

**HOUSE BILL NO. 312**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES WEYHRAUCH, Gardner

Introduced: 1/9/06

Referred: Health, Education and Social Services, Judiciary, Finance

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to pregnant women; requiring hospitals, schools, and alcohol licensees  
2 and permittees to distribute information about fetal alcohol effects and fetal alcohol  
3 syndrome; relating to the consumption of alcoholic beverages by and the sale or service  
4 of alcoholic beverages to a pregnant woman; requiring involuntary commitment of a  
5 pregnant woman who has consumed alcohol; creating a fund for the prevention and  
6 treatment of fetal alcohol syndrome and fetal alcohol effects; relating to fines and to the  
7 taking of permanent fund dividends for selling or serving alcoholic beverages to  
8 pregnant women; and increasing taxes on sales of alcoholic beverages to fund treatment  
9 and education related to fetal alcohol syndrome and fetal alcohol effects."

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

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

1 LEGISLATIVE FINDINGS. The legislature finds that

2 (1) fetal alcohol syndrome and fetal alcohol effects are the most common  
3 causes of mental retardation and are entirely preventable;

4 (2) fetal alcohol syndrome and fetal alcohol effects are permanent birth  
5 defects that can affect brain function, emotional and physical development, behavior, facial  
6 features, learning, and sleeping;

7 (3) prenatal exposure to alcohol can cause fetal alcohol syndrome and fetal  
8 alcohol effects;

9 (4) more than 126 children are born in the state each year with fetal alcohol  
10 syndrome or fetal alcohol effects;

11 (5) Alaska ranks first in the United States of the states with reliable and  
12 available surveillance data for the highest number of children born with fetal alcohol  
13 syndrome or fetal alcohol effects;

14 (6) each child born with fetal alcohol syndrome or fetal alcohol effects has  
15 been estimated to require millions of dollars over the child's lifetime in added public funding  
16 for educational, behavioral, and health services and, in more than 50 percent of the cases,  
17 juvenile and adult justice costs;

18 (7) it is in the best interest of the public to reduce and, by the year 2012,  
19 eliminate the occurrence of fetal alcohol syndrome and fetal alcohol effects in children born  
20 in the state by using all appropriate means; and

21 (8) it is in the best interest of the public to support education and early  
22 diagnosis and treatment programs related to fetal alcohol syndrome and fetal alcohol effects  
23 for families residing in the state.

24 \* **Sec. 2.** AS 04.11.370 is amended by adding a new subsection to read:

25 (d) As used in (a)(2) of this section, the sale or service of alcoholic beverages  
26 by the licensee or permittee is presumed to be contrary to the best interests of the  
27 public if the sale or service of alcoholic beverages is to a woman who is known by the  
28 licensee or permittee to be pregnant.

29 \* **Sec. 3.** AS 04.11 is amended by adding a new section to read:

30 **Sec. 04.11.375. Sales or service of alcoholic beverages to a pregnant**  
31 **woman prohibited; distribution of information; penalties.** (a) A licensee or permit

1 holder, or an agent or employee of the licensee or permit holder, may not sell or serve  
2 an alcoholic beverage to a woman known by the seller to be pregnant.

3 (b) Notwithstanding AS 04.11.370(a), the board shall suspend or revoke a  
4 license or permit issued under this chapter for a violation of (a) of this section as  
5 follows:

6 (1) for a first offense, a suspension of six months;

7 (2) for a second offense, a suspension of 12 months; and

8 (3) for a third offense, revocation.

9 (c) A license or permit suspended or revoked under (b) of this section may not  
10 be sold, transferred, or reinstated, except that a license that was suspended may be  
11 reinstated after the full suspension period has lapsed if the person otherwise qualifies  
12 for the license or permit.

13 (d) A person licensed or permitted to sell or serve alcoholic beverages shall  
14 distribute information to the public on fetal alcohol syndrome and fetal alcohol effects  
15 prepared and made available under AS 47.38.010.

16 \* **Sec. 4.** AS 04.11.575(a) is amended to read:

17 (a) Except as provided in (c) **and (d)** of this section, the board may, in  
18 addition to any other penalties imposed under this title, impose a civil fine upon a  
19 licensee that the board determines, at a proceeding under AS 04.11.510(c), has  
20 violated a provision of this title, a regulation adopted under this title, or an ordinance  
21 adopted in accordance with AS 04.21.010.

