

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

9868

HOUSE JUDICIARY

HB

354

CS FOR HOUSE BILL NO. 354()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE BRICE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to criminal sexual inducement of a minor and to criminal
2 sentencing."

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

4 * **Section 1.** AS 11.41 is amended by adding a new section to read:

5 **Sec. 11.41.452. Criminal sexual inducement of a minor.** (a) A person
6 commits the crime of criminal sexual solicitation of a minor if, being 18 years of age
7 or older, the offender engages in a course of conduct with a person who the offender
8 believes is under 16 years of age and at least three years younger than the offender
9 with the intent to induce the person to engage in sexual penetration or sexual contact
10 or conduct described in AS 11.41.455(a)(1) - (7) with the offender or another person.

11 (b) In a prosecution under this section, it is not a defense that the victim was
12 not actually under 16 years of age or at least three years younger than the offender.

13 (c) Criminal sexual inducement of a minor is a class C felony.

14 * **Sec. 2.** AS 12.55.155(c) is amended by adding a new paragraph to read:

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(30) the defendant was convicted of the offense of sexual abuse of a minor under AS 11.41.434 - 11.41.440, attempted sexual abuse of a minor, solicitation of sexual abuse of a minor, or criminal sexual inducement of a minor and, before or during the offense, provided to the minor materials described in AS 11.41.455(a)(1) - (7).

*Sec. 1. AS 11.31.110(c) is amended to read:

(c) Except as provided in (e) of this section, solicitation [SOLICITATION] IS

(1) an unclassified felony if the crime solicited is murder in the first degree;

(2) a class A if the crime solicited is an unclassified felony other than murder
in the first degree;

(3) a class B felony if the crime solicited is a class A felony;

(4) a class C felony if the crime solicited is a class B felony;

(5) a class A misdemeanor if the crime solicited is a class C felony;

(6) a class B misdemeanor if the crime solicited is a class A or class B
misdemeanor.

*Sec. 2. AS 11.31.110 is amended by adding a new section to read:

(e) If the crime solicited is sexual abuse of a minor under AS 11.41.434 -
11.41.440, or unlawful exploitation of a minor under AS 11.41.455, solicitation to
commit the crime is the same classification as the crime solicited if the person uses a
computer, computer system, computer program, computer network, or any part of a
computer system or network in the commission of the offense.



Representative Tom Brice
ALASKA STATE LEGISLATURE

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MEMORANDUM

To: Representative Pete Kott
Chair, Judiciary Committee

From: Representative Tom Brice 

Date: February 15, 2000

RE: HB 354: An Act Relating to Criminal Sexual Inducement of a Minor, and to
Distribution of Pornography to Minors

I respectfully request HB 354 be set on for a hearing. Please find attached a sponsor statement, section analysis (by Rep. Brice's staff), and other pertinent information regarding HB 354.

Briefly, the purpose of this bill is to prohibit adults from soliciting minors over the internet for sexual purposes and to prohibit adults from providing minors pornographic materials.

Please let me know if there is any other information I can provide.





Representative Tom Brice

ALASKA STATE LEGISLATURE

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Sponsor Statement

HB 354, An Act relating to Criminal Sexual Inducement of a Minor, and to Distribution of Pornography to Minors.

The Internet, or Information Superhighway, has enabled many people to gain greater access to information and faster communication. Unfortunately, this same superhighway provides adults who are inclined to abuse children greater, simpler, and easier access to children. These adults "troll" the highway to locate unsuspecting minors. They enter into teen "chat rooms" and represent themselves to be teens and develop friendships with them by discussing issues of interest to teens. After time the conversations become more personal and eventually of a sexual nature. The unscrupulous adult then solicits the teen to meet with him/her to engage in sexual acts.

HB 354 addresses this problem. It provides an avenue to prosecute an adult (over 18) who engages in a course of conduct with a minor (a person who the adult believes is under 16 and three years younger than the adult) with the intent to induce the minor to engage in sexual acts. These sex acts include sexual penetration, sexual contact and other acts which are described in AS 11.41.455 – a statute passed by the legislature in 1978.

While the focus of this statute is to stop solicitation of minors over the internet and it is anticipated that will be the media through which most of the illicit communication occurs the statute does not specifically refer to the internet nor does it limit the communication to the internet. It is written sufficiently broad to include solicitation through the mail or telephone. It is expected the pattern of these cases would be initial contact over the Internet, with a potential for the subsequent use of phones or mail or other types of contact.

HB 354 would prevent the provision of pornography to minors. In light of the recent technological advances including the Internet and digital photography, creating and distributing these materials is much easier and can be done with far less risk to their purveyors. The process by which an adult prepares a minor for his/her advances is called grooming. On some occasions this grooming includes showing the minor photos of or other materials describing people engaging in similar acts. Presently, the law prevents the possession and/or distribution of child pornography, that is, photos of children engaging in sexual acts. Current law does not prohibit provision of pornography to children. Individuals often escape prosecution for possession of what appears to be child pornography as the materials are boldly labeled "not using persons under 18". Yet these materials are used to entice and groom minors. This bill prohibits the provision of pornographic materials to minors, regardless of the claimed age of the actors. The definition of pornography in HB 354 is drawn from the definitions used in the current statutes regarding child pornography.



Sectional Summary of HB 354

Section 1, Creates a crime called "Criminal Sexual Inducement of a Minor". The elements of this offense are defined as: a) an adult [18 or older]; b) knowingly; c) engaging in a course of conduct; d) with a minor [under 16 and three years younger than the adult]; e) with the intent to induce the minor to engage in sexual acts. The ages of the adult and minor are patterned after and consistent with the current sexual abuse statutes. The prohibited sexual acts include sexual penetration and sexual contact which are presently defined by statute as well as sexual conduct described in the offense called Unlawful Exploitation of a Minor, AS 11.41.455. Criminal Sexual Inducement of a Minor would be C felony.

Section 2, Creates a crime called "Distribution of Pornography to Minors". The elements of this offense are defined as: a) an adult [18 or older]; b) knowingly; c) provides to or communicates with minors [under 16 and three years younger than the adult] materials that are or describe or discuss pornographic conduct. The section does not apply to distributions or material used for educational or therapeutic purposes nor does it apply to the distribution of motion pictures by a motion picture theatre. The definition for pornography taken from the definition found in AS 11.41.455, however but broadens it to include both children and adults. Distribution of Pornography to Minors would be a class B felony

Section 3, Adds a violation of 11.61.128 (distribution of pornography to minors) to the list of the crimes which fit the definition of a sex offense and thereby required to register as a sex offender. It should be noted that 11.41.452 would be included in this list as well. However, the statute presently provides that persons who commit crimes under "AS 11.41.450 - 11.41.458 must register. Criminal Sexual Inducement of a Minor is numbered within this range and therefore there is no need to amend that subsection of the registration statute

FAIRBANKS

Daily News - Miner

Sunday, January 30, 2000

Man faces sex abuse charges

By Staff report

A Fairbanks grand jury this past week indicted a Fort Wainwright man on charges that he sexually assaulted a teenage girl in North Pole.

Miguel Duque, 36, was indicted on charges of sexual abuse of a minor in the second degree, sexual abuse of a minor in the third degree, second degree sexual assault, and third-degree sexual assault.

Duque had apparently met a friend of the girl's in an Internet chat room, where he went by the name Macdaddy, Alaska State Troopers said.

In October he allegedly drove the girls either to a gravel pit or to the end of a road in North Pole, where he supplied them with alcohol, troopers said. One of the charges alleges that the girl was intoxicated at the time of the assault.

Troopers had thought the man's name might have been "Mike," and they had been looking for him over the past three months. They discovered his identity with the help of tips that came in after they distributed the man's description to the media earlier this month.

Anchorage Daily News

Eielson Airmen Face Sex Charges

By JON LITTLE
Daily News Peninsula Bureau

SOLDOTNA - Police investigators say two Fairbanks men drove some 500 miles for a night of sex in a Soldotna motel room with a couple of 14- and 15-year-old girls they met over the Internet.

The suspects, Eielson Air Force Base airmen Angel R. Berrios, 25, and Jeremy Nguyen, 20, were indicted Friday on three counts each of sexual abuse of a minor. Kenai Superior Court Judge Jonathan Link issued an arrest warrant for the men Tuesday. They were to be held on \$10,000 cash bail. Neither had been arrested by Wednesday evening, according to Eielson spokesman Master Sgt. Christopher Shock.

In addition to the abuse charges, the men were indicted on two misdemeanor charges each of furnishing alcohol to a minor.

Nguyen apparently struck up a relationship over the Internet with one of the girls, possibly through a chat room, said Soldotna Police Chief Shirley Warner, who investigated the case. The two then talked on the telephone and made arrangements to meet at Soldotna's King Salmon Motel over Labor Day weekend, Warner said. Police say Nguyen and Berrios spent the night of Sept. 4 with the girls.

Warner said she could not comment further about the computers that were used or how the men hooked up with the girls over the Internet.

"Since chat rooms have become available, I think this kind of thing happens," she said. "I don't think it's anything new."

Not only is the problem of sexual predators on the Internet not new, it is growing, said Lt. Mike Marrs, who supervises the Alaska State Troopers' Criminal Investigation Unit. Predators scan chat rooms, often in the guise of a teenager, looking for victims, he said. Giving out phone numbers is a bad idea, he said. "Some relationships work out fine, but you have to be extremely careful until you know exactly who you're dealing with."

Warner said the recent indictments might serve as a wake-up call to families.

"I think this is a case where the information needs to get out to parents that this type of thing happens, so they can provide a safeguard to protect their kids," Warner said. While parents cannot watch what their children are doing 24 hours a day, Marrs said they still can talk to their kids about the dangers. "They have to educate their children, make them understand that not all is good out there, even though it may seem that way," he said.

Last week's indictments came about after the girls' parents started asking questions, Warner said. "We did have some parents who were on the ball and had a suspicion that things were going on and gave us the call," she said.

* Reporter Jon Little can be reached at jlittle@adn.com

HB

357

Testimony

1:30 Monday, March 6 in Judiciary

- **Franklin Terry Elder: Will Attend Meeting**
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ALASKA STATE LEGISLATURE

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MILITARY AND VETERANS AFFAIRS

Member:
JUDICIARY
COMMUNITY AND REGIONAL AFFAIRS
LABOR AND COMMERCE



REPRESENTATIVE LISA MURKOWSKI

Government Hill • Elmendorf • East Anchorage

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Sponsor Statement HB 357

" An Act Relating to the redemption of shares of certain Alaska corporations."

House Bill 357 allows for the redemption of preferred stock at the discretion of the shareholder. By providing this option, Alaska corporations are given an alternative to raise funds and Alaskan investors are given an expanded investment opportunity. As the Alaska Corporate Code stands now, redemption of preferred shares is only at the option of the issuer.

The right to have stock redeemed under specific conditions is an important commercial term in a sale to a holder, a provision commonly included in the sale of redeemable preferred stock. This share redemption right gives the holder an avenue to get the holder's cash back under terms negotiated with the issuing corporation.

