

12183

HOUSE

JUDICIARY

1 facilities, or supplies to a candidate or group shall maintain a record of each
 2 transaction for a period of six years from the date of the election; newspapers,
 3 radio, television, advertising, advertising agency services, accounting, billboards,
 4 printing, secretarial, public opinion polls, or research and professional campaign
 5 consultation or management, media production or preparation, or computer services.
 6 Records of provision of services, facilities, or supplies shall be available for inspection
 7 by the commission.

8 * Sec. 2. AS 15.13 is amended by adding a new section to read:

9 **Sec. 15.13.111. Preservation of records.** (a) Each candidate, group, nongroup,
 10 entity, or person required to report under this chapter shall preserve all records
 11 necessary to substantiate information required to be reported under this chapter for a
 12 period of six years from the date of the election for which the information was
 13 required to be reported. add
larger

14 (b) Information preserved under (a) of this section must be made available for
 15 inspection by the commission.

16 * Sec. 3. AS 15.13.380(b) is amended to read:

17 (b) A member of the commission, the commission's executive director, or a
 18 registered voter [PERSON] who believes a violation of this chapter or a regulation
 19 adopted under this chapter has occurred or is occurring may file an administrative
 20 complaint with the commission within five years [ONE YEAR] after the date of the
 21 alleged violation. If a member of the commission has filed the complaint, that member
 22 may not participate as a commissioner in any proceeding of the commission with
 23 respect to the complaint. The commission may consider a complaint on an expedited
 24 basis or a regular basis. The time limitations of this subsection do not bar
 25 proceedings against a person who intentionally prevents discovery of a violation
 26 of this chapter. add

27 * Sec. 4. AS 24.45.111(a) is amended to read:

28 (a) A person required to register or report as a lobbyist or as a person who
 29 employs, retains, or contracts for the services of a lobbyist shall preserve all
 30 accounts, bills, receipts, books, papers, and documents necessary to substantiate the
 31 reports required to be made and filed under this chapter for a period of at least six

1 years [ONE YEAR] from the date of the filing of the report containing these items.
 2 These accounts, bills, receipts, books, papers, and other documents shall be made
 3 available for inspection by the commission, or members of its staff, at any time. If a
 4 lobbyist is required under the terms of the lobbyist's employment contract to turn any
 5 records over to the employer, responsibility for the preservation of these records under
 6 this section rests with the employer.

7 * **Sec. 5.** AS 24.45.131(a) is amended to read:

8 (a) The commission or its staff shall examine each statement or report filed
 9 under this chapter within 10 days after the date it is filed. A person required to file a
 10 statement or report under this chapter shall be notified immediately if

11 (1) it appears that the person has failed to file a statement or report as
 12 required by law or that the statement or report filed does not conform to the
 13 requirements of this chapter; or

14 (2) a written complaint is filed with the commission by any registered
 15 [QUALIFIED] voter alleging that a statement or report filed with the commission does
 16 not conform to the requirements of this chapter, or to the truth, or that a person subject
 17 to the provisions of this chapter has failed to file a statement or report in the manner
 18 prescribed by this chapter.

19 * **Sec. 6.** AS 24.45.131 is amended by adding a new subsection to read:

20 (d) If a member of the commission or a member of its staff files a complaint,
 21 that member of the commission or member of its staff may not participate in any
 22 proceeding of the commission relating to the complaint.

23 * **Sec. 7.** AS 24.45 is amended by adding a new section to read:

24 **Sec. 24.45.135. Administrative complaints.** (a) A registered voter, including
 25 a member of the commission or the commission's executive director, may file a
 26 written complaint alleging that a violation of AS 24.45.121 - 24.45.171 has occurred
 27 or is occurring.

28 (b) Complaints filed under (a) of this section must be filed within five years
 29 after the date of the alleged violation.

30 * **Sec. 8.** AS 24.60.170(a) is amended to read:

31 (a) The committee shall consider a complaint alleging a violation of this

1 chapter if the alleged violation occurred within five [TWO] years before the date that
 2 the complaint is filed with the committee [AND, WHEN THE SUBJECT OF THE
 3 COMPLAINT IS A FORMER MEMBER OF THE LEGISLATURE, THE
 4 COMPLAINT IS FILED WITHIN ONE YEAR AFTER THE SUBJECT'S
 5 DEPARTURE FROM THE LEGISLATURE]. The committee may not consider a
 6 complaint filed against all members of the legislature, against all members of one
 7 house of the legislature, or against a person employed by the legislative branch of
 8 government after the person has terminated legislative service. However, the
 9 committee may reinstitute proceedings concerning a complaint that was closed
 10 because a former employee terminated legislative service [OR BECAUSE A
 11 LEGISLATOR LEFT THE LEGISLATURE] if the former employee [OR
 12 LEGISLATOR] resumes legislative service, whether as an employee or a legislator,
 13 within five [TWO] years after the alleged violation. The time limitations of this
 14 subsection do not bar proceedings against a person who intentionally prevents
 15 discovery of a violation of this chapter.