22 \* **Sec. 5.** AS 04.11.575 is amended by adding a new subsection to read:

23 (d) If the board is proceeding under AS 04.11.375(a), the board shall impose a  
24 civil fine equal to the permanent fund dividend payment for a state resident for the  
25 year in which the violation occurred, multiplied by and payable over the life  
26 expectancy of a child born with fetal alcohol effects or fetal alcohol syndrome. Fines  
27 owed under this section shall be construed as a debt owed to an agency of the state  
28 under AS 43.23.065(b)(6). The board shall cause money collected under this  
29 subsection to be deposited into the general fund. The legislature may appropriate  
30 revenue from fines levied under this section to the fund established under  
31 AS 47.38.030 for the treatment of children born with fetal alcohol effects or fetal

1 alcohol syndrome.

2 \* **Sec. 6.** AS 14.30 is amended by adding a new section to article 5 to read:

3 **Sec. 14.30.372. Distribution of information on fetal alcohol syndrome and**  
 4 **fetal alcohol effects.** For students in grades six through 12, a school shall maintain a  
 5 system of distribution of information prepared and made available under AS 47.38.010  
 6 for the prevention of fetal alcohol syndrome and fetal alcohol effects.

7 \* **Sec. 7.** AS 14.45 is amended by adding a new section to read:

8 **Sec. 14.45.115. Distribution of information on fetal alcohol syndrome and**  
 9 **fetal alcohol effects.** A religious or other private school that elects to comply with  
 10 AS 14.45.100 - 14.45.130 shall, for students in grades six through 12, maintain a  
 11 system of distribution of information prepared and made available under AS 47.38.010  
 12 for the prevention of fetal alcohol syndrome and fetal alcohol effects.

13 \* **Sec. 8.** AS 18.20 is amended by adding a new section to read:

14 **Sec. 18.20.086. Distribution of information on fetal alcohol syndrome and**  
 15 **fetal alcohol effects.** A hospital shall maintain a system of distribution of information  
 16 prepared and made available under AS 47.38.010 for the prevention of fetal alcohol  
 17 syndrome and fetal alcohol effects.

18 \* **Sec. 9.** AS 43.23 is amended by adding a new section to read:

19 **Sec. 43.23.074. Claims for fines owed for the sale or service of alcoholic**  
 20 **beverages to pregnant women.** (a) AS 09.38 does not apply to permanent fund  
 21 dividends taken by the Alcoholic Beverage Control Board for a claim for payment of a  
 22 fine owed under AS 04.11.575(d). Notwithstanding AS 09.35, execution on a dividend  
 23 claimed under this section is accomplished by delivering a certified claim to the  
 24 Department of Revenue containing the following information:

25 (1) the name and social security number of the individual whose  
 26 dividend is being claimed;

27 (2) the amount the individual owes on the claim under  
 28 AS 04.11.575(d);

29 (3) a statement that

30 (A) the Alcoholic Beverage Control Board has notified the  
 31 individual that future permanent fund dividends of the individual will be taken

1 to satisfy the fine imposed under AS 04.11.575(d);

2 (B) the individual was notified of the right to request a hearing  
3 under AS 04.11 and the Alcoholic Beverage Control Board has allowed the  
4 individual at least 30 days after the date of the notice described in (A) of this  
5 paragraph to request a hearing of the claim;

6 (C) the claim has not been contested or, if contested, the issue  
7 has been resolved in favor of the Alcoholic Beverage Control Board; and

8 (D) if the claim has been resolved in favor of the Alcoholic  
9 Beverage Control Board, an appeal is not pending, the time limit for filing an  
10 appeal has expired, or the appeal has been resolved in favor of the board.

11 (b) The Alcoholic Beverage Control Board shall notify the individual of a  
12 claim under (a) of this section. The notice shall be sent to the address provided in the  
13 individual's permanent fund dividend application and must provide the following  
14 information:

15 (1) the amount of the claim;

16 (2) notice that the amount of the permanent fund dividend up to the  
17 amount of the claim shall be paid to the board to be credited against the individual's  
18 balance owed; and

19 (3) notice of the individual's right to a hearing under (c) of this section.

20 (c) Within 30 days after the date of the notice under (b) of this section, the  
21 individual may request a hearing. AS 44.62.330 - 44.62.630 apply to a hearing under  
22 this subsection. At the hearing, the individual has the burden to show that

23 (1) the board has not sent a notice of a claim under (a) of this section;

24 or

25 (2) the amount owed by the individual is less than the amount claimed  
26 from the permanent fund dividend.

