

AK LEGISLATURE FINANCE COMMITTEES FILES 2007-2008 3270

the desire to maintain or increase consumer and licensee protection, and to provide licensees with affordable insurance coverage. The former motivation is especially compelling in certain cases because some state governments are now (or are contemplating) raiding real estate recovery funds to supplement their general fund.

When contemplating a mandatory E&O insurance program, policymakers should consider the advantages, disadvantages and costs of such programs. Advantages include coverage availability, relatively low premiums, portable coverage, coverage for prior acts and consumer protection. Disadvantages include the fact that licensees with a bad claims history will increase the premium charged to all licensees, additional administrative responsibilities for the REC and other state agencies and (currently) the low number of insurance companies underwriting E&O group policies. Regulators' estimates of mandatory E&O program administration costs are nominal. The maximum dollar estimate of annual administrative costs offered by any respondent was \$5,000. Some states have reduced costs by transferring duties to the external program administrator. Special circumstances, however, may increase or decrease administrative costs.

Comments made by real estate regulators also suggest several recommendations for policymakers contemplating a mandatory E&O insurance program. Statutory requirements should be kept as basic as possible because it can be problematic to amend legislation. Requirements specified in rules and regulations promulgated by the REC provide greater flexibility. States with a real estate recovery fund should continue it to protect the public for claims that are excluded by, or exceed claim limits in, the E&O insurance policy. Licensees should have the option to obtain coverage independently and the mandatory E&O insurance requirement should only apply to active licensees. Finally, during the program investigation phase, regulators should make it clear to all parties exactly why the change is being contemplated, and seriously consider licensee input on the proposal.

Endnotes

1. Several interesting nonacademic E&O insurance related articles are available on the Realty Times website (www.realtytimes.com).
2. Alabama formerly had mandatory E&O insurance, but repealed the requirement on April 25, 2003. More details on this situation are provided later in the paper.
3. The survey may be viewed in full at www.wright.edu/~joseph.coleman. One thousand two hundred emails were sent, but for reasons unknown (we suspect a combination of turnover in the brokerage industry and the foibles of the internet), only 1,069 emails were successfully delivered. The overall and state response rates (shown in Endnote 5) are based on the number of emails successfully delivered.
4. Website at: realtor.org/codesign.nsf/pages/RealtorDirectory?OpenDocument.
5. Response numbers (rates) for individual states were: Colorado: 9 of 83 (10.8%); Idaho: 26 of 93 (28.0%); Iowa: 6 of 81 (7.4%); Kentucky: 12 of 84 (14.3%); Louisiana: 11 of 100 (11.0%); Mississippi: 20 of 92 (21.7%); Nebraska: 7 of 98 (7.1%); New Mexico: 19 of 90 (21.1%); North Dakota: 23 of 89 (25.8%); Rhode Island: 21 of 89 (23.6%); South Dakota: 21 of 79 (26.6%); and Tennessee: 26 of 91 (28.6%).

6. For most respondents, we were able to determine gender from the NAR website. For three dozen with names like Chris and Terry, gender was determined by visiting their state association of REALTORS, firm, or personal website.
7. According to NAR (2003), in 2003, 52% of all REALTORS are female, and the typical NAR member had 13 years' experience in real estate.
8. As of October, 2004, the average participation rate in state-sponsored plans for active licensees in all twelve states is 71.7%. The participation rate for all active licensees in each state as of the same date are: Colorado 65.8%, Idaho 89.7%, Iowa 98.7%, Kentucky 51.6%, Louisiana 95.4%, Mississippi 70.0%, Nebraska 83.5%, New Mexico 65.3%, North Dakota 46.6%, Rhode Island 41.4%, South Dakota 67.8% and Tennessee 83.5%. A regression analysis was performed on participation rates and group premium amounts. The two variables are not significantly related (p value = .21).
9. The study includes some anecdotal evidence that is not inconsistent with the concern of increased lawsuits. Of the states that had a recovery fund at the time E&O insurance was mandated, the RECs unanimous response was that there was no significant difference in the number of recovery fund claims in the years before and after E&O insurance was mandated. However, we do not have access to the number claims against independently-obtained policies in the years surrounding the mandatory E&O insurance implementation dates.
10. For example, difference in male and female disclosure (of psychological stigma) behavior is documented in Larsen and Coleman (2001). In the health insurance industry, Feldman and Schultz (2004) find that compared to males, females have higher service quality expectations. These expectations can influence policyholder satisfaction as asserted by Kolodinsky (1996); however, she discovered no significant relationship between satisfaction and gender.
11. All twelve REC directors contacted by phone and asked if they would participate in a written survey agreed to do so. The survey and cover letter were then emailed to each. Nine responses were eventually received. Subsequently, the nine participating people were contacted by phone to gather some clarifying information. A copy of the survey may be viewed at: www.wright.edu/~joseph.coleman.
12. Similar legislation was passed in Rhode Island and Tennessee after E&O insurance was made mandatory. In Idaho, the legislature attempted, and failed, to pass such legislation. About \$1,000,000 has been transferred from the Kentucky real estate recovery fund to the general fund in the in the last two years without the benefit of enabling legislation.
13. Proponents and opponents of mandatory E&O insurance may believe that arguments for their viewpoint are missing. The researchers encourage anyone who has additional items for either list to contact them.
14. Officially, a claim is made when the insured first receives a written demand for money or services, or has received notification of a lawsuit or arbitration proceeding naming the insured.
15. In 2004, Rice Insurance Services Company, LLC of Louisville, Kentucky (RISC) was the exclusive contract administrator, servicing all states with mandatory E&O programs. In 2005, RISC is providing service to all states but Nebraska, which is switched to the Williams Underwriting Group.
16. The contracting process varies from state to state; however, in general, the REC with the assistance of the legal and/or the insurance departments issues an RFP for a contract administrator who will be responsible for obtaining an insurance carrier. The contract term may vary in most cases, from one to three years with options for extensions.

17. The limit on the number claims that may be filed on an insured licensee is a function on the dollar payments made on claims against the policy. For example, a single \$100,000 claim would exhaust the coverage of a licensee in Iowa, but twenty claims of \$5,000 each would be covered by another licensee in that state.
18. In making this observation, the researchers are aware of the story of the 6-foot tall man who drowned in a river with an average depth of two feet. In addition, Iowa's \$100,000 total claim limit may not provide adequate protection for multiple claims.

References

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- Feldman, R. and J. Schultz, Consumer Demand for Guaranteed Renewability in Health Insurance, *Journal of Consumer Policy*, 2004, 27, 75-97.
- Kolodinsky, J., Consumer Satisfaction with a Managed Health Care Plan, *Journal of Consumer Affairs*, 1999, 33, 223-36.
- Larsen, J. E. and J. W. Coleman, Psychologically Impacted Houses: Broker Disclosure Behavior and Perceived Market Effects in an Unregulated Environment, *Journal of Real Estate Practice and Education*, 2001, 4, 1-16.
- ., Factors Associated with Survival of New REALTOR® Associates in Ohio, *Journal of Real Estate Practice and Education*, 2003, 6:2, 163-90.
- National Association of REALTORS®, The 2003 National Association of REALTORS Member Profile, Chicago, IL.
- Stitz, G., 2004 Ohio Association of REALTORS® Member Survey Findings, 2004. Ohio Association of REALTORS®, Columbus, Ohio.

Financial support for this research was provided by the Education and Research Fund, Ohio Department of Commerce, Division of Real Estate & Professional Licensing. The authors thank William Hardin and two anonymous reviewers for their helpful comments.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The legislature should consider amending the statutes related to the Real Estate Surety Fund to provide more complete, effective, and efficient consumer protection to claimants.

Prior Finding

Alaska Statutes regulate the dollar amount of limits that can be made on Real Estate Surety Fund (RESF) claims, the notification process of claim awards, and the nature of the claim that can be filed. Specifically, the previous recommendation included these findings:

1. When RESF was originally established by statute in 1974, the individual claim limit was set at \$10,000 and the aggregate claim limit was restricted at \$50,000. At the time of the last audit, in 2003, these claim limits remained at the original amounts. The audit found that each of the last five successful claim payments had alleged losses exceeding the \$10,000 limit. Also, Alaska's claim and aggregate fund limits for the surety fund were low compared to other states, where the average individual claim limit was just over \$21,000 and the average aggregate limit was just under \$70,000. As a result, the recommendation suggested increasing RESF claim limits to \$20,000 for individual claims and \$100,000 for aggregate claims per licensee.
2. Claims against RESF are administered under the state's Administrative Procedures Act (APA). Under APA, a respondent has the right to appeal a RESF decision, a claim payment is not paid from the fund until an appeal is filed and considered, or the respondent waives their appeal rights. The last audit found that this procedure resulted in a situation where a successful claimant was waiting over nine months to receive their claim payment because the Division of Corporations, Professional, and Business Licensing (division) was not able to locate or notify the respondent of their rights to appeal. Thus, the recommendation suggested permitting the Real Estate Commission (REC or commission) to disburse RESF claim awards after they have made a good faith effort to locate the respondent.
3. State law specifies that RESF can be used to reimburse an individual for a loss "*suffered in a real estate transaction as a result of fraud, misrepresentation, deceit.*" During the last audit, two instances were identified where respondents attempted to have claims dismissed because the transaction involved purchasing a mobile home. The respondents argued that since mobile homes are considered personal property, rather than real property, the sale does not represent a "*real estate transaction.*" The hearing officer disallowed these arguments because the intent of the fund is to compensate victims of fraud, misrepresentation, and deceit on the part of licensees. Despite the hearing officer

rulings, these administrative hearing decisions do not have any value in establishing recognized precedence. Consequently, the recommendation suggested amending statutes to specify mobile home transactions as subject to RESF claims.

Legislative Audit's Current Status

The current status of the recommendation is as follows:

1. This issue is partially resolved. The legislature increased the individual claim limits to \$15,000; however, the prior aggregate claim limit of \$50,000 remains unchanged. During our current review period, the \$15,000 individual limit did not hinder awards to claimants from the fund. Conversely, the \$50,000 aggregate limit restricted at least one award provided to claimants. In this instance, the hearing officer awarded \$10,850 more than the \$50,000 aggregate limit. REC could not disburse the entire award due to the statutory limit.
2. This issue is resolved. The legislature modified statutes to allow proof of notice to satisfy due process requirements for RESF actions.
3. This issue is not resolved. The RESF statutes have not been modified to permit mobile home transactions as being subject to RESF claims. During our period of review, we did not identify any RESF claims for mobile home transactions.

Based on the current status of these issues, we recommend the legislature reconsider making some increase to RESF aggregate claim limits, as well as making mobile home transactions eligible under RESF claims.

