

HB

402

"An Act relating to removal of disabilities of a minor; and amending Rules 3 and 17 of the Rules of Civil Procedure."

COMMITTEE REPORT

4/9/75

HOUSE

HESS

Mr. Speaker:

Date 5/14/75

The Committee on JUDICIARY has had HB 402

under consideration. A Majority of the members of the Committee

() recommends it DO PASS

() recommends it DO NOT PASS

() recommends it DO PASS WITH ATTACHED AMENDMENT(S)

() recommends it BE REPLACED WITH CS FOR HB 402 AND THAT

CS FOR HB 402 DO PASS

() "and" recommends it BE REFERRED TO THE _____

COMMITTEE

() reports it back WITHOUT RECOMMENDATION

() "other"

Members signing the Majority report:

[Signature] _____
[Signature] _____
[Signature] _____
[Signature] _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

[Signature] Chairman

House Judiciary Committee
May 5, 1975

HB 402 Disabilities of a Minor

Connie Hansen of Family and Children Services stated that the Department favors the bill as is.

Susan Gordon and Melissa Middleton of Alaska Youth Advocates proposed three amendments: page 2, line 11: insert "only" between "to" and "by", page 2, line 5 change "this requirement of consent" to "the requirement of this subsection" page 2, line 12, add "Except for the specific statutory and constitutional requirements of voting and drinking."

They explained that emancipation is now left up to the judge under common law. This bill would regulate an existing practice and would provide a definition of emancipation.

Don Clocksin of Alaska Legal Services stated that in (d) a guardian for a specific purpose should not be able to consent to emancipation without the consent of the parents. The requirement that the person must be self supporting raises the question of how a person could become trapped -- couldn't get welfare because he was a minor, and couldn't be emancipated because he is not self supporting. Mr. Clocksin objected to the requirement that the person be presently self supporting, and suggested that it would be sufficient if he was capable of self support and able to manage his own financial affairs. Mr. Specking stated that this would remove the whole thrust of responsibility. Mr. Clocksin favored deletion of (e) mandatory guardian ad litem and suggested that a permissive guardian ad litem or an attorney be appointed by the court.

Since there were several suggested amendments, the committee requested that a CS be drawn up for their further consideration.

HB 432 Child Protection

Susan Sullivan, sponsor of the bill, stated that it was required to get state statutes in compliance with federal law in order to be eligible for funding. There is a companion bill making a \$100,000 appropriation to provide child counseling, etc. (lines 20 - 23).

The committee questioned the mandatory requirement in line 27, page 1. Mrs. Hansen stated that she would like to prepare a position paper. Mr. Brown stated that he would like to change the penalty provision. The committee determined to hold the bill one day for further work.

House Judiciary Committee
May 9, 1975

The meeting was called to order at 4 p.m. by Chairman Gardiner. All members were present.

SB 350 Marijuana

The amendments proposed by the AG in response to Commissioner Burton's objections: (search, confiscate, id) were adopted. The Attorney General stated that under the bill it would be more difficult to initiate a case, but easier to prove one. Mr. Parr moved Judiciary CS SS SB 350 am out of committee. There being no objection, it was so ordered.

HB 432 Child Protection

Mr. Brown moved that Section 2 (e) be deleted. The amendment passed.

Mr. Brown moved on page 2, lines 7 and 8: add imprisonment for not more than one year or . . . \$5,000, or by both. The amendment passed.

Page 2, line 6: add willfully. The amendment passed.

Federal statutes require mandatory compliance. The definition in the bill is parallel to the federal definition.

CS HB 432 (Judiciary) was moved out of committee.

HB 402 Disabilities of a minor

Mr. Parr raised the question of specific exemptions for voting and drinking. Mr. Brown moved on line 29 language to the effect that: constitutional age requirements, except for those pertaining to alcohol. The amendment passed.

Mr. Brown moved on page 1, line 20: change the parent to a parent. The amendment passed.

Mr. Brown moved on page 1, line 21: subsection, as to that parent or guardian. The amendment passed.

Mr. Brown moved on page 2, line 1: included but not limited to. The amendment passed.

Judiciary CS HB 402 was passed out of committee.

