

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10283 HOUSE • JUDICIARY

128

Each day, **6,000**
people younger than
18 try their first
cigarette with **3,000**
of them becoming
daily smokers.

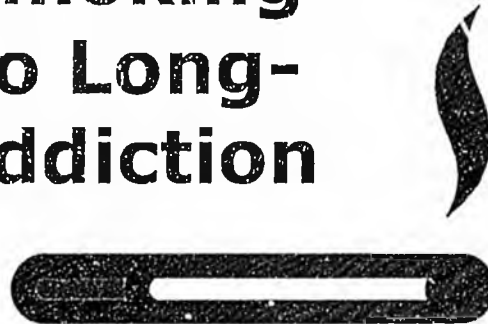
15

Over one-third of U.S.
and Alaskan high school
students have smoked in
the past 30 days.

*Sources: Investing in Tobacco Control: A Guide for State
Decision makers / Youth Risk Behavior Survey*

16

Early Smoking leads to Long- Term Addiction



**Addiction occurs from smoking
1 or 2 cigarettes a day for
3 weeks.**

17

Tobacco is considered
a gateway drug for
teens. Teens who
smoke are far more
likely to use other
drugs.

18

Almost 14,000 Alaskans
under the age of 18 today
will eventually die from
tobacco-caused illness
unless current trends are
reversed.

Source: CDC

19

BEST PRACTICES

Established by the CDC
&
The Office of Smoking and Health

20

The CDC – Office of Smoking and Health has identified the necessary components for a successful tobacco control program based on research of successful states who have reduced smoking related deaths.

21

-
- Community tobacco prevention programs
 - Chronic Disease programs
 - School prevention programs

22

- Enforcement of tobacco control policies
- Counter-marketing
- Statewide programs

23

- Smoking cessation programs
- A surveillance and evaluation system
- A strong administrative and managerial system

24

What is SYNAR



25

Provisions of the Federal Synar Amendment require :

- Enforcement of State-level minors' access laws to decrease sales to persons under the age of 18 to less than 20%.
-

26

-
- Conduct annual statewide inspection surveys that accurately measure the effectiveness of their enforcement efforts.
-

27

-
- Report annually to the U.S. Secretary of Health and Human Services.
-

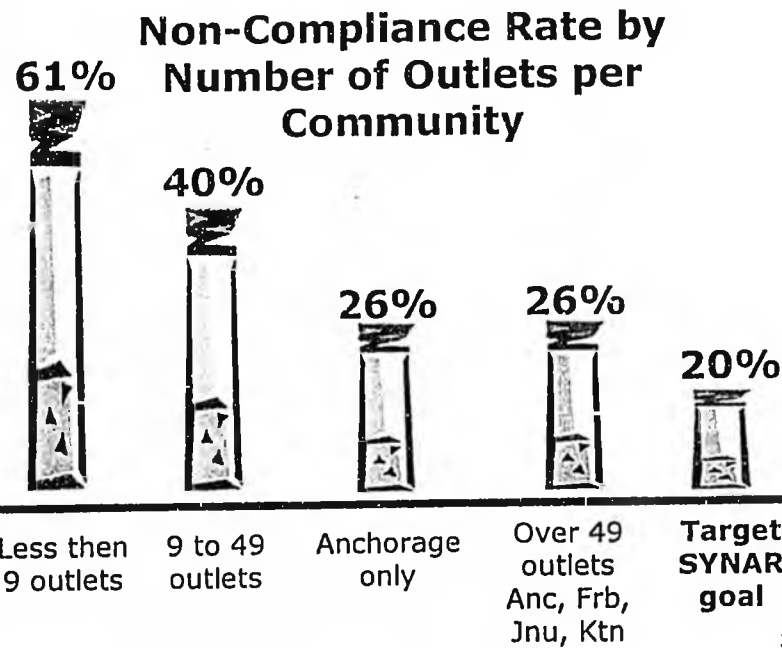
28

Alaska Tobacco Survey Results

Non-Compliance rates for Surveys Collected

August & September, 2000

29



Failure of Alaska to achieve performance targets will result in a significant loss of Federal block grant dollars.



31

The penalty for non-compliance is the loss of up to \$1.5 MILLION in substance abuse prevention and treatment funds from Alaska's Federal Substance Abuse Prevention and Treatment Block Grant



32

The enforcement program goal is to reduce the availability of tobacco products to children.

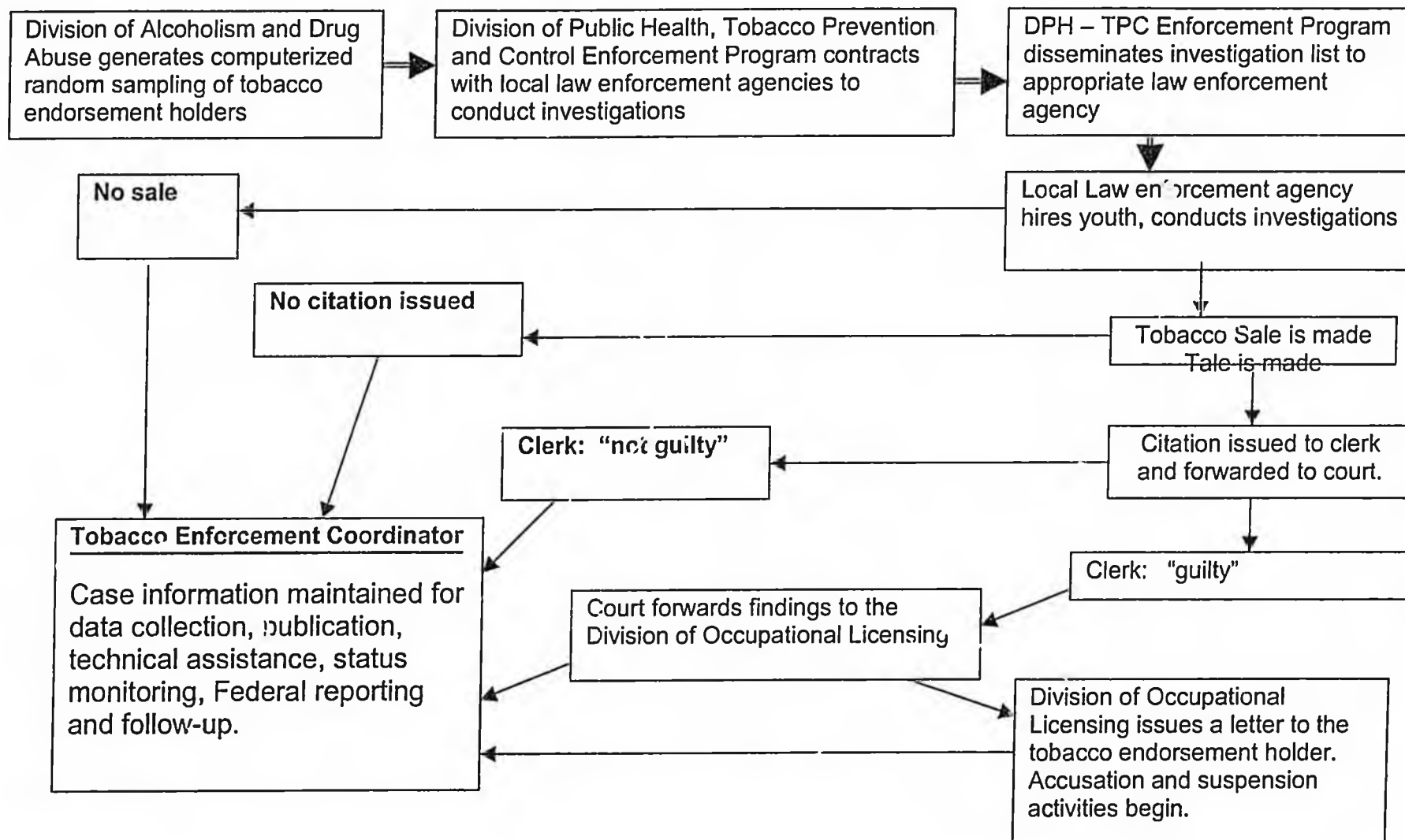
Enforcement is only one aspect of a comprehensive tobacco control strategy.

Without it, part of the message is missing.

WHY ENFORCEMENT?

- Enforcement deters youthful violators
- Enforcement sends a message that the community cares about its children.
- The health of Alaska's children depends on it.

34



Flow of Synar Survey Sample: Several agencies are involved in obtaining information for Federal reporting. DPH Tobacco Enforcement coordinates this effort.

Tobacco Enforcement Includes:

- Educating tobacco vendors
- Coordinating enforcement efforts
- Issuing citations to those who sell to minors
- Community education and development
- State and local agencies working together
- Law enforcement training
- Federal reporting

36

“Enforcement of restrictions
on the sale of tobacco products to
minors

is potentially a very cost-effective
measure for saving lives...”

Joseph R. DeFranza, MD in Preventive
Medicine 32,168-174, (2001)

37

One of the most effective ways to improve the health of Alaskans is to stop people from becoming addicted in the first place.

HB

243

22-LS0770C
Luckhaupt
2/1/02

*Adopted
2-8-02*

CS FOR HOUSE BILL NO. 243(JUD)

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

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE DYSON

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to sexual assault or abuse of a minor."

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

3 * Section 1. AS 11.41.445(b) is amended to read:

4 (b) In a prosecution under AS 11.41.410 - 11.41.440, whenever a provision of
5 law defining an offense depends upon a victim's being under a certain age, it is an
6 affirmative defense that, at the time of the alleged offense, the defendant

7 (1) reasonably ~~and in good faith~~ believed the victim to be that age or
8 older; and *delete Amendment #1 adopted*

9 (2) undertook reasonable measures to verify that the victim was
10 that age or older [, UNLESS THE VICTIM WAS UNDER 13 YEARS OF AGE AT
11 THE TIME OF THE ALLEGED OFFENSE].

Adopted
in subcommittee

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE BERKOWITZ

To: HB 243

Amend AS 11.41.445(b) to read:

(b) In a prosecution under AS 11.41.410 - 11.41.440, whenever a provision of law defining an offense depends upon a victim's being under a certain age, it is an affirmative defense that, at the time of the alleged offense, the defendant

- and
- (1) reasonably and in good faith believed the victim to be that age or older;
 - (2) took reasonable measures to verify that the victim was that age or older.



Definitions of "good faith"
under AK Law

Made available by Touch N' Go Systems, Inc., and the
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You can search the Alaska Statutes, go to The Alaska Legal Res
page.

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office run smoother. Visit Touch N' Go's



Alaska Statutes.

Title 23. Labor and Workers' Compensation

Chapter 10. Employment Practices and Working Conditions

Section 699. Definitions.

previous: Section 670. Effect of Mandatory Testing Obligations.

next: Chapter 15. Employment Services

AS 23.10.699. Definitions.