27 \* **Sec. 10.** AS 43.60.010(a) is amended to read:

28 (a) Except as provided in (c) of this section, every brewer, distiller, bottler,  
29 jobber, retailer, wholesaler, or manufacturer who sells alcoholic beverages in the state  
30 or who consigns shipments of alcoholic beverages into the state, whether the alcoholic  
31 beverages are brewed, distilled, bottled, or manufactured in the state, shall pay on all

1 malt beverages (alcoholic content of one percent or more by volume), wines, and hard  
2 or distilled alcoholic beverages, the following taxes:

3 (1) malt beverages at the rate of \$1.08 [\$1.07] a gallon or fraction of a  
4 gallon;

5 (2) cider with at least 0.5 percent alcohol by volume but not more than  
6 seven percent alcohol by volume, at the rate of \$1.08 [\$1.07] a gallon or fraction of a  
7 gallon;

8 (3) wine or other beverages, other than beverages described in (1) or  
9 (2) of this subsection, of 21 percent alcohol by volume or less, at the rate of \$2.52  
10 [\$2.50] a gallon or fraction of a gallon; and

11 (4) other beverages having a content of more than 21 percent alcohol  
12 by volume at the rate of \$12.81 [\$12.80] a gallon.

13 \* **Sec. 11.** AS 47 is amended by adding a new chapter to read:

14 **Chapter 38. Fetal Alcohol Syndrome and Fetal Alcohol Effects Prevention.**

15 **Article 1. Education and Treatment Programs.**

16 **Sec. 47.38.010. Education.** (a) The department shall prepare or obtain  
17 distributable and accurate information on prevention, early diagnosis, and treatment of  
18 and available resources pertaining to fetal alcohol syndrome and fetal alcohol effects.  
19 The department shall make this information available to all hospitals, schools that  
20 serve a student in grades six through 12, and licensed and permitted persons who are  
21 engaged in selling or serving alcoholic beverages.

22 (b) The department shall maintain a public information campaign to provide  
23 relevant information under (a) of this section to local and state media outlets for  
24 regular broadcast to the public.

25 (c) The department shall work in cooperation with the Department of  
26 Education and Early Development to prepare and distribute curriculum materials and  
27 resources pertaining to the prevention, diagnosis, and treatment of fetal alcohol  
28 syndrome and fetal alcohol effects to all schools serving a student in grades six  
29 through 12 in the state.

30 (d) A person who is employed by a hospital or by a school that serves a  
31 student in grades six through 12 in the state or who is licensed or permitted to sell or

1 serve alcoholic beverages in the state shall distribute the information made available  
2 under (a) of this section in a systematic way to the public.

3 **Sec. 47.38.020. Diagnosis and treatment program.** (a) The department shall  
4 establish a program for the diagnosis and treatment of persons suffering from fetal  
5 alcohol syndrome or fetal alcohol effects.

6 (b) The program must include

7 (1) identification of populations identified as being at risk of fetal  
8 alcohol syndrome or fetal alcohol effects, including mothers with at least one child  
9 born with fetal alcohol syndrome or fetal alcohol effects;

10 (2) early diagnosis and screening conducted in cooperation with  
11 schools and health care facilities;

12 (3) targeted prevention education for populations identified as being at  
13 risk of fetal alcohol syndrome or fetal alcohol effects;

14 (4) research in successful diagnosis and treatment techniques;

15 (5) employment of effective diagnosis and treatment techniques aimed  
16 at specialized assistance to school age children and young adults to reach optimum  
17 functioning and employability;

18 (6) outreach to detained and incarcerated persons and intervention  
19 programs for state and local juvenile and adult correctional facilities and probation  
20 offices;

21 (7) support services for

22 (A) activities of daily living; and

23 (B) accessing housing and nutrition resources for

24 (i) children and their parents; and

25 (ii) adults diagnosed with fetal alcohol syndrome or  
26 fetal alcohol effects; and

27 (8) inclusion of culturally sensitive materials and assistance.

28 **Sec. 47.38.030. Fund for prevention and treatment of fetal alcohol**  
29 **syndrome and fetal alcohol effects.** (a) The fund for the prevention and treatment of  
30 fetal alcohol syndrome and fetal alcohol effects is created as an account in the general  
31 fund. The fund consists of money appropriated to it by the legislature.

1 (b) The fund shall be used by the commissioner to support education,  
 2 prevention, and treatment programs in the state, including involuntary commitment of  
 3 a pregnant woman under this chapter.

4 **Article 2. Involuntary Commitment.**

5 **Sec. 47.38.100. Involuntary commitment of a pregnant woman.** (a) A  
 6 woman who intentionally consumes alcohol in the state knowing that she is pregnant  
 7 and that consumption of alcohol will harm the fetus shall be taken into protective  
 8 custody by a peace officer or a member of the emergency service patrol and  
 9 immediately brought to an approved public treatment facility, an approved private  
 10 treatment facility, or another appropriate health facility or service for education and  
 11 treatment. Within 24 hours after taking a pregnant woman into protective custody, the  
 12 peace officer or member of the emergency service patrol shall file a petition for  
 13 involuntary commitment under (b) of this section.