16 * **Sec. 9.** AS 24.60 is amended by adding a new section to read:

17 **Sec. 24.60.255. Administrative complaints.** (a) A registered voter, including
 18 a member of the Alaska Public Offices Commission or the commission's executive
 19 director, may file a written complaint alleging a violation of AS 24.60.200 - 24.60.260
 20 has occurred or is occurring.

21 (b) Complaints filed under (a) of this section must be filed within five years
 22 after the date of the alleged violation.

23 (c) If a member of the Alaska Public Offices Commission or a member of its
 24 staff files a complaint, that member of the commission or member of its staff may not
 25 participate in any proceeding of the commission relating to the complaint.

26 * **Sec. 10.** AS 39.50 is amended by adding a new section to read:

27 **Sec. 39.50.055. Administrative complaints.** (a) A registered voter, including
 28 a member of the Alaska Public Offices Commission or the commission's executive
 29 director, may file a written complaint alleging a violation of this chapter has occurred
 30 or is occurring.

31 (b) Complaints filed under (a) of this section must be filed within five years

1 after the date of the alleged violation.

2 (c) If a member of the Alaska Public Offices Commission or a member of its
3 staff files a complaint, that member of the commission or member of its staff may not
4 participate in any proceeding of the commission relating to the complaint.

5 * Sec. 11. AS 39.50.100 is amended to read:

6 **Sec. 39.50.100. Enforcement by private citizens.** A registered
7 [QUALIFIED] Alaska voter may bring a civil action to enforce any of the sections of
8 this chapter.

9 * Sec. 12. AS 39.50.100 is amended by adding a new subsection to read:

10 (b) An action brought under (a) of this section must be brought within five
11 years after the date of the alleged violation.

12 * Sec. 13. The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 APPLICABILITY. (a) AS 15.13.040(f), as amended by sec. 1 of this Act, applies to
15 records of transactions made on or after the effective date of sec. 1 of this Act.

16 (b) AS 15.13.380(b), as amended by sec. 3 of this Act, applies to administrative
17 complaints alleging violations of AS 15.13 or the regulations adopted under that chapter that
18 occurred

19 (1) within one year before the effective date of sec. 3 of this Act; or

20 (2) on or after the effective date of sec. 3 of this Act.

21 (c) AS 15.13.111, added by sec. 2 of this Act, applies to records for elections on or
22 after the effective date of sec. 2 of this Act.

23 (d) AS 24.45.111(a), as amended by sec. 4 of this Act, applies to reports required to
24 be made and filed on or after the effective date of sec. 4 of this Act.

25 (e) AS 24.45.135, added by sec. 7 of this Act, applies to complaints alleging
26 violations of AS 24.45.121 - 24.45.171 that occur on or after the effective date of sec. 7 of this
27 Act.

28 (f) AS 24.60.170(a), as amended by sec. 8 of this Act, applies to complaints alleging
29 violations of AS 24.60 that occurred

30 (1) within two years before the effective date of sec. 8 of this Act; or

31 (2) on or after the effective date of sec. 8 this Act.

Handwritten notes in a box: 15-5-10

1 (g) AS 24.60.255, added by sec. 9 of this Act, applies to complaints alleging
2 violations of AS 24.60.200 - 24.60.260 that occur on or after the effective date of sec. 9 of this
3 Act.

4 (h) AS 39.50.055, added by sec. 10 of this Act, applies to complaints alleging a
5 violation of AS 39.50 on or after the effective date of sec. 10 of this Act.

6 (i) AS 39.50.100, as amended by secs. 11 and 12 of this Act, applies to actions
7 alleging violations of AS 39.50 that occur on or after the effective date of secs. 11 and 12 of
8 this Act.

9 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 **TRANSITION: REGULATIONS.** The Alaska Public Offices Commission may
12 immediately adopt regulations as are necessary to implement the changes made by this Act.
13 The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before
14 January 1, 2009.

15 * **Sec. 15.** Section 14 of this Act takes effect immediately under AS 01.10.070(c).