In AS 23.10.600 - 23.10.699.

- (1) "alcohol" means ethanol, isopropanol, or methanol;
- (2) "drugs" means a substance considered unlawful under AS 11.71 or the metabolite of the substance;
- (3) "drug testing" means testing for evidence of the use of a drug;
- (4) "employee" means a person in the service of an employer;
- (5) "employer" means a person who employs one or more full-time employees under a contract of hire, express or implied, oral or written;
- (6) "good faith" means reasonable reliance on fact, or that which is held out to be factual, without the intent to deceive or be deceived and without reckless or malicious disregard for the truth;
- (7) "prospective employee" means a person who has made application to an employer, whether written or oral, to become an employee;
- (8) "random" means a scientifically valid method that ensures that all covered employees have an equal chance of being selected;



Alaska State Legislature

- Interim (May-Dec.) -
10928 Eagle River Rd., Suite 140
Eagle River, Alaska 99577
☎ (907) 694-6683
FAX (907) 694-1015

- Session (Jan.-May) -
Alaska State Capitol
Juneau, Alaska 99801-1182
☎ (907) 465-2199
FAX (907) 465-4587

Toll free (800) 342-2199

REPRESENTATIVE FRED DYSON

Sponsor Statement for HB 243 Verify Age Required for Defense in Crimes

An Act relating to sexual assault or abuse of a minor

Last Updated: January 22, 2002

Contact: Representative Fred Dyson's office at (907) 465-2199

Periodically, sexual predators use the defense that they did not know that the victim was under age, and that the victim *said* he/she was of age. HB 243 will force the perpetrator to show they took some action to verify the victim's age. This requirement is a step beyond the claim that they "reasonably believed" the victim was of age.

According to an Alaska Public Health Publication, 36% of known male partners of teen mothers (17 and under) were 21 years of age or older. There seems to be growing evidence that the teen pregnancies experienced by many young teens are the result of non-voluntary sex.

Our existing law that covers minors having sex with minors whose ages are within three years (AS 11.41.440) will still apply.

- E-mail -
Representative_Fred_Dyson
@Legis.state.ak.us

- Internet -
<http://www.akrepublicans.org>

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 243
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to sexual assault or abuse of BRU Criminal Division
a minor." Component All
 Sponsor Representative Dyson
 Requester House Judiciary Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
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--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 243 relates to sexual abuse of a minor where the definition of the crime depends on the victim being under a certain age. The bill requires that a defendant must have taken reasonable measures such as checking identification or verifying the victim's age with the victim's parents in order to assert the affirmative defense that the defendant believed the victim of be old enough to consent to sexual activity. It would be insufficient for the defendant to rely solely on the word of the victim or the victim's friends.

Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Phone (907) 465-5370
 Division Attorney General's Office Date/Time 1/17/02 10:57 A
 Approved by: Bob Meiners for Bruce M. Bolelho, Attorney General Date 1/17/2002
 Agency Department of Law

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Alaska Association of Chiefs of Police

January 3, 2002

The Honorable Fred Dyson
Alaska House of Representatives
State Capitol, Room 104
Juneau, AK 99801-1182

Re: Support for HB 243

Dear Representative Dyson:

As you are aware, the Alaska Association of Chiefs of Police is actively engaged in supporting or opposing legislation that impacts law enforcement efforts in Alaska.

I would like to advise you of our support for HB 243, which appropriately places the responsibility for determining the age of potential sexual partners where it belongs. To often in the past, perpetrators have been able to avoid conviction by claiming they "thought" the person appeared to be older.

If we can be of any assistance during the upcoming hearings, please let me know.

Thank you for your efforts on behalf of Alaska's youth.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Clemons".

Tom Clemons
President, AACOP



Alaska State Legislature

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Toll free (800) 342-2199

REPRESENTATIVE FRED DYSON

HB 243 Sponsor Statement

"An Act relating to sexual assault or abuse of a minor

Updated: April 20, 2001

Contact: Representative Fred Dyson's office at (907) 465-2199

Periodically sexual predators use the defense that they did not know that the victim was under age and that the victim said he/she was of age. HB 243 will force the perpetrator to show that verified the victim's age by some external, objective means.

In the State of Alaska we require people to show ID for the purchase of tobacco and alcoholic beverages. HB 243 will force sexual predators who prey upon minors to go through a similar process. Our existing law that covers minors having sex with minors whose ages are within three years (AS 11.41.440) will still apply.

- E-mail -
Representative_Fred_Dyson
@legis.state.ak.us

- Internet -
<http://www.akrepublicans.org>

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 243
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Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title "An Act relating to sexual assault or abuse of BRU Criminal Division
a minor." Component All
Sponsor Representative Dyson
Requester House Judiciary Committee Component No. _____

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

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

Estimate of any current year (FY2001) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 243 relates to sexual abuse of a minor where the definition of the crime depends on the victim being under a certain age. The bill requires that a defendant must have taken reasonable measures such as checking identification or verifying the victim's age with the victim's parents in order to assert the affirmative defense that the defendant believed the victim to be old enough to consent to sexual activity. It would be insufficient for the defendant to rely solely on the word of the victim or the victim's friends.

Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Phone 465-5370
Division: Attorney General's Office Date/Time 4/25/01 9:06 AM
Approved by: Kathryn Daughhettee for Bruce M. Botelho, Attorney General Date 4/25/01
Agency: Department of Law

For distribution information, call the Governor's Legislative Office

this case is REMANDED for further proceedings.



STATE of Alaska, Petitioner
and Cross-Respondent,

v.

Michael FREMGEN, Respondent
and Cross-Petitioner.

Court of Appeals Nos. A-1909, A-4939.

Court of Appeals of Alaska.

Feb. 17, 1995.

Hearing Granted April 4, 1995.

Defendant was indicted for sexual abuse of minor in first degree for engaging in sexual penetration with female under 13 years of age, and defendant filed motion challenging constitutionality of statute prohibiting him from defending against charges of sexual abuse of minor in first degree on the ground that he reasonably believed that she was over age 16. The Superior Court, Third Judicial District, Anchorage, Rene J. Gonzalez, J., concluded that statute was unconstitutional as applied to defendant, and state filed petition for review and defendant filed cross petition for review of his claim that statute was unconstitutional on its face. The Court of Appeals, Coats, J., held that defendant had constitutional right to present affirmative defense of reasonable mistake of age in his prosecution for sexual abuse of minor.

Affirmed.

1. Rape ⇄13

Defendant had constitutional right to present affirmative defense of reasonable

1. AS 11.41.434(a) states in relevant part:

An offender commits the crime of sexual abuse of a minor in the first degree if . . . being 16 years of age or older, the offender engages in sexual penetration with a person who is under 13 years of age[.]

mistake of age in prosecution for sexual abuse of minor, though victim was under 13 years of age at time of alleged offense. AS 11.41.445(b).

2. Criminal Law ⇄20

State must prove criminal intent of defendant for conviction of serious crime; defendant may not be convicted of serious criminal offense based upon strict liability.

Eric A. Johnson, Asst. Atty. Gen., Office of Sp. Prosecutions and Appeals, Anchorage, and Bruce M. Botelho, Atty. Gen., Juneau, for petitioner and cross-respondent.

Mauri Long and Ray R. Brown, Dillon & Findley, P.C., Anchorage, for respondent and cross-petitioner.

Before BRYNER, C.J., and COATS and MANNHEIMER, JJ.

OPINION

COATS, Judge.

The state indicted Michael Fremgen for six counts of sexual abuse of a minor in the first degree for engaging in sexual penetration with S.M., a female under thirteen years of age.¹ Fremgen filed a motion with the court in which he contended that Alaska Statute 11.41.445(b) was unconstitutional to the extent that it prohibited him from defending against the charge of sexual abuse of a minor in the first degree on the ground that he reasonably believed that S.M. was over the age of sixteen.² AS 11.41.445(b) establishes an affirmative defense to charges of sexual abuse of a minor and provides:

In a prosecution under AS 11.41.410—11.41.440, whenever a provision of law defining an offense depends upon a victim's [sic] being under a certain age, it is an affirmative defense that, at the time of the alleged offense, the defendant reasonably believed the victim to be that age or older,

2. Under the statutes prohibiting sexual abuse of minors, the age of consent in Alaska is 16 years. See AS 11.41.436(a)(1).

on the sexual assault i)(1). Kidnapping is separately punishable by nine years' imprisonment of five. AS 125(b).

sexual assault, Judge Johnson to the present years. Because of mitigating factors or reasons, the sentencing imposed a lesser term. 72 P.2d 466, 467 (Alaska App. 1947) sentenced Johnson to five years for his crime and two years of that term consecutively to the sexual assault, for a combined term of seven years. Thus, for his conviction of an unclassified crime of sexual assault in effect received only the minimum composite sentence, the court was empowered to

Johnson proposes, we do not view this as a separate crime. The circumstance aggravating the sexual assault, Johnson's total sentence hardly seems beyond the bounds within which the court properly exercise its discretion. Independently reviewed the record, we conclude that the sentence below was not clearly an error. *v. State*, 519 P.2d 811.

conviction and sentence was reversed as to Russell G. Johnson.

ensome on the trial court. *in camera* review of an already convicted person is likely to result in more than a minimal incursion on the privacy of a person who is the subject of

we do not believe that *in camera* review of information that was not previously reviewed by the superior court should permit the court to engage in a significant incursion on the privacy of a person who is the subject of a motion by Russell Johnson based on the information.

unless the victim was under 18 years of age at the time of the alleged offense. (Emphasis added.)

Superior Court Judge Rene J. Gonzalez conducted an evidentiary hearing on Fremgen's motion. Several witnesses testified at this hearing. At the conclusion of the hearing, Judge Gonzalez found that there was a substantial basis to Fremgen's defense that S.M. exhibited a sexual and physical maturity which could lead a reasonable person to believe that she was older than her actual age of just under thirteen years. Judge Gonzalez rejected Fremgen's claim that AS 11.41.445(b) was unconstitutional on its face. He concluded, however, that the statute was unconstitutional as applied to Fremgen. Judge Gonzalez ruled that Fremgen would be allowed to present an affirmative defense that he reasonably believed that S.M. was age sixteen or older.³

[1] The state filed a petition for review in this court. Fremgen filed a cross-petition asking for review on the constitutional challenges which Judge Gonzalez rejected. This court granted both petitions. The parties have briefed and argued the case to this court. We now affirm Judge Gonzalez's ultimate decision allowing Fremgen to present a defense of reasonable mistake of age. However, unlike Judge Gonzalez, we base our conclusion upon the Alaska Supreme Court's decision in *State v. Guest*, 583 P.2d 836 (Alaska 1978). Following *Guest*, we find that

3. Fremgen concedes that unless he can show that he reasonably believed that S.M. was 16 years of age or older, he cannot establish the defense of reasonable mistake of age. Fremgen acknowledges that even if he reasonably believed that S.M. was 13 years of age or older but under 16, this would be sufficient showing of criminal intent to allow his conviction for sexual abuse of a minor in the first degree. See *Bell v. State*, 668 P.2d 829, 832-33 (Alaska App.1983) (no violation of due process to refuse to allow a reasonable mistake of age defense for a charge of inducing a person under the age of sixteen to engage in prostitution where defendant's knowledge that he was promoting prostitution was sufficient to provide criminal intent). See also *Ortberg v. State*, 751 P.2d 1368, 1374 (Alaska App.1988) (no *mens rea* requirement that defendant know that damage he caused exceeded \$500 for criminal mischief charge); *Noblitt v. State*, 808 P.2d 280, 284-86 (Alaska App.1991) (no *mens rea* requirement in hindering prosecution case that defen-

convicting Fremgen of sexual abuse of a minor without allowing him to present the affirmative defense of a reasonable mistake of age would violate his right to due process of law under the Alaska Constitution. We accordingly do not consider Judge Gonzalez's ruling that AS 11.41.445(b) was unconstitutional as applied to Fremgen.