14 (b) A peace officer, a member of the emergency service patrol, the spouse or  
 15 guardian, a relative, the certifying physician, physician assistant, or advanced nurse  
 16 practitioner, or the administrator in charge of an approved public treatment facility  
 17 may petition the court for an order for a 300-day involuntary commitment of a  
 18 pregnant woman. The petition must allege that the pregnant woman has intentionally  
 19 consumed alcohol while knowing she is pregnant and that consumption of alcohol will  
 20 harm the fetus and, unless she is committed, that the pregnant woman is likely to  
 21 inflict harm on the fetus through continued use of alcohol. The petition must be  
 22 accompanied by a certificate of a licensed physician, physician assistant, or advanced  
 23 nurse practitioner who has examined the person within two days before submission of  
 24 the petition, unless the person whose commitment is sought has refused to submit to a  
 25 medical examination, in which case, the fact of refusal must be alleged in the petition.  
 26 The certificate must set out the physician's, physician assistant's, or advanced nurse  
 27 practitioner's findings of the examination in support of the allegations of the petition.

28 (c) After a petition is filed under (b) of this section, the court shall fix a date  
 29 for a hearing not later than 10 days after the date the petition was filed. A copy of the  
 30 petition and of the notice of the hearing, including the date fixed by the court, shall be  
 31 served on

- 1 (1) the petitioner;
- 2 (2) the pregnant woman whose commitment is sought or the pregnant  
3 woman's guardian, if any;
- 4 (3) the attorney representing the pregnant woman whose commitment  
5 is sought;
- 6 (4) the administrator in charge of the approved public or private  
7 treatment facility in which the pregnant woman has been committed for emergency  
8 care; and
- 9 (5) any other person the court considers appropriate.

10 (d) A pregnant woman who is the subject of a petition filed under this section  
11 does not have the right to a jury.

12 **Sec. 47.38.110. Hearing on petition for involuntary commitment.** (a) At the  
13 hearing for a 300-day commitment required under AS 47.38.100(c), the court shall  
14 hear all relevant testimony, including, if possible, the testimony of at least one person  
15 who has examined the pregnant woman whose commitment is sought under  
16 AS 47.38.100(b). The pregnant woman whose commitment is sought shall be present  
17 unless the court believes that being present is likely to be injurious to the pregnant  
18 woman, in which case, the court may conduct the hearing telephonically. The court  
19 may examine the pregnant woman in open court, or, if advisable, examine the  
20 pregnant woman out of court. If the pregnant woman has refused to submit to a  
21 medical examination under AS 47.38.100(b), the pregnant woman shall be given an  
22 opportunity to request a medical examination by a court-appointed licensed physician,  
23 physician assistant, or advanced nurse practitioner. If the pregnant woman fails to  
24 request a medical examination and there is sufficient evidence to believe that the  
25 allegations of the petition are true or if the court believes that more evidence is  
26 necessary, the court may issue a temporary order committing the pregnant woman to a  
27 public or private facility for not more than five days for purposes of a diagnostic  
28 examination.

29 (b) If, after hearing all relevant evidence, including the results of any  
30 diagnostic examination by the public or private facility, the court finds that grounds  
31 for involuntary commitment have been clearly established, the court shall issue an

1 order of 300-day commitment to the public or private facility.

2 (c) The court shall inform the pregnant woman whose commitment is sought  
3 of the right to contest the petition, to be represented by counsel at every stage of the  
4 proceedings relating to commitment, and to have counsel appointed by the court or  
5 provided by the court if the pregnant woman is unable to obtain counsel. The pregnant  
6 woman whose commitment is sought shall be informed of the right to be examined by  
7 a licensed physician of the pregnant woman's choice. If the pregnant woman is unable  
8 to obtain a licensed physician and requests examination by a physician, the court shall  
9 appoint a licensed physician for the examination.

10 (d) A pregnant woman committed under this chapter may, at any time, seek  
11 discharge from commitment by writ of habeas corpus under AS 12.75.

12 **Sec. 47.38.120. Commitment; duration; discharge from custody.** (a) A  
13 pregnant woman committed for a 300-day period shall remain in the custody of a  
14 public or private facility for treatment for a period of not more than 300 days. At the  
15 end of the 300-day period, the pregnant woman shall be automatically discharged.