With the enactment of this bill, share redemption would continue to be subject to other provisions of the code. For example, redemption is prohibited if the amount of the corporation's retained earnings immediately before the proposed distribution does not equal or exceed the amount of the proposed distribution. These restrictions on distributions are codified as AS 10.06.358.

The Alaska Corporations Code is modeled, in part, after the California Corporations Code which has been amended and expanded to allow issuance of stock that is redeemable under circumstances other than at the option of the issuing corporation. For example, in the case of preferred stock, share redemption is allowed at the option of the holder. A number of other states allow issuance of stock under conditions as provided in the proposed changes to the Alaska Corporations Code. These proposed changes would bring Alaska law in line with these other states and promote commerce in Alaska.

I urge your support of HB 357.

FISCAL NOTE

Bill Version: HB 357

(H) Publish Date: 2/28/00

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected Community & Econ. Dev.
 Title Redemption of shares of certain AK Corporations BRU Banking, Securities, and Corporations
 Component Banking, Securities, and Corporations
 Sponsor Rep. Murkowski
 Requester H L&C Component Serial No. 1233

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY00) cost: _____

POSITIONS

Full-time					
Part-time					
Temporary					

ANALYSIS: (Attach a separate page if necessary)

The division does not anticipate any fiscal impact with this proposed legislation.

Prepared by Franklin T. Elder, Director
 Division Banking, Securities and Corporations
 Approved by Commissioner Deborah B. Sedwick
 Agency Community and Economic Development

Phone 465-2521
 Date/Time 2/24/00 8:24 AM
 Date 2/24/00

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Sectional Analysis of HB 357

Section 1:

- Provides drafting style corrections to make specific reference to AS 10.06.325

Section 2:

- Provides that a corporation may through its articles of incorporation, establish common shares that are redeemable either at the option of the corporation or on the happening of specified events.
- Provides that preferred shares are redeemable at the option of the corporation, on the happening of a specified event, at the option of the holder, or upon vote of the shareholders.

Section 3:

- Eliminates the prohibition against share redemption at the option of the holder.
- Clarifies existing law as to share redemption involving an open-end investment company.

Section 4:

- Establishes general guidelines to be followed in share redemption.
- Clarifies that AS 10.06.325 is the only manner by which a corporation may issue redeemable shares notwithstanding the provisions of AS 10.06.375 which allow a corporation to impose additional restriction on share redemption.

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STATEMENT OF TESTIMONY IN SUPPORT SHARE REDEMPTION BILL (HB 357)

Submitted Before the
House Labor and Commerce Committee
on
February 25, 2000

Members of the committee, my name is Julius J. Brecht. I am an attorney and the managing shareholder of the law firm of Wohlforth, Vassar, Johnson & Brecht, A Professional Corporation having offices in Anchorage, Alaska. I am a past director of the Alaska Division of Banking, Securities and Corporations, serving from 1976 through 1980. Since then I have been in private practice in Anchorage, Alaska. My law practice is in the area of business law with a focus on securities, corporate and finance law.

I participated in the development and, later, the review of proposals for a new Alaska corporate code in the late-1970s and through the 1980s. That ten year effort resulted in a bill being enacted by the Alaska Legislature which became the Alaska Corporations Code, effective July 1, 1989. That code is codified at AS 10.06.

As comprehensive as was the effort to prepare and enact the Alaska Corporations Code, the needs of corporate law do change with time. For example, the Alaska Corporations Code provisions on redemption of shares found at AS 10.06.325 was based upon a similar provision of the California Corporation Code at that time. California law had, for some time, prohibited shares which are redeemable at the option of the holder, with limited exception. However, in 1983, the California Corporations Code was changed expressly to allow share redemption at the option of the holder.

HB 357 provides for amendment of the Alaska Corporations Code pertaining to share redemption of an Alaska corporation. The primary focus of the bill is on changes to AS 10.06.325. At present, Section 325 allows share redemption at the option of the

issuing corporation. However, it prohibits an Alaska corporation from selling stock that includes a right in the holder of the stock to require the corporation to redeem the stock.

The bill expands the circumstances under which share redemption may occur. The right to have stock redeemed under specific conditions is an important commercial term in a sale of stock to a holder. It is a provision commonly included in the issuance and sale of redeemable preferred stock. It gives the holder a mechanism for the return of the holder's investment under terms as negotiated with the corporation.

The changes to AS 10.06.325 proposed in HB 357, in major part, simply revise Alaska corporate law to reflect the same changes adopted in California relating to share redemption at the option of the holder. A number of other states, which have become commercial centers in this country, have similar provisions regarding share redemption at the option of the holder. Based upon my limited review of a small portion of those commercial states, I found that, in addition to California, the states of Michigan, Ohio, Connecticut, Delaware and New Jersey have similar provisions.

Even with enactment of HB 357, a share redemption right would continue to be subject to other provisions of the code which preclude the exercise of the redemption right under certain circumstances. A distribution to a corporation's shareholders, e.g., as a result of an exercise of share redemption rights, is prohibited unless certain conditions are met. Those conditions are that the amount of the corporation's retained earnings immediately before the proposed distribution equals or exceeds the amount of the proposed distribution or otherwise satisfies conditions on distributions set forth in the code. These restrictions on distributions are codified at AS 10.06.358.

In my view, the proposed changes to Section 325 do not lessen the provisions of the code protecting shareholders of the corporation. However, the proposed changes will

allow greater flexibility to a corporation's board of directors in addressing capital needs in present day financial markets.

The other provisions of HB 357 make other changes to the Alaska Statutes to accommodate these primary changes to Section 325. I have prepared a brief section-by-section outline of the provisions of the bill. It is attached to this statement of testimony.

In summary, the Alaska Corporations Code is, in my view, presently in need of amendment to recognize the needs of modern corporations, while retaining shareholder protection as already adopted in other commercial states. Specifically, that amendment is needed to incorporate changes to code provisions of California on which Section 325 is based.

Thank you for the opportunity to present this testimony before the committee.

STATEMENT OF TESTIMONY IN SUPPORT OF THE SHARE
REDEMPTION BILL (HB 357)

Submitted Before the
House Labor and Commerce Committee
On
February 25, 2000

Members of the committee, my name is John M. Lowber. I am a Senior Vice President and the Chief Financial Officer for General Communication, Inc. and its Subsidiaries and have been serving in that capacity for nearly fifteen years. I am also a certified public accountant in the state of Alaska. In my capacity as Chief Financial Officer, it is my responsibility to raise various types of debt and equity financing necessary to meet the requirements of GCI's continuously evolving business plans.

My interest in the proposed revision to the Alaska Corporations Code is based on my recent experience negotiating the terms of a preferred stock transaction.

During the spring of 1999, GCI became interested in raising a modest amount of additional capital in order to fully implement its business plan for the remainder of 1999. Our interest in raising additional capital led us to negotiate with a couple of investors willing to purchase convertible preferred stock of GCI. The company and the potential investors negotiated and executed a term sheet, and attorneys began preparing definitive agreements. It was during this process that it was brought to my attention that, unlike that of many other states, Alaska law does not allow the sale of securities that are redeemable at the option of the holder.

In a normal situation, an investor buys convertible securities that can be exchanged for a fixed number of shares of common stock. As the value of the underlying common stock increases, so does the likelihood that the convertible security will be converted into common stock. The investors' expected strategy is to convert to common stock, usually at a premium to the market price at the time of the initial investment, and then sell the common stock in order to realize the gain on the investment. Oftentimes, the security will provide for an interest element to go along with the conversion feature. The investor enjoys a current return on his or her investment while at the

same time sharing in the upside potential posed by an increase in the value of the common stock.

An investor will generally require protection in the event that the underlying stock does not appreciate or in fact, depreciates. This protection is usually in the form of a redemption option. Should things not materialize as planned, the investor would have the right, under previously negotiated conditions, to ask the Company to redeem the shares. The right to request redemption under certain circumstances provides comfort to the investor that the monies invested will be returned. Absent such a right, the investor would likely require an increased return to compensate for the perceived increase in risk. An increased return to the investor equates to a higher cost of capital to the issuer.

This bill will help Alaska companies raise capital in an increasingly competitive marketplace. Without that opportunity, Alaskan businesses will have an increasingly hard time raising capital to invest in their Alaskan business. Alternatively, businesses may find it necessary to incorporate in other states, driving the services which support incorporation to those states. It is my belief that the legislature should do what it can to eliminate any competitive disadvantages that might arise as a result of incorporating in Alaska

Thank you for your consideration.

WOHLFORTH, VASSAR, JOHNSON & BRECHT
A PROFESSIONAL CORPORATION

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March 3, 2000

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Representative Pete Kott, Chair
House Judiciary Committee
House of Representatives, State Capitol, Room 118
Juneau, Alaska 99801-1182

Re: Statement in Support of HB 357 -- Share Redemption Bill

Dear Representative Kott:

Please find enclosed a statement of testimony which I respectfully submit to the House Judiciary Committee pertaining to SB 357, an act relating to the redemption of shares of certain Alaska corporations.

I am an attorney in private practice and managing shareholder of my firm in Anchorage. I am a past director of the Alaska Division of Banking, Securities and Corporations, serving from 1976 through 1980. Since then, I have been in private practice in Anchorage. My law practice is in the area of business law, with a focus on securities, corporate and finance law. In particular, I have represented General Communication, Inc. on corporate and securities matters for a number of years, including the present share redemption statutory amendment.

It is my understanding that the committee intends to hold hearings on this bill at 1 p.m. on March 6, 2000. I request the opportunity to offer testimony to the committee via teleconference from Anchorage.

Sincerely,

WOHLFORTH, VASSAR
JOHNSON & BRECHT



Julius J. Brecht

JJB/neb

Enclosure(s)

STATEMENT OF TESTIMONY IN SUPPORT SHARE REDEMPTION BILL (HB 357)

**Submitted Before the
House Judiciary Committee
on
March 6, 2000**

Chairman Kott and members of the committee, my name is Julius J. Brecht. I am an attorney and the managing shareholder of the law firm of Wohlforth, Vassar, Johnson & Brecht, A Professional Corporation having offices in Anchorage, Alaska. I am a past director of the Alaska Division of Banking, Securities and Corporations, serving from 1976 through 1980. Since then I have been in private practice in Anchorage, Alaska. My law practice is in the area of business law with a focus on securities, corporate and finance law.

Thank you for the opportunity to appear before the committee to offer testimony on HB 357, a bill relating to share redemption.

I participated in the development and, later, the review of proposals for a new Alaska corporate code in the late-1970s and through the 1980s. That ten year effort resulted in a bill being enacted by the Alaska Legislature which became the Alaska Corporations Code. That code became effective July 1, 1989 and is codified at AS 10.06.

As comprehensive as was the effort to prepare and enact the Alaska Corporations Code, the needs of corporate law do change with time. For example, the code provisions on redemption of shares found at AS 10.06.325 was based upon a similar provision of the California Corporations Code at that time. California law had, for some time, prohibited shares which are redeemable at the option of the holder, with limited exception. However, in 1983, the California code was changed expressly to allow share redemption at the option of the holder.

