

HB

125

Amendment
Fails

AMENDMENT #1

OFFERED IN THE HOUSE ~~HESS~~ *sed*

BY REPRESENTATIVE COGHILL

TO: HB 125

1 Page 2, line ²⁵⁻²⁶~~24~~, after the words "by a professional journalist":

2 Delete: "employed by a legitimate news-gathering organization for an actual or intended
3 news story"

4
5
6 Insert: who is a member in good standing of the Society of Professional Journalists
7 performing journalistic duties in accordance with the Society of Professional
8 Journalists' principles and standards of practice.

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Adopted

Conceptual
Amendment #2

Moved
by Coghill

Delete

Lines 25-27, Page 2

Adopted

22-LS0510VC
Luckhaupt
4/10/01

CS FOR HOUSE BILL NO. 125(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES KOTT, Dyson

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to unlawful and indecent viewing and photography and to civil
2 damages and penalties for that viewing and photography."

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

4 * **Section 1.** AS 09.68 is amended by adding a new section to read:

5 **Sec. 09.68.150. Indecent viewing or photography or improper viewing**
6 **civil liability.** A person who engages in improper viewing or photography in violation
7 of AS 11.61.121 or indecent viewing or photography in violation of AS 11.61.123 is,
8 in addition to any criminal penalty provided by law, liable in a civil action to the
9 person viewed or photographed for

10 (1) the person's actual damages;

11 (2) the total of

12 (A) any pecuniary gain realized by the person from engaging in
13 the indecent viewing or photography or improper viewing or photography;

14 (B) a penalty of \$100 for each picture the person engaging in

1 the indecent viewing or photography or improper viewing or photography
 2 reproduced or transmitted to another person; in this paragraph, "picture" has
 3 the meaning given in AS 11.61.123; and

4 (3) a penalty of \$5,000 for each day the person viewed or
 5 photographed was viewed or photographed.

6 * Sec. 2. AS 11.61 is amended by adding a new section to read:

7 **Sec. 11.61.121. Improper viewing or photography.** (a) A person commits
 8 the crime of improper viewing or photography if the person knowingly and
 9 surreptitiously views or produces a picture of or knowingly employs a hidden or
 10 concealed camera, peephole, or two-way mirror to view or produce a picture of
 11 another person in the interior of a residence or domicile without the knowledge or
 12 consent of

13 (1) the parent or guardian of the person viewed, or who is shown in the
 14 picture, if the person who is viewed or shown is under 16 years of age; and

15 (2) the person viewed or shown in the picture if the person viewed or
 16 shown is at least 13 years of age.

17 (b) Each viewing of a person and each production of a picture of a person
 18 constitutes a separate violation of this section.

19 (c) This section does not apply to viewing or photography conducted by a law
 20 enforcement agency for a law enforcement purpose.

21 (d) In a prosecution under this section, it is an affirmative defense that

22 (1) notice of the viewing or photography was posted, or any viewing or
 23 use of pictures produced is done only in the interest of crime prevention or
 24 prosecution; or

25 (2) the viewing or photography was conducted by a professional
 26 journalist employed by a legitimate news-gathering organization for an actual or
 27 intended news story.

28 (e) In this section, "picture" has the meaning given in AS 11.61.123.

29 (f) Improper viewing is a class A misdemeanor.

30 * Sec. 3. AS 11.61.123(a) is amended to read:

31 (a) A person commits the crime of indecent viewing or photography if, in the

1 state, the person knowingly views, or produces a picture of, the private exposure of the
2 genitals, anus, or female breast of another person, or the undergarments of the
3 person covering the genitals, anus, or female breast, and the view or production is
4 without the knowledge or consent of

5 (1) the parent or guardian of the person viewed, or who is shown in the
6 picture, if the person who is viewed or shown is under 16 years of age; and

7 (2) the person viewed or shown in the picture [,] if the person viewed
8 or shown is at least 13 years of age.

9 * Sec. 4. AS 11.61.123(e)(1) is amended to read:

10 (1) "picture" means a film, image, photograph, negative, slide, book,
11 newspaper, or magazine, whether in print, electronic, magnetic, or digital format;

12 [AND]

Alaska State Legislature

House of Representatives

RULES COMMITTEE, CHAIR
COMMITTEE ON COMMITTEES
LABOR & COMMERCE COMMITTEE
MILITARY & VETERANS AFFAIRS
LEGISLATIVE COUNCIL



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EAGLE RIVER, AK 99577

SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801

Sponsor Statement House Bill 125

House Bill 125 amends Alaska Statute 09.68 by adding a section that creates protection for victims of improper viewing and/or photography. This bill also sets the parameters for what is considered to be improper viewing or photography.

House Bill 125 would prohibit the transmission of pictures or video images over the Internet without the consent of the subject or the parents if the subject is a minor.

House Bill 125 will also prohibit any monetary gain to be had by the perpetrators of crimes of this nature as well as imposing stiff monetary fines.