16 * **Sec. 16.** Except as provided in sec. 15 of this Act, this Act takes effect January 1, 2009.

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MEMORANDUM

January 24, 2008

SUBJECT: Statute of Limitations for Election Offenses (amendment K.2 to CSHB 281(STA) (Work Order No. 25-LS1115\K.2)

TO: Representative Bob Lynn

FROM: Gerald P. Luckhaupt *ERL*
Legislative Counsel

I was requested to take a look at Amendment K.2 dealing with the statute of limitations for election offenses as the amendment deals with general issues of criminal law. The amendment changes AS 15.56.130 by expanding the statute of limitations for election offenses from one year after the date of the election to five years after the commission of the offense. Five years is also the general statute of limitations for offenses contained in AS 12.10.010(b)(2). AS 12.10 also contains other provisions dealing with when the statute of limitation begins¹ and how the statute of limitation runs,² and provisions that stay the running of the limitation period when the offender has fled the jurisdiction³ and expand the limitation period when the offender is a public officer or employee who has committed misconduct in office.⁴

Because the amendment makes the statute of limitation for AS 15 offenses the same as the general criminal statute of limitation in AS 12.10.010 there is no need for AS 15.56.130 and the provision should be repealed if the legislature wants a general five year statute of limitations to apply. Allowing the provision to remain will only engender uncertainty and encourage litigation about how and whether the other provisions of AS 12.10 apply to AS 15 offenses.

GPL:lmb
08-001.lmb

¹ AS 12.10.030(a)

² AS 12.10.030(b)

³ AS 12.10.040

⁴ AS 12.10.020(b) expands the statute of limitation in such cases by up to three years by allowing prosecution up to one year after discovery of the offense.

AMENDMENT

OFFERED IN THE HOUSE
TO: CSHB 281(STA)

BY REPRESENTATIVE LYNN

1 Page 1, line 6, following "AS 15.13;":

2 Insert "extending the statute of limitations for prosecution of offenses under the
3 Alaska Election Code;"

4

5 Page 2, following line 26:

6 Insert a new bill section to read:

7 **** Sec. 4.** AS 15.56.130 is amended to read:

8 **Sec. 15.56.130. Time limitation.** A prosecution for an offense described in
9 AS 15.05 - AS 15.60 (Alaska Election Code) may not be maintained unless it is begun
10 within **five years after the commission of the** [ONE YEAR AFTER THE DATE OF
11 THE ELECTION IN CONNECTION WITH WHICH THE] offense [IS ALLEGED
12 TO HAVE BEEN COMMITTED]."

13

14 Renumber the following bill sections accordingly.

15

16 Page 5, following line 20:

17 Insert a new subsection to read:

18 "(c) AS 15.56.130, as amended by sec. 4 of this Act, applies to a prosecution for an
19 offense described in AS 15.05 - AS 15.60

20 (1) that is committed on or after the effective date of sec. 4 of this Act; or

21 (2) that is committed before the effective date of sec. 4 of this Act if the
22 statute of limitations in effect on the date of the commission of the offense has not expired
23 before the effective date of sec. 4 of this Act."

1

2 Reletter the following subsections accordingly.

3

4

5 Page 5, line 23:

6 Delete "sec. 4"

7 Insert "sec. 5"

8

9 Page 5, line 24:

10 Delete "sec. 4"

11 Insert "sec. 5"

12

13 Page 5, line 25:

14 Delete "sec. 7"

15 Insert "sec. 8"

16

17 Page 5, line 26:

18 Delete "sec. 7"

19 Insert "sec. 8"

20

21 Page 5, line 28:

22 Delete "sec. 8"

23 Insert "sec. 9"

24

25 Page 5, line 30:

26 Delete "sec. 8"

27 Insert "sec. 9"

28

29 Page 5, line 31:

30 Delete "sec. 8"

31 Insert "sec. 9"

1

2 Page 6, line 1:

3 Delete "sec. 9"

4 Insert "sec. 10"

5

6 Page 6, line 2:

7 Delete "sec. 9"

8 Insert "sec. 10"

9

10 Page 6, line 4:

11 Delete "sec. 10"

12 Insert "sec. 11"

13

14 Page 6, line 5:

15 Delete "sec. 10"

16 Insert "sec. 11"

17

18 Page 6, line 6:

19 Delete "secs. 11 and 12"

20 Insert "secs. 12 and 13"

21

22 Page 6, line 7:

23 Delete "secs. 11 and 12"

24 Insert "secs. 12 and 13"

25

26 Page 6, line 15:

27 Delete "Section 14"

28 Insert "Section 15"

29

30 Page 6, line 16:

31 Delete "sec. 15"

1

Insert "sec. 16"