HB 357 provides for amendment of the Alaska Corporations Code pertaining to share redemption of an Alaska corporation. The primary focus of the bill is on changes to AS 10.06.325. At present, Section 325 allows share redemption at the option of the issuing corporation. However, it prohibits an Alaska corporation from selling stock that includes a right in the holder of the stock to require the corporation to redeem the stock.

The bill expands the circumstances under which share redemption may occur. The right to have stock redeemed under specific conditions is an important commercial term in a sale of stock to a holder. It is a provision commonly included in the issuance and sale of redeemable preferred stock. It gives the holder a mechanism for the return of the holder's investment under terms as negotiated with the corporation.

The changes to AS 10.06.325 proposed by the bill before the committee, in major part, simply revise Alaska corporate law to reflect similar changes adopted in California relating to share redemption at the option of the holder. A number of other states, which have become commercial centers in this country, have similar provisions regarding share redemption at the option of the holder. Based upon my limited review of a small portion of those commercial states, I found that, in addition to California, the states of Michigan, Ohio, Connecticut, Delaware and New Jersey have similar provisions.

Even with enactment of HB 357, a share redemption right would continue to be subject to other provisions of the code which preclude the exercise of the redemption right under certain circumstances. A distribution to a corporation's shareholders, e.g., as a result of an exercise of share redemption rights, is prohibited unless certain conditions are met. Those conditions are that the amount of the corporation's retained earnings immediately before the proposed distribution equals or exceeds the amount of the proposed distribution or otherwise satisfies conditions on distributions set forth in the code. These restrictions on distributions are codified at AS 10.06.358.

In my view, the proposed changes to Section 325 do not lessen the provisions of the code protecting shareholders of the corporation. However, the proposed changes will allow greater flexibility to a corporation's board of directors in addressing capital needs in present day financial markets.

The other provisions of HB 357 make other changes to the Alaska Statutes to accommodate these primary changes to Section 325. I have prepared a brief section-by-section outline of the provisions of the bill. It is included with this statement of testimony.

In summary, the Alaska Corporations Code is, in my view, presently in need of amendment to recognize the needs of modern corporations, while retaining shareholder protection as already adopted in other commercial states. Specifically, that amendment is needed to incorporate changes to code provisions of California on which Section 325 is based.

Again, thank you for the opportunity to present this testimony before the committee. I am available should you have questions about the bill.

The following is a brief outline of the specific provisions of the share redemption bill (HB 357) submitted to the Alaska legislature in January 2000:

- **Section 1 of the bill –**
 - *Provides* drafting style correction to make specific reference to AS 10.06.325

- **Section 2 of the bill –**
 - *Provides* a corporation may through its articles establish common shares that are redeemable, under either of the following –
 - At option of the corporation (present Alaska law)
 - On the happening of specific events (new separate provision, follows California law)
 - *Provides* a corporation may through its articles establish preferred shares that are redeemable under any of the following –
 - At the option of the corporation (present Alaska law)
 - On the happening of specified events (new separate provision, follows California law)
 - At the option of the holder (new provision, follows California law)
 - Upon vote of shareholders (new provision, follows California law)

- **Section 3 of the bill –**
 - *Eliminates* prohibition against share redemption at holder option (follows California law)
 - *Clarifies* existing law as to share redemption involving an open-end investment company

- **Section 4 of the bill (new provisions) –**
 - *Establishes* guidelines for share redemption (Subsection (d), follows California law) –
 - Must state terms and conditions in articles
 - For partial share redemption, must state share selection method in articles
 - Exception – Share redemption at option of corporation (covered by AS 10.06.385)
 - *Clarifies* AS 10.06.325 is only way to issue redeemable shares (Subsection (e)) –
 - Notwithstanding provisions of AS 10.06.375 allowing a corporation to impose "additional restriction" on share redemption

HB

359

FISCAL NOTE

Bill Version: HB 359

BI (H) Publish Date: 2/9/00

STATE OF ALASKA 2000 LEGISLATIVE SESSION

Revision Date/Time: _____ Dept Affected: Natural Resources
 Title: Notice Requirements for Oil and Gas Final BRU: Minerals, Land & Water Development
 Findings: Administrative Appeals Component: Director's Office
 Sponsor: Rules Committee
 Requestor: Governor Component No: 2440

Expenditures/Revenues (Thousands of Dollars)
 Note: Amounts do not include inflation unless otherwise noted below.

	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
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
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: \$ N/A

POSITIONS

	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS:

(Attach a separate page if necessary)

This bill can be implemented without cost. Secs. 1-3 apply to appeals of decisions by all divisions in DNR, including the Division of Mining, Land and Water. They allow an aggrieved person to ask for the commissioner's review, but only one time (either by appealing to the commissioner, or by requesting the commissioner's reconsideration). Previously some aggrieved parties have appealed to the commissioner, received an adverse decision from the commissioner, then immediately asked him to reconsider that decision. In the meantime, the decision was put on hold. Eliminating the duplicative review might not save appreciable staff time, as the reconsideration decision was usually very similar to the appeal decision, but will shave 30 days off the permit process in controversial cases.

Prepared by: Robert M. Loeffler Phone: 269-8600
 Division: Mining, Land and Water Date: 31-Jan-00
 Approved by Commissioner: John Shively Date: 1-31-2000
 Agency: Natural Resources

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Department of Natural Resources
HB 359 Notice and Administrative Appeals

HB 359 is "An Act relating to notice requirements for certain final findings concerning the disposal of an interest in state land or resources for oil and gas; relating to administrative appeals and petitions for reconsideration of decisions of the Department of Natural Resources; and providing for an effective date."

HB 359 will create a uniform procedure for appeals of decisions made by the Department of Natural Resources. These changes will simplify the appeal process for applicants, departmental employees, and the public, reducing the risk of errors. The uniform appeal process will also confirm that people have the right to challenge DNR's appeal decision in court.

The bill's uniform appeal process is modeled on legislation already in place for DNR "disposal" decisions. (These are the written findings DNR must issue for public comment before it can make a final decision to sell state land or interests in land, such as oil and gas leases or timber contracts.) It provides for disputes over DNR decisions to be taken straight to the DNR commissioner. However, it allows only one administrative review by the commissioner: a person who disagrees with DNR's action will file either an appeal or a reconsideration request, but not both. The filing period for a reconsideration request will be 20 days, the same period allowed to request reconsideration of a disposal decision under AS 38.05.035, instead of the 15-day deadline generally applicable under AS 44.62.540. A person who is still aggrieved by the commissioner's final decision on the appeal or reconsideration request can then challenge it in Superior Court.

Under existing law for DNR actions other than disposal decisions, there can be as many as three layers of administrative review: first an appeal to a division director, then an appeal to the commissioner, and finally a reconsideration request, which must be filed within 15 days instead of 20. HB 359 will replace this duplicative, complex process with one that has been successfully used for major DNR disposal actions since 1994.

HB 359 will also correct a flaw in DNR's public notice law, AS 38.05.945, by removing a special requirement for final decisions on oil and gas lease sales. The change will leave intact two other public notice provisions relating to oil and gas lease sales:

- When DNR issues a proposed oil and gas lease sale decision, AS 38.05.945 directs DNR to give public notice at the beginning of the comment period, notifying the public of its right to comment. This requirement will not change.
- After the final lease sale decision has been made (including the resolution of any administrative appeals), AS 38.05.945 directs DNR to give notice of the lease sale itself, so that prospective bidders may prepare for the sale. This requirement will not change.

However, between these two stages, AS 38.05.945 literally requires DNR to give notice of the issuance of the final decision "at least 30 days before the action." Advance notice that DNR plans to issue a final decision a month later does not serve any apparent purpose. More importantly, if the comment period is still underway when this "notice of final decision" appears in the newspaper, the public may be confused into thinking that the decision has already been made, and that there is no point in commenting or testifying on the proposed lease sale. HB 359 will correct this problem by removing the separate requirement for

notice of the final decision. (Under other applicable law, AS 38.05.035(e)(5), DNR must make the final disposal decision available to the public at least 90 days before the lease sale. As part of this duty, DNR gives notice to everyone who timely commented or testified on the proposal. Only those who timely commented or testified have the right to appeal the final decision under AS 38.05.035(i).)

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FAX: (907) 465-3886

3601 C STREET, SUITE 1210
ANCHORAGE, ALASKA 99503-5921
PHONE: (907) 269-8431
FAX: (907) 269-8918

March 28, 2000

The Honorable Pete Kott
Chair, Judiciary
Alaska State Legislature
State Capitol, MS 3101
Juneau, AK 99801-1182

Dear Representative Kott:

The Department of Natural Resources requests a House Resources Committee hearing on HB 359.

HB 359 is directed toward streamlining DNR administrative appeals and reconsiderations and Oil and Gas notice requirements. This bill would remove a redundant notice requirement and standardize the administrative appeal and reconsideration process across all DNR decisions.

Thank you for your consideration of this request. It is very important that the state implement efficiencies whenever possible. I look forward to discussing this bill with your committee. If you need additional information concerning HB 359, please call my office at 465-2400.

Sincerely,



John T. Shively
Commissioner

cc: Carol Carroll
Legislative Liaison

Enc.

"Develop, Conserve and Enhance Natural Resources for Present and Future Alaskans"

HB

366

HB 366

TONY KNOWLES
GOVERNOR
governor@gov.state.ak.us

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Juneau, Alaska 99801-1000
1907 465 3500
Fax 1907 465 3512
www.governor.state.ak.us

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 10, 2000

The Honorable Brian Porter
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Porter:

The Victims' Rights Amendment (art. I, sec. 24, of the Alaska Constitution) was approved by 87 percent of Alaskan voters, and has been in effect since December 30, 1994. Since then, our knowledge of both the difficulties that a crime victim suffers and efforts to minimize the effects of victimization continues to grow. This bill I am transmitting today results from this increased knowledge. It contains four proposals, which are described in further detail below.

- Allowing a mitigated presumptive sentence for speedy no contest or guilty pleas;
- Simplifying procedures for victims to recover stolen property;
- Establishing a crime for violating protective injunctions in child in need of aid cases;
- Extending current disallowance of civil compromise in some domestic violence cases to all domestic violence cases.

Mitigated Presumptive Sentences. The bill allows the court to mitigate a presumptive sentence when the defendant pleads no contest or guilty within 30 days after being charged. The reasoning is that early admission on the part of the defendant relieves the victim of some of the suffering involved in long, drawn out court procedures. This concept has already been recognized by the courts as a non-statutory mitigating factor. State v. McKinney, 946 P.2d 456 (Alaska 1997).