Recommendation No. 2

The director of Boards and Commissions, Office of the Governor, should verify board members satisfy all statutory requirements prior to being appointed.

During 2007, a board member was appointed to the commission without meeting the professional experience requirements outlined in statute. Alaska Statute 08.88.041(a) requires brokers and associate brokers to be licensed in Alaska for at least three years before being appointed to the commission. This board member was an associate broker for less than two years prior to his appointment.

Boards and Commissions' staff overlooked this board member's lack of professional experience when appointing the member to the commission. This appointment could result in commission decisions not being supported by adequate professional experience. We recommend the director of Boards and Commissions verify that potential board members satisfy all statutory requirements prior to being appointed.

HB

359

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 359(JUD)
(H) Publish Date: 2/21/2008

Identifier (file name): HB359 Dept. Affected: None
Title: Probation & Minor Consuming RDU: _____
Component: _____
Sponsor: House Judiciary Committee
Requester: House Judiciary Committee Component Number: _____

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
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	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 Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Jane Pierson, Committee Aide
Division: House Judiciary Committee
Approved by: Representative Ramras
Chairman

Phone 907-465-4990
Date/Time 2/21/2008 at 8:50 AM
Date 2/21/2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSHB 359(JUD) Correct.
() Publish Date: _____

Identifier (file name): _____ Dept. Affected: Alaska Court System
Title: Probation and Minor Consuming RDU: Trial Courts
Component: Trial Courts
Sponsor: House Judiciary Committee
Requester: House Judiciary Committee Component Number: 768

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	29.8	29.8	16.9	16.9	16.9	16.9	16.9	16.9
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	29.8	29.8	16.9	16.9	16.9	16.9	16.9	16.9

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	29.8	29.8	16.9	16.9	16.9	16.9	16.9	16.9
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	29.8	29.8	16.9	16.9	16.9	16.9	16.9	16.9

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0

ANALYSIS: (Attach a separate page if necessary)

CSHB 359 allows those on probation for minor consuming and repeat minor consuming convictions to petition the court to have their probation lifted.

Although there are currently 3,500 people on probation who would come under the terms of this bill, this note assumes that the majority of those coming to court will be aged 17 and older. There are approximately 2,500 probationers in this category. Once the current backlog of offenders is dealt with, our statistics show an average of 1,400 new offenders moving into this age category each year.

Continued on page 2.

Prepared by: Doug Wooliver, Administrative Attorney for the Alaska Court System
Division: Alaska Court System
Approved by: Stephanie Colu, Administrative Director for the Alaska Court System

Phone: 907-463-4750
Date/Time: 3/4/08 2:48 PM
Date: 3/4/2008

ANALYSIS CONTINUATION

This note estimates that of the 2,500 probationers aged 17 and older who would fall under the terms of this bill in FY 09, and the 1,400 new probationers each year thereafter, 25% will petition the court to have their probation lifted. This means that CSHB 359(JUD) will result in 625 hearings in FY 09 and 350 hearings each year thereafter. This note further estimates that each hearing will last an average of 20 minutes.

This note reflects the additional judicial and clerical time necessary to handle these hearings.

3/13/08

adopted

AMENDMENT 1

OFFERED IN THE HOUSE

BY REPRESENTATIVE HAWKER

TO: CS HB 359 (), Version 25-LS1377L

- 1 Page 2, line 11
- 2 After "AS 12.55.051;"
- 3 Insert "and"
- 4
- 5 Page 2, line 13
- 6 After "probation"
- 7 Delete "; and"
- 8 Insert "."
- 9
- 10 Page 2, line 14-15
- 11 Delete "(5) continuance of the probation would interfere with the
- 12 rehabilitation and growth of the person."
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3/13/08 passed 5/3

25-LS1377L.4
Luckhaupt
3/10/08

AMENDMENT 2

OFFERED IN THE HOUSE

TO: CSHB 359(), Draft Version "L"

Rep. Thomas
+ Gara

1 Page 1, line 1, following "Act":

2 Insert "relating to the term of probation for persons convicted of minor
3 consuming or in possession or control of alcohol or repeat minor consuming or in
4 possession or control of alcohol; and"

5

6 Page 1, following line 4:

7 Insert new bill sections to read:

8 **** Section 1.** AS 04.16.050(b) is amended to read:

9 (b) A person who violates (a) of this section and who has not been previously
10 convicted or received a suspended imposition of sentence under (1) of this subsection
11 is guilty of minor consuming or in possession or control. Upon conviction in the
12 district court, the court

13 (1) may grant a suspended imposition of sentence under AS 12.55.085
14 and place the person on probation for up to one year [OR UNTIL THE PERSON IS
15 21 YEARS OF AGE, WHICHEVER IS LATER,] if the person has not been convicted
16 of a violation of this section previously; among the conditions of probation, the court
17 shall, with the consent of a community diversion panel, refer the person to the panel,
18 and require the person to comply with conditions set by the panel, including
19 counseling, education, treatment, community work, and payment of fees; in this
20 paragraph, "community diversion panel" means a youth court or other group selected
21 by the court to serve as a sentencing option for a person convicted under this section;
22 or

23 (2) shall impose a fine of at least \$200 but not more than \$600, shall

1 require the person to attend alcohol information school if the school is available, and
 2 shall place the person on probation for up to one year under (e) of this section; the
 3 court may suspend a portion of the fine imposed under this paragraph that exceeds
 4 \$200 if the person is required to pay for education or treatment required under (e) of
 5 this section.

6 * Sec. 2. AS 04.16.050(c) is amended to read:

7 (c) A person is guilty of repeat minor consuming or in possession or control if
 8 the person was placed on probation under (b)(1) [(b)] of this section or has been
 9 previously convicted once, and the person violates (a) of this section. Upon conviction
 10 in the district court, the court shall

11 (1) impose a fine of \$1,000 and require at least 48 hours of community
 12 work;

13 (2) revoke the person's driver's license for three months;

14 (3) take possession of the person's driver's license; and

15 (4) suspend up to \$500 of the fine and place the person on probation
 16 for up to one year under (e) of this section.

17 * Sec. 3. AS 04.16.050(d) is amended to read:

18 (d) A person is guilty of habitual minor consuming or in possession or control
 19 if the person was placed on probation under (e) of this section, or has been previously
 20 convicted twice, and the person violates (a) of this section. Habitual minor consuming
 21 or in possession or control is a class B misdemeanor. Upon conviction, the court may
 22 impose an appropriate period of imprisonment and fine and place the person on
 23 probation under (e) of this section for one year, or until the person is 21 years of
 24 age, whichever is later, and shall

25 (1) impose at least 96 hours of community work;

26 (2) revoke the person's driver's license for six months;

27 (3) within five working days, notify the agency responsible for the
 28 administration of motor vehicle laws of the revocation; and

29 (4) take possession of the person's driver's license.

30 * Sec. 4. AS 04.16.050(e) is amended to read:

31 (e) The court shall place a person sentenced under (b)(2) [(b)], (c), or (d) of

1 this section on probation for the appropriate period [ONE YEAR, OR UNTIL THE
2 PERSON IS 21 YEARS OF AGE, WHICHEVER IS LATER]. The person may not
3 refuse probation. The court may require the person to pay for and enroll in a juvenile
4 alcohol safety action program, if one is available. The court shall impose the following
5 conditions of probation:

6 (1) the person shall pay for and successfully complete any education or
7 treatment recommended;

8 (2) the person may not consume inhalants or possess or consume
9 controlled substances or alcoholic beverages, except as provided in AS 04.16.051(b);

10 (3) the person shall timely complete any community work ordered, as
11 provided in (f) of this section; and

12 (4) other conditions the court considers appropriate."
13

14 Page 1, line 5:

15 Delete "Section 1"

16 Insert "Sec. 5"

17
18 Page 1, lines 8 - 9:

19 Delete "(b) or (c) of this section"

20 Insert "those subsections"

*adopted
3/5*

25-LS1377\L
Luckhaupt
2/22/08

CS FOR HOUSE BILL NO. 359()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - SECOND SESSION**

BY

Offered:

Referred:

Sponsor(s): HOUSE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to termination of probation for certain persons convicted of minor**
2 **consuming or in possession or control of alcohol or repeat minor consuming or in**
3 **possession or control of alcohol."**

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

5 *** Section 1. AS 04.16.050 is amended by adding a new subsection to read:**

6 **(f) Notwithstanding (b), (c), and (e) of this section, a person sentenced under**
7 **(b) or (c) of this section may make a motion to the court to terminate probation of that**
8 **person before the end of the probationary period required under (b) or (c) of this**
9 **section. The court may grant the motion if the court finds, by clear and convincing**
10 **evidence, that**

11 **(1) the person completed any community work ordered under (f) of**
12 **this section;**

13 **(2) the person has successfully completed any education or treatment**
14 **program ordered by the court and, if required by the court, has either**

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- (A) paid for the programs; or
- (B) made a good faith effort to pay for the programs, agreed to have the debt reduced to a civil judgment, entered into a repayment plan with the provider or the state, and agreed that the civil judgment may be enforced in the manner provided for restitution and fines in AS 12.55.051;
- (3) the person has either
 - (A) paid the fine; or
 - (B) made a good faith effort to pay the fine, agreed to have the remaining fine amount reduced to a civil judgment, entered into a plan with the state, and agreed that the civil judgment may be enforced in the manner provided for restitution and fines in AS 12.55.051;
- (4) the person has substantially complied with the other conditions of probation; and
- (5) continuance of the probation would interfere with the rehabilitation and growth of the person.

2007 HOUSE FINANCE COMMITTEE VOTE SHEET

DATE: 3/13/08

Amendment: 2 / 359

MEMBER

Favor

Oppose

THOMAS	X	
CRAWFORD	X	
ROSE HARRIS	X	
GARA	X	
HAWKER	X	
JOULE —		
KELLY		X
NELSON —		
STOLTZE —		
CHENAULT		X
MEYER		

Yea _____

Nay 3

ALASKA STATE LEGISLATURE HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman
(907) 465-3004

Fax: (907) 465-2070

Representative_Jay_Ramras@legis.state.ak.us

1292 Sadler Way, Suite 324
Fairbanks, AK 99701



Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Sponsor Statement HB 359

“An Act relating to probation and the offense of a minor consuming or in possession or control of alcohol.”

Joining the military is one of the best ways for young Alaskans to gain self-confidence, and learn respect and discipline; skills that will serve them well throughout their adult lives. Unfortunately, making the mistake of underage drinking can prevent a person from enlisting in the armed services, due to probation restrictions. Although being barred from military service seems to be the largest issue, some who are convicted of minor consuming also face issues when filling out college or job applications and even when crossing the border to participate in college sporting events.