16 (b) A pregnant woman who has been taken into protective custody under  
17 AS 47.38.100 or involuntarily committed under AS 47.38.110 shall be discharged at  
18 any time before the end of the period for which the pregnant woman has been  
19 committed if any of the following conditions is met:

- 20 (1) the pregnant woman who is involuntarily committed gives birth;  
21 (2) the pregnancy is otherwise terminated; or  
22 (3) a court of competent jurisdiction orders the release.

23 **Sec. 47.38.130. Required treatment.** (a) A public or private facility to which  
24 a commitment is ordered must be capable of providing adequate and appropriate  
25 treatment for a pregnant woman in its custody. A public facility may transfer a  
26 pregnant woman in its custody from one approved public treatment facility to another  
27 if the transfer is medically advisable.

28 (b) If a private treatment facility agrees with the request of a competent  
29 pregnant woman or the pregnant woman's parent, adult sibling, adult child, or  
30 guardian to accept the pregnant woman for treatment, the administrator of the public  
31 treatment facility shall transfer the pregnant woman to the private treatment facility.

1           **Sec. 47.38.140. Unauthorized absences; return to facility.** When a pregnant  
2 woman committed under AS 47.38.100 and 47.38.110 is absent from a facility without  
3 authorization, the administrator or the administrator's designee may contact peace  
4 officers, who shall take the pregnant woman into custody and return her to the  
5 treatment facility.

6           **Sec. 47.38.150. Records of involuntary commitment.** (a) The registration  
7 and other records of a treatment facility are confidential and are privileged to the  
8 patient.

9           (b) Notwithstanding (a) of this section, the department may make available  
10 information from a patient's record for purposes of research into the causes and  
11 treatment of fetal alcohol syndrome and fetal alcohol effects. The department shall  
12 delete all personal identifying information before making the information available.

13           **Sec. 47.38.160. Visitation and communication of patients.** (a) A patient in  
14 an approved treatment facility under this chapter shall be granted reasonable  
15 opportunities for adequate consultation with counsel and for continuing contact with  
16 family and friends, including the use of telephone facilities, consistent with an  
17 effective treatment program.

18           (b) Mail or other communication to or from a patient in any approved  
19 treatment facility may not be intercepted, read, or censored.

20           **Sec. 47.38.170. Limitations on liability.** (a) Except as provided under (b) of  
21 this section, a person acting in good faith on either actual knowledge or reliable  
22 information who takes a pregnant woman into protective custody or detains a pregnant  
23 woman or who petitions for commitment under AS 47.38.100 - 47.38.140 is not  
24 subject to civil or criminal liability.

25           (b) The following persons may not be held civilly or criminally liable for  
26 detaining or failing to detain a pregnant woman or for releasing a pregnant woman  
27 under AS 47.38.100 - 47.38.140 at or before the end of the period for which the  
28 pregnant woman was admitted or committed for protective custody or treatment if the  
29 persons have performed their duties in good faith and without gross negligence:

- 30                   (1) an officer of an approved public or private treatment facility;  
31                   (2) the administrator and staff of an approved public or private

1 treatment facility;

2 (3) a public official performing functions necessary to the  
3 administration of AS 47.38.100 - 47.38.140;

4 (4) a peace officer or other person responsible for detaining or  
5 transporting a pregnant woman under AS 47.38.100 - 47.38.140.

6 **Article 3. General Provisions.**

7 **Sec. 47.38.200. Effect of chapter on other laws.** (a) Nothing in this chapter  
8 affects a statute, ordinance, or regulation relating to

9 (1) drunken driving, driving under the influence of alcohol, or other  
10 similar offenses involving alcohol and the operation of a vehicle, aircraft, boat,  
11 machinery, or other equipment;

12 (2) the sale, purchase, dispensation, possession, or use of alcoholic  
13 beverages at specified times and places or by a particular class of persons, including  
14 prohibitions against drinking intoxicating beverages in specified public places; or

15 (3) being on the traveled portion of a highway so as to be a hazard to  
16 the motoring public.

17 (b) Nothing in this chapter affects AS 11.81.630, relating to the defense of  
18 voluntary intoxication.

19 **Sec. 47.38.299. Definitions.** In this chapter,

20 (1) "approved private treatment facility" or "private facility" has the  
21 meaning given in AS 47.37.270 except that the facility must have specialized training  
22 in the treatment of pregnant women and may be funded under AS 47.38.030;

23 (2) "approved public treatment facility" or "public facility" has the  
24 meaning given in AS 47.37.270, except that the facility must have specialized training  
25 in the treatment of pregnant women and may be funded under AS 47.38.030;

26 (3) "commissioner" means the commissioner of health and social  
27 services;

28 (4) "department" means the Department of Health and Social Services;

29 (5) "treatment" has the meaning given in AS 47.37.270.