In *Guest*, the defendants were charged with the statutory rape of a fifteen-year-old female in violation of former AS 11.15.120.⁴ Prior to trial, the defendants asked the trial judge to give an instruction that if the defendants held a reasonable belief that the fifteen-year-old victim was sixteen years of age or older, then the jury must find the defendants not guilty of the charges of statutory rape. 583 P.2d at 837. The trial judge agreed to give the instruction if the evidence at trial supported it.⁵ The state petitioned for review from the trial judge's decision to give the instruction. The supreme court affirmed, overruling a prior decision.⁶ Earlier decisions by the court in *Speidel v. State*, 400 P.2d 77 (Alaska 1969), and *Alex v. State*, 484 P.2d 677 (Alaska 1971), played an important part in the court's reasoning. The supreme court noted that it had held in both cases that "it would be a deprivation of liberty without due process of law to convict a person of a serious crime without the requirement of criminal intent." *Guest*, at 888.⁷ The court stated:

defendant know that person he aided committed a felony).

4. Former AS 11.15.120 provided in relevant part

Rape. (a) a person who ... (2) being 16 years of age or older, carnally knows and abuses a person under 16 years of age, is guilty of rape.

5. The parties in *Guest* stipulated that they expected the evidence at trial to support a reasonable belief on the part of the defendants that the alleged victim was 16 years of age or older at the time of the alleged act of sexual intercourse. *Id.* at 837.

6. *Anderson v. State*, 384 P.2d 669 (Alaska 1963).

7. The court also referred to its decision in *Kimoktoak v. State*, 584 P.2d 25 (Alaska 1978), as supporting the same principle.

We believe that the charge of statutory rape is legally unsupportable under the principles of *Speidel*, *Alex* and *Kimoktoak* unless a defense of reasonable mistake of age is allowed. To refuse such a defense would be to impose criminal liability without any criminal mental element. The defense of reasonable mistake of fact is generally allowed in criminal cases to permit the defendant to show that he lacked criminal intent. When that opportunity is foreclosed the result is strict criminal liability.

[I]n such cases, where the particular statute is not a public welfare type of offense, either a requirement of criminal intent must be read into the statute or it must be found unconstitutional.

583 P.2d at 838-39 (footnote and citations omitted).⁸

[2] The state points out that in *Guest* the supreme court quoted from what was then the tentative draft of the Alaska Criminal Code which ultimately became law as AS 11.41.445(b). *Id.* at 838 n. 2. The state contends that by setting out in its entirety proposed AS 11.41.445(b), the supreme court "tacitly approved the draft." This is certainly a possibility. However, as a lower court within the state court system, we are bound

8. The court defined "public welfare" offenses as a rather narrow class of regulatory offenses which imposed stringent duties on those who were connected with activities affecting the public health, safety and welfare. The court stated that:

The penalties for the infraction of strict liability offenses are usually relatively small and conviction of them carries no great opprobrium. Statutory rape may not be categorized as a public welfare offense. It is a serious felony. *Id.* at 838 (citation omitted).

by the decisions of the Supreme Court of Alaska. The clear language of *Guest* is sweeping, and unmistakably requires the state to prove criminal intent for the conviction of a serious crime. *Id.* at 838. *Guest* specifically applied this principle to require a defense of reasonable mistake of age. Furthermore, the *Guest* opinion does not stand alone. The Supreme Court of Alaska has consistently refused to allow a defendant to be convicted of a serious criminal offense based upon strict liability. See *Hentzner v. State*, 613 P.2d 821 (Alaska 1980); *Kimoktoak v. State*, 584 P.2d 25 (Alaska 1978); *Alex v. State*, 484 P.2d 677 (Alaska 1971); *Speidel v. State*, 460 P.2d 77 (Alaska 1969).

We conclude that under *Guest v. State*, Judge Gonzalez was required to allow Fremgen to present an affirmative defense that he reasonably believed that at the time that he engaged in sexual penetration with S.M., she was sixteen years of age or older. We accordingly AFFIRM Judge Gonzalez's decision.⁹



9. Fremgen concedes that at trial he will have the burden of establishing by a preponderance of the evidence that he reasonably believed that during the incidents charged S.M. was sixteen years of age or older. Reasonable mistake of age is an affirmative defense under which the defendant has the burden of proof under AS 11.41.445. We recently upheld the allocation of the burden of proof in *Steve v. State*, 875 P.2d 110, 115-23 (Alaska App.1994).

STATE OFFICE

ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 210106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355

January 31, 2002

Representative Fred Dyson
State Capitol
Juneau, AK 99801-1182

Dear Representative Dyson:

I am writing you on behalf of the Alaska Peace Officers Association (APOA) State Board of Directors, who recently met and discussed proposed legislation for this legislative session.

APOA discussed House Bill 243 (22-LS0770(A)) related to the sexual assault or abuse of a minor. Although we understand and support the spirit in which this bill was introduced, we believe there should not be an affirmative defense to these crimes by simply checking government-issued photo identification or checking with a victim's parents. Clearly, the responsibility in cases such as these lies on the offender, and "reasonable measures" should extend far beyond what this legislation suggests.

Please contact the APOA office in Anchorage at 277-0515 if there is anything our organization can do to assist in the discussion and revision of this proposed legislation.

Sincerely,

COPY

Leo Brandlen
State President

cc: House Judiciary Chair, Rep. Norman Rokeberg

Business Manager

Joseph Young
Anchorage

Board of Directors

Leo Brandlen, President
Anchorage

Chuck Kopp, Vice President
Kenai

Michael Corkill, Past President
Mesa, AZ

Kim Wannamaker, Member
Kenai
Pres. Kenai Chapter

Terry Games, Member
Anchorage
Pres. Anchorage Chapter

Angella Long, Member
Wasilla
Pres. Mat-Su Chapter

Lorrie Hatman, Member
Fairbanks
Pres. Farthest North Chapter

Jerry Nankervis, Member
Juneau
Pres. Capital City Chapter

Andrea Jacobson, Member
Ketchikan
Pres. First City Chapter

James See, Member
Craig
Pres. Prince of Wales Chapter

John Lucking, Jr., Member
Unalaska
Pres. Aleutian Islands Chapter

Thecla LaLonde, Member
Wrangell
Pres. Wrangell Chapter

HB

246

Adopted
4-22-02

AMENDMENT #1

OFFERED IN THE HOUSE

BY

TO: CS FOR HOUSE BILL NO. 246 (L&C)

1 Page 9, Line 6:

2 Insert a new bill section to read:

3 *Sec. 23. AS 21.27.330(b) is amended to read:

4 (b) If a licensee that is a firm transacts business at more than one place of business,
5 [IN THIS STATE], the licensee shall pay a license fee for each place of business that transacts
6 business in this state or relative to a subject resident, located or to be performed in this
7 state.

Amendment to AS 21.27.330(b)

Changes to the producer licensing laws were made last year to eliminate the requirement that each branch location transacting Alaska business obtain separate licenses consistent with the intent of the Gramm-Leach-Bliley Act (GLBA). This amendment was to be revenue neutral to the Division with only the "main office" receiving a license, but with all branch offices transacting Alaska business paying a fee.

In the drafting process the words "in this state" were mistakenly added to the provision in AS 21.27.330(b). The result is that the provision now implies that a branch office would not be required to pay a fee if the branch office is not actually located in Alaska, even though the branch office transacts Alaska business. This drafting error could mean unintentional loss of revenue for the Division.

The proposed amendment corrects this drafting error and clarifies that each branch office that transacts Alaska business is required to pay a fee.

ALASKA STATE LEGISLATURE

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Representative Pete Kott
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HOUSE LABOR AND COMMERCE COMMITTEE Sponsor Statement House Bill 246 Omnibus Insurance Reform

Regulatory Structure for MEWAs: Sections 1, 44 and 56. A Multiple Employer Welfare Arrangement (MEWA) is an employee welfare benefit plan established for the benefit of employees of two or more employers to provide health care or other welfare benefits to employees and dependents. Under current statute a MEWA is regulated as an insurer. The provisions in House Bill 246 establish a more appropriate regulatory structure for MEWAs, in particular, a more reasonable and appropriate capital and surplus, reserving and financial reporting requirements.

Confidentiality of Records: Sections 2-5, 50, 57. These provisions clarify that documents determined to be confidential by law or by the director of insurance are not subject to inspection, copying, or subpoena but may be used by the director in regulatory or legal proceedings and may be shared with other law enforcement or regulatory agencies. The director may receive confidential information from other regulatory or law enforcement agency and maintain the confidentiality and may enter into information sharing agreements. Information designated as confidential includes personally identifiable information, trade secret or proprietary business information, and information the director finds the withholding of which is necessary to protect a person or is in the public interest.

Late Payment of Premium Taxes: Sections 13, 49. These provisions establish late payment fees for all entities that pay premium taxes including insurers and surplus lines brokers for when premium taxes are not received by the division when due.

Annual Fee to Operate as a Joint Insurance Arrangement: Section 51. This provision establishes an annual fee to offset the cost to the division of insurance of enforcing of AS 21.76 on joint insurance arrangement.

Revision of Property-Casualty Guaranty Fund Assessment: Sections 53-55. These provisions revise the formula for assessing member insurance companies for funds to pay claims and operate the guaranty fund. The revision provides for a redistribution of payments due in the year following an assessment based on the premiums written by insurers in the Alaska market. It also allows for the surcharge to policyholders for the assessment to be determined by the association as a percentage of premium.

Stop Loss Insurance Standards: Section 35 The changes establish minimum specific and aggregate attachment points (i.e. retention limits) for stop loss insurance policies. These minimums will provide greater protections to smaller employers who chose to self-fund their health care plans. Without these minimums insurers are able to sell health insurance under the guise of stop loss insurance that is not required to comply with state health care insurance laws including benefit mandates, guarantee issue and portability requirements.