Recovering Stolen Property. The bill establishes a simplified procedure for theft victims to recover property that is in the possession of a law enforcement agency after having been recovered from a pawnshop or secondhand dealer. The current process is based on federal procedure and requires the victim to initiate formal legal proceedings to recover

The Honorable Brian Porter
February 10, 2000
Page 2

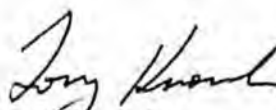
property. Under this less formal procedure, the victim could file a petition in state court supported by affidavit of ownership. The pawnshop or secondhand dealer can file a response supported by affidavit. Ownership may then be decided based on the information in the affidavits.

Protective Injunction Violations. Alaska law authorizes the court to issue a protective injunction in child in need of aid (CINA) proceedings that orders perpetrators to stay away from a child. These are similar to protective orders in domestic violence cases. Unlike domestic violence protective orders, however, it is not a separate crime to violate a protective injunction for a child in a CINA proceeding. The bill corrects this unjust inconsistency by making it a class A misdemeanor for a perpetrator to violate the CINA injunction.

Civil Compromise in Domestic Violence Cases. Alaska allows a person charged with a misdemeanor that harms a person or property to enter into a civil compromise by agreeing to pay the victim for personal costs, such as medical expenses or property damage. If the victim appears in court and acknowledges in writing that the defendant has paid the damages, the court may dismiss the charges, even if the prosecution objects to the dismissal. There are several exceptions in the statute allowing for civil compromise. One of the exceptions disallows compromise of cases between spouses and former spouses, or persons living together in a family or spousal relationship. The exception does not, however, include all domestic violence crimes. For example, it does not include domestic violence by a person who lived with another person if the court determines that the relationship was not a spousal relationship. This bill extends the disallowance of civil compromise to all cases involving domestic violence as defined in the Domestic Violence Prevention and Victim Protection Act of 1996. Civil compromise is not appropriate in domestic violence cases. This bill ensures that it will not occur.

This bill continues the state's efforts to better protect victims of crimes and deserves your favorable consideration.

Sincerely,


Tony Knowles
Governor

FISCAL NOTE

Bill Version: HB 366
(H) Publish Date: 2/11/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Revision Date: _____
Title: "An Act relating to the rights of crime victims..."
Sponsor: Rules Committee
Requestor: Governor

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
PERSONAL SERVICES	**	**	**	**	**	**
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**
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						
TOTAL	**	**	**	**	**	**

Estimate of an current year (FY 00) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)
See attached sheet.

Prepared by: Barbara Brink, Director
Division: Public Defender Agency

Phone: (907) 264-4414
Date: _____

Approved by Commissioner: Robert Poe, Jr.
Agency: Department of Administration

Date: 2/10/99

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FISCAL NOTE

STATE OF ALASKA

BILL NO. _____

2000 LEGISLATIVE SESSION

ANALYSIS: (continued)

This bill contains a number of provisions that would affect the Public Defender Agency's operations. The bill makes violating protective orders entered in Child in Need of Aid (CINA) cases a misdemeanor. It reduces the authority of the courts to allow compromises in misdemeanor cases. Finally, it creates a mitigating factor that can be used in felony sentencings. An offense can be mitigated if the defendant reduces the impact of the offense on the victim by pleading guilty or no contest within 30 days of the arraignment.

We expect to have some additional misdemeanor cases because of the new misdemeanor offense of violating a CINA protective order. However, we cannot make an accurate estimate of the number of additional cases to which we would be appointed.

Allowing fewer civil compromises and creating the new mitigator will result in more work in our existing caseload. However, we do not expect a significant fiscal impact.

Based on this analysis, the Public Defender Agency is submitting an indeterminate fiscal note on this bill.

FISCAL NOTE

Bill Version: HB 366

(H) Publish Date: 2/11/00

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected Department of Corrections
 Title An Act relating to the rights of crime victims, BRU Administration and Operations
the crime of violating a protective order of injunction, ... Component All
 Sponsor Rules Committee
 Requester Governor Component No. #0694

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	***	***	***	***	***	***

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Department of Corrections is submitting an indeterminate fiscal note for this legislation. This legislation will provide criminal consequences for a person who violates a protective injunction in child in need of aid proceedings.

Information provided by the Dept. of Law suggests approximately 12 offenders per year will be convicted. It is difficult to determine the length of sentence the Court will assign to these offenders. It presumably will be less than the mandatory minimum sentence of 20 days for an assault 4 in conjunction with the violation of a domestic violence restraining order.

Prepared by: Candy Brower, Legislative Liaison Phone 465-3307
 Division Commissioner's Office Date/Time 2/9/00 9:30 AM
 Approved by Commissioner Margaret M. Pugh *Margaret M. Pugh* Date 2-9-00
 Agency Dept. of Corrections

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FISCAL NOTE

Bill Version: HB 366

(H) Publish Date: 2/11/00

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction)	Dept. Affected	Law
Title "An Act relating to the rights of crime victims, the crime of violating a protective order or injunction ..."	BRU	Criminal Division
Sponsor Rules Committee	Component	1st-4th Judicial Districts; Criminal Appeals/Special Litigation
Requester Governor	Component No.	2198-99;2201/03/61/79

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill makes several amendments related to the protection of crime victims. It makes the violation of a protective injunction a class A misdemeanor. Like protective orders in a domestic violence case, protective injunctions may be ordered by the court to prevent or limit a person's contact with a child if it is established that the person has sexually or physically abused the child, or engages in conduct that constitutes a clear and present danger to the welfare of the child. While domestic violence protective orders are a class A misdemeanor, under current law, the only remedy for violations of a protective injunction is a finding of contempt by the court.

The bill also would clarify the means by which a victim can petition for the return of their property seized by law enforcement from a pawnbroker or second hand dealer; and broadens prohibitions against "compromising

Prepared by: Joan M. Kasson
 Division: Attorney General's Office
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-5370
 Date/Time: 2/10/00, 11:27 AM
 Date: 2/10/00

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FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO.

ANALYSIS CONTINUATION

misdemeanors" (paying a victim's expenses in return for criminal charges being dropped) to include domestic violence as defined in current law. The bill also adds a new mitigating factor for presumptive sentences when a defendant pleads guilty or no contest within 30 days of arraignment on a charge.

Any potential fiscal impact of the bill on the Department of Law would come from the creation of the new class A misdemeanor for violating a protective injunction. The department expects to see only a handful of new cases arising from this provision each year, and anticipates any increased workload can be handled with existing resources.

FISCAL NOTE

Bill Version: HB 366
 (H) Publish Date: 2/11/00

**STATE OF ALASKA
 2000 LEGISLATIVE SESSION**

Revision Date _____ Dept. Affected Public Safety
 Title An Act relating to the rights of crime victims ... BRU CDVSA
 Component CDVSA
 Sponsor Rules Committee
 Requester Governor Component No. 521

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill is not expected to adversely impact the budget.

Prepared by: Royce Weller, Special Assistant Phone 465-4322
 Division Office of the Commissioner Date/Time 12/21/99
 Approved by Commissioner Ronald L. Otis Date 12/21/99
 Agency Department of Public Safety

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HB

367

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION
March 9, 2000

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

CRIMINAL DIVISION CENTRAL
OFFICE
P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3428
FAX: (907) 465-4043

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501-2064
PHONE: (907) 269-6250
FAX: (907) 269-6270

The Hon. Pete Kott
Chair, House Judiciary Committee
Alaska State Legislature
State Capitol, Room 118
Juneau, Alaska 99801

Re: HB 367 (Revocation of Driving Privileges)

Dear Representative Kott:

House Bill 367, introduced February 11, 2000, was passed by the House State Affairs Committee and has been referred to your committee. I am writing to request that the bill be scheduled for a hearing at your earliest convenience.

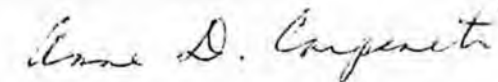
HB 367 provides that a court shall revoke the driving privileges of a driver who violates the traffic laws, and the violation contributes to an accident that results in a death. Drivers who violate traffic laws may not have committed a crime, but if their poor driving causes the death of another person, their driving privileges should be revoked. The bill provides for a one-year revocation under these circumstances. This period would be concurrent with any other revocation that might apply, and the court may grant a limited license if the court finds the limited license will not endanger the public.

If you have any questions about the bill or require further information, please feel free to call me at any time.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Anne D. Carpeneti
Assistant Attorney General

HB367

TONY KNOWLES
GOVERNOR
governor@gov.state.ak.us

P.O. Box 1000
Juneau, Alaska 99801-1000
(907) 465-3500
Fax (907) 465-3532
www.gov.state.ak.us

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 10, 2000

The Honorable Brian Porter
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Porter:

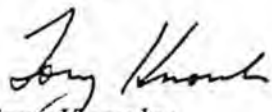
Many Alaskans are killed annually by drivers who are operating their vehicles in an unsafe way, but are not specifically violating any criminal laws. In 1998, approximately 20 deaths on our state highways may have fallen into this category. The extent of any punishment in these cases is merely a fine for a traffic violation of up to \$300.

Regardless of whether their conduct is criminal, drivers whose traffic violations contribute to an accident causing the death of another person pose a risk to people on the highways and cause much suffering to family and friends of their victims. This bill I transmit today addresses this unfortunate situation by requiring, under certain circumstances, revocation of driving privileges of a driver involved in a fatal traffic accident.

This bill requires the court to revoke driving privileges in cases where a person violated traffic laws and the violation contributed to an accident that resulted in a death. The license revocation would be for one year and applies to drivers of all vehicles, including those for commercial use. The court would be allowed to grant limited license privileges if it determines driving is critical to the person's livelihood and will not pose a danger to the public.

When people drive in an unsafe way and cause the death of another, their privilege to drive should be taken to protect other drivers and pedestrians on the roadways.

Sincerely,


Tony Knowles
Governor

FISCAL NOTE

No: 3

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Bill Version: HB 367
(H) Publish Date: 2/11/00

Revision Date: February 8, 2000
Title: Providing for the revocation of driving privileges by a court
For a driver convicted of a violation of traffic laws...
Sponsor: Rules Committee
Requestor: Governor

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2 003	FY 2004	FY 2005	FY 2006
PERSONAL SERVICES	**	**	**	**	**	**
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**
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						
TOTAL	**	**	**	**	**	**

Estimate of any current year (FY 00) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)
This bill is likely to have some fiscal impact on the Public Defender Agency. We generally do not represent people in traffic cases. (In Alaska, a person only has the right to a court-appointed attorney if he or she is charged with a serious offense.) However, because this bill calls for a court revocation rather than an administrative revocation by the Division of Motor Vehicles, we may end up being involved. The Alaska Supreme Court has said that the potential for loss of a "valuable license" may make the offense serious enough to require a jury trial and a court-appointed attorney, if necessary.

The Public Defender Agency is submitting an indeterminate fiscal note because we may be required to represent defendants in jury trials if this bill becomes law.