Under current Alaska law the court is required to place a person convicted of minor consuming on probation for one year from the date of conviction, or until the person is 21 years of age, whichever is later. There is no authority under the minor consuming statute for termination or modification of probation. This is contrary to authority granted to the court under Title 12. Under AS 12.55.090(b), “the court may revoke or modify any condition of probation, or may change the period of probation”.

HB 359 would grant the courts similar authority to change the period of probation given under Title 12. By doing so, the courts would have the discretion to remove a person who has been convicted of minor consuming from probation, if the person has met the conditions of probation set forth by the court and the continuance of their probation would interfere with their rehabilitation or growth.

There are often good, young Alaskans who make mistakes. HB359 would offer those youth the opportunities to learn from their mistakes and work toward becoming stronger, more disciplined, law-abiding individuals.

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman
(907) 465-3004
Fax: (907) 465-2070
Representative_Jay_Ramras@legis.state.ak.us



Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

1292 Sadler Way, Suite 324
Fairbanks, AK 99701

State Capitol, Room 120
Juneau, Alaska 99801-1182

Proposed changes in HB 359 Version "L"

Section 1: AS 04.16.050

Page 1, lines 7-10: change would remove petition language and replace it with motions to the court. This keeps the language consistent with what is used by the courts.

Page 2, lines 12-15: change would establish two distinct requirements, (4) and (5) where there was previously only one under subsection 4 in version "K".

ALASKA STATE LEGISLATURE HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman

(907) 465-3004

Fax: (907) 465-2070

Representative_Jay_Ramras@legis.state.ak.us

1292 Sadler Way, Suite 324
Fairbanks, AK 99701



Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Changes in Judiciary CS for HB 359 (JUD)

Title Change: The title was narrowed to more specifically address probation relating to minor consuming statutes rather than probations as a whole.

Section 1: AS 04.16.050

Page 1, lines 6 - 10: more language was added which clarifies the process for termination of probation.

Page 1, line 8: section (b) was added to include probation under (b) (1) which does not fall under probation requirements set forth in (e).

Page 1, line 11 thru page 2, line 13: Provides specific requirements to be met before termination of probation may be granted by the court. This language was added at the request of Department of Law.

Page 2, lines 1-4 & lines 7-10: Language was added to require a person convicted of minor consuming to pay the remainder of their fine after their probation has been terminated. Without this language the fine would not be collectable once probation was terminated.



DEPARTMENTS OF THE ARMY AND THE AIR FORCE
ALASKA ARMY NATIONAL GUARD ELEMENT, JOINT FORCES HEADQUARTERS
PO BOX 5800
FORT RICHARDSON AK 99505-0800

3/5/08

February 6, 2008

Office of the Commanding General

Rep. Jay Ramras
State Capitol, Room 118
Juneau, AK 99801-1182

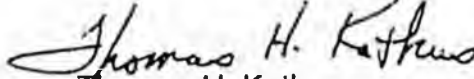
Dear Rep. Ramras:

The Alaska Army National Guard is in support of allowing youth, who have made a mistake by drinking alcohol underage, to receive the leniency from the court system to join the Army, or any United States military service branch.

If a teenager receives a minor-consuming-alcohol conviction they are not eligible for enlistment in the armed services, due to their probation restriction until the age of 21. I would like to see the court system remove this probation term, if and only if, the teen presents a letter from a United States military recruiter stating that this is the only factor keeping the teen from joining the military.

We have good kids in Alaska who sometimes make mistakes. Joining the military gives young people a sense of confidence and discipline that will demand a respect for the law as adults.

Sincerely,


Thomas H. Katkus
Brigadier General, AKARNG
Commanding

3/5/08

Sec. 04.16.050. Possession, control, or consumption by persons under the age of 21.

(a) A person under the age of 21 years may not knowingly consume, possess, or control alcoholic beverages except those furnished persons under AS 04.16.051 (b).

(b) A person who violates (a) of this section and who has not been previously convicted or received a suspended imposition of sentence under (1) of this subsection is guilty of minor consuming or in possession or control. Upon conviction in the district court, the court

(1) may grant a suspended imposition of sentence under AS 12.55.085 and place the person on probation for one year or until the person is 21 years of age, whichever is later, if the person has not been convicted of a violation of this section previously; among the conditions of probation, the court shall, with the consent of a community diversion panel, refer the person to the panel, and require the person to comply with conditions set by the panel, including counseling, education, treatment, community work, and payment of fees; in this paragraph, "community diversion panel" means a youth court or other group selected by the court to serve as a sentencing option for a person convicted under this section; or

(2) shall impose a fine of at least \$200 but not more than \$600, shall require the person to attend alcohol information school if the school is available, and shall place the person on probation under (c) of this section; the court may suspend a portion of the fine imposed under this paragraph that exceeds \$200 if the person is required to pay for education or treatment required under (c) of this section.

(c) A person is guilty of repeat minor consuming or in possession or control if the person was placed on probation under (b) of this section or has been previously convicted, and the person violates (a) of this section. Upon conviction in the district court, the court shall

(1) impose a fine of \$1,000 and require at least 48 hours of community work;

(2) revoke the person's driver's license for three months;

(3) take possession of the person's driver's license; and

(4) suspend up to \$500 of the fine and place the person on probation under (c) of this section.

(d) A person is guilty of habitual minor consuming or in possession or control if the person was placed on probation under (c) of this section, or has been previously convicted twice, and the person violates (a) of this section. Habitual minor consuming or in possession or control is a class B misdemeanor. Upon conviction, the court may impose an appropriate period of imprisonment and fine and place the person on probation under (c) of this section and shall

- (1) impose at least 96 hours of community work;
- (2) revoke the person's driver's license for six months;
- (3) within five working days, notify the agency responsible for the administration of motor vehicle laws of the revocation; and
- (4) take possession of the person's driver's license.

(e) The court shall place a person sentenced under (b), (c), or (d) of this section on probation for one year, or until the person is 21 years of age, whichever is later. The person may not refuse probation. The court may require the person to pay for and enroll in a juvenile alcohol safety action program, if one is available. The court shall impose the following conditions of probation:

- (1) the person shall pay for and successfully complete any education or treatment recommended;
- (2) the person may not consume inhalants or possess or consume controlled substances or alcoholic beverages, except as provided in AS 04.16.051(b);
- (3) the person shall timely complete any community work ordered, as provided in (f) of this section; and
- (4) other conditions the court considers appropriate.

(f) A person ordered to perform community work under this section shall perform the work within 120 days of the entry of judgment for a conviction. The court may expand the time period for up to 30 days upon a showing of good cause. The person shall submit verification of completion of community work to the clerk of court on a form provided by the court. If the verification is not provided within the time period required by this subsection, the court shall, within 30 days, schedule further proceedings in the case to determine whether a violation of probation has occurred.

(g) The treatment recommended by a juvenile alcohol safety action program for a person placed on probation under (e) of this section may include a period of inpatient treatment if the judgment specifies the maximum period of inpatient treatment authorized. A person who has been recommended for inpatient treatment may make a written request to the sentencing court for review of the referral. A person shall make a request for review within seven days after the recommendation and shall specifically set out the grounds upon which the request for review is based. The court may order a hearing on the request for review.

(h) The juvenile alcohol safety action program to which a person is referred under this section shall inform the court or a minor's juvenile probation officer if the person fails to submit to evaluation or fails to complete successfully any education or treatment recommended. If the court finds that the person has failed to perform community work as ordered, to submit to evaluation, or to complete successfully the education or treatment recommended, the court may impose the suspended fine, and may impose any period of suspended incarceration. If the person was convicted under (c) or (d) of this section, the court shall revoke the person's driver's license for an additional six months beyond the revocation imposed under (c) or (d) of this section. A court revoking a person's driver's license under this subsection shall notify the agency responsible for the administration of motor vehicle laws of the revocation within five working days.

(i) When considering the financial resources of a minor for purposes of determining eligibility for court-appointed counsel under this section, the court shall consider the resources of both the defendant and the defendant's parent or guardian, unless the court finds good cause to treat the defendant's or the defendant's parent's or guardian's resources as being unavailable to the defendant.

(j) A driver's license revocation under this section is consecutive to a revocation imposed under another provision of law, but is concurrent with a revocation under another provision of law based on a prior conviction, adjudication of delinquency, or informal adjustment under AS 47.12.060 .

(k) In this section,

(1) "driver's license" has the meaning given in AS 28.90.990 ;

(2) "juvenile alcohol safety action program" means

(A) a juvenile alcohol safety action program developed and implemented or approved by the Department of Health and Social Services under AS 47.37;

(B) any other alcohol education or treatment program approved by the Department of Health and Social Services under AS 47.37 if a program described in (A) of this paragraph is not available in the community in which the person resides; or

(C) a program or counseling approved by the court if a program or treatment described in (A) of this paragraph is not available in the community where the person resides;

(3) "previously convicted" means a conviction or an adjudication as a delinquent for a violation of AS 11.71, AS 28.35.030 , 28.35.032, 28.35.280 - 28.35.290, or a law or ordinance in another jurisdiction with substantially similar elements.

Sec. 12.55.090. Granting of probation.

(a) Probation may be granted whether the crime is punishable by fine or imprisonment or both. If a crime is punishable by both fine and imprisonment, the court may impose a fine and place the defendant on probation as to imprisonment. Probation may be limited to one or more counts or indictments, but, in the absence of express limitation, shall extend to the entire sentence and judgment.

(b) The court may revoke or modify any condition of probation, or may change the period of probation.

(c) The period of probation, together with any extension, may not exceed

(1) 25 years for a felony sex offense; or

(2) 10 years for any other offense.