Correction/Clarification of Existing Statutes: Sections 6-12, 14-34, 36-43, 45-49, 52. Please see sectional analysis for explanation of changes.

CS HB 246 (L&C) Sectional Analysis

Regulation of Multiple Employer Welfare Arrangements

Sections 1, 44 and 56 establish a regulatory framework for Multiple Employer Welfare Arrangements (MEWA). A MEWA is defined under federal law and is an employee welfare benefit plan established for the benefit of employees of two or more employers to provide health care or other welfare benefits to employees and dependents. States are given authority under the federal Employee Retirement Income Security Act (ERISA) to regulate MEWAs under state insurance law.

Section 1. AS 21.03.021. Regulation of MEWAs, page 1.

These new subsections provide the authority for the Alaska Division of Insurance to regulate MEWAs. Subsection (b) specifies that an entity that is offering medical coverage is under the jurisdiction of the Alaska Division of Insurance unless it is under another governmental agency. Subsection (c) provides authority to conduct an examination to determine what the entity is and whether it is subject to Title 21. Subsection (d) requires that while an examination to determine jurisdiction is being conducted any transaction of insurance business must advise the purchaser that the coverage is not regulated under Alaska insurance statutes and is not covered by a guaranty fund in Alaska.

Confidentiality of Records

Sections 2 – 5, 50, and 57 add specific statutory clarification of the confidentiality of records maintained within the division. The language clarifies that documents determined to be confidential by law or by the director of insurance are not subject to inspection, copying, or subpoena but may be used by the director in regulatory or legal proceedings and may be shared with other law enforcement or regulatory agencies. The director may receive confidential information from other regulatory or law enforcement agencies and maintain the confidentiality and may enter into information sharing agreements. Information that is designated as confidential includes personally identifiable information, trade secret or proprietary business information, and information that the director finds the withholding of which is necessary to protect a person or is in the public interest.

Section 2. AS 21.06.060. Confidential documents, page 2.

The amendment to this subsection adds a reference to the new subsections in Section 3 on confidential documents.

Section 3. AS 21.06.060. Confidential documents, page 2.

New subsection (b) explains that documents that are confidential or not available for public inspection, are not subject to inspection, copying or subpoena, may be used in a regulatory or legal proceeding, may be released if the person who provided the information consents or releases incomplete or misleading information on the same topic.

New subsection (c) specifies that a person working for the director may not be required to testify about confidential information.

New subsection (d) specifies that providing confidential information to the director does not waive any claim of privilege.

New subsection (e) allows the director to disclose confidential information to the legislature, regulatory or law enforcement agencies or the NAIC if the entity will maintain the confidentiality. The director may also receive information from regulatory or law enforcement agencies or the NAIC and will maintain the confidentiality of the information if requested to do so or given notice that the records are confidential by law of the supplying agency. The director may enter into agreements with other regulatory or law enforcement agencies or the NAIC consistent with this section.

New subsection (f) specifies that the following documents are confidential:

- personally identifiable consumer information unless disclosure is necessary to resolve a consumer complaint;
- information shown to be trade secret or proprietary business information including health insurance claim cost data and usual, customary and reasonable charge determinations;
- information provided by a person not subject to regulation by the director if the information is identified as confidential by the director; and
- financial analysis ratios and examination synopses from the NAIC.

New subsection (g) gives the director authority to withhold information from public inspection if the director finds it is necessary to protect a person against unwarranted injury or is in the public interest.

Section 4. AS 21.06.150(g). Confidential documents, page 4.

This subsection was repealed and reenacted to specify that examination workpapers are confidential. The director continues to be able to publish the examination report in a newspaper or electronically if it is determined to be in the public interest to do so.

Section 5. AS 21.06.210. Close a hearing, page 4.

This new subsection (h) allows the director to close a hearing to the public when it is necessary to protect a person against unwarranted injury or is in the public interest. This includes a sentence from the existing AS 21.06.150(g) that is lost when the section is repealed and reenacted in Section 4 of the bill.

Correction of Wording

Section 6 is amended to correct wording in a section adopted by the legislature in 2000.

Section 6. AS 21.07.040(c), Correction of Wording, page 5.

This amendment to subsection (c) changes wording to a phrase that more properly reflects the meaning of the subsection. The change removes "a current or former person" and replaces it with "a person currently or formerly"

Limit on Processing Time for Certificate of Authority Applications

Section 7 is amended to change the processing time for applications from an insurer for a certificate of authority from 30 days to 60 days.

Section 7. AS 21.09.120(a). Limit on Processing Time, page 5.

This amendment to (a) changes the processing time for a certificate of authority application from 30 days to 60 days. The recommended processing time for the uniform certificate of authority application adopted by the National Association of Insurance Commissioners is 60 days. The division is participating in the uniform application process and needs to adopt the uniform goal on time to effectively process an application.

Payment of Premium Taxes and Fees

Sections 8, 10, and 13 through 17 address several areas of premium taxes and fees payable to the state. Sections 8 and 10 expand the director's authority to specify the form of payment of certificate of authority continuation fees and financial statement filing fees which was granted for premium tax collection in 1998. Section 13 provides for a late fee payment when premium taxes are not received when due. Section 14 clarifies that tax credit statutes apply to taxpayers under AS 21.09.210. Sections 15 through 17 clarify language on taxation of jumbo life policy premiums and exemption from retaliatory fees, both of which were adopted in the 1998 Legislative Session.

Section 8. AS 21.09.130(a). Fee Payment, page 5.

The amendment to subsection (a) gives the director authority to specify the method of payment of certificate of authority continuation fees by electronic or other means. This same authority was given to the director in 1998 on the collection of premium taxes.

Section 10. AS 21.09.200(d). Fee Payment, page 6.

The amendment to subsection (d) gives the director authority to specify the method of payment of annual statement filing fees by electronic or other means. This same authority was given to the director in 1998 relative to the collection of premium taxes.

Section 13. AS 21.09.210(g). Late Fee, page 6.

The amendment to subsection (g) adds a late payment fee for late payment of premium tax required under AS 21.09.210 and late payment of retaliatory fee required under AS 21.09.270. The fee is the greater of \$100 per day or 25% of the tax due. In addition interest is charged at 1% per month or partial month.

Section 14. AS 21.09.210(i). Tax Credit, page 6.

The amendment to subsection (j) adds the fire safety standards counsel charitable contribution premium tax credit to the education charitable contribution tax credit and clarifies that the provision applies to payers of tax under this section.

Section 15. AS 21.09.210(m). Jumbo life policy taxation, page 6.

This amendment to subsection (m) makes it clearer that individual life policy premium is taxed at 2.7% up to \$100,000 and premium above \$100,000 is taxed at 0.1%.

Section 16. AS 21.09.270(b). Exemption from retaliatory fee, page 7.

This amendment to paragraph (b)(2) clarifies that the exemption from payment of retaliatory fee is only for health care insurance premium received by an insurance company from a state, municipality, city or borough school district, a regional educational attendance area, University of Alaska or community college.

Section 17. AS 21.09.270. Exemption from retaliatory fee, page 7.

This new subsection (f) clarifies that the retaliatory fee calculation does not include taxes paid on health care insurance premiums received from the state, political subdivisions, or University of Alaska. This is a clarification of an exemption adopted in 1998 to more carefully show the extent of the intended exemption.

Authority for Filing of Financial Statements

Sections 9, 11 through 12 provide authority for the director to allow filing of financial statements only on an electronic basis at the place of the director's designation. This authority will allow the division to reduce the resources necessary to maintain paper files of insurance company annual financial statements. Section 12 changes the filing due date from 60 days after the end of the quarter to 45 days after the end of the quarter to make it consistent with the due date in the majority of other state insurance departments.

Section 9. AS 21.09.200(a). Electronic Filing of Financial Statements, page 6.

This amendment allows the director to designate where the financial statement required in the statute is to be filed. The location of the filing will be published by the director at least annually by bulletin.

Section 11. AS 21.09.200(e). Electronic Filing of Financial Statements, page 6.

This amendment allows the penalty in statute to be charged when the financial statement is not sent to the location designated by the director. The penalty is \$100 per day until properly filed.

Section 12. AS 21.09.205(b). Filing of Quarterly Financial Statements, page 6.

This amendment modifies the due date for the filing of the quarterly financial statement from 60 days after the end of the quarter to 45 days after the end of the quarter. Most states and the

National Association of Insurance Commissioners require the quarterly financial statements to be filed 45 days after the end of the quarter

Clarification of Contents of US Branch Financial Statement

Section 18 clarifies that the US Branch financial statement filed with the division must include all insurance activity within the United States.

Section 18. AS 21.09.310(n). US Branch Financial Statement Contents, page 7.

The amendment to subsection (n) clarifies that the US Branch financial statement shall have only US Branch insurance activities and must include all insurance transactions conducted within the United States.

Clarify the application of RBC Mandatory Control Level Actions

Section 19 clarifies that the actions in AS 21.14.050 required when an insurer reaches the Mandatory Control Level only apply to domestic insurance companies.

Section 19. AS 21.14.050(a). RBC Mandatory Control Level actions, page 8.

This amendment to subsection (a) clarifies that this section that requires an insurer to be placed under regulatory control when the insurer reaches the Mandatory Control Level only applies to domestic insurers. Actions for foreign insurers are included in AS 21.14.070.

Compliance Officers, Compensation, and Clarification of the Firm License

Amendments in Section 20 to 25 make changes to licensing statutes and clarifies who can receive compensation. Sections 20 and 22 clarify that a producer firm may have more than one compliance officer with all compliance officers covering all the powers conferred by the firm's license and requires the compliance officer to be licensed as an individual in the firm for specific lines and classes of authority. Section 21 rewords a section that requires the scope of the firm license to include all lines and class of authority of each individual in the firm. Section 23 makes small amendments to AS 21.27.370(c) on unlicensed compensation to clarify the meaning of this section that was adopted in 2001. Sections 24 and 25 provide better definitions for "compliance officer" and "class of license".

Section 20. AS 21.27.020(c). Compliance officer, page 8.

This amendment to subsection (c) clarifies that qualification for a firm license will allow the designation of more than one compliance officer to be responsible for the firm's compliance with Alaska statutes and regulations.

Section 21. AS 21.27.140(a). Firm License, page 8.

The repeal and reenactment of subsection (a) results in clarification that the scope of the firm license is to include all lines and classes of authority of the individuals working in the firm.

Section 22. AS 21.27.140(b). Compliance officer, page 8.

The repeal and reenactment of subsection (b) results in clarification that the firm may not be licensed unless each individual in the firm is licensed. In addition, it specifies that each compliance officer must also be licensed as an individual in the firm for a specific line and class of authority and, if there is more than one compliance officer, each area of the firm's license authority shall be covered by a compliance officer.