AMENDMENT

OFFERED IN THE HOUSE
TO: CSHB 281(STA)

BY REPRESENTATIVE LYNN

1 Page 1, line 5, following "election;":

2 Insert "defining 'registered voter' for the Alaska Election Code;"

3

4 Page 2, following line 26:

5 Insert a new bill section to read:

6 "** Sec. 4. AS 15.60.010 is amended by adding a new paragraph to read:

7 (43) "registered voter" means a person who is registered to vote under
8 AS 15.07."

9

10 Renumber the following bill sections accordingly.

11

12 Page 5, line 23:

13 Delete "sec. 4"

14 insert "sec. 5"

15

16 Page 5, line 24:

17 Delete "sec. 4"

18 Insert "sec. 5"

19

20 Page 5, line 25:

21 Delete "sec. 7"

22 Insert "sec. 8"

23

- 1 Page 5, line 26:
- 2 Delete "sec. 7"
- 3 Insert "sec. 8"
- 4
- 5 Page 5, line 28:
- 6 Delete "sec. 8"
- 7 Insert "sec. 9"
- 8
- 9 Page 5, line 30:
- 10 Delete "sec. 8"
- 11 Insert "sec. 9"
- 12
- 13 Page 5, line 31:
- 14 Delete "sec. 8"
- 15 Insert "sec. 9"
- 16
- 17 Page 6, line 1:
- 18 Delete "sec. 9"
- 19 Insert "sec. 10"
- 20
- 21 Page 6, line 2:
- 22 Delete "sec. 9"
- 23 Insert "sec. 10"
- 24
- 25 Page 6, line 4:
- 26 Delete "sec. 10"
- 27 Insert "sec. 11"
- 28
- 29 Page 6, line 5:
- 30 Delete "sec. 10"
- 31 Insert "sec. 11"

1

2 Page 6, line 6:

3 Delete "secs. 11 and 12"

4 Insert "secs. 12 and 13"

5

6 Page 6, line 7:

7 Delete "secs. 11 and 12"

8 Insert "secs. 12 and 13"

9

10 Page 6, line 15:

11 Delete "Section 14"

12 Insert "Section 15"

13

14 Page 6, line 16:

15 Delete "sec. 15"

16 Insert "sec. 16"

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 281(STA)
 (H) Publish Date: 1/22/08

Identifier (file name): HB281-DOA-APOC-1-11-08 Dept. Affected: Administration
 Title: "An Act extending the statute of limitations" RDU: AK Public Offices Commission
 Component: AK Public Offices Commission
 Sponsor: Lynn and Gatto
 Requester: House State Affairs Component Number: 70

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required		Information				
	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES							
Personal Services	156.0	0.0	156.0	156.0	156.0	156.0	156.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	14.5	0.0	14.5	14.5	14.5	14.5	14.5
Supplies	0.7	0.0	0.7	0.7	0.7	0.7	0.7
Equipment	3.1	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	174.3	0.0	171.2	171.2	171.2	171.2	171.2

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	174.3	0.0	156.0	156.0	156.0	156.0	156.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	174.3	0.0	156.0	156.0	156.0	156.0	156.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time	2.0	0.0	2.0	2.0	2.0	2.0	2.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

This bill will expand the statute of limitations for filing complaints under the campaign disclosure law

We are requesting funding for an additional investigator position, a paralegal position, and associated costs that will be dedicated to auditing and enforcement. Investigations into allegations of violations that occurred years ago are more complex. It is more difficult to establish facts and find and question witnesses.

Prepared by: Brooke Miles
 Division: Alaska Public Offices Commission
 Approved by: Kevin Brooks, Deputy Commissioner
Department of Administration

Phone 907-334-1726
 Date/Time 1/11/2008 3:05 p.m.
 Date 1/11/2008

Alaska State Legislature

Chairman
State Affairs Committee

Vice-Chairman
Economic Development, Trade & Tourism
Committee

Member
Judiciary Committee
Joint Armed Services Committee

Finance Subcommittees
Corrections
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety



A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

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Changes from original Version E to current Version K HB 281: Campaign Finance Complaints

The original bill, 25-LS1115\E, amended one section, AS 15.13.380(b), to increase the statute of limitations for the filing of complaints with the Alaska Public Offices Commission from one year to five years.