In summary, **HB 125** will ban a practice known simply as "up-skirting or down-blousing". The Internet has made this practice more common with web-sites posting images and buying pictures from high tech peeping toms and telling users where to buy hidden cameras. These web-sites basically promote this practice as well as encourage it. This bill is designed to protect the privacy of all the residents in the State of Alaska



Representative Pete Kott

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LEGAL SERVICES

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

MEMORANDUM

February 21, 2001

SUBJECT: Sectional Summary of HB 125

TO: Representative Pete Kott

FROM: Gerald P. Luckhaupt 
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 - the bill itself is the best statement of its contents.

Section 1 of the bill creates a new section that provides that a person that engages in conduct prohibited by AS 11.61.121 (added by sec. 2 of the bill) or 11.61.123 is liable to the person viewed or photographed for (1) the actual damages suffered by the person; (2) the total of any pecuniary gain realized by the person doing the viewing or photography and a penalty of \$100 for each picture; and (3) a penalty of \$5,000 for each day the person was viewed or photographed.¹

Section 2 of the bill creates the new crime of improper viewing or photography (AS 11.61.121) which is similar to the existing crime of indecent viewing or photography (AS 11.61.123) but lacks the indecent aspect of the offense. A person violates this new offense by surreptitiously viewing or producing a picture of another person in a room without consent. Violation of this new provision is a class A misdemeanor.²

Section 3 of the bill amends the existing offense of indecent viewing or photography to provide that the offender commits the offense if the offender views or produces a picture of the private exposure of the undergarments of the person viewed without consent. Under current law a person only violates this law if they view or produce a picture of the private exposure of the genitals, anus, or female breast of the other person without consent.

¹ Presumably, a person improperly viewed or photographed already has a cause of action for invasion of privacy (or a civil action for violation of the criminal statute) against the person doing the viewing or photography. The remedies would not include those provided in proposed AS 09.68.150(2) or (3).

² The period of incarceration authorized for a class A misdemeanor may be found at AS 12.55.135. The fines authorized for a class A misdemeanor may be found at AS 12.55.035.

Representative Pete Kott
February 21, 2001
Page 2

Section 4 of the bill adds the word "image" to the definition of "picture" in AS 11.61.123.

GPL:glc
01-182.glc

Enclosure

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 125
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to unlawful and indecent viewing BRU Criminal Division
and photography and to civil damages and penalties for . . ." Component 1st-4th Judicial Districts
 Sponsor Representative Kott
 Requester House Judiciary Committee Component No. 2198-99;2201;61;79

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 125 contains two criminal law provisions. The first creates a new offense and makes it a crime to surreptitiously view or take a picture of a person in a room without their consent, and the consent of the parent or guardian if the person is a child under 16 years of age. The second provision expands an existing offense to make it a crime to view or produce a picture of a person in undergarments without the person's consent and the consent of the child's parent or guardian if the child is under 16 years of age. In addition to the criminal penalties, the bill allows civil damages for the person viewed or photographed.

Passage of this legislation is not anticipated to generate many prosecutions, and should not have a fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Phone 465-5370
 Division: Attorney General's Office Date/Time 4/4/01 2:06 PM
 Approved by: Kathryn Daughhettee for Bruce M. Botelho, Attorney General Date 4/4/01
 Agency: Department of Law

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

BILL NO. HB 125

Revision Date/Time (Note if correction) _____ Dept. Affected _____
 Title Unlawful and indecent viewing of photography BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative Kott
 Requester House Judiciary Component No. 768

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
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)						
TOTAL	0.0	0.0	0.0	C J	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 The court system does not anticipate any fiscal impact from the passage of HB 125.

Prepared by: Douglas Wooliver *[Signature]* Phone 463-4750
 Division Alaska Court System Date/Time 2/29/01 9:30 a.m.
 Approved by: Stephanie Cole *[Signature]* Date _____
 Agency Alaska Court System

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB125
 () Publish Date: _____

Revision Date/Time (Note if correction): _____
 Title: "An Act relating to unlawful or indecent viewing and photography....."
 Sponsor: Representative Kott
 Requester: (H) Judiciary
 Dept. Affected: Administration
 BRU: Legal & Advocacy Svc.
 Component: Public Defender Agency
 Component Number: 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

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						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See Page 2 for Analysis.

Prepared by: Barbara Brink, Director Phone (907) 334-4414
 Division: Public Defender Agency Date/Time April 5, 2001
 Approved by: Jim Duncan, Commissioner Date 4/5/01
 Agency: Department of Administration

For distribution information, call the Governor's Legislative Office

Analysis HB 125 (Indecent Viewing)

This bill creates a new crime called Improper Viewing or Photography. The new crime would make it illegal to view or produce a picture of someone in the interior of a room without the consent of the person who is viewed or in the picture. If the person is under 16, the person's parents would also have to consent.

The bill also changes definitions in existing statutes. Changes to the Indecent Viewing or Photography statute would include viewing or photographing "undergarments" covering a person's genitals, anus, or female breast. Current law only covers viewing or photographing the genitals, anus, or female breast itself. The definition of "picture" is changed to include "images" in addition to actual photographs.

This bill would probably add some additional cases to the Public Defender Agency's workload. There may be some difficult First Amendment issues to brief in these cases. However, the Department of Law has stated that passage of this legislation is not anticipated to "generate many prosecutions." Because we cannot determine the exact fiscal impact, we are submitting an indeterminate fiscal note.