Section 23. AS 21.27.370(c). Compensation, page 9.

Amendments to subsection (c) clarify that a person who discusses specific terms and conditions of a policy or a person who gives opinions or advice regarding insurance is not eligible for compensation without first having a license.

Section 24. AS 21.27.900(4). Definition, page 9.

The amendment to the definition of "compliance officer" in (4) adds that the compliance officer must be designated for a specific line and class of authority.

Section 25. AS 21.27.900. Definition, page 9.

The addition of a new paragraph is to define a "class of authority" to mean one or more designations of authority such as insurance producer, managing general agent, reinsurance intermediary manger, reinsurance intermediary broker, surplus liens broker, or independent adjuster, or third party administrator.

Exemption from Premium Tax and Payment in Lieu of Premium Tax

Sections 26 through 30 clarify language in the area of premium tax exemptions and exemption from other state or local taxes. Sections 26, 28, and 30 clarify that exemptions are for aircraft that are primarily engaged in interstate or foreign commerce instead of regularly engaged in such business. Sections 27 and 29 amend the sections to clarify what other state taxes are not payable when an entity pays premium tax under these statutes.

Section 26. AS 21.33.037(b). Aircraft exemption from licensing, page 9.

This amendment clarifies that the prohibition of a person acting as an agent for an unauthorized insurer in this state does not apply to unauthorized insurance transactions for the property or operations of railroads or aircraft primarily engaged in interstate or foreign commerce.

Section 27. AS 21.33.055(a). Premium tax payment in lieu of other taxes, page 10.

This amendment to subsection (a) clarifies that only the premium taxes paid by an insurance company for unauthorized insurance business allowed in AS 21.33 are in lieu of all other taxes. Exemption from other taxes given in Title 21 is for insurance companies only.

Section 28. AS 21.33.055(c). Aircraft exemption from unauthorized insurer premium tax, page 11.

This amendment clarifies that aircraft that is primarily engaged instead of regularly engaged in interstate or foreign commerce is exempt from the unauthorized insurer premium tax. This will help determine when the exemption applies.

Section 29. AS 21.33.061(c). Premium tax payment in lieu of other taxes, page 11.

This amendment to subsection (c) removes the statement that the premium receipts tax is in lieu of other taxes. Exemption from other taxes given in Title 21 is for insurance companies only.

Section 30. AS 21.33.061(g). Aircraft exemption from independently procured premium tax, page 12.

This amendment clarifies that aircraft that is primarily engaged instead of regularly engaged in interstate or foreign commerce is exempt from the independently procured premium tax. This will help determine when the exemption applies.

Exemption from Premium Tax

Sections 31 and 32 clarify premium tax payments and exemptions for surplus lines placements.

Section 31. AS 21.34.180(a). Admitted insurance exemption from surplus lines premium tax, page 12.

This amendment clarifies that for subscription policies the portion of premium taxes submitted to the division by the admitted insurer does not need to also be submitted to the division by the surplus line broker. This will avoid double payment of premium taxes.

Section 32. AS 21.34.180(d). Aircraft exemption from surplus lines premium tax, page 12.

This amendment clarifies that aircraft that is primarily engaged instead of regularly engaged in interstate or foreign commerce is exempt from the independently procured premium tax.

Payment of Premium Taxes and Fees

Section 33 establishes a late fee payment for when premium taxes for surplus lines insurance placements are not received by the division when due.

Section 33. AS 21.34.180(f). Late Fee, page 12.

The new subsection (f) adds a fee for late payment of the premium tax required under AS 21.34.180 for surplus lines insurance placements. The fee is the greater of \$100 per day or 25%

of the tax due. In addition interest is charged at 1% per month or partial month. Remaining subsections are renumbered.

Insurable Interest

Section 34 clarifies the application insurable interest to life, annuity or health insurance.

Section 34. AS 21.42.020(d). Insurable interest, page 12.

AS 21.42.020 is intended to apply to life, health and annuity insurance. However, the term "personal insurance" is used and is not defined in AS 21.42. It is a particularly confusing term to use since "personal insurance" is defined in AS 21.36.310 only for purposes of 36.210-310 and it is defined to exclude life, health, and annuity insurance. Therefore, the change to this section deletes the reference to personal insurance and replaces it with life, health and annuity insurance.

Stop Loss Insurance Regulation

Section 35 regulates the issuance of stop loss insurance policies by setting standards for such policies.

Section 35. AS 21.42.145. Stop Loss Insurance, page 13.

This new section added to Chapter 42 prohibits a health insurer from issuing a stop loss insurance policy that allows payment at claim levels below \$10,000 for an individual or for a large employer plan is \$4000 times the number of individuals covered in a plan or 120% of claims for a plan or \$20,000, whichever is greater, or pays claims at lower than 110% of expected claims, or provides direct coverage of health care expenses. This provides a definition between health insurance and stop loss insurance policies covering health risks. The new section allows adjustment of the standards set and allows adoption of a regulation to implement the section. The new section defines terms used in the section.

Health Insurance

Section 36 through 43 makes small changes to health insurance policy benefits, requirements for insurers discontinuing health products in this state, and small employer insurers.

Section 36. AS 21.42.363. Eye care under health insurance, page 14.

AS 21.89.040 requires an insurer to provider reimbursement for services provided by an optometrist if the plan covers services within the scope of practice of an optometrist. This provision should be in AS 21.42 where the other coverage mandates are located. This section simply moves the provision to a new section AS 21.42.363.

Section 37. AS 21.42.365(b). Health policy benefits, page 14.

Under AS 21.42.365(b) the director is required to make adjustments to the alcohol and drug abuse limits on January 1 every three years using the prior calendar years. It is not possible to

use the prior calendar years and make the adjustment on January 1, since the CPI data is not available until after January 1. The change to this section removes the requirement that the adjustment be based on the prior calendar years so that the director can make the adjustment, effective on January 1, based on available CPI data.

Section 38. AS 21.42.390(b). Diabetes benefits, page 14.

This subsection is repealed and reenacted to require insurers to provide not less than \$1,500 for diabetes outpatient self-management education. HB 298 was signed into law this year with a limitation provision that is ambiguous. The change in this section modifies the provision to more clearly reflect the intent.

Section 39. AS 21.42.500(5). Definitions, page 15.

When the HIPAA provisions were added in 1997, the mandated benefit provisions in AS 21.42 were amended to use terms consistent with the HIPAA group definitions. The HIPAA definition of individual health coverage was not defined in our statute, since we used the CHIA as the alternative mechanism, which made most of the individual health provisions in HIPAA inapplicable. However, using the group definitions of health insurance coverage did not reflect the exclusion for individual short-term medical coverage as provided in the individual health HIPAA provisions. The unintended consequence is that individual short-term medical coverage (non-renewal health care coverage for less than 1 year) must comply with health benefit mandates. Most of these do not make sense for a short-term medical coverage such as annual screening exams. This section amends the definition of health care insurance plan in order to exclude short-term individual health coverage from the benefit mandates.

Section 40. AS 21.42.500. Definitions, page 15.

This new paragraph refers to already existing definitions given in AS 21.51 in the area of health insurance.

Section 41. AS 21.51.090. Claim forms, page 15.

This amendment clarifies that the insurer has 10 working days to furnish claimant forms when notified of a claim. The changes to this section modify AS 21.51.090 (individual health insurance), which became effective in 1966, to be consistent with the unfair claim practice regulation requirement regarding claim communication.

Section 42. AS 21.51.110. Time of payment of claims, page 15.

This amendment clarifies that indemnities will be paid within 30 days of receipt of written proof of loss. The changes to this section modify AS 21.51.110 (individual health insurance), which became effective in 1966, to be consistent with the unfair claim practice regulation requirement regarding claim payment.

Section 43. AS 21.54.130(c). Discontinuing health care plans, page 16.

Under HIPAA, insurers are allowed to exit the small group, large group or both markets. However, the current statutory language implies that they must exit from both markets. The change to this section clarifies that an insurer can exit just one or both of the group markets.

Section 44. AS 21.55.010. Regulation of MEWAs, page 16.

This amendment adds a licensed self-funded MEWA to the membership of the Comprehensive Health Insurance Association set out in Chapter 55.

Small Employer Health Insurance

Sections 45 and 46 clarify two areas of the small employer health insurer provisions in AS 21.56.

Section 45. AS 21.56.120(c). Small employer insurer, page 16.

Prior to the HIPAA modifications in 1997 this section required the actuary to certify to compliance with the renewal requirements because they were in Chapter 56. The 1997 HIPAA changes moved this section to AS 21.54 without modifying the references so that under current law the actuary is no longer required to certify to compliance with the renewal requirements (because it is no longer in the chapter as referenced in AS 21.56.120). The change to this section corrects this error and also adds the requirement that the actuary certify to all the HIPAA provisions in AS 21.54 as they relate to small group coverage as was intended.

Section 46. AS 21.56.140(c). Small employer insurers, page 17.

The intent of AS 21.56.140(c) is to require that insurers exclude any employee who has existing comprehensive medical coverage in determining whether an employer has met established minimum participation requirements. The use of the term "similar existing coverage" does not clearly reflect this intent and therefore the change to this section modifies this to "existing creditable coverage". Creditable coverage is a clearly defined term under AS 21.54.

Consumer Credit Insurance

Sections 47 and 48 clarify information that must be provided in notices to a debtor before consumer credit insurance is purchased and information that must be provided in the policy.

Section 47. AS 21.57.055(a). Consumer credit insurance, page 17.

These two amendments clarify that the creditor must allow the debtor to provide any other creditor required insurance through existing policies or other insurers and state whether or not benefits will pay off the debt at the time of death, disability or unemployment. An insurer may require insurance but not necessarily credit insurance. The current disclosure requirement is incorrect in that it implies that an insurer may provide coverage for unearned premium payments. However, AS 21.57.040 does not allow coverage of unearned premium. Therefore,

the change in this section modifies the provision to clarify the insurer must disclose whether benefits will completely pay off debt existing at the time of death, disability, or unemployment.

Section 48. AS 21.57.060(b). Consumer credit insurance, page 19.

Credit unemployment was left out of this disclosure requirement in error. The change to this section adds credit unemployment to the disclosure statement.

Late Fee for Late Payment of Title Insurance Premium Tax

Section 49 provides for a late fee when the premium tax on title insurance business written during the year is not paid by the due date in statute.

Section 49. AS 21.66.110(c). Late Fee, page 19.

The new subsection (c) adds a late payment fee for late payment of the premium tax required under AS 21.66.110 on title insurance. The fee is the greater of \$100 per day or 25% of the tax due. In addition, interest is charged at 1% per month or partial month.

Section 50. AS 21.66.380(b). Confidential documents, page 20.

This amendment specifies that information provided to the division that could identify the experience of a particular title insurance limited producer is confidential.

Annual Fee for Joint Insurance Arrangements

Section 51 sets an annual fee for an entity operating as a joint insurance arrangement under Chapter 76.