The next draft of the bill, 25-LS1115\M, attempted to address issues brought up in the initial hearing in the House State Affairs Committee to codify a specific period of time for the retention of records related to complaints and to create a uniform statute of limitations for all four sections of the ethics code (AS 15.13, AS 24.45, AS 24.60 and AS 39.50) that are enforced by APOC and the Select Committee on Legislative Ethics.

The current version, 25-LS1115\K, which passed out of the State House Affairs Committee, amended the bill to replace the word "person" with the term "registered voter" where it applies to the filing of a complaint in the applicable sections of this act. It also deleted words in Sec. 8 AS 24.60.179(a) on page 4, lines 10-12 to clean up language to conform with the deleting of words on page 4, lines 2-5.

Alaska State Legislature



Chairman
State Affairs Committee

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Economic Development, Trade & Tourism
Committee

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Joint Armed Services Committee

Finance Subcommittees
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Military and Veterans' Affairs
Public Safety

A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

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To: Legal Services

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of Pages (including cover): 1

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Re: CSHB 281 - CAMPAIGN FINANCE COMPLAINTS

1/19/08

Amendments to CSHB 281 - 25-LS1115\M

Amendment #1 (Coghill)

Page 4 Line 9 and 10 after the word *service* **delete or because a legislator left the legislature**
Page 4 Line 10 after the word *employee* **delete or legislator**

Amendment #2 (Doll) Withdrawn

Conceptual Amendment #3 (Doll)

Replace the word "person" with the term "registered voter" where it applies to the filing of a complaint in the applicable sections of CSHB 281 (STA) 25-LS1115\M. Here are the areas we identified but you be the final judge:

Page 2 Line 18
Page 3 Line 13
Page 3 Line 23
Page 4 Line 15
Page 4 Line 25
Page 5 Line 4

Alaska State Legislature

Chairman
State Affairs Committee

Vice-Chairman
Economic Development, Trade & Tourism
Committee

Member
Judiciary Committee
Joint Armed Services Committee

Finance Subcommittees



A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

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Sectional Analysis of Version 25-LS1115K **CSHB 281(STA): Campaign Finance Complaints**

- Section 1** Amends AS 15.13.040(f), to establish in code a retention period of six years for records of transactions listed in this section.
- Section 2** Adds a new section, Sec. 15.13.042, directing each candidate, group, nongroup entity, or person required to report under this chapter to preserve all necessary records for six years.
- Section 3** Amends AS 15.13.380(b), to increase the time period allowed to file a complaint for an alleged campaign finance violation from one year to five years. It also eliminates the time limitations of this subsection on proceedings against a person who "intentionally prevents discovery" of a violation of this chapter.
- Section 4** Amends AS 24.45.111(a), to require "a person who employs, retains, or contracts for the services of a lobbyist," in addition to a lobbyist, to retain records required under this section. It also increases the retention period from one year to six years.
- Section 5** Amends AS 24.45.131, to allow any registered voter to file a complaint with the commission.
- Section 6** Adds a new section, AS 24.45.131(d), prohibiting commission members and staff who file complaints from participating in any commission proceeding related to the complaint.
- Section 7** Adds a new section, AS 24.45.135, allowing a registered voter, as well as a commission member or staffer, to file a complaint alleging a violation of AS 24.45.121-24.45.171 has occurred or is occurring. The complaint must be filed within five years after the date of the alleged violation.

Sectional Analysis for CSHB 281(STA)
Campaign Finance Complaints

- Section 8** Amends AS 24.60.170(a), to increase the time limit for complaints alleging a violation of this section from two years to five years. It also increases the time limit for complaints against a former legislator from one year to five years.
- Section 9** Adds a new section, Sec. 24.60.255, allowing a registered voter, as well as a member of the Alaska Public Office Commission or a member of its staff to file a written complaint alleging a violation of AS 24.60.200-24.60.260 has occurred or is occurring . The complaint must be filed within five years after the date of the alleged violation.
- Section 10** Adds a new section, AS 39.50.055, allowing a registered voter, as well as a member of the Alaska Public Office Commission or a member of its staff to file a written complaint alleging a violation of this chapter has occurred or is occurring . The complaint must be filed within five years after the date of the alleged violation. An APOC member or staffer who files the complaint may not participate in any proceeding of the commission relating to the complaint.
- Section 11** Amends AS 39.50.100, to allow a registered voter to bring a civil action to enforce any of the sections of this chapter.
- Section 12** Amends AS 39.50.100, creating a statute of limitations of five years from the date of the alleged violation for a complaint to be filed under this section.
- Section 13** Establishes an effective date for the sections that have been amended and created in this act.
- Section 14** Allows the Alaska Public Offices Commission to immediately adopt regulations necessary to implement changes made by this act, in accordance with the Administrative Procedure Act, but not before Jan. 1, 2009.
- Section 15** Allows Section 14 to take effect immediately.
- Section 16** Except as provided in Section 15, allows this Act to take effect on Jan. 1, 2009.