HB

359

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/6/08

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Finance Committee considered CS FOR HOUSE BILL NO. 359(FIN)

HB 359 PROBATION AND MINOR CONSUMING

"An Act relating to the term of probation for persons convicted of minor consuming or in possession or control of alcohol or repeat minor consuming or in possession or control of alcohol; and relating to termination of probation for certain persons convicted of minor consuming or in possession or control of alcohol or repeat minor consuming or in possession or control of alcohol."

and recommends:

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

SENATE BILL:

- Same Title
- New Title

HOUSE BILL:

- Same Title
- Technical Title Change
- New Title w/ SCR # _____

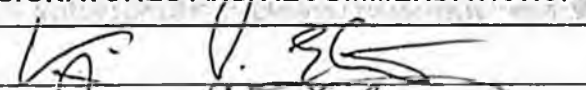
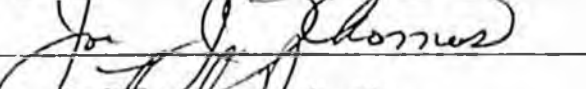
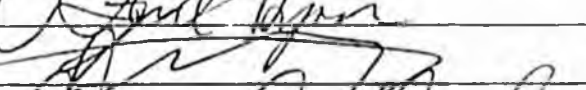
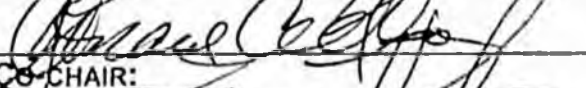
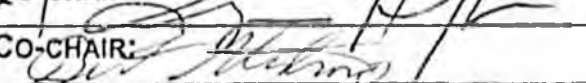

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
CRT	3/4/08	✓			2
HJC	2/21/08			✓	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Ellen			✓	
	Thomas	✓			
	Huggins	✓			
	OLSON			✓	
CO-CHAIR: 	HOFFMAN			✓	
CO-CHAIR: 	STEARNS			✓	

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 359(JUD)
(H) Publish Date: 2/21/2008

Identifier (file name): HB359 Dept. Affected: None
Title: Probation & Minor Consuming RDU: _____
Component: _____
Sponsor: House Judiciary Committee
Requester: House Judiciary Committee Component Number: _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	Appropriation Required	Information					
	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
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	0.0

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

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 Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

Prepared by: Jane Pierson, Committee Aide Phone 907-465-4990
Division: House Judiciary Committee Date/Time 2/21/2008 at 8:50 AM
Approved by: Representative Ramras Date 2/21/2008
Chairman

See

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 359(FIN)
(H) Publish Date: 3/17/08

Identifier (file name): _____ Dept. Affected: Alaska Court System
Title: Probation and Minor Consuming RDU: Trial Courts
Component: Trial Courts
Sponsor: House Judiciary Committee
Requester: House Judiciary Committee Component Number: 768

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES							
Personal Services	29.8	29.8	16.9	16.9	16.9	16.9	16.9
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	29.8	29.8	16.9	16.9	16.9	16.9	16.9

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	29.8	29.8	16.9	16.9	16.9	16.9	16.9
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	29.8	29.8	16.9	16.9	16.9	16.9	16.9

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary	2.0	2.0	2.0	2.0	2.0	2.0	2.0

ANALYSIS: (Attach a separate page if necessary)

CSHB 359 allows those on probation for minor consuming and repeat minor consuming convictions to petition the court to have their probation lifted.

Although there are currently 3,500 people on probation who would come under the terms of this bill, this note assumes that the majority of those coming to court will be aged 17 and older. There are approximately 2,500 probationers in this category. Once the current backlog of offenders is dealt with, our statistics show an average of 1,400 new offenders moving into this age category each year.

Continued on page 2.

Prepared by: Doug Wooliver, Administrative Attorney for the Alaska Court System
Division: Alaska Court System
Approved by: Stephanie Cole, Administrative Director for the Alaska Court System

Phone 907-463-4750
Date/Time 3/4/08 2:48 PM
Date 3/4/2008

ANALYSIS CONTINUATION

This note estimates that of the 2,500 probationers aged 17 and older who would fall under the terms of this bill in FY 09, and the 1,400 new probationers each year thereafter, 25% will petition the court to have their probation lifted. This means that CSHB 359(JUD) will result in 625 hearings in FY 09 and 350 hearings each year thereafter. This note further estimates that each hearing will last an average of 20 minutes.

This note reflects the additional judicial and clerical time necessary to handle these hearings.

ALASKA STATE LEGISLATURE HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras

Chairman

(907) 465-3004

Fax: (907) 465-2070

Representative_Jay_Ramras@legis.state.ak.us

1292 Sadler Way, Suite 324

Fairbanks, AK 99701



Committee Members:

Representative Nancy Dahlstrom,

Vice-Chairman

Representative John Coghill

Representative Bob Lynn

Representative Ralph Samuels

Representative Max Gruenberg

Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Sponsor Statement HB 359

"An Act relating to termination of probation for certain persons convicted of minor consuming or in possession or control of alcohol or repeat minor consuming or in possession or control of alcohol."

Joining the military is one of the best ways for young Alaskans to gain self-confidence, and learn respect and discipline; skills that will serve them well throughout their adult lives. Unfortunately, making the mistake of underage drinking can prevent a person from enlisting in the armed services, due to probation restrictions. Although being barred from military service seems to be the largest issue, some who are convicted of minor consuming also face issues when filling out college or job applications and even when crossing the border to participate in college sporting events.

Under current Alaska law the court is required to place a person convicted of minor consuming on probation for one year from the date of conviction, or until the person is 21 years of age, whichever is later. There is no authority under the minor consuming statute for termination or modification of probation. This is contrary to authority granted to the court under Title 12. Under AS 12.55.090(b), "the court may revoke or modify any condition of probation, or may change the period of probation".

HB 359 would grant the courts similar authority to change the period of probation given under Title 12. By doing so, the courts would have the discretion to remove a person who has been convicted of minor consuming from probation, if the person has met the conditions of probation set forth by the court.

HB 359 would also change the term lengths of probation for persons convicted of minor consuming and repeat minor consuming. The current probation term for both of these

offenses is one year or until the person is 21 years of age, whichever is later. HB 359 would change the probation term to up to one year for both violations.

There are often good, young Alaskans who make mistakes. HB359 would offer those youth the opportunities to learn from their mistakes and work toward becoming stronger, more disciplined, law-abiding individuals.

ALASKA STATE LEGISLATURE HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman
(907) 465-3004
Fax: (907) 465-2070
Representative_Jay_Ramras@legis.state.ak.us
1292 Sadler Way, Suite 324
Fairbanks, AK 99701



Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Changes in Finance CS of HB 359 Version "O"

Section 1: AS 04.16.050 (b) language was added to change the probation term for a person who has been convicted of minor consuming to up to one year. The current probation term in statute is one year or until the person is 21, whichever is later.

Section 2: AS 04.16.050 (c) language was added to change the probation term for a person who has been convicted of repeat minor consuming to up to one year. The current probation term in statute is one year or until the person is 21, whichever is later.

Section 3: AS 04.16.050 (d) language was added to reference the probation term length in section (d) where previously the term length was referenced in section (c). No change was made to the current probation term length for habitual minor consuming violations.

Section 4: AS 04.16.050 (e) language was added to reference probation terms set forth in sections (b)(2), (c), and (d).

Section 5: AS 04.16.050 (l)

Page 3, lines 24-26: petition language was removed and replaced with motions to the court. This keeps the language consistent with what is currently used by the courts.

Page 4, lines 10-12: language in version "K" which required the court to find that continuance of probation would interfere with the rehabilitation and growth of the person was removed.

Sec. 04.16.050. Possession, control, or consumption by persons under the age of 21.

(a) A person under the age of 21 years may not knowingly consume, possess, or control alcoholic beverages except those furnished persons under AS 04.16.051 (b).

(b) A person who violates (a) of this section and who has not been previously convicted or received a suspended imposition of sentence under (1) of this subsection is guilty of minor consuming or in possession or control. Upon conviction in the district court, the court

(1) may grant a suspended imposition of sentence under AS 12.55.085 and place the person on probation for one year or until the person is 21 years of age, whichever is later, if the person has not been convicted of a violation of this section previously; among the conditions of probation, the court shall, with the consent of a community diversion panel, refer the person to the panel, and require the person to comply with conditions set by the panel, including counseling, education, treatment, community work, and payment of fees; in this paragraph, "community diversion panel" means a youth court or other group selected by the court to serve as a sentencing option for a person convicted under this section; or

(2) shall impose a fine of at least \$200 but not more than \$600, shall require the person to attend alcohol information school if the school is available, and shall place the person on probation under (c) of this section; the court may suspend a portion of the fine imposed under this paragraph that exceeds \$200 if the person is required to pay for education or treatment required under (c) of this section.

(c) A person is guilty of repeat minor consuming or in possession or control if the person was placed on probation under (b) of this section or has been previously convicted, and the person violates (a) of this section. Upon conviction in the district court, the court shall

(1) impose a fine of \$1,000 and require at least 48 hours of community work;

(2) revoke the person's driver's license for three months;

(3) take possession of the person's driver's license; and

(4) suspend up to \$500 of the fine and place the person on probation under (c) of this section.

(d) A person is guilty of habitual minor consuming or in possession or control if the person was placed on probation under (c) of this section, or has been previously convicted twice, and the person violates (a) of this section. Habitual minor consuming or in possession or control is a class B misdemeanor. Upon conviction, the court may impose an appropriate period of imprisonment and fine and place the person on probation under (c) of this section and shall

- (1) impose at least 96 hours of community work;
- (2) revoke the person's driver's license for six months;
- (3) within five working days, notify the agency responsible for the administration of motor vehicle laws of the revocation; and
- (4) take possession of the person's driver's license.

(e) The court shall place a person sentenced under (b), (c), or (d) of this section on probation for one year, or until the person is 21 years of age, whichever is later. The person may not refuse probation. The court may require the person to pay for and enroll in a juvenile alcohol safety action program, if one is available. The court shall impose the following conditions of probation:

- (1) the person shall pay for and successfully complete any education or treatment recommended;
- (2) the person may not consume inhalants or possess or consume controlled substances or alcoholic beverages, except as provided in AS 04.16.051(b);
- (3) the person shall timely complete any community work ordered, as provided in (f) of this section; and
- (4) other conditions the court considers appropriate.

(f) A person ordered to perform community work under this section shall perform the work within 120 days of the entry of judgment for a conviction. The court may expand the time period for up to 30 days upon a showing of good cause. The person shall submit verification of completion of community work to the clerk of court on a form provided by the court. If the verification is not provided within the time period required by this subsection, the court shall, within 30 days, schedule further proceedings in the case to determine whether a violation of probation has occurred.

(g) The treatment recommended by a juvenile alcohol safety action program for a person placed on probation under (c) of this section may include a period of inpatient treatment if the judgment specifies the maximum period of inpatient treatment authorized. A person who has been recommended for inpatient treatment may make a written request to the sentencing court for review of the referral. A person shall make a request for review within seven days after the recommendation and shall specifically set out the grounds upon which the request for review is based. The court may order a hearing on the request for review.

(h) The juvenile alcohol safety action program to which a person is referred under this section shall inform the court or a minor's juvenile probation officer if the person fails to submit to evaluation or fails to complete successfully any education or treatment recommended. If the court finds that the person has failed to perform community work as ordered, to submit to evaluation, or to complete successfully the education or treatment recommended, the court may impose the suspended fine, and may impose any period of suspended incarceration. If the person was convicted under (c) or (d) of this section, the court shall revoke the person's driver's license for an additional six months beyond the revocation imposed under (c) or (d) of this section. A court revoking a person's driver's license under this subsection shall notify the agency responsible for the administration of motor vehicle laws of the revocation within five working days.