Section 51. AS 21.76.130. Annual Fee, page 20.

This new subsection adopts an annual fee to be paid by each entity operating under Chapter 76 as a joint insurance arrangement. The annual fee is to compensate the division for services performed in determining that an entity is staying within the authority given in Chapter 76. An entity that is found to be operating outside of Chapter 76 must be appropriately licensed as an insurer or producer under other provisions of Title 21.

Claim Priority in Liquidation Proceeding

Section 52 corrects the classification of claims by government by removing them from stockholders claims class 8.

Section 52. AS 21.78.260(5). Claim Priority in Liquidation Proceeding, page 20.

This amendment to paragraph (5) moves claims of a government entity for penalties out of Class 8 Stockholder Claims to Class 7. Class 8 are residual payments to stockholders of the defunct company and Class 7 are for payment of miscellaneous claims such as surplus notes,

premium refunds on assessable policies, and payments to members of a mutual company. Specific penalty claims as a part of residual claims as the statute currently reads provides an impossible allocation of remaining funds in a liquidation estate.

Revision of Property-Casualty Guaranty Fund Assessment

Sections 53 through 55 amend AS 21.80 to revise the formula for assessing member insurance companies for funds to pay claims and operate the guaranty fund. The revision provides for a redistribution of payments due in the year following an assessment based on the premiums written by insurers in the Alaska market. It also allows for the surcharge to policyholders for the assessment to be determined by the association as a percentage of premium.

Section 53. AS 21.80.060. Guaranty Fund Assessment, page 20.

The amendment to this section revises the assessment formula and applies it to information in annual statements as filed by the insurers on March 1. Assessments are charged to member insurers to generate funds for claims and administration costs. The assessment paid is a percentage of the premium written by the insurer in Alaska in the prior calendar year. That initial assessment percentage is used to adjust the final amount due after completion of the calendar year following the year used to calculate the initial assessment. The adjustment would result in additional payment by insurers who have recently written premium in the Alaska market and a lowering of the payment for insurers who have collected less premium in the Alaska market. Insurers would be billed or credited for the adjustment. If the association determines that funding is necessary the initial assessment shall be made during November of each year and the association may use the services of an independent actuary to assist in determining the amount of the assessment.

The section is also amended to make it clear that excess funds in the association may be used to reduce future assessments unless the association determines that there are significant excess funds. If there are significant excess funds the association shall return amounts to individual policyholders through procedures established by the association. The procedures shall have the association reimbursing member insurers for issuing uniform rate credits against premiums charged during the next calendar year.

Section 54. AS 21.80.070. Guaranty Fund Assessment, page 24.

The amendments to this section require the association to establish procedures in its Plan of Operation for determining uniform surcharge percentages that member insurers would apply to policies issued. The amendments also require the association to establish procedures so that the surcharge percentages shall match adjusted assessments as closely as possible for the calendar year. Any mismatch between the adjusted assessment paid and the maximum allowable surcharge which could be collected shall be taken into consideration when determining future surcharge percentages.

Section 55. AS 21.80.140. Guaranty Fund Assessment, page 26.

The amendment to this section allows the use of surcharge rates that may be added to policy premium that are sufficient to offset the adjusted assessments to an insurer. The amendment

also sets a procedure for the director to be notified of the surcharge percentage set by the association and that such percentage shall be the maximum surcharge rate which member insurers may apply to policies. The amendment does allow an insurer to apply to the director directly for a higher surcharge rate.

Section 56. AS 21.85. Regulation of MEWAs, page 26.

This new Chapter in Title 21 provides the details of regulation of self-funded MEWAs operating in the state of Alaska.

AS 21.85.010. Certificate of authority required

This new section requires that a MEWA may not exist unless a certificate of authority is obtained from the director. The section defines when a self-funded MEWA is established or maintained in the state and thereby required to obtain a certificate authority.

AS 21.85.020. Name

This new subsection provides rules for the name of a self-funded MEWA such that the name does not imply that the MEWA is an insurer and that the name is not similar to another MEWA such that it would mislead the public.

AS 21.85.030. Qualifications for a certificate of authority.

This new subsection sets out in (a) the standards that must be met to obtain a certificate of authority. The employers must be members of an association in a related trade, profession or industry. The employers must exercise direct control of the arrangement. The MEWA must be nonprofit and provide only allowable benefits along with life insurance that meets the Alaska insurance statutes. The MEWA must have adequate facilities and competent personnel and the arrangement must cover not less than 2 employer and not less than 75 employees. The MEWA must not solicit participation from the general public but may associate with a licensed insurance producer to enroll employers. The arrangement may not be used solely to collect premiums and forward premiums to an insurance company except in the case of life insurance.

The new subsection (a) sets some solvency requirements. The MEWA must deposit \$100,000 with the director for payment of claims if the arrangement should become insolvent and the arrangement must provide the director a written plan of operation that ensures financial integrity if the director requests such a document. The MEWA must demonstrate that it has the ability to remain solvent. The methods open to the director for determining that the MEWA has the ability to remain solvent are

- pro forma financial statements
- types and levels of stop-loss insurance
- deposit requirement for each employee equal to at least one month cost of providing benefits
- management experience
- other factors the director considers relevant.

The new subsection (b) allows the director to require documents which describe the rights and obligations of the participants to say that those participants are liable for a pro rata share of all liabilities that are unpaid.

The new subsection (c) requires that the MEWA must have stop loss insurance coverage for 100% of claims in excess of the attachment point recommended by a qualified actuary.

AS 21.85.040. Application for a certificate of authority.

This new section sets out the items that must be submitted in an application for a certificate of authority. The items include the submission of an application showing detailed information of the MEWA along with a fee. The application must also have the following

- a copy of all documents describing rights and obligations of the employers, employees and beneficiaries of the arrangements,
- copy of the summary plan description files with the US Department of Labor,
- evidence of coverage or intent to cover at least 2 employers and at least 75 employees
- copy of the most recent annual financial statement or pro forma financial statement including an actuarial opinion
- proof of fidelity bonds
- copy of any stop-loss insurance policies in place or proposed
- biographical reports evidencing trustworthiness and competence of each managing employee or fiduciary
- a statement that the information provided is true and correct and that the arrangement is in compliance with specific state and federal laws, and
- base contribution rates for participation for the initial year of operations.

AS 21.85.050. Minimum reserves.

This new section requires that a self-funded MEWA maintain reserves equal to at least 30% of unpaid claim liability or the amount certified by an actuary, whichever is greater.

AS 21.85.060. Investments.

This new section requires that the MEWA maintain an amount of funds equal to 85% of net unpaid claim liability in cash, cash equivalents, insured bank deposits, bank certificate of deposits, insured share or savings accounts of a savings and loan or rated credit instruments issued or guaranteed by the US or Canada or by a government-sponsored enterprise of the US or Canada if the instrument is guaranteed or is backed by the full faith and credit of the US or Canada. The bank certificate of deposit is subject to review of the director to determine if the investment is sound. If it is not determined to be sound the director may require liquidation of the portion found to be unsound.

AS 21.85.070. Contribution rates.

This new section requires that the self-funded MEWA maintain contribution rates that fund the greater of the amount certified by a qualified actuary, or the sum of projected claims liability for the year, plus all projected costs of operation for the year, plus an amount equal to deficiency of reserves for the prior year minus an amount equal to reserves in excess of minimum required levels of reserves. The contribution rates must also be not excessive, inadequate or unfairly discriminatory.

AS 21.85.080. Reporting requirements.

This new section sets out requirements for the filing of financial statements with the director. The statements must be a statement of the financial condition, transactions and affairs as of the preceding December 31 on forms required by the director. The financial statement as a whole must include

- statement of financial condition (balance sheet);
- a statement of change in financial condition (income statement) accompanied by an actuarial opinion by a qualified actuary certifying that the unpaid claim liability meets the requirements for health coverage reserves in Chapter 18 of the Alaska insurance statutes, including a recommended level of specific and aggregate stop loss insurance, and a description of actuarial soundness with recommendations for improvement;
- Statement of contribution rates for next year;
- Certified financial statements for the prior two years if payments to the arrangement by participants during the prior year exceeded \$2 million; and
- Additional information the director finds necessary to determine financial integrity.

New subsection (b) requires a quarterly statement to be filed within 60 days of the end of each quarter which must include:

- statement of financial condition,
- statement of change in financial condition since the prior year end
- report of number of participating employeers and number of covered lives at the end of the quarter and contributions received during the quarter, and
- any other information required by the director.

The new subsection (c) requires that the self-funded MEWA must also file with the director a copy of each Form 5500, with attachments, filed with the Internal Revenue Service.

AS 21.85.090. Consumer information notice.

This new section requires that a notice be given to each participating employee, in writing at the time coverage becomes effective that is clear and conspicuous, no smaller than 10 point type, and that states that the coverage is issued by a self-funded MEWA ; coverage is not protected by the Alaska Life and Health Insurance guaranty Association; and if claim payment is not made by the MEWA the employer or employee may be responsible for payment.

AS 21.85.100. Applicability of other provisions.

This new section sets out what other provisions of the Alaska insurance statutes apply to self-funded MEWAs. The sections include requirements for examinations, managed care insurance plans, unsound management, issuance and continuance of the certificate of authority, disciplinary action against the certificate of authority, filing of financial statements, payment of premium tax, filing of changed information, retaliatory fee, reporting of material transaction, maintenance of records, health insurance reserves, requirements for unauthorized insurers, trade practices and frauds, approval of policy forms, coverage mandates, requirements for group life insurance, requirements for health insurance, participation in small employer health insurance and high risk health insurance, requirements for rehabilitation or liquidation.

AS 21.85.500. Definitions.

This new section defines the terms used throughout Chapter 85. It also defines "self-funded multiple employer welfare arrangement" as used in this chapter to be a MEWA that does not provide for benefit payment under a policy of insurance issued by authorized insurance companies.

Section 57. AS 21.87.190(b). Confidential documents, page 36.

This amendment specifies that detailed rate justifications and rating formulas are confidential without a specific determination by the director.

Section 58. AS 21.87.340. Applicability of other provisions, page 36.

This amendment clarifies that the Alaska Patients' Bill of Rights and the minimum health insurance reserves standards apply to hospital and medical service corporations.

Repeal of Sections

Section 59 repeals several sections because of statute changes included in this bill.

Section 59. Repealing sections, page 36.

The section repeals AS 21.33.045(d) that exempted life, health and annuity insurers from providing information if the director had reason to believe the coverage was placed with a nonadmitted insurer. Life, health and annuity insurers who write business in Alaska and were not admitted in Alaska would be treated like all other insurers and required to provide information to the director. The section repeals AS 21.87.340(17) because it references repealed section AS 21.89.040. The section repeals current section AS 21.89.040 due to the optometric services provision being added as a new section AS 21.42.363 in Sec. 36 of this bill.