House Bill 281

Background Information

Alpheus Bullard Memorandum of Jan. 18, 2008

Legislative Research Report of Sept. 17, 2007

Legislative Research Memo of Jan. 16, 2008

LEGAL SERVICES

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MEMORANDUM

January 18, 2008

SUBJECT: CSHB 281(STA) - Drafting issues

TO: Representative Bob Lynn
Chair of the House State Affairs Committee
Attn: Mike Sica

FROM: Alpheus Bullard
Legislative Counsel

This memorandum accompanies the State Affairs Committee Substitute for House Bill 281 you requested.

The substitute you requested contained a provision amending AS 24.60.170(a). The amendment requires the committee to consider a complaint alleging a violation of AS 24.60 if the alleged violation occurred within five years before the date the complaint is filed. AS 24.60.170(n) requires that the committee dismiss a complaint filed against a person employed by the legislative branch if the person terminates legislative service. Members of the legislature may also not be in office when the complaint is filed.

You have asked that I add the sentence "[t]he time limitations of this subsection do not bar proceedings against a person who intentionally prevents discovery of a violation of this chapter" (from AS 24.60.170(a) to AS 15.13.380(b)). As noted above, AS 24.60.170(a) governs complaints filed with the Select Committee on Legislative Ethics while AS 15.13.380(b) speaks to administrative complaints filed with the Alaska Public Offices Commission. I have added the sentence, but please be aware that it is unclear what the legal effect of its addition to AS 15.13.380(b) might be. The history of AS 24.60.170(a) is silent as to any previous interpretation and the sentence does not invoke any legal standard of proof, creating the possibility that any person who filed incorrectly could be held to have "intentionally prevent[ed] discovery of a violation of th[e] chapter." Such an interpretation would operate to dispense with the statute of limitations for the filing of administrative complaints altogether. You might consider amending the sentence to read "[t]he time limitations of this subsection do not bar proceedings against a person who the commission finds willfully prevents discovery of a violation of this chapter, such a finding by the commissioner must be based on clear and convincing evidence."

Representative Bob Lynn

January 18, 2008

Page 2

The provisions of the substitute you requested would have become retrospectively applicable to alleged violations and records required to be retained. In this draft the applicability of these provisions is not retroactive.

Your draft serves to increase the statute of limitations for the filing of administrative complaints with the Alaska Public Offices Commission. Please be aware that these extended statutes of limitation for the filing of complaints alleging violations of AS 15.13 do not serve to amend the existing law pertaining to criminal prosecution of related election law violations. AS 15.56.130 provides:

A prosecution for an offense described in AS 15.05 - AS 15.60 (Alaska Election Code) may not be maintained unless it is begun within *one year* after the date of the election in connection with which the offense is alleged to have been committed (emphasis added).

If you would like this provision amended in a subsequent draft, or if you have any questions, please do not hesitate to contact me.

TLAB:med
08-021.med

Enclosure

Table 1: Selected States' Statutes of Limitations for Filing Complaints Related to Campaign Finance Violations

State	Citation	Time Limit for Filing Complaint
Alaska	AS § 15.13.380	One year from the date of the violation.
Colorado	CRS § 16-5-401	Three years from the date of the election in which the violation took place.
Florida	FS § 105.25	Two years from the date of the violation.
Georgia	OCGA § 21-5-13	Within three years of a violation involving any person elected to serve for a term of two years, within five years of a alleged violation involving any person elected to serve for a term of four or more years.
Minnesota	MS § 211B.32	Within one year of the violation, except that if the act or failure to act involves fraud, concealment, or misrepresentation that could not be discovered during that one-year period, the complaint may be filed with the office within one year after the violation was discovered.
Ohio	ORC § 3517.157	Within two years of the violation, except that if the act or failure to act involves fraud, concealment, or misrepresentation and was not discovered during that two-year period, a complaint may be filed within one year after discovery of such act or failure to act.
Texas	Texas Ethics Comm. Rule § 12.5	Violation must have occurred within three years of the date the complaint is filed or the date the commission votes to initiate a preliminary review of a matter.
Washington	RCWA § 42.17.410	Five years from the date of the violation occurred.