Prepared by: Barbara Brink, Director
Division: Public Defender Agency

Phone: (907) 264-4414
Date: February 8, 2000

Approved by Commissioner: Robert Poe, Jr.
Agency: Department of Administration

Date: February 8, 2000

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FISCAL NOTE

Bill Version: HB 367

(H) Publish Date: 2/11/00

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected Law
 Title "... revocation of driving privileges by a court for BRU Criminal Division
a driver convicted of a violation ... with a fatal ... accident." Component 1st-4th Judicial Districts; Criminal
 Sponsor Rules Committee Appeals/Special Litigation
 Requester Governor Component No. 2198-99;2201/03/61/79

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would require the revocation of driving privileges of a person who drives a vehicle, including a commercial vehicle, that is involved in a fatal traffic accident if the person is convicted of a violation of traffic laws in connection with the accident, and the violation of the traffic laws contributed to the accident that resulted in the death of another person.

Because conviction of the traffic offense may result in loss of a valuable license, the person has a right to a jury trial. However, a jury trial on traffic matters is a relatively short time commitment. The Department of Law estimates no more than a dozen of these trials will occur statewide per year, and does not anticipate a measurable fiscal impact from passage of this legislation.

Prepared by: Joan M. Kasson
 Division: Attorney General's Office
 Approved by Commissioner: Bruce M. Sotelo, Attorney General
 Agency: Department of Law

Phone: 465-5370
 Date/Time: 2/8/00, 3:18 PM
 Date: 2/8/00

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FISCAL NOTE

Bill Version: HB 367

(H) Publish Date: 2/11/00

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

Revision Date _____ Dept. Affected Public Safety
 Title An Act for the administrative revocation of driving BRU AST- Detachments
privileges ... in connection with a fatal vehicle accident. Component AST- Detachments
 Sponsor Rules Committee
 Requester Governor Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill will not adversely impact the budget.

Prepared by: Royce Weller, Special Assistant Phone 465-4322
 Division _____ Date/Time 12/22/99 12:00:00 A
 Approved by Commissioner Ronald L. Otte Date 12/22/99
 Agency Department of Public Safety

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HB

368

1-GH2027G
Luckhaupt
3/2/00

3/3/00
JUD
Adopted
3/3/00
+
moved
after
amended

CS FOR HOUSE BILL NO. 368(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to release of persons before trial and before sentencing or
2 service of sentence; relating to when service of sentence shall begin; relating to
3 custodians of persons released, to security posted on behalf of persons released,
4 and to the offense of violation of conditions of release; and amending Rule 41(f),
5 Alaska Rules of Criminal Procedure."

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

7 * Section 1. AS 09.50.010 is amended to read:

8 Sec. 09.50.010. Acts or omissions constituting contempt. The following acts
9 or omissions with [IN] respect to a court of justice or court proceedings are contempts
10 of the authority of the court:

11 (1) disorderly, contemptuous, or insolent behavior toward the judge
12 while holding the court, tending to impair its authority or to interrupt the course of a
13 trial or other judicial proceeding;

- 1 (2) a breach of the peace, boisterous conduct, or violent disturbance,
2 tending to interrupt the course of a trial or other judicial proceeding;
- 3 (3) misbehavior in office, or other wilful neglect or violation of duty
4 by an attorney, clerk, peace officer, or other person appointed or elected to perform
5 a judicial or ministerial service;
- 6 (4) deceit or abuse of the process or proceedings of the court by a party
7 to an action or proceeding [PROCEEDINGS];
- 8 (5) disobedience of a lawful judgment, order, or process of the court;
- 9 (6) falsely pretending to act under authority to an order or process of
10 the court;
- 11 (7) rescuing a person or property in the custody of an officer by virtue
12 of an order or process of the court;
- 13 (8) unlawfully detaining a witness or party to an action or proceeding
14 while going to, remaining at, or returning from the court where the witness or party
15 is for trial;
- 16 (9) any other unlawful interference with the process or proceedings of
17 the court;
- 18 (10) disobedience of a subpoena duly served, or refusing to be sworn
19 or answer as a witness;
- 20 (11) when summoned as a juror in a court, neglecting to attend or
21 serve, or improperly conversing with a party to an action or proceeding to be tried at
22 the court or with another person in relation to the merits of the action, or receiving a
23 communication from a party or other person in respect to it without immediately
24 disclosing it to the court;
- 25 (12) disobedience by an inferior court, judge, magistrate, referee,
26 master, or officer of the lawful judgment, order, or process of a higher court, or
27 proceeding in an action or proceeding contrary to law after the action or proceeding
28 is removed from the jurisdiction of that inferior court, judge, magistrate, or officer;
- 29 (13) failure, when acting as a custodian appointed by the court for
30 a released person under AS 12.30, to report immediately that the person released
31 has violated a condition of release.

1 * Sec. 2. AS 09.50.020(a) is amended to read:

2 (a) A person who is guilty of contempt is punishable by fine of not more than
3 \$300 or by imprisonment for not more than six months. However, when the contempt
4 is one mentioned in AS 09.50.010(3) - (12), or in an action before a magistrate, the
5 person is punishable by a fine of not more than \$100 unless it appears that a right or
6 remedy of a party to an action or proceeding was defeated or prejudiced by the
7 contempt, in which case the penalty shall be as prescribed for contempts described in
8 AS 09.50.010(1), [AND] (2), and (13).

9 * Sec. 3. AS 11.56 is amended by adding a new section to read:

10 **Sec. 11.56.757. Violation of condition of release.** (a) A person commits the
11 crime of violation of condition of release if the person

12 (1) has been charged with a crime or convicted of a crime;

13 (2) has been released under AS 12.30; and

14 (3) violates a condition of release imposed by a judicial officer under
15 AS 12.30, other than the requirement to appear as ordered by a judicial officer.

16 (b) Violation of condition of release is

17 (1) a class A misdemeanor if the person is released from a charge or
18 conviction of a felony;

19 (2) a class B misdemeanor if the person is released from a charge or
20 conviction of a misdemeanor.

21 (c) In this section, "conviction" means that an adult, or a juvenile charged as
22 an adult under AS 47.12, has entered a plea of guilty, guilty but mentally ill, or nolo
23 contendere, or has been found guilty or guilty but mentally ill by a court or jury.

24 * Sec. 4. AS 12.30.020(b) is amended to read:

25 (b) If a judicial officer determines under (a) of this section that the release of
26 a person will not reasonably assure the appearance of the person, or will pose a danger
27 to the alleged victim, other persons, or the community, the judicial officer may

28 (1) place the person in the custody of a designated person or
29 organization agreeing as a custodian to supervise the person; the court shall inform
30 the custodian about the duties required of a custodian, and that failure to report
31 immediately in accordance with the terms of the order that the person released

1 has violated a condition of release may result in the custodian's being held in
2 contempt under AS 09.50.010:

3 (2) place restrictions on the travel, association, or place of abode of the
4 person during the period of release;

5 (3) require the person to return to custody after daylight hours on
6 designated conditions;

7 (4) require the execution of an appearance bond in a specified amount
8 and the deposit in the registry of the court, in cash or other security, a sum not to
9 exceed 10 percent of the amount of the bond; the deposit to be returned upon the
10 performance of the condition of release;

11 (5) require the execution of a bail bond with sufficient solvent sureties
12 or the deposit of cash; [OR]

13 (6) require the execution of a performance bond in a specified
14 amount and the deposit in the registry of the court, in cash or other security; the
15 deposit to be returned upon the performance of the condition of release; or

16 (7) impose any other condition considered reasonably necessary to
17 assure the defendant's appearance as required and the safety of the alleged victim,
18 other persons, or the community.

19 * Sec. 5. AS 12.30.060 is amended to read:

20 **Sec. 12.30.060. Penalties for failure to appear.** A person released under the
21 provisions of this chapter who knowingly [WILFULLY] fails to appear before a court
22 or judicial officer as required shall incur a forfeiture of any security that was given or
23 pledged for the person's release, as provided in AS 12.30.065, and, if the person was
24 released

25 (1) in connection with a charge of felony, or while awaiting sentence
26 or pending appeal after conviction of an offense, is guilty of a felony and upon
27 conviction is punishable by a fine of not more than \$5,000 or by imprisonment for not
28 more than five years, or by both;

29 (2) in connection with a charge of misdemeanor, is guilty of a
30 misdemeanor and upon conviction is punishable by a fine of not more than the
31 maximum provided for the misdemeanor, or by imprisonment for not more than one

1 year, or by both; or

2 (3) for appearance as a material witness, is guilty of a misdemeanor
3 and upon conviction is punishable by a fine of not more than \$1,000, or by
4 imprisonment for not more than one year, or by both.

5 * Sec. 6. AS 12.30 is amended by adding a new section to read:

6 **Sec. 12.30.065. Forfeiture of security.** (a) The court shall forfeit any
7 security given or pledged for the release of a person under this chapter if the person
8 violates a condition of release that prohibits the person from knowingly or intentionally
9 contacting, either directly or indirectly, a victim or witness in the proceeding.

10 (b) The court may order the forfeiture of all or a portion of any security given
11 or pledged for the release of a person under this chapter if the person fails to appear
12 before a court or judicial officer as required in an order by a court or judicial officer
13 or violates a condition of release other than one described in (a) of this section.

14 (c) If the court orders a forfeiture under this section, the court shall issue a
15 judgment for the amount forfeited. Proceedings to enforce the judgment may be
16 instituted by the prosecuting authority. Execution shall issue on judgments of
17 forfeiture entered under this subsection in the same manner as on other judgments for
18 the payment of money.

19 * Sec. 7. AS 12.55.025(c) is amended to read:

20 (c) Except as provided in (d) and (e) of this section, when a defendant is
21 sentenced to imprisonment, the term of confinement commences on the date of
22 imposition of sentence unless the court specifically provides that the defendant
23 must report to serve the sentence on another date. If the court provides another
24 date to begin the term of confinement, the court shall provide the defendant with
25 written notice of the date, time, and location of the correctional facility to which
26 the defendant must report. A defendant shall receive credit for time spent in custody
27 pending trial, sentencing, or appeal, if the detention was in connection with the offense
28 for which sentence was imposed. A defendant may not receive credit for more than
29 the actual time spent in custody pending trial, sentencing, or appeal. The time during
30 which a defendant is voluntarily absent from official detention after the defendant has
31 been sentenced may not be credited toward service of the sentence.

1 * Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section
2 to read:

3 DIRECT COURT RULE AMENDMENT. Rule 41(f), Alaska Rules of Criminal
4 Procedure, is amended to read:

5 (f) Forfeiture.

6 (1) Judgment of Forfeiture. If the person released on bail on the giving
7 or pledging of security fails to appear before a court or a judicial officer as required,
8 or violates a condition of release prohibiting the person knowingly or intentionally
9 from contacting a victim or witness, the judge or magistrate before whom the person
10 released was to appear shall provide for forfeiture of [FORFEIT] the security as
11 provided in AS 12.30.065. The clerk may sign the judgment of forfeiture if directed
12 to do so on the record in the particular proceeding by the judge. However, the
13 judgment of forfeiture may not be enforced until a hearing is held pursuant to
14 subparagraph (f)(3) of this rule [(d)(3)] or, if no hearing is requested, until 30 days
15 after the date of notice of the judgment of forfeiture. Nothing in this subparagraph
16 shall interfere with the issuance of a summons or bench warrant for a person who fails
17 to appear as required before a court or judicial officer.