Section 60. Revisor instruction, page 36.

The revisor is instructed to change the title of AS 21.42.020 to reflect the change made in Section 31 of this bill.

Section 61. Effective date, page 36.

This section provides for an effective date of July 1, 2002 for all sections of this bill.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 246(L&C)
 (H) Publish Date: 4/17/02

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Omnibus Insurance Bill BRU Insurance (116)
 Component Insurance Operations
 Sponsor House Labor & Commerce by Request
 Requester House Labor & Commerce Component No. 354

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
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						
1156 GF Receipt Supported Services						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact on this component.

Prepared by: Robert A. Lohr, Director Phone 907-269-7900
 Division Insurance Date/Time 4/11/02 11:55 AM
 Approved by: Deborah B. Sedwick, Commissioner Date 4/11/2002
 Agency Department of Community & Economic Development

HB

252

Amended

CS FOR HOUSE BILL NO. 252(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 2/25/02

Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVES COGHILL, Dyson

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the construction of certain statutes relating to children; relating to
2 the scope of duty and standard of care for persons who provide services to certain
3 children and families; relating to intensive family preservation services; and providing
4 for an effective date."

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

6 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
7 to read:

8 **LEGISLATIVE INTENT.** By the amendment of AS 47.10.005 in sec. 2 of this Act,
9 the legislature intends to express its recognition that parents possess inherent, individual right
10 to direct and control the education and upbringing of their children.

11 * **Sec. 2.** AS 47.10.005 is amended to read:

12 **Sec. 47.10.005. Construction.** The provisions of this chapter shall be
13 liberally construed to the end that a child coming within the jurisdiction of the court
14 under this chapter may receive the care, guidance, treatment, and control that will

best interests of the child, ~~welfare~~ including and the parents' participation in the child's upbringing.

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promote the ~~child's, welfare~~ and the parents' participation in the child's upbringing.

* Sec. 3. AS 47.10.086(a) is amended to read:

(a) Except as provided in (b) and (c) of this section, the department shall make timely, reasonable efforts to provide family support services to the child and to the parents or guardian of the child that are designed to prevent out-of-home placement of the child or to enable the safe return of the child to the family home, when appropriate, if the child is in an out-of-home placement. Within appropriations identified by the department for the specific purpose of intensive family preservation services, the department shall also offer intensive family preservation services when those services are available and the child's safety in the home can be maintained during the time the services are provided. The department's duty to make reasonable efforts under this subsection to provide family support services includes the duty to

(1) identify family support services that will assist the parent or guardian in remedying the conduct or conditions in the home that made the child a child in need of aid;

(2) actively offer the parent or guardian, and refer the parent or guardian to, the family support services identified under (1) of this subsection; the department shall refer the parent or guardian to community-based family support services whenever community-based services are available and desired by the parent or guardian; and

(3) document the department's actions that are taken under [(1) AND (2) OF] this subsection; the documentation required under this paragraph must include

(A) documentation about whether intensive family preservation services were appropriate, offered, used, or available to the family; and

(B) if intensive family preservation services were appropriate or offered to the family, enumeration of the reasons specific to the case explaining why intensive family preservation services were appropriate or offered.

1 * **Sec. 4.** AS 47.10.086(b) is amended to read:

2 (b) If the court makes a finding at a hearing conducted under AS 47.10.080(l)
3 that a parent or guardian has not sufficiently remedied the parent's or guardian's
4 conduct or the conditions in the home despite reasonable efforts made by the
5 department in accordance with this section, the court may conclude that continuation
6 of reasonable efforts of the type described in (a) of this section are not in the best
7 interests of the child. The department shall then make reasonable efforts to place the
8 child in a timely manner in accordance with the permanent plan and to complete
9 whatever steps are necessary to finalize the permanent placement of the child. If the
10 court concludes that continuation of reasonable efforts of the type described in
11 (a) of this section are not in the best interests of the child and intensive family
12 preservation services were not provided in the case, the court shall enumerate in
13 the record the reasons the services were not provided.

14 * **Sec. 5.** AS 47.10.142(b) is amended to read:

15 (b) The department shall offer available counseling services and intensive
16 family preservation services to the person having legal custody of a minor described
17 in AS 47.10.141 and to the members of the minor's household if it determines that
18 counseling services or intensive family preservation services would be appropriate
19 in the situation. If, after assessing the situation, offering available [COUNSELING]
20 services to the legal custodian and the minor's household, and furnishing appropriate
21 social services to the minor, the department considers it necessary, the department
22 may take emergency custody of the minor.

23 * **Sec. 6.** AS 47.10 is amended by adding new sections to read:

24 **Article 3A. Intensive Family Preservation Services.**

25 **Sec. 47.10.500. Statewide program.** Subject to AS 47.10.510 and 47.10.520,
26 the department shall, within appropriations available for intensive family preservation
27 services, develop and implement intensive family preservation services systematically
28 and over time, with the ultimate goal of providing intensive family preservation
29 services on a statewide basis. The department may provide the services directly or
30 through contracts with private nonprofit providers.

31 **Sec. 47.10.510. Standards for providers.** The department shall develop

1 measurable standards that must be met by a provider before a contract may be
2 awarded to, or renewed with, the provider under AS 47.10.500.

3 **Sec. 47.10.520. Eligibility for services.** (a) The department may provide
4 intensive family preservation services to a child, the child's family, and other
5 appropriate nonfamily members only if

6 (1) there are no other available means that will prevent out-of-home
7 placement of the child or make it possible to immediately return the child to the child's
8 home; and

9 (2) the child has been placed in out-of-home care or is at actual,
10 imminent risk of out-of-home placement due to

11 (A) child abuse or neglect;

12 (B) a serious threat of substantial harm to the child's health,
13 safety, or welfare; or

14 (C) any other factor that could lead to out-of-home placement.

15 (b) The department need not provide services to an otherwise eligible family if

16 (1) services are not available in the community in which the family
17 resides;

18 (2) services cannot be provided because the program is filled to
19 capacity;

20 (3) the family refuses the services;

21 (4) the child's case plan does not include reunification of the child and
22 family; or

23 (5) the safety of a child, a family member, or a person providing the
24 services would be threatened.

25 **Sec. 47.10 530. Solicitation of funding sources.** The department shall solicit
26 federal and private resources that may be available to fund intensive family
27 preservation services.

28 **Sec. 47.10.590. Definition.** In AS 47.10.500 - 47.10.590, "intensive family
29 preservation services" and "services" mean intensive family preservation services, as
30 defined in AS 47.10.990.

31 * **Sec. 7.** AS 47.10.960 is amended to read:

Amendment #1

1 Sec. 47.10.960. ~~Civil liability~~ DUTY AND STANDARD OF CARE ~~not~~
2 ~~created. Failure to comply with a provision of this title or a regulation adopted~~
3 ~~under this title is not a basis for civil liability, but may be the basis for employee~~
4 ~~discipline or administrative action authorized by law~~ [NOTHING IN THIS TITLE
5 ~~CREATES A~~ ^{THE} DUTY OR STANDARD OF CARE FOR SERVICES TO CHILDREN
6 AND THEIR FAMILIES BEING SERVED UNDER AS 47.10~~7~~ ^{is derived from}

7 * Sec. 8. AS 47.10.990 is amended by adding a new paragraph to read: ^{common law.}

8 (28) "intensive family preservation services" means services provided
9 to a family with a child who is in an out-of-home placement or is at imminent risk of
10 out-of-home placement that

11 (A) are designed to address problems creating the need for out-
12 of-home placement by assisting the family to improve parental and household
13 management competence, solve day-to-day practical problems that contribute
14 to family stress, identify the factors that created the risk of out-of-home
15 placement, and participate in the development of the family's case plan so as to
16 improve parental performance and enhance functioning of the family unit; and

17 (B) have the following characteristics:

- 18 (i) are offered at the family's option;
- 19 (ii) are provided in the family's home;
- 20 (iii) are available 24 hours a day and seven days a
- 21 week;
- 22 (iv) are provided within 24 hours of initial contact for
- 23 assistance;

24 (v) are provided on a time-limited basis by a single case
25 worker whose caseload is congruent with ~~the~~ ^{delete} intensive family
26 preservation services standards established by the Child Welfare
27 League of America; caseloads ~~should~~ ^{shall} be kept low to allow for the
28 necessary intense level of interaction with the family, and the services
29 ~~should~~ ^{shall} be most intensive at the time of crisis; and

30 (vi) may, in appropriate instances and subject to
31 available appropriations, include monetary assistance for special needs

Amendment #2

1 of the family, such as to obtain food, shelter, or clothing or to purchase
 2 other goods or services that will enhance the effectiveness of other
 3 services offered to help preserve the family.

4 * Sec. 9. AS 47.17.030(d) is amended to read:

5 (d) Before the department or a local government health or social services
 6 agency may seek the termination of parental rights under AS 47.10, it shall offer
 7 protective social services and pursue all other reasonable means of protecting the
 8 child. The department or agency shall also consider the eligibility of the child
 9 and family for intensive family preservation services under AS 47.10.500 -
 10 47.10.590.

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

13 STUDY. (a) The Department of Health and Social Services shall conduct a study in
 14 at least one region of the state in order to

15 (1) develop a valid and reliable process for accurately identifying clients who
 16 are eligible for intensive family preservation services;

17 (2) collect data on which to base projections of service needs, budget requests,
 18 and long-range planning related to intensive family preservation services;

19 (3) develop regional and statewide projections of needs for intensive family
 20 preservation services;

21 (4) develop a cost estimate for implementation and expansion of intensive
 22 family preservation services on a statewide basis;

23 (5) develop a long-range plan and time frame for ultimately making intensive
 24 family preservation services available to all eligible families; and

25 (6) collect data regarding the number of children in foster care, group care,
 26 institutional care, and other out-of-home care due to medical needs, mental health needs,
 27 developmental disabilities, and juvenile offenses and to assess the feasibility of expanding
 28 intensive family preservation services eligibility to include all of these children.

29 (b) By November 30, 2004, the Department of Health and Social Services shall
 30 submit a report to the governor describing the study required under this section and including
 31 the department's conclusions and recommendations that are based on the study. The

1 department shall notify the legislature that the report is available.

2 (c) In this section, "intensive family preservation services" has the meaning given in
3 AS 47.10.990.

4 * **Sec. 11.** Sections 1 and 2 of this Act take effect immediately under AS 01.10.070(c).

5 * **Sec. 12.** Sections 3 - 6 and 8 - 10 of this Act take effect July 1, 2002.