(i) When considering the financial resources of a minor for purposes of determining eligibility for court-appointed counsel under this section, the court shall consider the resources of both the defendant and the defendant's parent or guardian, unless the court finds good cause to treat the defendant's or the defendant's parent's or guardian's resources as being unavailable to the defendant.

(j) A driver's license revocation under this section is consecutive to a revocation imposed under another provision of law, but is concurrent with a revocation under another provision of law based on a prior conviction, adjudication of delinquency, or informal adjustment under AS 47.12.060 .

(k) In this section,

(1) "driver's license" has the meaning given in AS 28.90.990 ;

(2) "juvenile alcohol safety action program" means

(A) a juvenile alcohol safety action program developed and implemented or approved by the Department of Health and Social Services under AS 47.37;

(B) any other alcohol education or treatment program approved by the Department of Health and Social Services under AS 47.37 if a program described in (A) of this paragraph is not available in the community in which the person resides; or

(C) a program or counseling approved by the court if a program or treatment described in (A) of this paragraph is not available in the community where the person resides;

(3) "previously convicted" means a conviction or an adjudication as a delinquent for a violation of AS 11.71, AS 28.35.030 , 28.35.032, 28.35.280 - 28.35.290, or a law or ordinance in another jurisdiction with substantially similar elements.



DEPARTMENTS OF THE ARMY AND THE AIR FORCE
ALASKA ARMY NATIONAL GUARD ELEMENT, JOINT FORCES HEADQUARTERS
PO BOX 5800
FORT RICHARDSON AK 99505-0800

February 6, 2008

Office of the Commanding General

Rep. Jay Ramras
State Capitol, Room 118
Juneau, AK 99801-1182

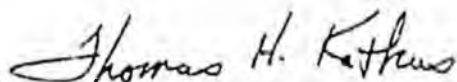
Dear Rep. Ramras:

The Alaska Army National Guard is in support of allowing youth, who have made a mistake by drinking alcohol underage, to receive the leniency from the court system to join the Army, or any United States military service branch.

If a teenager receives a minor-consuming-alcohol conviction they are not eligible for enlistment in the armed services, due to their probation restriction until the age of 21. I would like to see the court system remove this probation term, if and only if, the teen presents a letter from a United States military recruiter stating that this is the only factor keeping the teen from joining the military.

We have good kids in Alaska who sometimes make mistakes. Joining the military gives young people a sense of confidence and discipline that will demand a respect for the law as adults.

Sincerely,


Thomas H. Katkus
Brigadier General, AKARNG
Commanding

HB

364

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSHB 364(JUD)
() Publish Date: _____

Identifier (file name): _____ Dept. Affected: _____
Title: Notice and Consent for Minor's Abortion RDU _____
Component _____
Sponsor: Representative Coghill
Requester: House Finance Committee Component Number _____

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
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	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 Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

The court system had a \$10,000 fiscal note on the original parental consent bill that passed the legislature in 1997. Those funds were incorporated into our base budget for personal services. If CSHB 364 passes the legislature the court system would use the funds already available. Should any of those earlier funds have been included in our annual lapsed funds, we would not lapse them in the future.

Prepared by: Doug Wooliver, Administrative Attorney
Division: Alaska Court System
Approved by: Stephanie Cole, Administrative Director by Doug Wooliver

Phone 907-463-1750
Date/Time 3/10/08 @ 12:00 pm
Date 3/10/2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 364(JUD)
 (H) Publish Date: 3/3/08
 Dept. Affected: Health & Social Services
 RDU: Health Care Services
 Component: Medicaid Services

ID(File name) HB364-DHSS-MS-02-19-08
 Title: NOTICE & CONSENT FOR MINOR'S ABORTION
 Sponsor: COGHILL
 Requester: HOUSE JUD

Component No. 2077

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation		Information					
	Required		FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims	*		*	*	*	*	*	*
Miscellaneous								
TOTAL OPERATING	*	0.0	*	*	*	*	*	*
CAPITAL EXPENDITURES								
CHANGE IN REVENUES (0)								

FUND SOURCE (Thousands of Dollars)

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
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	*	*	*	*

Estimate of any current year (FY2008) cost: _____

POSITIONS

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This fiscal note is indeterminate (*).

There is no way to determine which minors enrolled in Medicaid had consent from a parent or guardian for abortions because the department does not require a consent form to process claims. The department estimates that requiring parental consent could increase Medicaid costs due to higher risk factors associated with these pregnancies, including delayed prenatal care.

Continued on page 2.

Prepared by: William J. Streur, Deputy Commissioner
 Division: Health Care Services
 Approved by: Karleen Jackson, Commissioner
 Agency: Department of Health and Social Services

Phone 334-2520
 Date/Time 02/11/2008
 Date 02/19/2008

ANALYSIS CONTINUATION

Expenditures for abortions are made from general fund dollars. These claims are paid pursuant to an Alaska Supreme Court decision that requires state funding of medically necessary abortions for low-income women eligible for Medicaid. The only abortion services eligible for federal financial participation are those that the department is required to cover under the federal Hyde amendment. To qualify under the Hyde amendment, the abortion must be the result of rape or incest, or the life of the mother must be endangered if the pregnancy were carried to term. Hyde amendment qualifying abortion claims are rare—in FY 2007, there were no Hyde amendment claims.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSHB 364(JUD)
() Publish Date: _____

Identifier (file name): HB364CS(JUD)-DOA-OPA-3-11-08
Title "Act Act relating to notice and consent for a minor's abortion..."
Sponsor Representative Coghill
Requester _____

Dept. Affected: Administration
RDU Legal and Advocacy Services
Component Office of Public Advocacy
Component Number 43

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	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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	(Thousands of Dollars)						
	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
FUND SOURCE							
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS							
Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

This bill modifies the parental notice requirements and bypass procedures for minors seeking abortions. The Office of Public Advocacy does not expect to be fiscally impacted by this legislation, and therefore, the agency submits a zero fiscal note.

Prepared by: Joshua P. Fink, Director
Division: Office of Public Advocacy
Approved by: Rachael Petro, Deputy Commissioner
Department of Administration

Phone 907-269-3501
Date/Time 3/11/08, 5:00 p.m.
Date 3/11/2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: HB364-LAW-CIV-03-11-08
 Bill Version: HB364
 () Publish Date: _____

Identifier (file name): _____ Dept. Affected: LAW
 Title An Act relating to notice and consent for a minor's abortion. RDU CIVIL
 Component HUMAN SERVICES
 Sponsor REPRESENTATIVE(s) COGHILL
 Requester HOUSE JUDICIARY Component Number _____

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
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)

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL							

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

HB 364 would amend existing Statutes, the Alaska Rules of Civil Procedure, the Alaska Rules of Appellate Procedure, and Alaska Probate Rules regarding the requirement of parental notice and consent to be given if a person under age 17, who is unmarried, unemancipated, and pregnant, intends to obtain an abortion. The bill prohibits a person from performing an abortion unless the requisite parental notice and consent is provided or the person qualifies for an exception to those requirements. The bill also enacts new provisions of law regarding coercion of a minor who is pregnant and regarding certain reports that must be filed by physicians. If this bill is enacted and challenged there would be indeterminate costs in defense of the State.

Prepared by: Robert Meiners, Administrative Services Manager
 Division: Administrative Services Division
 Approved by: Talis Colberg, Attorney General
Department of Law

Phone 907-465-5427
 Date/Time 3/11/08 12:40 PM
 Date 3/11/2008

*adopted
3/17/08*

AMENDMENT 1

OFFERED IN THE HOUSE
TO: CS HB 364(JUD), Version 25-LS1406E

BY REPRESENTATIVE MEYER

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Page 6, line 7
 After "without"
 Insert "notice to or"

Failed
3/6

521

25-LS1406\E.1
Mischel
3/12/08

AMENDMENT 2

By: Rep. Gara

OFFERED IN THE HOUSE

TO: CSHB 364(JUD)

- 1 Page 2, line 29:
- 2 Delete "medical instability caused by a"

**2007 HOUSE FINANCE
COMMITTEE VOTE SHEET**

DATE: 3/17

Amendment: #2, 364

MEMBER

Favor

Oppose

ROBERT HARRIS		X
GARA	X	
HAWKER		X
JOULE	X	
KELLY		X
NELSON	X	
STOLTZE		X
THOMAS		X
CRAWFORD —		
MEYER		X
CHENAULT —		

Yea 3

Nay 6

Failed

25-LS1406E.2
Mischel
3/12/08

AMENDMENT 3

By Rep. Gara

OFFERED IN THE HOUSE
TO: CSHB 364(JUD)

- 1 Page 3, line 6:
- 2 Delete "not less than 48 hours"

2007 HOUSE FINANCE COMMITTEE VOTE SHEET

DATE: 3/17/08

Amendment: # 3

MEMBER

Favor

Oppose

MEMBER	Favor	Oppose
GARA	X	
HAWKER		X
JOULE	X	
KELLY		X
NELSON	X	
STOLTZE		X
THOMAS		X
CRAWFORD		
2008/2/28 HARRIS		X
CHENAULT	—	
MEYER		X

Yea 3

Nay 6

*Failed
4/5*

25-LS1406E.3
Mischel
3/13/08

AMENDMENT 4

OFFERED IN THE HOUSE
TO: CSHB 364(JUD)

By Rep. Gara

- 1 Page 3, line 15, following "victim":
- 2 Insert "or has a reasonable fear of becoming a victim"
- 3
- 4 Page 3, line 18, following "by":
- 5 Insert "the minor."
- 6
- 7 Page 3, lines 19 - 28:
- 8 Delete all material.