18 (2) Notice of Forfeiture. The clerk shall send notice of the judgment
19 of forfeiture to the defendant, defendant's attorney and the person pledging the security
20 at their last known addresses. The notice must state that a hearing will be held on the
21 forfeiture if timely requested pursuant to subparagraph (f)(3) of this rule [(d)(3)].

22 (3) Hearing. If requested by the defendant or person giving or pledging
23 the security within 30 days of the date of notice of the forfeiture, the court shall hold
24 a hearing [TO DETERMINE WHETHER THE DEFENDANT'S FAILURE TO
25 APPEAR WAS WILLFUL]. The state, the defendant, the defense attorney, and the
26 person giving or pledging the security have the right to be heard at this hearing. The
27 court shall set aside the judgment of forfeiture if it is proven by a preponderance of
28 the evidence that the (A) failure to appear or failure to comply with a condition
29 other than one described in AS 12.65.065(a) was due to circumstances beyond the
30 control of the defendant; or (B) defendant's contact with a victim or witness did
31 not occur or was not done knowingly or intentionally [WAS NOT WILLFUL]. The

1 court may set aside the judgment of forfeiture if the court concludes that justice does
2 not require the enforcement of the judgment. An appeal may be taken from the
3 judgment of forfeiture in the manner of other appeals.

4 (4) Remission. Within one year after entry of judgment of forfeiture,
5 a person who has given or pledged security may apply to the court for a remission,
6 either in whole or in part, based on the return of the defendant with the assistance of
7 the person who gave or pledged security or upon such other extraordinary
8 circumstances as justice requires. The conditions of remission may include payment
9 of expenses incurred for enforcement of the forfeiture and for securing the return of
10 the defendant to custody.

11 (5) Exoneration. When the conditions of the bond have [HAS] been
12 satisfied or the forfeiture thereof has been remitted, the court shall exonerate the
13 obligors and release any bail. A surety may be exonerated by a deposit of cash in the
14 amount of the bond or by a timely surrender of the defendant into custody.

15 (6) Enforcement. Execution shall issue on judgments of forfeiture in
16 the same manner as on other judgments for the payment of money.

17 * Sec. 9. The uncodified law of the State of Alaska is amended by adding a new section
18 to read:

19 CONDITIONAL EFFECT. Sections 5, 6, and 8 of this Act take effect only if sec. 8
20 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
21 Constitution of the State of Alaska.

22 * Sec. 10. The uncodified law of the State of Alaska is amended by adding a new section
23 to read:

24 APPLICABILITY. (a) Sections 1 - 3, 5, and 6 of this Act apply to offenses
25 committed on or after the effective date of this Act. However, the underlying offense for
26 which a person is on release before trial, sentence, or service of sentence may occur before,
27 on, or after the effective date of this Act.

28 (b) Section 4 of this Act applies to custodians appointed and performance bonds
29 posted on or after the effective date of this Act. However, offenses that give rise to the
30 appointment of a custodian or the posting of the performance bond may occur before, on, or
31 after the effective date of this Act.

1 (c) Sections 6 and 8 of this Act apply to acts that require or allow forfeiture of
2 security that occur on or after the effective date of this Act. However, offenses that give rise
3 to the giving or pledging of security may occur before, on, or after the effective date of this
4 Act.

5 (d) Section 7 of this Act applies to actions occurring before, on, or after the effective
6 date of this Act.

2/25/00
JUD

SECTIONAL ANALYSIS - HB 368 Pretrial Release

The purpose of HB 368 is to give the criminal justice system more tools to allow a person charged with a crime to be released before trial, or pending sentence or appeal, and at the same time protect the public and ensure that the person will appear for trial or other procedures. When a court releases a defendant on condition that the defendant abide by certain conditions, it is important to the safety of the public and the victim that the defendant honor the conditions.

Sections 1, 2, and 4: One important tool for pretrial release is putting the defendant in the custody of a third party. The custodian is charged with the responsibility of making sure that the defendant abides by conditions the court has imposed; the custodian must report to the courts or the police if the defendant violates conditions. It is a responsibility that most custodians take very seriously. Some, however, do not. The bill specifies that a custodian must promise to immediately notify the police or court if the defendant has violated conditions, or face the possibility of being found in contempt.

Section 3: Currently, if a defendant is released before trial on certain conditions, violation of the condition results in the possibility that the defendant may be put back in jail for the original charge. The defendant will be given credit for time served against any sentence imposed on the original charge; there aren't additional consequences for the violation that would discourage the defendant from violating conditions. The bill adopts a misdemeanor offense for a person who violates release conditions - a class A misdemeanor if the person is charged with a felony, and a class B misdemeanor if the person is charged with a misdemeanor. Both the Municipality of Anchorage and the City and Borough of Juneau have similar ordinances, and have found them to be very useful tools in encouraging defendants to abide by conditions of release.

Section 4: The bill specifically allows courts to impose performance bonds; performance bonds allow a court to require a defendant to post a bond which will be forfeited if the defendant does not abide by conditions of release. Judges in some parts of the state have been imposing performance bonds for many years; these are very useful in encouraging people to honor their conditions. On February 18, 2000, however, the Court of Appeals decided that the bail statutes do not allow for imposition of performance bonds. (*Lonis v. State*, Op. No. 1661, February 18, 2000.) This bill specifically provides specific statutory authorization of performance bonds. Defendants have a monetary reason, in addition to other reasons, to honor release conditions if a performance bond is imposed.

Sections 6 and 8: Amends the bail statutes and the court rule for forfeiture of security by requiring forfeiture of security if the defendant violates a condition of release that prohibits contact with a victim or witness. It allows the court to forfeit security if the person violates other conditions. It provides that a person may ask the court to set aside the forfeiture if the failure to appear or abide by conditions, not including a condition not to contact a victim

or witness, was due to circumstances beyond the control of the defendant. The forfeiture may be set aside for violation of a condition not to contact a victim or witness if the contact was not knowing or intentional.

Section 7: Clarifies the law to specifically allow courts to order defendants to begin service of a sentence date in the future. This is important in managing prison populations.

Sections 9 and 10: These adopt applicability and effective date clauses.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

February 15, 2000

The Hon. Pete Kott
Chair, House Judiciary Committee
Alaska State Legislature
State Capitol, Room 118
Juneau, Alaska 99801

Re: HB 368 (Release of Criminal Defendant)

Dear Representative Kott:

House Bill 368, introduced February 11, 2000, has been referred to the House Judiciary Committee. I am writing to request that the bill be scheduled for a hearing at your earliest convenience.

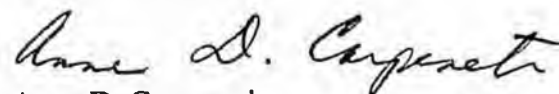
Most people charged with a criminal offense are released before trial, and often persons found guilty of a crime are released pending sentencing. The courts, in addition to bail, require the person to abide by rules, or conditions, of release. The safety of victims often depends on the person abiding by these conditions. This bill gives the courts and law enforcement important tools to encourage people to abide by conditions. The bill adopts the offense of violating conditions of release. The municipalities of Anchorage and Juneau have both found similar ordinances very useful in enforcing conditions of release. The bill clarifies the law by specifically providing for performance bonds. It also specifically provides that a third party custodian may be held in contempt for failing to notify the court that the person in their custody has violated release conditions. The bill further clarifies the law by specifically authorizing courts to order a defendant to serve a sentence at a later date.

Thank you for your consideration of this request. If you have any questions or need more information, please feel free to call me at any time.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Anne D. Carpeneti
Assistant Attorney General

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

CRIMINAL DIVISION CENTRAL
OFFICE
P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3428
FAX: (907) 465-4043

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501-2064
PHONE: (907) 269-6250
FAX: (907) 269-6270

FISCAL NOTE

No: 3

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Bill Version: HB 368
(H) Publish Date: 2/11/00

Revision Date: 2/7/00
Title: "An Act relating to release of persons before trial..."
Sponsor: Rules Committee
Requestor: Governor

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2 003	FY 2004	FY 2005	FY 2006
PERSONAL SERVICES	26.8	26.8	26.8	26.8	26.8	26.8
TRAVEL	1.0	1.0	1.0	1.0	1.0	1.0
CONTRACTUAL	3.2	3.2	3.2	3.2	3.2	3.2
SUPPLIES	0.5	0.5	0.5	0.5	0.5	0.5
EQUIPMENT	6.5	0.6	0.6	0.6	0.6	0.6
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	38.0	32.1	32.1	32.1	32.1	32.1
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	38.0	32.1	32.1	32.1	32.1	32.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	38.0	32.1	32.1	32.1	32.1	32.1

Estimate of any current year (FY 00) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME	1	1	1	1	1	1
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: Barbara Brink, Director
Division: Public Defender Agency

Phone: (907) 264-4414
Date: 2/7/00

Approved by Commissioner: Bob Poe
Agency: Department of Administration

Date: 2/11/00

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FISCAL NOTE

STATE OF ALASKA

BILL NO. _____

2000 LEGISLATIVE SESSION

ANALYSIS: (continued)

This bill creates a new misdemeanor offense: Violation of Condition of Release. In addition, the bill provides for "performance bonds." Under current practice, when people are released on bail, judges routinely impose conditions of release in addition to an "appearance bond." If they fail to appear, they can be charged with a crime and the appearance bond can be forfeited. Currently, if defendants appear as ordered but violate conditions of release, they are generally returned to jail. If this bill becomes law, defendants would be charged with a new offense (Violation of Condition of Release) and be required to forfeit performance bonds.

This bill would affect Public Defender Agency operations. We represent many people in bail hearings every day. We did a rough study of court calendars in Anchorage, Fairbanks, Palmer, and Kenai for a ten-day period last year. We covered 335 bail and arraignment hearings just in that period. Most defendants who are released on conditions do not violate conditions. But given the volume, there are a substantial number who will. The Public Defender Agency will need additional staff to handle the increased workload in bail hearings and new misdemeanor cases this bill would cause.

Anchorage is our busiest court location for bail hearings. The addition of a half-time Associate Attorney I on our Anchorage staff would enable us to meet handle the additional workload this bill would cause.

FISCAL NOTE

Bill Version: HB 368

(H) Publish Date: 2/11/00

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected Department of Corrections
 Title An Act relating to release of persons before BRU Administration and Operations
trial and before sentencing or service of sentence; relating... Component All
 Sponsor Rules Committee
 Requester Governor Component No. #0694

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	***	***	***	***	***	***

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation creates the new crime of "violation of condition of release." The Dept. of Corrections believes this new crime will have a small impact on the number of offenders in DOC custody and therefore is submitting an indeterminate fiscal note. Under current law, if offenders violate their conditions of release they cannot be arrested unless a new crime is committed. This presents a problem for law enforcement and public safety. If passed, this legislation would allow for an immediate arrest and return to custody of violators and a decrease in the risk to the public safety. Under current law the offender would eventually be returned to custody. This is simply a more efficient method of removing an offender from the community immediately upon violation as opposed to waiting for the offender to be brought before the Court. If an offender is convicted of this new crime, they will most likely receive a concurrent sentence. A small fraction may receive sentences in addition to their original conviction resulting in a small cost to DOC.

