

HB

268

Alaska State Legislature

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Representative Joe Green
District 10

Sponsor Statement

HB 268 – Right to Privacy

Article 1, Section 22 of the Alaska Constitution states “The right of privacy is recognized and shall not be infringed. The Legislature shall implement this section.” Court rulings have successively granted privacy rights to individuals that I am confident the voters never intended when, in 1972, they amended the constitution to include the right to privacy. HB 268 implements section 22 by statutorily defining that privacy does not include the right to receive public money, a public benefit, or a public service.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 268
() Publish Date: _____

Revision Date/Time (Note if correction): 5/5/01 11:51 Dept. Affected: Law
Title "An Act relating to the constitutional right to BRU Civil Division
privacy." Component Governmental Affairs
Sponsor Representative Green Human Services
Requester House Judiciary Committee Component No. 2207; 2208

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)
This bill establishes that the Alaska constitutional right to privacy does not create a right to receive public money, a public benefit, or a public service.

Passage of this legislation is expected to generate substantial litigation. However, we have no way of predicting when such litigation may occur, or what resources might be needed to defend the law. The department cannot assign a fiscal impact to potential constitutional challenges due to their unpredictability and speculative nature.

Prepared by: Joan M. Kasson Phone 465-5370
Division: Attorney General's Office Date/Time 5/5/01 11:51 AM
Approved by: Joan M. Kasson for Bruce M. Botelho, Attorney General Date 5/5/01
Agency: Department of Law

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MEMORANDUM

May 5, 2001

SUBJECT: Constitutionality of HB 268

TO: Representative Norman Rokeberg, Chair
House Judiciary Committee
Attn: Heather Nobrega

FROM: Tamara Brandt Cook
Director *TBC*

HB 268 provides that the state constitutional right to privacy does not create a right to receive public money, a public benefit, or a public service. You ask whether this bill is constitutionally valid. Your question cannot be answered until a court considers the matter, but, clearly, the bill is susceptible to challenge and might not survive that challenge.

There are reasonable arguments that can be made in defense of the constitutionality of HB 268. The court has noted that the state right to privacy is not absolute and may be restricted by the government if the government can meet its burden of establishing that the restriction serves a legitimate and compelling governmental interest. (Messerli v. State, 626 P.2d 81 (Alaska 1980)) Furthermore, Art. I, sec. 22 directs the legislature to implement the state constitutional right to privacy. This conveys to the legislature a degree of discretion regarding the scope of the right. It appears that the purpose behind HB 268 is to avoid state financial liability, and this is certainly a legitimate governmental interest.

Despite the foregoing, HB 268 is vulnerable to a finding of unconstitutionality. The court has also specifically noted that the explicit state right to privacy affords a broader protection than the penumbral right inferred from other constitutional provisions, certainly broader than the federal right of privacy. (Messerli v. State, 626 P.2d 81 (Alaska 1980); Valley Hosp. Ass'n v. Mat-Su Coalition for Choice, 948 P.2d 963 (Alaska 1997)) While saving state money is a legitimate goal, it is questionable that a court would agree that it is a compelling goal. In any case, I think it will be hard to persuade the court that the legitimate governmental interest in saving money cannot be accomplished without infringing on the individual's right to privacy, by, for example, eliminating a particular benefit altogether rather than restricting its application in ways that implicate the right to privacy.

Furthermore, while the scope of the legislature's power to implement the right to privacy has not been squarely considered by the court, the court has considered similar

Representative Norman Rokeberg, Chair
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constitutional language in an entirely different context and invalidated the legislation at issue. Art. IX, sec. 17(d) of the Alaska Constitution directs the legislature to implement the requirement that unexpended general fund money be transferred to repay the constitutional budget reserve fund, the "sweep provision." This the legislature did when it enacted AS 37.10.420(b) which, basically, makes unrestricted general fund money subject to the "sweep." The court held the statute unconstitutional for failing to properly take into account all general fund money that is "available for appropriation," despite the fact that nowhere in the constitution, or in statute for that matter, is "general fund" defined. (Hickel v. Cowper, 874 P.2d 922 (Alaska 1994)) Even though the court gives some deference to legislative enactments, this example illustrates that the court will not necessarily find that a direction to the legislature to implement a particular constitutional provision, in itself, confers power on the legislature to ultimately define the scope of that provision.

TBC:glc
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