ALASKA STATE HOUSE OF REPRESENTATIVES



Interim Address:

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Fairbanks, AK 99701
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Session Contact:

(907)-465-3719
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**State Capitol
Room 102**

REPRESENTATIVE JOHN COGHILL

HB 252 STANDARD OF CARE FOR CINA SERVICES

Sponsor Statement

The two most important goals of HB 252 is to create a standard of care for services offered by DFYS and to keep families together. We must continue our work of balancing child protection with family preservation during government intervention. Parents are held to a standard of care by our state with the threat of loosing parental rights if they fail in meeting these standards.

Failing to properly care for children is not just a parental issue. Our State Division of Youth Services also is made up of humans that from time to time may fail in a standard of caring. Therefore HB 252 is requiring that a standard of care be instituted within our State so that each department employee is held to at least the same standard of care that we require of parents in Alaska. Currently under AS 47.10.960 there is no duty or standard of care imposed department employees. The lack of a standard of care obscures the fiduciary duty of the State to the parents and children for which they are making these decisions

HB 252 is introduced with the purpose of recognizing parents in their God given role to raise their children as they see fit. This bill also recognizes that parents fail in varying degrees and the Division of Youth Services is called upon to protect the children while trying to preserve the family. Therefore we are adding the parent's participation in the event of a child coming under court jurisdiction. This legislation also directs DFYS to offer Intensive Family Preservation Services to families who are able to and want to learn the skills necessary to remain together and change the conditions that would mandate the placement of their children. These services would be provided at the family's option and would consist of an intensive short-term intervention to help the family work through the crisis and stabilize. By remaining intact and safe, families can grow strong and overcome their problems together.

The bill also asks for a study to determine a plan for providing statewide services. The study would also include recommendations on solicitation of federal funds and redirection of state funds in order to provide the services and realize a cost-savings.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1102
Deliveries to: 129 6th St., Rm. 329


MEMORANDUM

February 22, 2002

SUBJECT: CSHB 252(HES) (Work Order No. 22-LS0454\P)

TO: Representative Fred Dyson
Attn: Jason

FROM: Terri Lauterbach
Legislative Counsel



Enclosed is the CS you requested.

By way of legal advice, I have two comments to make about the language the committee added in sec. 8 of the CS to AS 47.10.990(28)(B)(v).

The first comment is about the reference to the Child Welfare League of America on page 5, lines 25-26, of this CS. Ordinarily, the contents of a statute may not depend on the actions and policies of a private body. That would constitute excessive delegation of legislative power because it would give a private group the power to change a state law. It may be that the requirement in this language that the caseloads merely be "congruent" with the private body's standards (and not exactly the same as the private body's standards) will save this statute from being unconstitutional. However, a good argument could be made that even requiring only congruency or consistency is an excessive delegation of legislative power.

My second comment about this language concerns the two uses of the word "should" at lines 27 and 29 on page 5. Ordinarily, a law does not use the term "should." Laws set duties and requirements. The use of the term "should" is more appropriate for a resolution or for a bill section of temporary law that explains the legislature's intent about something. If you really want caseloads to be kept low and to be most intensive at the time of crisis, "shall" is the word to use in place of "should." If this is truly just intent language and not intended to carry the force of law, then I advise that the two clauses simply be deleted as being non-statutory in nature.

If I may be of further assistance, please advise.

TML:med
02-194.med

Enclosure

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CS HB 252 (HES)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Health & Social Services
Title: RELATING TO CONSTRUCTION OF THE CINA STATUTES AND SCOPE OF DUTY FOR SOCIAL WORKERS BRU: Family and Youth Services
Component: FYS Management
Sponsor: COGHILL
Requestor: HOUSE (HES) Component Number: 2306

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual	80.0	50.0	50.0			
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	80.0	50.0	50.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (0)						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	80.0	50.0	50.0			
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--do not abbreviate)						
TOTAL	80.0	50.0	50.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: _____

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The intent of this proposed legislation appears to be one that is in line with the department's desire to provide support to families who can benefit from it, and to improve safety and well being of children. Intensive Family Preservation services are provided in many communities across the nation. These programs work intensely with a small number of families, for a short period of time, to help the family through a threatening time of crisis. Intensive Family Preservation services can be beneficial in preventing children from entering protective custody, and in reducing the amount of time children spend in protective custody. These services have limits in their appropriateness and effectiveness.

Currently, DFYS receives federal and state funds to provide family support, family preservation and time

Prepared by: Theresa Tanoury, Director Phone 465-3191
Division: Family & Youth Services Date/Time 02/22/2002
Approved by: Elmer A. Lindstrom, Deputy Commissioner Date 02/22/2002
Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

BILL NO. CS HB 252 (HES)

ANALYSIS CONTINUATION

ANALYSIS CONTINUED:

limited family reunification services. These funds are disbursed through the grant process to 26 agencies in communities throughout Alaska.

The legislation obligates the division to consider using Intensive Family Preservation services when and where available; and it allows the division to determine the appropriateness of the services.

The legislation also states an expectation that the department will research and pursue outside funding to develop these services. The detailed prospective study (which includes development and training), data analysis, and projection process will need to be completed by an outside source with specific expertise. This fiscal note is for the expected cost of this process. Funding to cover the cost of this process is requested for three years. Cost covers expenses related to the required study. Since the CS HB252 allows phase in of these services to occur, the department will spend first year funding on developing and training for intensive family preservation services.

Cost Comparison: Intensive Family Preservation Services vs. Out-of-Home Care

"One of the most unusual and exciting things about family preservation is that it is largely self-financing. One reason states can expand and institutionalize the program is that a good portion of it can be funded with money states are already spending on out-of-home care." - Frank Farrow, Director of Children's Services Policy at the Center for the Study of Social Policy

	IFPS Cost	Foster Care	Residential Treatment	Psychiatric Hospital
Alaska		\$8000-17,520 per child per year	\$25,285-84,680 per child per year	\$100,000+ per child per year
Washington ¹	\$2556 per child	\$8000-36,000 per child per year	\$48,000-120,000 per child per year	\$110,000+ per child per year
Missouri ²	\$3200 per family	\$8000 per child per year	\$40,000+ per child per year	
Michigan	\$4500 per family	\$12,000 per child per year		\$100,000+ per child per year
New York City	\$3000 per family	\$20,000 per child per year		
North Carolina ³	\$5284 per family	\$7055 average per child per placement	\$20,862 average per child per placement	\$28,862 per child placed in Youth Corrections facilities

Federal funding sources for IFPS:

- PL96-272 Adoption Assistance and Child Welfare Act
- Title IV-A Emergency Assistance
- Title IV-B of the Social Security Act
- Title IV-C of the Social Security Act
- Title IV-E of the Social Security Act
- Title XX of the Social Security Act
- National Child Abuse and Neglect state grants
- Medicaid, Title XIX of the Social Security Act

¹ Washington figures from the Behavioral Sciences Institute, Federal Way, WA (2001)

² Figures for Missouri, Michigan and New York City found in: Barthel, Joan, For Children's Sake: The Promise of Family Preservation, The Winchell Company, Philadelphia, PA: 1992.

³ These figures are from a study done in FY '97 in North Carolina (see attached documents)

Cost-Effectiveness. Cost/Benefit Analysis

Children At Risk of Out-Of-Home Placement at Intake.

Potential Placement Type	Number of Children At Risk	Number of Children Placed
DSS Foster Care	697	45
Juvenile Justice	110	8
Mental Health	93	11
Developmental Disabilities	5	0
Substance Abuse Services	27	1
Private Placement	35	6
Totals	967	74

Estimated Potential and Actual Costs of Placements, SFY '97

Estimated Potential Placement Costs				Estimated Actual Placement Costs		
Placement Type	Number of Children At Risk	Placement Costs	Total	Number of Children Placed	Costs	Total
DSS FC	697	\$7,055	\$4,917,335	45	\$7,055	\$317,475
MH/DD/SAS	160	20,819	3,331,040	18	20,819	374,742
Juv. Just.	110	28,862	3,174,820	8	28,862	230,896
Column Totals	967		\$11,423,195	71*		\$923,113

* This number is less than 74 because 3 children who had been "placed" were "on runaway".

Cost-effectiveness and cost/benefit statistics for the IFPS program during SFY '97:

- 967 children were at imminent risk of removal, at a total potential placement cost of \$11,423,195;
- 71 children were actually placed in various, known placements at an estimated cost of \$923,113;
- IFPS diverted an estimated maximum of \$10,500,082 from placement costs; a cost savings of 92%;
- if the cost of operating the IFPS program (\$3,059,494) are subtracted from the gross savings (\$10,500,082), a net savings of \$7,440,588 results;
- the cost/benefit ratio of IFPS for SFY '97 is \$3.43; that is, for every dollar spent providing IFPS, \$3.43 is not being spent on placement services for imminent risk children;
- the cost of delivering IFPS in SFY '97 was \$3,164 per imminent risk child. and \$5,284 per family;
- had all 967 children been placed as originally indicated, the placement cost per child would have been \$11,813, and the families would not have received any services as part of these expenditures.

**Determining the Fiscal Break-Even Point of the IFPS
Program: Cost and Cost-Savings Resulting from Different
Levels of Placement Prevention**

Placement Prevention Rates	Cost of Providing IFPS in SFY '97	Placement Costs Avoided	Net Additional Cost or Cost Savings
100 %	\$3,059,494	\$11,423,195	\$8,363,701 savings
92 %	3,059,494	10,500,082	7,440,588 savings
90 %	3,059,494	10,280,875	7,221,381 savings
80 %	3,059,494	9,138,556	6,079,062 savings
70 %	3,059,494	7,996,237	4,936,743 savings
60 %	3,059,494	6,853,917	3,794,423 savings
50 %	3,059,494	5,711,598	2,652,104 savings
40 %	3,059,494	4,569,278	1,509,784 savings
30 %	3,059,494	3,426,959	367,465 savings
26.7832 %	3,059,494	3,059,497	3 savings
20 %	3,059,494	2,284,639	<774,855> add'l cost
10 %	3,059,494	1,142,320	<1,917,174> add'l cost
0 %	3,059,494	0	<3,059,494> add'l cost

This table is adapted from a method developed by the Center for the Study of Social Policy (CSSP, Working Paper FP-6, 1989).

The two shaded rows of data from the Table illustrate that the "fiscal break-even point" for IFPS occurs at about the 27% (26.7832%) placement prevention rate, whereas the IFPS program actually performed at a 92% placement prevention rate. This yields a range of more than 60% within which program critics can argue about the cost-effectiveness of the program and the cost/benefit produced. However, the data clearly demonstrate that the program is *very cost-effective*, and results in a very high cost/benefit ratio.

HB

268

Alaska State Legislature

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Representative Joe Green
District 10

Sponsor Statement

HB 268 – Right to Privacy

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

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2001) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

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

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

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MEMORANDUM

May 5, 2001

SUBJECT: Constitutionality of HB 268

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

FROM: Tamara Brandt Cook
Director *TBC*

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

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

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

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

Representative Norman Rokeberg, Chair

May 5, 2001

Page 2

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

TBC:glc

01-301.glc