Prepared by: Candy Brower, Legislative Liaison Phone 465-3307
 Division Commissioner's Office Date/Time 2/9/00 10:05 AM
 Approved by Commissioner Margaret M. Pugh *Margaret M. Pugh* Date 2/8/00
 Agency Dept. of Corrections

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FISCAL NOTE

No: 1

Bill Version: HB 368

(H) Publish Date: 2/11/00

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction)		Dept. Affected	Law
Title	"... relating to release of persons before trial	BRU	Criminal Division
and ... to the offense of violation of conditions of release ..."		Component	1st-4th Judicial Districts; Criminal Appeals/Special Litigation
Sponsor	Rules Committee	Component No.	2198-99;2201/03/61/79
Requester	Governor		

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill adopts stronger enforcement measures to encourage persons released before trial, imposition of sentence, or service of sentence to abide by conditions of release. One of the enforcement measures included in the bill is the creation of a new crime. The bill provides that it is a class A misdemeanor for a person to violate release conditions if the person is charged with a felony, and a class B misdemeanor to violate conditions for a person charged with a misdemeanor. Currently, although it is a crime to wilfully fail to appear as ordered by the court, there are few options for violation of other release conditions except incarcerating the person.

The bill also clarifies the law as it relates to performance bonds, and the forfeiture of the posted security on violation of conditions of release; provides that the court may find a third-party custodian in contempt for failure to report immediately a defendant's violations of conditions of release; and clarifies the court may order a person begin their

Prepared by:	Joan M. Kasson <i>Joan M. Kasson</i>	Phone 465-5370
Division	Attorney General's Office	Date/Time 2/3/00, 10:07 AM
Approved by Commissioner	<i>Bob M. Betelbo</i> Bob M. Betelbo, Attorney General	Date 2/9/00
Agency	Department of Law	

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FISCAL NOTE

BILL NO.

STATE OF ALASKA
2000 LEGISLATIVE SESSION

ANALYSIS CONTINUATION

sentence at a later date than when the sentence is imposed.

The Department of Law does not anticipate a fiscal impact from passage of this legislation. The department already appears in court when conditions of release are violated to try and get the person's release revoked by the court, and passage of this bill will not increase the time commitment already required.

HB 368

TONY KNOWLES
GOVERNOR
governor.alaska.gov

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

P.O. Box 11500
Juneau, Alaska 99811-1500
(907) 465-7500
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February 10, 2000

The Honorable Brian Porter
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Porter:

I am transmitting a bill that will protect the public by adopting stronger enforcement measures to encourage persons to abide by their conditions of release before trial, imposition of sentence, or service of sentence. Specifically, the bill addresses four areas explained in more detail below:

- Establishing the crime of violating conditions of release;
- Authorizing courts to order performance bonds;
- Charging contempt of court for third-party custodian's failure to report condition violations;
- Authorizing delayed reporting date for jail time.

Violating Conditions of Release. In criminal cases, an accused has a constitutional right to be released on bail before trial. Persons who have been found guilty of a crime may be released before sentence is imposed or before ordered to serve a sentence. When releasing a person, the court may impose both general conditions, such as requiring that the accused violate no laws, and conditions specific to the particular case or defendant, such as forbidding an accused in a domestic violence case from contacting the victim. The safety of the victim often depends on the enforcement of release conditions. Currently, although it is a crime to willfully fail to appear as ordered by the court, there are few options for violation of other release conditions, except incarcerating the person. The bill provides that it is a class A misdemeanor for a person to violate release conditions if the person is charged with a felony, and a class B misdemeanor to violate conditions for a person charged with a misdemeanor.

The Honorable Brian Porter
February 10, 2000
Page 2


Performance Bonds. The bill clarifies the law by specifically authorizing the court to order the accused to post a performance bond, and requires that the court forfeit the security if the person violates a condition of no contact with the victim or witness in a proceeding. The court may forfeit the security if the accused violates other conditions. The standard for forfeiture of security in Rule 41(f), Alaska Rules of Criminal Procedure, is amended to require that security be forfeited unless the defendant could not comply due to circumstances beyond the control of the defendant. An example of such circumstances includes weather conditions that prevent airplane transportation, if there is no alternative way to travel to court.

Third Party Custodians. Courts often release a defendant to the custody of a third party, either an individual or an organization. Custodians are required to report to the court or the police if the defendant violates release conditions, but often do not. The bill provides that a third-party custodian can be found in contempt for failing to report immediately a defendant's violations of conditions of release ordered by the court, and requires the court to inform the custodian of the possible consequences of ignoring the duty to report.

Delayed Reporting Date. The bill specifically gives the court the authority to order a person sentenced to a period of incarceration to begin serving the sentence at a date sometime after it was imposed. With overcrowded correctional facilities, this is useful to help avoid "bottlenecks" in admissions by proper scheduling.

I urge your prompt and favorable consideration of this measure.

Sincerely,


Tony Knowles
Governor

HB

369

CS FOR HOUSE BILL NO. 369()

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY

Deletes Indexing

Offered:
Referred:

Sponsor(s): REPRESENTATIVE HARRIS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to property exemptions under the Alaska Exemptions Act,
2 including removal of the provisions for adjusting the dollar amounts by referring
3 to the consumer price index; and providing for an effective date."

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

5 * Section 1. AS 09.38.010(a) is amended to read:

6 (a) An individual is entitled to an exemption as a homestead of the individual's
7 interest in property in this state used as the principal residence of the individual or the
8 dependents of the individual, but the value of the homestead exemption for the
9 individual's interest may not exceed \$250,000 [\$54,000].

Committee amended

10 * Sec. 2. AS 09.38.010(b) is amended to read:

11 *same* (b) If property owned by the entirety or in common is used by one or more
12 individual owners or their dependents as their principal residence, each owner is
13 entitled to a homestead exemption of that owner's interest in the property as provided
14 in (a) of this section. [THE AGGREGATE VALUE OF MULTIPLE HOMESTEAD

1 EXEMPTIONS ALLOWABLE WITH RESPECT TO A SINGLE LIVING UNIT
2 MAY NOT EXCEED \$54,000. IF THERE ARE MULTIPLE OWNERS OF
3 PROPERTY EXEMPT AS A HOMESTEAD, THE VALUE OF THE EXEMPTION
4 OF EACH INDIVIDUAL OWNER MAY NOT EXCEED THE INDIVIDUAL
5 OWNER'S PRO RATA PORTION OF \$54,000.]

6 *Same* * Sec. 3. AS 09.38.010(c) is amended to read:

7 (c) If property that includes a homestead is sold under an execution, the sale
8 becomes effective upon confirmation by order of the court. The court shall enter the
9 order of confirmation unless the sales price under the execution is less than the
10 amount of exemption, or unless, within six months [60 DAYS] after the sale, the
11 individual repurchases the property under this section or the court extends the time for
12 confirmation upon the filing of a timely motion by a party in interest. The individual
13 may repurchase property, including that individual's homestead, at a sale on execution
14 before confirmation by paying into court the costs of the sale plus the lesser of either
15 (1) the difference between the highest bid and the amount of the exemption in the
16 property, or (2) the amount of the creditor's claim. If the individual does not exercise
17 the repurchase right under this subsection, the clerk of the court shall first remit an
18 amount determined to be exempt to the individual from the proceeds of sale and the
19 balance less the cost of the sale to the creditor. For the purpose of collecting an
20 amount remaining unpaid on a judgment after repurchase of property by an individual
21 under this subsection, the creditor or the creditor's assignee may not make another levy
22 *Same* on the property repurchased.

23 * Sec. 4. AS 09.38.015 is amended by adding a new subsection to read:

24 (e) An association of apartment owners under AS 34.07 and a unit owners'
25 association established under AS 34.08 are entitled to an exemption of all money that
26 is kept on deposit in the name of the association in a financial institution authorized
27 to do business in the state and that has been paid to the association as common
28 expenses under AS 34.07 or assessments for common expenses under AS 34.08. The
29 *Same* exemption in this subsection may be waived, but the waiver must be in writing.

30 * Sec. 5. AS 09.38.017(e)(3) is amended to read:

31 (3) "retirement plan" means

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(A) a retirement plan that is qualified under 26 U.S.C. 401(a), 26 U.S.C. 403(a), 26 U.S.C. 403(b), 26 U.S.C. 408, 26 U.S.C. 408A, or 26 U.S.C. 409 (Internal Revenue Code);

(B) a medical savings account under 26 U.S.C. 220; or

New

(C) a deferred compensation plan under 26 U.S.C. 457.

* Sec. 6. AS 09.38.020 is amended to read:

Sec. 09.38.020. Exemptions of personal property subject to value limitations. (a) An individual is entitled to an exemption in property not to exceed an aggregate value of \$3,600 [\$3,000] chosen by the individual from the following categories of property:

(1) household goods and wearing apparel reasonably necessary for one household;

(2) if reasonably held for the personal use of the individual or a dependent, books and musical instruments; and

(3) family portraits and heirlooms of particular sentimental value to the individual.

(b) An individual is entitled to exemption of jewelry, not exceeding \$1,200 [\$1,000] in aggregate value, if held for the personal use of the individual or a dependent.

(c) An individual is entitled to exemption, not exceeding \$3,360 [\$2,800] in aggregate value, of implements, professional books, and tools of the trade.

(d) An individual is entitled to the exemption of pets to the extent of a value not exceeding \$1,200 [\$1,000].

(e) An individual is entitled to an exemption of one motor vehicle to the extent of a value not exceeding \$3,600 [\$3,000] if the full value of the motor vehicle does not exceed \$24,000 [\$20,000].

* Sec. 7. AS 09.38.020 is amended by adding a new subsection to read:

Same as Sec. 6

(f) In addition to the exemptions allowed under AS 09.38.015(a) and the exemption for liquid assets under AS 09.38.030, an individual is entitled to an exemption of cash and other liquid assets up to \$8,075. In this subsection, "liquid assets" includes deposits, securities, notes, drafts, accrued vacation pay, refunds,

1 prepayments, and receivables, but does not include property identified under (a) of this
2 section.

3 * Sec. 8. AS 09.38.025(a) is repealed and reenacted to read:

Same as Sec 7

4 (a) Except as provided in this section or AS 09.38.017, an individual is entitled
5 to an exemption of \$250,000 in the total combined value of the cash surrender value
6 of all life insurance policies and annuity contracts owned by the individual, unless the
7 life insurance policies or annuity contracts were entered into for the benefit of a
8 creditor.