2007 HOUSE FINANCE COMMITTEE VOTE SHEET

DATE: 3/17

Amendment: 364 #4

MEMBER

Favor

Oppose

HAWKER		X
JOULE	X	
KELLY		X
NELSON	X	
STOLTZE		X
THOMAS	X	X
CRAWFORD		
BOGGS HARRIS		X
GARA	X	
MEYER		X
CHENAULT		

Yea 4 3

Nay 5 10

82V

Withdrawn

25-LS1406E.4
Mischel
3/12/08

AMENDMENT 5

By Rep. Gara

OFFERED IN THE HOUSE
TO: CSHB 364(JUD)

- 1 Page 7, line 25, following "abortion":
- 2 Insert "or to bear a child"
- 3
- 4 Page 7, line 28, following "abortion":
- 5 Insert "or to bear a child"

ALASKA STATE HOUSE OF REPRESENTATIVES

Contact:

Interim Address:

3340 Badger Road
North Pole, AK 99705
(907)-488-5725
Fax# (907)-488-4271



Session

(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 214

REPRESENTATIVE JOHN COGHILL

HB 364 Penalties, Parental Notice, Parental Consent, and Judicial Bypass for an Abortion

SECTIONAL FOR VERSION "E"

* **Section 1.** Adds a notice requirement to the consent requirement in AS 18.16.010(a). Section 3 sets out specific requirements for notice and consent

***Sec. 2.** AS 18.16.010(g) is reenacted to shift the burden of proof for prosecution of a physician who performs an abortion to the State. With the new statutory language all it takes to determine the standard for whether or not an abortion is required because of a medical emergency is the doctor's good faith, clinical judgment. The doctor should make one of the following findings:

- (1) an immediate abortion of the minor's pregnancy is necessary to avert the minor's death; or
- (2) a delay in providing an abortion will create a serious risk of medical instability due to a substantial and irreversible impairment of a major bodily function of the pregnant minor.

***Sec. 3.** Specifies conditions under which a doctor can perform an abortion: parental consent, court order waiving notification and consent (judicial bypass), constructive consent, and bypass of the judicial bypass.

Notice and consent is not required if the minor and a brother or sister of the minor who is over the age of 21, or a law enforcement officer, or a representative of state Child Protective services, or a grandparent, or a stepparent specified by the minor signs a notarized written statement certifying their personal knowledge of the abuse against the minor by a parent or guardian or sexual abuse by another person.

The other exceptions to notice and consent would be if a court issues an order under AS 18.16.030 authorizing the minor to proceed with the abortion without notice to the parent, guardian, or custodian or if a court, by its inaction under AS 18.16.030, constructively has authorized the minor to proceed with the abortion without notice to the parent, guardian, or custodian.

If the physician proceeds with the abortion proceeds after receiving notarized declarations of abuse, the physician performing or inducing the abortion must certify in the patient's medical record that he or she has received the written declarations of abuse or neglect abuse to and must report the abuse to OCS. Any physician who relies in good faith on written statements declaring abuse and who reports the abuse to Child Protection authorities shall not be civilly or criminally liable for failure to give notice to or to obtain consent from a parent, guardian or custodian. If the minor's pregnancy was the result of a sexual assault on the minor, the physician performing or inducing the abortion must retain, and take reasonable steps to preserve, the products of conception following the abortion for use by law enforcement authorities in any subsequent criminal prosecution of the assailant.

Requires the physician performing the abortion or the referring physician to give actual notice to one legal parent or the legal guardian or custodian of the possible abortion. Is notice must be in person or by telephone. If in person, the parent or guardian must provide a government issued I.D. and provide documentation of their legal relationship with the minor requesting an abortion. If the notice is by telephone, the call must be initiated by the physician and the physician must take reasonable steps to verify the true identity of the person receiving notice and his or her relationship to the minor. A designee may initiate the call but the physician must give the notification.

If the physician has exhausted efforts for notice in person or by phone, the physician can send written notice to the parent or guardian at the last known legal mailing address. This bill adjusts the waiting period to 48 hours after actual notice or 48 hours after the letter is deemed received. A letter is deemed received 48 hours after it is mailed, so that would be 96 hours. If the doctor actually talks to a parent, the waiting period would only be 48 hours. One of the minor's parents or the minor's legal guardian or custodian has consented in a notarized writing to the performance or inducement of the abortion

* Secs. 4 & 5. Adds notice to process for filing for judicial bypass without notice to and the consent of a parent, guardian, or custodian.

*Sec. 6. Requires the court to hold a hearing not later than the third business day after a judicial bypass complaint has been filed. This reduces the deadline from five to three days for expediency purposes.

Sec. 7. Amends provisions for an appeal to a dismissed complaint for judicial bypass by adding notice language and reducing the timeline from four to three days the superior court has to deliver a copy of the appeal to the supreme court.

Sec. 8. Provides for a minor requesting a judicial bypass can request the superior court issue an order directing the minor's school allow the minor to attend a judicial bypass hearing and prohibits the school from notifying the parents, guardian, or custodian

*Sec. 9. This is a new section of the law prohibiting a parent, guardian, custodian, or any other person from coercing a pregnant minor to have an abortion performed. If a minor is denied financial support by the minor's parents, guardian, or custodian due to the minor's refusal to have an abortion performed, the minor shall be deemed emancipated for the purposes of eligibility for public assistance benefits, except that such benefits may not be used to obtain an abortion. As used in this Section "coercion" means restraining or dominating the choice of a minor female by force, threat of force, or deprivation of food or shelter.

Requires physicians to submit monthly reports to the Department Health and Social Service on forms prescribed by the department reporting the following:

1. the number of consents obtained under this law
2. the number of times in which exceptions were made to the consent requirement under this law
3. the type of exception, the minor's age
4. the number of prior pregnancies and prior abortions of the minor

No patient names are to be used on the forms. The Department is required to make a compilation of the data reported available to the public on an annual basis.

***Sec. 10.** Direct court rule change adding notice to consent provisions of Rule 220(a) Rules of Appellant Procedure, scope of judicial bypass appeals. It also contains language cleanup from revisor that replaces "parental consent" with consent of a parent, guardian, or custodian.

***Sec. 11.** Direct court rule change adding notice to consent provisions of Rule 220(c)(1) Rules of Appellant Procedure, notice of judicial bypass appeals. It also contains language cleanup from revisor that replaces "parental consent" with consent of a parent, guardian, or custodian.

***Sec. 12.** Direct court rule change amending Rule 220(h) Rules of Appellant Procedure, constructive order of judicial bypass appeals. It reduces from five to three days the deadline for the appellant to receive a constructive order because the court did not enter an order on an appeal.

***Sec. 13.** Direct court rule change adding "notice" to consent language in Rules of Probate Procedure Rule 20(a), Petition for Judicial Bypass Procedure to Authorize Minor to Consent to an Abortion.

***Sec. 14.** Direct court rule change adding notice to consent provisions of Rule 20(e) Rules of Probate Procedure, Findings and Order of Judicial Bypass Procedure to Authorize Minor to Consent to an Abortion.. It also contains language cleanup from revisor that replaces "parental consent" with consent of a parent, guardian, or custodian.

***Sec. 15.** Direct court rule change adding notice to consent provisions of Ru' 20(i) Rules of Probate Procedure, Findings and Order of Judicial Bypass Procedure to Authorize Minor to Consent to an Abortion. It reduces from five to three days the deadline for the appellant to receive a constructive order because the court did not enter an order on an appeal.

***Sec. 16.** Severability clause.

***Sec. 17.** This Act takes effect within thirty (30) days of its enactment.

ALASKA STATE HOUSE OF REPRESENTATIVES

Contact:

Interim Address:

3340 Badger Road
North Pole, AK 99705
(907)-488-5725
Fax# (907)-488-4271



Session

(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 204

REPRESENTATIVE JOHN COGHILL

SPONSOR STATEMENT

HB 364 Parental Notification and Consent for a Pregnant Minor Aborting an Unborn Child

One-page sponsor statements are the preferred norm, but the issue of parental consent and the eleven-year struggle for protecting parental rights and the thirty-five-year struggle for protecting the right of life for an unborn child requires the complete picture for us to tackle this subject.

On November 2, 2007 in *State of Alaska v. Planned Parenthood of Alaska*, the Alaska Supreme Court, in a 3 – 2 decision, has once again undermined a long line of case law, the intent of the Constitution, and the will of the people of Alaska. HB 364 is a direct response to an active judiciary and an attempt to put this issue to rest once and for all.

The legislature passed the Parental Consent Act (PCA) in 1997. In July of that same year, Alaska Superior Court Judge Sen Tan ruled the law was unconstitutional because "the privacy clause of the Alaska Constitution protects minors as well as adults." The Superior Court did not address whether or not the PCA violated the privacy clause. The State appealed the decision and the Supreme Court ruled that the privacy clause extends to minors unless there is a compelling state interest using the least restrictive means available. The Supreme Court remanded the case back to Sen Tan to hold an evidentiary hearing to determine if PCA furthered a compelling state interest.

In January 2003 the Superior Court held a bench trial spanning almost three weeks to hear evidence regarding the constitutionality of the PCA. In October 2003, Judge Sen Tan ruled the PCA was unconstitutional because it did not further a compelling state interest while using the least restrictive means available. In January 2004 the Superior Court enjoined the State from enforcing the PCA declaring the PCA was unconstitutional under the equal protection and privacy clauses of the Alaska Constitution.

The primary purpose of the right to privacy is to protect Alaskans from "unwarranted intrusions by the State" (*Ravin*, P.2d 514). How can this be interpreted to mean a parent has no say in the approval of a medical procedure for a minor that would result in the termination of an unborn relative? State law already requires parental consent for tattoos, immunization, school use of student information, body piercing, school travel for extra-

curricular activities, marrying, entering the military, and all medical procedures except abortion.

In *Valley Hospital Association v. Mat-Su Coalition for Choice*, (948 P.2d 963 Alaska 1997) the court concluded that a "woman's control of her body, including the choice of whether or when to have children" is most personal and protected under the privacy clause. The decision was based on the "uniquely personal physical, psychological, and economic implications of the abortion decision." However, the *Valley* decision did not address pregnant minors.

In its November 2, 2007 decision, the court agreed with the State that "protecting minors from their own immaturity and aiding parents in fulfilling their parental responsibilities" are "compelling interests." So the issue at hand for the court was whether the PCA was the least restrictive means of achieving the State's compelling interests.

Although we are responding to a judicial body writing law with philosophical vents, HB 364 addresses the legal issues of parental consent in a practical manner based on the historical beliefs of our forefathers. The Parental Consent Act of 1997 was fully compliant with the U.S. Supreme Court precedent *Bellotti v. Baird*, (443 U.S. 622 1979). In essence, the Alaska Supreme Court in its November 2, 2007 decision struck down a decision of the U.S. Supreme Court. Justice Carpeneti eloquently wrote the dissenting decision stating the following:

"Because this court's rejection of the legislature's thoughtful balance is inconsistent with our own case law and unnecessarily dismissive of the legislature's role in expressing the will of the people, I respectfully dissent."