Notes: With the exception of Texas, the states listed are those with statutory time limitations for filing complaints that we were readily able to locate. We located the rules of the Texas Ethics Commission through a statutory reference. We believe this table is best interpreted as a sample of states' positions on the topic.

Sources: Lexis online database of state statutes, Texas Ethics Commission website.
<http://www.ethics.state.tx.us/legal/rules.htm>

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

Legislative Research Services

Alaska State Legislature
Legislative Affairs Agency
Division of Legal and Research Services

State Capitol, Juneau, AK 99801
Phone: 907-465-3991
Fax: 907-465-3908

January 16, 2008

Memorandum

TO: Senator Bill Wielechowski

FROM: Daniel Lesh
Legislative Analyst

RE: States with Filing Limits of Four Years or Greater Regarding Campaign Finance Violations
LRS 08-104

You asked for examples of states that allow campaign finance complaints regarding state election campaigns to be filed up to four years or greater after the violation has taken place. A previous report by this agency identified the following examples:

- 1) Georgia – OCGA § 21-5-13 – Within three years of a violation involving any person elected to serve for a term of two years; within five years of a alleged violation involving any person elected to serve for a term of four or more years.
- 2) Washington – RCWA § 42.17.410 – Five years from the date of the violation.

In the time allotted, we identified an additional six examples by speaking with staff attorneys at the relevant elections commissions in the following states:

- 3) Arkansas – Four years.
- 4) California – Five years for administrative sanctions and four years for civil sanctions.
- 5) Connecticut – No limit; however, by practice, the Connecticut Elections Enforcement Commission generally limits their investigations to complaints regarding violations that occurred within the previous two election cycles.
- 6) Hawaii – No limit.
- 7) Massachusetts – No limit.
- 8) New Jersey – No limit in statute; however, after four years, candidates and committees are not required to maintain records and investigations are not generally conducted.

I hope this is useful. Please contact us if you require additional information.

House Bill 281

News Clips

Juneau Empire story of Sept. 12, 2007

KTUU TV report of Sept. 24, 2007

Anchorage Daily News opinion of Sept. 25, 2007

Juneau Empire story of Sept. 25, 2007



[Click here to return to the original story](#)

Campaign law violations past APOC's scope

FBI investigations show state agency needs more authority, legislators say

An FBI investigation into corruption in the Alaska Legislature has turned up numerous instances of violations of the state's campaign finance laws that will not be prosecuted.

Those implicated, including former VECO Corp. owner Bill Allen, won't even be investigated, said Brooke Miles, executive director of the Alaska Public Offices Commission.

The Alaska Legislature shortened the statute of limitations for pursuing such campaign finance violations to one year, according to Miles.

"The bundling of campaign donations, the giving of illegal campaign contributions ... all those things are beyond our scope because of the statute of limitations," Miles said.

Miles said she plans to seek more authority for the commission to go back and prosecute violations.

"By the time I read them (in the federal indictment) they were already beyond the statute of limitations," she said.

One allegation made in court filings so far was that contributions were made to one person to be passed on to another to mislead APOC about where the money was coming from. Another was that VECO reimbursed a top executive's campaign donations made at Allen's behest.

Former House Minority Leader Ethan Berkowitz, D-Anchorage, an outspoken critic of the ethical standards of the Legislature, said he didn't know how the statute of limitations was shortened, but said there were efforts at about that time to weaken oversight of campaign finance laws.

"I know there were efforts around then to gut APOC," he said.

Miles said when the commission meets in Anchorage on Thursday and Friday, she'll request a longer time to go after violations.

"I intend to recommend the commission seek to revise that statutory language to four years," she said.

She said she would only ask for four years because memories falter and obtaining documents becomes more difficult as time passes.

House Rules Committee Chairman Rep. John Coghill, R-North Pole, was one of the leaders in ethics reform in the Legislature last year. He said he's be open to that request, after what the public has learned from the FBI investigation.

"I think we should be able to give a good rational answer about why it is so short," Coghill said of the statute of limitations.

He said it initially appeared to him that the minimum time period should be a two-year election cycle, and perhaps longer.

Berkowitz said he'll support a longer statute of limitations, but APOC may need more done to it than that.

"I think there needs to be an audit of APOC's functions," he said. "I think we need to see if they have the statutory authority and the resources to do their job."