SB 132 Nursing Home administrators

Research showed that a board was necessary in order to get federal funding. The committee recommended a letter of intent to the effect that it is the desire of the legislature to see a uniform act -- which would eliminate the need for a bunch of boards.

House Judiciary Committee
May 9, 1975
page 2

Page 1, delete (b) after consult
line 14: 1 administrator, 2 public representatives
lines 19 - 21 governor. delete rest
page 2, line 1 delete "at least"
page 2, line 17: delete (5) and renumber
page 3, line 4 add not applicable to Pioneers Homes
page 3, delete 100 and renumber, delete "qualified"
page 2, line 5 delete are of good character, with
page 4 delete (2) investigation

The above amendments were adopted and Judiciary CS SB 132
was moved out of committee.

SB 60 Arbitrary Discrimination

The amendments suggested by Mr. Bowman and Mr. Thomas were
adopted and the bill reported out of committee as a CS.

H 402

Alaska Youth Advocates, Inc.

1200 EAST 27TH AVENUE PHONE 274-6541
ANCHORAGE, ALASKA 99504

BOARD OF DIRECTORS

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- MELISSA MIDDLETON

21 April 1975

Representative Terry Gardiner
Chairman, House Judiciary Committee
Pouch V
Juneau, Alaska 99801

Dear Terry,

Enclosed please find our recommended amendments to HB 402. It is important that these be included in the bill, particularly the third one, because otherwise one could interpret "constitutional and statutory age requirements" to include all those disabilities of minority that the bill wishes to remove -- for instance, ability to sign a contract.

Please pass this position paper on to the other members of your committee.

Thank you very much.

Best wishes,



Melissa Middleton
Co-director

Alaska Youth Advocates, Inc.

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POSITION PAPER ON HB 402

Alaska Youth Advocates, Inc. encourages amending HB 402, "An Act relating to removal of disabilities of a minor," as follows:

1. Page 2, line 11 (Section 1, subsection d): To clarify that only the guardian need consent, not the parents who have been deprived of custody, insert the word "only" between the word "to" and the word "by".

2. Page 2, line 5 (Section 1, subsection d): For clarity, change the phrase "this requirement of consent" to "the requirement of this subsection."

3. Page 2, line 12 (Section 1, subsection g): To clarify the exceptions of this act, change this subsection to read: "Except for the specific statutory and constitutional requirements of voting and drinking, a minor whose disabilities are removed for general purposes has the power and capacity of an adult, including the right to control himself or herself, the right to be domiciled where he or she desires, the right to receive and control his or her earnings, to sue or be sued, and the capacity to contract."

con't

Alaska has no statutory provisions for either complete or partial removal of the disabilities of a minor. Common law prevails. Emancipation, both general and limited, have been petitioned for and granted in Alaska. However, no guidelines exist, no one knows what the removal of disabilities of minority means in Alaska. It is left solely to the court's discretion, on a case by case basis, to determine the requirements for, procedures of, and effect of such removal. This leaves not only the courts, police, and community, but the young people with a legal situation which is basically undefined, and often times misunderstood.

We have seen relatively few young people that are mature and stable enough to live completely on their own. Putting into statute form what is now common law will not open the floodgate -- the requirements are stringent in HB 402, only those youth who really are capable of living on their own will even petition the court. However, the question of how underage people become emancipated and what emancipation means is definitely one of the most asked by both young people and adults. It is a confusing area of juvenile law that should become clearer.

The Act will regulate and standardize the common law practice of removing the disabilities of minority. Alaska Youth Advocates, Inc. supports the passage of HB 402.



*File on 402
with members*

Alaska Court System

State of Alaska

303 "K" STREET

ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

April 18, 1975

Representative Clark Gruening
Pouch V - State Capitol
Juneau, Alaska 99801

Dear Representative Gruening:

I am writing you with regard to HB 402 which was introduced under your sponsorship. This Bill was introduced on 4/9/75 but only came to my attention on 4/17/75.

The Administrative Office of the Courts would like to see some minor changes in this legislation so as to lessen its unnecessary fiscal impact on the Judiciary. Specifically, we would like to see Section 1(e) of the Bill deleted. The reasons for this request are contained in the enclosed memorandum sent to me by the Staff Counsel of the Administrative Office. If you should wish any testimony or further comment from the Administrative Office on our request, we would certainly be glad to comply at your convenience.