The dissent opinion brought to light the lack of consideration or recognition in case law that "children are not generally considered competent to consent to medical procedures." It brought to light the four exemptions in the PCA, "married minors, ... minors who have been legally emancipated, ... minors who have entered the armed services of the United States, and ... who have become employed and self-subsisting." For those pregnant minors who did not fall into the four exempt categories a judicial bypass provision was provided for appropriate circumstances. It was a process designed to be speedy and cost-free to the child. The PCA called for a five-day response of the court; HB 364 calls for a three-day response. Failure by the court to respond in time would be construed as an act constructive authorization. The judicial bypass requires a sworn statement from the pregnant minor and an adult family member or state agent such as an Office of Children's Services caseworker or law enforcement officer.

Carpeneti discussed the fact that the Court quickly recognized that there was a compelling State interest but failed to "look closely at the nature of the state's and parents' interests" leaving "its constitutional 'balance' one-sided." Carpeneti continues in his dissent to outline case law that creates a judicial history of "treating minors differently from adults," "protecting twelve-year-olds from older teenagers and from their own immaturity in choosing to participate in harmful activity," prohibiting minors from making contract to "smoke cigarettes or drink alcoholic beverages or consent to sexual intercourse. Without a parent's consent they may not become licensed drivers or get married or obtain general medical or dental treatment."

"In sum, the Alaska Parental Consent Act appears to be the product of a concerted effort to make certain that those pregnant girls who are sufficiently mature to make the decision to obtain an abortion on their own are allowed to do so while those who are not sufficiently mature either obtain a parent's consent or, in the case of parental abuse, a judicial determination that the procedure is in their best interest."

In his dissenting opinion, Carpeneti uses the litmus test for parental consent that is required for participation in school field trips to demonstrating the extent to which the State must go to terminate parental rights is his argument:

"In addition to society's interest in protecting children from their own immaturity, we have long held that parents have a fundamental right in raising of their children."

Carpeneti's dissenting opinion determines that the State's compelling interest does outweigh the equal protection and privacy clauses because:

"In sum, the norm in American, and Alaskan, life and law is that the parents are a child's first and most important resource for assistance in decision-making. For that reason, the state's interest in protecting children from the consequences of their own immaturity, and in so doing protecting the health of its children, and its interest in supporting parents' right and duty to guide the upbringing of their children is particularly compelling."

HB 364 enacts the notification process that the Court determined is the least restrictive means of achieving the State's compelling interest but further continues to require parental consent unless the minor chooses a judicial bypass. It leaves intact the four exemptions from parental consent: *married minors, minors who have been legally emancipated, minors who have entered the armed services of the United States, and minors who have become employed and self-subsisting.*

I believe parental consent can still be a part of a three-legged stool that recognizes the State's compelling interest in *"protecting minors from their own immaturity and aiding parents in fulfilling their parental responsibilities."* In addition to parental consent, HB 364 provides for a judicial bypass for sexual abuse cases using a *lower standard than the 1997 PCA Act's clear and convincing* provision, and a provision prohibiting the parents from coercing a pregnant minor to have an abortion.

In an era where government intrusion continues to be an issue with infringement on freedom of speech, removing God from government and schools, Real ID, the Patriot Act, infringement on Second Amendment rights, and now abrogation of parental rights, it is time to reverse the trend and protect those principles our forefathers rooted in government to preserve our freedom.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Sarah Palin, Governor

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-2133
FAX: (907)465-2075

March 13, 2008


The Honorable Les Gara
Alaska State Legislature
Alaska State Capitol, Room 500
Juneau, AK 99801-1182

Re: CSHB 364 (JUD)

Dear Representative Gara:

I am in receipt of your letter dated March 11, 2008, whereby you have requested an opinion on the constitutionality of HB 364 before Friday, March 14, 2008, when the bill is back before the finance committee. It is simply not possible to provide you with a formal or draft opinion by the end of this week. However, as you noted in your letter, the Alaska Supreme Court recently ruled that the previous parental consent law was unconstitutional but describes circumstances under which a notice requirement might pass constitutional muster. Our initial review of the Bill suggests that the notice provisions of HB 364, if severable under section 17 of the bill, would be constitutional, but that the consent provisions continue to be constitutionally dubious. *See, Planned Parenthood v. State*, 151 P.3d 577 (Alaska 2007). It is possible that the recent change in the composition of the court could have bearing on the issues this bill attempts to raise.

Sincerely,


Talis J. Colberg
Attorney General

3/17/08

ON FILE

LIO Mat-Su

From: Alaska Right To Life [prolife@mtaonline.net]
Sent: Monday, March 17, 2008 3:48 PM
To: LIO Mat-Su
Subject: Attn: Judi Re: HB364

3/17/08

To: All in House Finance Pertaining to: HB364
Good Afternoon Chairman Chenault, Chairman Meyer, Vice Chair Stoltze, and all committee members.

My name is Karen Lewis, and I'm the Executive Director for Alaska Right to Life. I'm here to speak on behalf of myself, the Board of Directors for Alaska Right to Life, and over 48 thousand households contained within our database.
Thank you for hearing this vital bill.

Parental notification and consent acts have very strong general support from the American public. Various polls have shown that public support for parental notification and consent legislation is about 75% of those polled.

Currently, there are 35 states that require some parental involvement in a minor's decision to have an abortion. I believe that every state should have laws in place that protect the minor child in peril, and also will protect the family unit that would be negatively affected.

There are over 100 physical complications that can be incurred by abortion. Hemorrhaging and infection are the most common, but cervical damage, scarring or puncturing of the uterine lining, and damage to other organs can occur. These damages can cause problems during subsequent pregnancies. Including pre-mature delivery, which is associated with higher rates of cerebral palsy and various complications that include the brain, bowel, respiratory and eyes. Studies also show a 300%-400% increase in ectopic pregnancies due to abortion. Breast cancer has been linked to abortion; especially for those who have an abortion before their first live birth.

We haven't even touched on the heavy duty psychological damages that abortion inflicts. Studies show that over 90% of aborted women suffer from depression and guilt because of their abortion. Even Planned Parenthood admits that 93% of the women that have had abortions, have post-procedural trauma. Alcohol and drug abuse is prevalent among aborted women, and the suicide rate among women who have had an abortion is 5 times greater than women who have not.

Abortion is the most life changing decision any women, teenaged or any age, will ever make. And to place the full burden of guilt from an abortion on a young, underaged girl, is much too heavy. Parents need to be involved in their children's lives and the choices that come before them... especially the tough ones. That's why we're called parents. It's not only our duty, it's our right.

35 states require some parental involvement in a minor's decision to have an abortion. I'm surprised that all states don't have parental notice/consent legislation in place. It's only wise to protect the youth of this nation.

- Of those: 22 states require parental consent only.
- 11 states require parental notification only.
- 2 states require both consent and notification.
- 35 states include a judicial bypass procedure.

29 states permit a minor to obtain an abortion in a medical emergency.

14 states permit a minor to have an abortion in cases of abuse, assault, incest or neglect.

The following statement is from a brief by a group of California Attorneys:

"To deny parents the opportunity....risks or perpetuates estrangement of alienation from the child when she is in the greatest need of parental guidance and support and denies all dignity to the family."

HB364 is a very good bill. It will protect everyone involved. Please vote yes, and pass it through to the next committee.

I'd like to add one more thought.

Thomas Jefferson made this statement in 1809. He said, "The care of human life and happiness, and NOT their destruction, is the first and only legitimate object of good government."

Thank you for your hard work!

Karen L. Lewis
Exec. Director
Alaska Right to Life
276-1912

3/17/00

Dear Chairman;

I am testifying tonight on behalf of my family, my self, and my husband. My husband is a physician assistant and together we have 7 daughters. They range in age from 33 years down to 3 years.

We, too, trust our children.

We have the experience to trust that minors make immature decisions based on inexperience along with lack of foresight and knowledge. THEREFORE WE TRUST that our minor daughters still need us - our wisdom, experience, and knowledge

We trust that our children are not so different than we were at their age. How many here present hid something from our parents - even things we needed their help for- because we feared to face the consequences for our actions? THEREFORE WE TRUST that neither the state nor the medical profession should interfere with our right to know about, and guide the actions of, our children.

We trust that even our own beloved daughters can get into desperate situations.

One of my minor daughters became involved with what turned out to be a 50 something year old man on the internet. She successfully hid this from us for over a year. Luckily, it was discovered at her school. I was immediately called in to talk with the principal, the district safety officer, and my daughter. My husband and I were able to take immediate steps to protect our daughter, physically and mentally. Was she grateful for this outcome? Did she cooperate with her school and with us? No. She was angry with all of us for finding out and "interfering" in her life. Thankfully, with the laws and regulations on our side in this incident, WE FOUND OUT. What if she had become pregnant by such a man? (This leads to...)

We DO NOT trust that abortion providers, nor the general medical community, are able to take over our responsibilities as parents:

Planned Parenthood of Alaska (I believe in Juneau) showed itself willing to conceal sex between a minor girl and her adult abuser when a caller posing as a minor in just such a situation inquired if PP would have to tell on her. Worse, there are at least 3 or 4 lawsuits currently in the lower 48 against abortion providers (I think Planned Parenthood providers) involving actual cases of egregious sexual abuse of minors wherein the abortion providers aborted the pregnant girls, covered up the abusive relationship, and sent these girls right back into the arms of their abusers.

AND from an article appearing in the "Journal of American Physicians and Surgeons" by Angela Lanfranchi, MD, F.A.C.S. (a clinical assistant professor of surgery at the Robert Wood Johnson Medical School and a private practice specialist in breast surgery):

Well-documented breast physiology accounts for the fact that oral contraceptives and abortion are risk factors for breast cancer. There is an effort to suppress this information by federal agencies and those in academic medicine. (Italics added) (Spring 2008, p. 15)

Finally, will the abortionist be there to notice any post procedural problems? Will the abortionist check for temperature, redness or swelling? Will the abortionist drop by and evaluate any discharge? Will the abortionist personally keep checking on my daughter to see if she had an ectopic pregnancy (and therefore risks her life because she thinks she's no longer pregnant)? Will the abortionist be sent the hospital bills incurred due to any complications?

WITHOUT THIS LAW we wouldn't know to look for all these symptoms. We would remain in ignorance, and our daughter would be needlessly endangered.

I must admit that it seems surreal for me to have to stand here and argue the obvious: ONLY parents have the right and ability to provide intimate and loving guidance for their minor daughters. We can only hope that all legislators of good will act to restore common sense and parental rights by passing HB 364 "Notice and Consent for a Minor's Abortion".

This bill will restore the safeguards of parental wisdom to the daughters
of parents to oversee the medical decisions of their minor children.

I thank you for taking the time to listen to our concerns.

Sincerely,
Heather Andrulli
3815 Tanada Rd.
North Pole, Alaska 99705

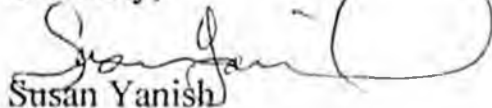
A handwritten signature in cursive script that reads "Heather Andrulli". The signature is written in dark ink and is positioned below the typed name and address.