9 * Sec. 9. AS 09.38.025 is amended by adding new subsections to read:

Same as Sec

10 (c) A beneficiary of a life insurance policy or annuity contract is entitled to
11 an unlimited exemption of all proceeds of life insurance policies and annuity contracts
12 that are payable on the death of an insured to the beneficiary, other than those
13 proceeds that are paid to the insured's estate.

14 (d) If the life insurance policies and annuity contracts of an individual have
15 accrued dividends and loan values available to the individual that aggregate more than
16 \$250,000, a creditor of the individual may obtain a court order that requires the
17 individual or the beneficiary of the policy to pay the creditor and that authorizes the
18 creditor on the debtor's behalf to obtain payment of the amount of the accrued
19 dividends and loan values that exceed \$250,000 or the amount of the creditor's claim,
20 *New* whichever amount is less.

21 * Sec. 10. AS 09.38.030(a) is amended to read:

22 (a) Except as provided in (b), (c), (f), and (h) of this section and
23 AS 09.38.050, an individual debtor is entitled to an exemption of the individual
24 debtor's weekly net earnings not to exceed \$420 [\$350]. The weekly net earnings of
25 an individual are determined by subtracting from the weekly gross earnings all sums
26 required by law or court order to be withheld. The weekly net earnings of an
27 individual paid on a monthly basis are determined by subtracting from the monthly
28 gross earnings of the individual all sums required by law or court order to be withheld
29 and dividing the remainder by 4.3. The weekly net earnings of an individual paid on
30 a semi-monthly basis are determined by subtracting from the semi-monthly gross
31 earnings all sums required by law or court order to be withheld and dividing the

1 *New* remainder by 2.17.

2 * **Sec. 11.** AS 09.38.030(b) is amended to read:

3 (b) An individual who does not receive earnings either weekly, semi-monthly,
4 or monthly is entitled to a maximum exemption for the aggregate value of cash and
5 other liquid assets available in any month of \$1,680 [\$1,400], except as provided in
6 (f) and (h) of this section and in AS 09.38.050. **In this subsection.** [THE TERM]
7 "liquid assets" includes deposits, securities, notes, drafts, accrued vacation pay, refunds,
8 prepayments, and receivables, but does not include permanent fund dividends before
9 *New* or after receipt by the individual.

10 * **Sec. 12.** AS 09.38.050(b) is amended to read:

11 (b) The exemption amounts under AS 09.38.030 may be increased when the
12 individual submits an affidavit, under penalty of perjury, stating that the individual's
13 earnings alone support the individual's household; by so doing, the maximum part of
14 the individual's aggregate disposable earnings for any week subject to execution may
15 not exceed the amount by which the individual's disposable earnings for that week
16 exceed \$660 [\$550], or, if the individual is claiming an exemption for cash or other
17 liquid assets under AS 09.38.030(b), a maximum amount of \$2,640 [\$2,200] available
18 in a month is exempt.

19 * **Sec. 13.** AS 09.38.055 is amended to read: *Same as Sec. 9*

20 **Sec. 09.38.055. Bankruptcy proceedings.** In a proceeding under 11 U.S.C.
21 (Bankruptcy) only the exemptions under AS 09.38.010, 09.38.015(a) and (e),
22 09.38.017, 09.38.020, 09.38.025 and 09.38.030 apply.

23 * **Sec. 14.** AS 09.38.060(a) is amended to read: *Same as Sec. 10*

24 (a) If property, or a part of it, that could have been claimed as [AN EXEMPT
25 HOMESTEAD UNDER AS 09.38.010,] a burial plot under AS 09.38.015(a)(1), a
26 health aid under AS 09.38.015(a)(2), or personal property subject to a value limitation
27 under AS 09.38.020(a)(1) [,] or (2) or (c) [09.38.020(c)], has been taken or sold by
28 condemnation, or has been lost, damaged, or destroyed and the owner has been
29 indemnified for it, the individual is entitled to an exemption of proceeds that are
30 traceable for 12 months after the proceeds are received. **If property, or a part of it,**
31 **that could have been claimed as an exempt homestead under AS 09.38.010 has**

1 been voluntarily sold, has been taken or sold by condemnation, or has been
 2 damaged or destroyed and the owner indemnified for the damage or destruction,
 3 the [AN] individual is entitled to an exemption of proceeds of the property, [FROM
 4 THE VOLUNTARY SALE OF AN EXEMPT HOMESTEAD UNDER AS 09.38.010]
 5 that are traceable for 24 [SIX] months after the proceeds are received. The exemption
 6 of proceeds under this subsection does not entitle the individual to claim an aggregate
 7 exemption in excess of the value limitation otherwise allowable under AS 09.38.010
 8 *New* or 09.38.020.

9 * **Sec. 15.** AS 09.38.065(a) is amended to read:

10 (a) Notwithstanding other provisions of this chapter,

11 (1) a creditor may make a levy against exempt property of any kind to
 12 enforce a claim for

13 (A) child support;

14 (B) unpaid earnings of up to one month's compensation or the
 15 full-time equivalent of one month's compensation for personal services of an
 16 employee; or

17 (C) state or local taxes;

18 (2) a creditor may make a levy against exempt property to enforce a
 19 claim for

20 (A) the purchase price of the property or a loan made for the
 21 express purpose of enabling an individual to purchase the property and used for
 22 that purpose;

23 (B) labor or materials furnished to make, repair, improve,
 24 preserve, store, or transport the property; and

25 (C) a special assessment imposed to defray costs of a public
 26 improvement benefiting the property; and

27 (3) a creditor may make a levy against exempt property of any kind to
 28 enforce the claim of a crime victim if the claim arises from criminal conduct of the
 29 debtor that results in a felony conviction, except that the debtor is entitled to an
 30 exemption in property

31 (A) not to exceed an aggregate value of \$3,600 [\$3,000] chosen

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by the debtor from the following categories of property:

(i) household goods and wearing apparel reasonably necessary for one household;

(ii) books and musical instruments, if reasonably held for the personal use of the debtor or a dependent of the debtor; and

(iii) family portraits and heirlooms of particular sentimental value to the debtor; and

(B) not to exceed an aggregate value of \$3,360 [\$2,800] of the debtor's implements, professional books, and tools of the trade.

* Sec. 16. AS 09.38 is amended by adding a new section to read: *SAME AS SEC 13*

Sec. 09.38.130. Treatment of certain trusts. A trust is treated as an individual when applying the provisions of this chapter if the trust is revocable by the person creating the trust or if the income of the trust is taxable to the individual creating the trust under the grantor trust rules of 26 U.S.C. 671 - 678.

* Sec. 17. AS 09.38.030(e)(4) and 09.38.115 are repealed.

* Sec. 18. This Act takes effect immediately under AS 01.10.070(c).

SAME

Indexing provision of Sec. 11/12

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 369

1 Page 4, line 24:

2 Delete "index for January of"

3 Insert "annual average of the index for [JANUARY OF]"

4 Page 4, line 26:

5 Delete "index for January of"

6 Insert "annual average of the index for"

7 Page 4, line 31:

8 Delete "index for January of that"

9 Insert "annual average of the index for the year preceding [JANUARY OF] that
10 even-numbered"

11 Page 5, lines 2 through 6:

12 Delete

13 "(1) the portion of the percentage change in the index in excess of a
14 multiple of 10 percent is disregarded and the dollar amounts change only in multiples
15 of 10 percent of the amounts appearing in this chapter on the effective date of this
16 Act for the dollar amounts in AS 09.38.010, 09.38.020(f), and 09.38.025(a) and (d)
17 and on August 26, 1982, for the other dollar amounts in this chapter; and"

18 Insert

19 "(1) the [PORTION OF THE PERCENTAGE CHANGE IN THE
20 INDEX IN EXCESS OF A MULTIPLE OF 10 PERCENT IS DISREGARDED AND
21 THE] dollar amounts change only in multiples of \$100 [10 PERCENT OF THE
22 AMOUNTS APPEARING IN THIS CHAPTER ON AUGUST 26, 1982]; and"

HOUSE BILL NO. 369

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE HARRIS

Introduced: 2/11/00

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to property exemptions under the Alaska Exemptions Act; and
2 providing for an effective date."

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

4 * Section 1. AS 09.38.010(a) is amended to read:

5 (a) An individual is entitled to an exemption as a homestead of the individual's
6 interest in property in this state used as the principal residence of the individual or the
7 dependents of the individual, but the value of the homestead exemption may not
8 exceed \$250,000 [\$54,000].

9 * Sec. 2. AS 09.38.010(b) is amended to read:

10 (b) If property owned by the entirety or in common is used by one or more
11 individual owners or their dependents as their principal residence, each owner is
12 entitled to a homestead exemption of that owner's interest in the property as provided
13 in (a) of this section. [THE AGGREGATE VALUE OF MULTIPLE HOMESTEAD
14 EXEMPTIONS ALLOWABLE WITH RESPECT TO A SINGLE LIVING UNIT

*for the individual's
interest* Amend 1

1 MAY NOT EXCEED \$54,000. IF THERE ARE MULTIPLE OWNERS OF
2 PROPERTY EXEMPT AS A HOMESTEAD, THE VALUE OF THE EXEMPTION
3 OF EACH INDIVIDUAL OWNER MAY NOT EXCEED THE INDIVIDUAL
4 OWNER'S PRO RATA PORTION OF \$54,000.]

5 * Sec. 3. AS 09.38.010(c) is amended to read:

6 (c) If property that includes a homestead is sold under an execution, the sale
7 becomes effective upon confirmation by order of the court. The court shall enter the
8 order of confirmation unless the sales price under the execution is less than the
9 amount of exemption, or unless, within six months [60 DAYS] after the sale, the
10 individual repurchases the property under this section or the court extends the time for
11 confirmation upon the filing of a timely motion by a party in interest. The individual
12 may repurchase property, including that individual's homestead, at a sale on execution
13 before confirmation by paying into court the costs of the sale plus the lesser of either
14 (1) the difference between the highest bid and the amount of the exemption in the
15 property, or (2) the amount of the creditor's claim. If the individual does not exercise
16 the repurchase right under this subsection, the clerk of the court shall first remit an
17 amount determined to be exempt to the individual from the proceeds of sale and the
18 balance less the cost of the sale to the creditor. For the purpose of collecting an
19 amount remaining unpaid on a judgment after repurchase of property by an individual
20 under this subsection, the creditor or the creditor's assignee may not make another levy
21 on the property repurchased.

22 * Sec. 4. AS 09.38.015 is amended by adding a new subsection to read:

23 (e) An association of apartment owners under AS 34.07 and a unit owners'
24 association established under AS 34.08 are entitled to an exemption of all money that
25 is kept on deposit in the name of the association in a financial institution authorized
26 to do business in the state and that has been paid to the association as common
27 expenses under AS 34.07 or assessments for common expenses under AS 34.08. The
28 exemption in this subsection may be waived, but the waiver must be in writing.

29 * Sec. 5. AS 09.38.017(e)(3) is amended to read:

30 (3) "retirement plan" means

31 (A) a retirement plan that is qualified under 26 U.S.C. 401(a),