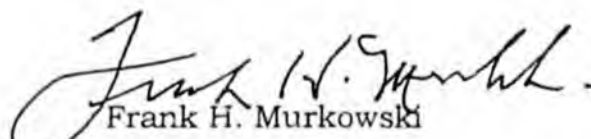
This bill would provide that minors who are 16 or 17 years old and commit certain felony misconduct involving weapons are automatically waived to adult court. This will deter such potentially lethal activity with a weapon by holding these minors accountable to the same legal consequences adults face for this conduct. When minors engage in a dispute and weapons are brought into the situation, the negative effects are magnified for all involved.

This bill also addresses violence by adults at school. It would adopt an aggravating factor in sentencing for those convicted of a crime against a person, such as assault, on a school employee on school grounds or at a school-sponsored event.

The enactment of this legislation will send the message that Alaskans will not tolerate violence in our schools, either by minors or adults. All children and teachers in this state should have a safe environment in which to work and learn.

I urge your prompt and favorable action on this measure.

Sincerely yours,


Frank H. Murkowski
Governor

Enclosure

CS FOR HOUSE BILL NO. 88(RLS)

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

BY THE HOUSE RULES COMMITTEE

**Offered: 4/1/05
Referred: Rules**

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SB 65
Feb 9th
Fin.

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to certain weapons offenses involving minors; relating to the definition
2 of 'recreation or youth center' for purposes of misconduct involving a controlled
3 substance; to aggravating factors in sentencing for certain offenses committed on school
4 grounds, on a school bus, at a school-sponsored event, or in administrative offices of a
5 school district; to mitigating factors in sentencing for a defendant's assistance to
6 authorities to detect, apprehend, or prosecute other persons who committed an offense;
7 and providing for an effective date."

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

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

11 **SHORT TITLE.** Sections 1, 3, and 5 of this Act may be known as the School
12 Violence Prevention Act of 200^c

13 * **Sec. 2.** AS 11.71.900(20) is amended to read:

1 (20) "recreation or youth center" means a building, structure, athletic
2 playing field, or playground

3 (A) run or created by a municipality or the state to provide
4 athletic, recreational, or leisure activities for minors; or

5 (B) operated by a public or private organization licensed to
6 provide shelter, training, or guidance for minors.

7 * Sec. 3. AS 12.55.155(c) is amended by adding a new paragraph to read:

8 (31) the offense is a violation of AS 11.41 or AS 11.46.400 and the
9 defendant directed the conduct constituting the offense against a person while the
10 person was on school grounds, on a school bus, at a school-sponsored event, or in the
11 administrative offices of a school district; in this paragraph,

12 (A) "school bus" has the meaning given in AS 11.71.900;

13 (B) "school district" has the meaning given in AS 47.07.063;

14 (C) "school grounds" has the meaning given in AS 11.71.900.

15 * Sec. 4. AS 12.55.155(d)(12) is amended to read:

16 (12) after commission of the offense for which the defendant is
17 being sentenced, the defendant assisted authorities to detect, apprehend, or prosecute
18 other persons who committed an offense;.

19 * Sec. 5. AS 47.12.030(a) is amended to read:

20 (a) When a minor who was at least 16 years of age at the time of the offense is
21 charged by complaint, information, or indictment with an offense specified in this
22 subsection, this chapter and the Alaska Delinquency Rules do not apply to the offense
23 for which the minor is charged or to any additional offenses joinable to it under the
24 applicable rules of court governing criminal procedure. The minor shall be charged,
25 held, released on bail, prosecuted, sentenced, and incarcerated in the same manner as
26 an adult. If the minor is convicted of an offense other than an offense specified in this
27 subsection, the minor may attempt to prove, by a preponderance of the evidence, that
28 the minor is amenable to treatment under this chapter. If the court finds that the minor
29 is amenable to treatment under this chapter, the minor shall be treated as though the
30 charges had been heard under this chapter, and the court shall order disposition of the
31 charges of which the minor is convicted under AS 47.12.120(b). The provisions of

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1 this subsection apply when the minor is charged by complaint, information, or
 2 indictment with an offense

3 (1) that is an unclassified felony or a class A felony and the felony is a
 4 crime against a person;

5 (2) of arson in the first degree; [OR]

6 (3) that is a class B felony and the felony is a crime against a person in
 7 which the minor is alleged to have used a deadly weapon in the commission of the
 8 offense and the minor was previously adjudicated as a delinquent or convicted as an
 9 adult, in this or another jurisdiction, as a result of an offense that involved use of a
 10 deadly weapon in the commission of a crime against a person or an offense in another
 11 jurisdiction having elements substantially identical to those of a crime against a
 12 person, and the previous offense was punishable as a felony; in this paragraph, "deadly
 13 weapon" has the meaning given in AS 11.81.900(b); or

14 (4) that is misconduct involving weapons in the first degree under

15 (A) AS 11.61.190(a)(1); or

16 (B) AS 11.61.190(a)(2) when the firearm was discharged
 17 under circumstances manifesting substantial and unjustifiable risk of
 18 physical injury to a person.

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

21 APPLICABILITY. Sections 2 - 5 of this Act apply to acts committed on or after the
 22 effective date of this Act.

23 * Sec. 7. This Act takes effect July 1, 2005.

FISCAL NOTE

**STATE OF ALASKA
2005 LEGISLATIVE SESSION**

Fiscal Note Number: 1
 Bill Version: HB 88
 (H) Publish Date: 1/19/05
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction):

Title WEAPONS OFFENSES INVOLVING MINORS
AND OFFENSES AGAINST SCHOOL
EMPLOYEES

RDU Juvenile Justice

Component Probation Services

Sponsor (RLS) BY REQUEST OF THE
GOVERNOR

Requester GOVERNOR

Component No. 2134

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGE IN REVENUES (0)						
-------------------------------	--	--	--	--	--	--

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This proposed legislation will not have a significant impact on workloads of the Division of Juvenile Justice staff. Therefore, this zero fiscal note is entered to reflect negligible fiscal impact.

Prepared by: Patty Ware
 Division: Juvenile Justice
 Approved by: Joel S. Gilbertson, Commissioner
 Agency: Department of Health and Social Services

Phone 465-2112
 Date/Time _____
 Date 01/06/2005

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 88
 (H) Publish Date: 1/19/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to penalties for certain weapons RDU CRIMINAL
offenses involving minors; to delinquent minors..." Component CDCO
 Sponsor _____ Component No. _____
 Requester Governor

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill seeks to address the issue of school violence by adopting an aggravating factor in sentencing a person convicted of felony assault directed at a school employee. The bill would deter minors 16 years and older from committing felony offenses involving misconduct with weapons in the first and second degrees by holding them accountable to the same legal consequences as adults. Passage of this legislation will not have a foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhete, Director Phone 465-5427
 Division Administrative Services Date/Time 1/18/05 3:14 PM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 1/18/2005
 Agency Department of Law