Dear Alaska Legislature,

As a mother of six children, I am a strong advocate of trust between child and parent. Parental notification is imperative for our state. Children need to be encouraged in every way to trust and rely on their parents and families, who love them and have value their best interests, instead of ill-informed peers or financially motivated clinic workers. Parents are responsible for the well-being of their children. How can I provide for the well-being of my children when I have been eliminated from the equation? Who cares more for my children? I can tell you that I have already made significant sacrifices for my children, and it has not been motivated by financial gain; and I will continue to make sacrifices for my children.

I remain highly suspicious of Planned Parenthood and their claims of motivation to protect my children. How can they be taken seriously when they would sever the bond of trust between parent and child simply so they can make money off the child during a time of crisis? Our Alaskan families deserve better than deceit and cover-ups. Our Alaskan families need to be encouraged to work through difficulties, such as an unplanned teen pregnancy, not try to sweep it under the proverbial carpet of keeping the parents in the dark and performing a major medical procedure, like an abortion. Such a deception will seriously damage the fabric of any family. Our Alaskan families deserve better, our teens deserve better.

Sincerely,



Susan Yanish

March 10, 2008

508 Monroe Street

Fairbanks, Alaska 99701

907-456-2488

D.A. and Frank McGilvary
924 Kellum St. Unit 206
Fairbanks, AK 99701-4374

IN SUPPORT of HB 364.

Let us not forget that the Parents are responsible for their minor children. We must not strip parents of their legal rights or responsibilities. **Alaska voted in favor of parental consent.** The will of the people has been heard. Please pass this bill.

ALASKAN LIVES AND FAMILIES will be positively strengthened by **THE PASSAGE OF HB364**, the **Alaska bill for Parental Consent before teens can obtain an abortion.**

If this bill is NOT passed, it stands to reason that at least some teens will be promiscuous and then obtain abortions without their parents even knowing they were pregnant. For a teen to keep a pregnancy from her parents, then hide an abortion, and subsequently possibly go through a severe personality change without her parents knowing 'Why' is a sure recipe for disaster in that young life, and that of her torn family.

Planned Parenthood and pro-abortion supporters insist that they are worried about the few girls (approximately 2 each year) who come in without their parents. They are ashamed and embarrassed, perhaps afraid, to tell their parents that they got pregnant. This bill actually protects and gives these particular girls the legal help and protection they might need.. By seeking a judicial bypass or going to an Alaskan medical provider to seek help in getting one, these girls will be in contact with professionals, who can put them in contact with social workers. These girls will also go in front of the legal system. If they mention "abuse," or feel abused, the claims will be investigated. If proven, they and their families will get help. The judicial bypass process also protects teens whose parents are trying to force them to abort their babies, against their wills. Having an abortion can interfere in their life later.

Having an abortion is a proven risk factor. It can increase a mother's chances of inflicting future child abuse and neglect. Having an abortion makes these young women the worst of domestic abusers. They will have **KILLED** their own child. Women who didn't get help via the judicial bypass will then have an increased risk of perpetuating abuse. Not having sought help, and having the mental and emotional damage of Post Abortion Syndrome, these young women and their families could be destined to face a lifetime of emotional struggle and bondage, instead of living fruitful, free, and contributing lives.


Frank M. McGilvary


Dorothy S. McGilvary

March 10, 2008

TO: State of Alaska Legislators

RE: HB 364

To all elected legislators of the State of Alaska,

I am in strong support of HB 364.

Failure to pass this legislation will damage and undermine family values in Alaska and abandon our teens to the morals of the world in general.

Thank you for standing strong and passing this necessary bill.

Sincerely,

Signature Anita L Bryan

Name Anita L Bryan

Address P.O. Box 50822

City/Zip North Pole, AK 99705

Phone# 907-488-5293

March 10, 2008

TO: State of Alaska Legislators

RE: HB 364

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I am in strong support of HB 364.

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Thank you for standing strong and passing this necessary bill.

Sincerely,

Signature E. Andrew Bryan II

Name E. Andrew Bryan II

Address P.O. Box 57822

City/Zip Norwalk AK 99705

Phone# 907-488-5293

March 10, 2008

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RE: HB 364

To all elected legislators of the State of Alaska,

I am in strong support of HB 364.

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Thank you for standing strong and passing this necessary bill.

Sincerely,

Signature Robert Falster

Name Robert Falster

Address PO Box 80021

City/Zip Fairbanks AK 99708

Phone# 907-488-6722

March 10, 2008

TO: State of Alaska Legislators

RE: HB 364

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I am in strong support of HB 364.

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Thank you for standing strong and passing this necessary bill.

Sincerely,

Signature Pam Balster

Name Pamela Balster

Address PO Box 80021

City/Zip FBKs AK 99708

Phone# 4886722

March 10, 2008

TO: State of Alaska Legislators

RE: HB 364

To all elected legislators of the State of Alaska,

I am in strong support of HB 364.

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Thank you for standing strong and passing this necessary bill.

Sincerely,

Signature Thomas D Ertel

Name Tom Ertel
Address 830 Lakloey Dr
City/Zip North Pole, AK 99705
Phone# 907-488-1995

March 10, 2008

TO: State of Alaska Legislators

RE: HB 364

To all elected legislators of the State of Alaska,

I am in strong support of HB 364.

Failure to pass this legislation will damage and undermine family values in Alaska and abandon our teens to the morals of the world in general.

Thank you for standing strong and passing this necessary bill.

Sincerely,

Signature Rachel Frame (TEEN)

Name Rachel Frame (7/19/90)

Address 4517 Melan Dr. South

City/Zip Fairbanks

Phone# 490-2152

March 10, 2008

TO: State of Alaska Legislators

RE: HB 364

To all elected legislators of the State of Alaska,

I am in strong support of HB 364.

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Thank you for standing strong and passing this necessary bill.

Sincerely,

Signature Laura Frame (TEEN)

Name Laura Frame (10-24-91)

Address 4517 Melan Dr S

City/Zip Fairbanks 99712

Phone# 490-2152

March 10, 2008

TO: State of Alaska Legislators

RE: HB 364

To all elected legislators of the State of Alaska,

I am in strong support of HB 364.

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Thank you for standing strong and passing this necessary bill.

Sincerely,

Signature



Name

Jo A. Frame

Address

4517 Melan Dr. S

City/Zip

Fairbanks AK 99712

Phone#

907-490 2152

March 10, 2008

TO: State of Alaska Legislators

RE: HB 364

To all elected legislators of the State of Alaska,

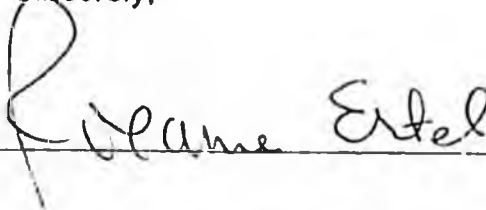
I am in strong support of HB 364.

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Thank you for standing strong and passing this necessary bill.

Sincerely,

Signature

A handwritten signature in cursive script that reads "Roxanne Ertel". The signature is written over a horizontal line.

Name

Roxanne Ertel

Address

830 Lukloey Dr.

City/Zip

North Pole, AK 99705

Phone#

907-488-1995

March 10, 2008

TO: State of Alaska Legislators

RE: HB 364

To all elected legislators of the State of Alaska,

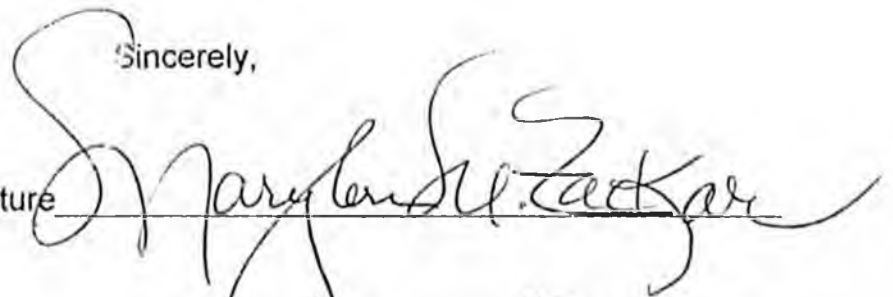
I am in strong support of HB 364.

Failure to pass this legislation will damage and undermine family values in Alaska and abandon our teens to the morals of the world in general.

Thank you for standing strong and passing this necessary bill.

Sincerely,

Signature



Name Marylou M. Zack AR

Address 3875 GEIST Rd. #E22.3

City/Zip Fairbanks AK 99709

Phone# (907) 479-5519

March 10, 2008

TO: State of Alaska Legislators

RE: HB 364

To all elected legislators of the State of Alaska,

I am in strong support of HB 364.

Failure to pass this legislation will damage and undermine family values in Alaska and abandon our teens to the morals of the world in general.

Thank you for standing strong and passing this necessary bill.

Sincerely,

Signature Adam M. Christensen

Name Adam M. Christensen
Address 3875 Geist Rd #E223
City/Zip FAIRBANKS AK 99709
Phone# 479-5519

March 10, 2008

TO: State of Alaska Legislators

RE: HB 364


To all elected legislators of the State of Alaska,

I am in strong support of HB 364.

Failure to pass this legislation will damage and undermine family values in Alaska and abandon our teens to the morals of the world in general.

Thank you for standing strong and passing this necessary bill.

Sincerely,

Signature 

Name Benjamin W. Christenson

Address 3875 Geist Rd. #E 253

City/Zip Fairbanks AK 99709

Phone# 322-4331

March 10, 2008

TO: State of Alaska Legislators

RE: HB 364

To all elected legislators of the State of Alaska.

I am in strong support of HB 364.

Failure to pass this legislation will damage and undermine family values in Alaska and abandon our teens to the morals of the world in general.

Thank you for standing strong and passing this necessary bill.

Sincerely,

Signature Jessica Christenson

Name JESSICA CHRISTENSON

Address 3875 GOIST RD #E 253

City/Zip FAIRBANKS AK 99709

Phone# 347-9916

March 10, 2008

TO: State of Alaska Legislators

RE: HB 364

To all elected legislators of the State of Alaska,

I am in strong support of HB 364.

Failure to pass this legislation will damage and undermine family values in Alaska and abandon our teens to the morals of the world in general.

Thank you for standing strong and passing this necessary bill.

Sincerely,

Signature Martha Christensen

Name Martha Christensen

Address 3875 GEIST RD #E223

City/Zip FAIRBANKS

Phone# 479-5519