Thank you for your consideration in this matter.

Sincerely,

Arthur H. Snowden, II
Administrative Director

AHS/bd
encl.

cc: Hon. Terry Gardiner
Chairman, House Judiciary Committee

Hon. Susan Sullivan
Chairman, House Health, Educa. &
Social Services Committee

Memorandum

Alaska Court System

TO:

Arthur H. Snowden, II
Administrative Director

DATE : April 17, 1975

FROM: Susan Burke
Staff Counsel

SUBJECT: House Bill 402 -- Removal of
disabilities of a minor.

At your request I have reviewed the above Bill. I have no problems with most of the sections. In fact, legislation to provide procedures and standards for emancipation of minors in Alaska is long overdue. I fail to see the necessity, however, for appointment of a guardian ad litem for the minor petitioning for emancipation, particularly cast as it is in mandatory terms. If the purpose of the proceeding is to demonstrate that the minor should be treated legally as an adult for most purposes, it seems anomalous to require the appointment of a person to represent the "best interests" of the minor. A minor who is self supporting and managing his own financial affairs should be able to advance his own best interests in a court proceeding, either alone or represented by private counsel of his choice. In fact, if a guardian ad litem is necessary it would seem to follow that the minor is not ready to be treated legally as an adult.

Further, this is a proceeding instituted at the behest of the child unlike proceedings under the Children's Rules and divorce actions in which the child's interests may be overlooked or inadequately represented because of his inability to understand the nature of the proceedings. While removal of minority disabilities may ease the ability with which an emancipated minor may handle his affairs, in most instances it is hardly a matter of emergency or dire consequences. I would expect also that the largest proportion of these petitions will be uncontested (i.e., consented to by the parents) and the presence of a guardian ad litem will be superfluous.

At the very least the Bill should make appointment of guardian ad litem discretionary with the court. Preferably section (e) should be deleted altogether, as I believe appointment of a guardian ad litem in these proceedings is unnecessary in light of the fact that a minor must be at least 16 and must be living alone, self-supporting, and managing his own financial affairs as a prerequisite to instituting the proceeding.

Finally, as a matter of pleading practice, if the minor must meet the above requirements before being eligible to petition the court, these matters should be pleaded in the petition and proved at a hearing.

SB
SB

:lw

FISCAL NOTE

First Session - Ninth Legislature

file with members

I. REQUEST

Bill No. House Bill 402

Title: Removal Disabilities of a minor

Requested by: Helen Reirne

Date: _____

Return Date Requested: _____

Agency: H&SS, Div. Family & Children Program: _____

II. FISCAL DETAIL

Budget Request Unit(s) Affected: _____

A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 75	FY 76	FY 77	FY 78	FY 79	FY 80
100 PERSONAL SERVICES		0				
200 TRAVEL		0				
300 CONTRACTUAL		0				
400 COMMODITIES		0				
500 EQUIPMENT		0				
600 LAND & STRUCTURES		0				
700 GRANTS, CLAIMS, ETC.		0				
TOTAL		0				

B. FUNDING: (Thousands of dollars)

GENERAL FUND		0				
FEDERAL FUNDS		0				
OTHER		0				

C. POSITIONS:

PERMANENT/TEMPORARY	/	0/	/	/	/	/
MAN MONTHS (P./T.)	/	0/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

It is usual practice for the petitioner to pay court fees and other related costs. In the case of House Bill No 402, the petitioner is a minor who is self supporting and managing his own financial affairs. The Dept. of Health and Social Services would not be responsible for payment in actions of this type.

IV. ATTACHMENTS

V. DATE: 4-15-75

PREPARED BY: Ada Gleason

Ada Gleason
Assist. Prog. Admin.

Memorandum

Alaska Court System

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Administrative Director

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Staff Counsel

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State of Alaska

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ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

April 18, 1975

Representative Helen D. Beirne
Pouch V - State Capitol
Juneau, Alaska 99801

Dear Representative Beirne:

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cc: Hon. Terry Gardiner
Chairman, House Judiciary Committee

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