Coghill said the ongoing corruption trials indicate that enforcement of campaign finance rules in the state need to be more proactive, but said the commission could do that.

"Brooke (Miles) has said 'give me the tools and I'll be proactive,'" Coghill said.

Gov. Sarah Palin included money for an APOC investigator in her first budget as governor, and the Legislature approved the expenditure.

Miles recently announced that former Alaska journalist Jeff Berliner had been hired to fill that job.

Berkowitz said that was not enough.

"I know people are touting the fact that they've added an investigator, but all they've done is put an investigator back in after they took it out," he said.

• Contact Pat Forgey at 523-2250 or patrick.forgey@juneauempire.com.

Click here to return to story:

http://www.juneauempire.com/stories/091207_sta_20070912007.shtml



APOC investigating VECO



by Steve MacDonald
Monday, Sept. 24, 2007

ANCHORAGE, Alaska -- The Alaska Public Offices Commission, the agency that enforces state campaign finance laws, says it will investigate a claim by the former owner of VECO Corp. that it bought dozens of public opinion polls for political candidates.

APOC says it will investigate a claim by the former owner of VECO Corp. that it bought dozens of public opinion polls for political candidates. (KTUU-TV)

VECO apparently paid for the polls but never reported the transactions on campaign disclosure forms, a violation of state regulations.

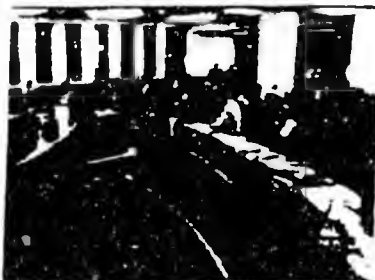


APOC Director Brooke Miles said it's the commission's goal to investigate the facts surrounding the allegations. (Scott Jensen/KTUU-TV)

During the Pete Kott bribery trial, former VECO owner Bill Allen claimed his company bought a public opinion poll for Kott's re-election campaign.

That revelation prompted a question from political watchdog Ray Metcalfe as to how many other candidates received the gift of a free poll.

"I think that our goal is to establish as many facts as we can regarding the polls that have been alleged that VECO undertook on behalf of candidates," APOC Director Brooke Miles said.



The claim prompted a question from political watchdog Ray Metcalfe as to how many other candidates received the gift of a free poll. (KTUU-TV)

This morning, the Alaska Public Offices Commission held an emergency meeting.

It has decided to investigate whether any other candidates got the same kind of help from VECO or any other company.

But the commission's investigation will have its limits.

"We can't go back further than a year for the purpose of imposing a civil penalty, but for the purpose of determining what may have gone wrong with this whole polling information issue, I think we are free to go back further than that if we wish," Miles said.



Jeff Berliner is APOC's new investigator, hired by the Palin Administration. (Scott Jensen/KTUU-TV)

That's because in 2003 the Legislature, at the urging of then Gov. Frank Murkowski, reduced the statute of limitations for how far back APOC could go when investigating a campaign violation. It was slashed from four years to one.

During his time in office, Murkowski made APOC a prime target for cutbacks.

He got rid of the agency's lone investigator, along with a paralegal and another staffer, but that now has begun to change.



Assistant Attorney General Dave Jones says stricter regulations for candidates will make contributions more transparent. (Scott Jensen/KTUU-TV)

Jeff Berliner is APOC's new investigator, hired by the Palin Administration.

"Everybody is suspicious now. Alaska is even in the national spotlight and there is a climate of distrust and I hope we can turn that around," Berliner said.

And that will take time, but the Palin Administration believes beefing up APOC and the new ethics regulations put into place this summer will help.

Assistant Attorney General Dave Jones says stricter regulations for candidates will make contributions more transparent.

"I think the electronic filing requirement will help members of the public identify when there are potential problems and bring those to the attention of the APOC and perhaps push for some additional investigations," Jones said.

It's an agency that now has some teeth behind the regulations it's supposed to enforce.

He says he's "delighted to hear that APOC is investigating," but is questioning the statute of limitations.

Metcalfe wants to know if the statute of limitations begins when a violation is committed or when it's discovered.

He believes the clock starts ticking when a violation is uncovered.

Contact Steve MacDonald at stevem@ktuu.com



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OPINION

Anchorage Daily News (AK) - September 25, 2007

Author: Staff

Only 1 year? Short limit on campaign law cases lets violators off easily

The Veco corruption scandal has revealed a stunning loophole in Alaska's political integrity laws. Candidates, corporations and others who violate state campaign laws apparently get a free pass if they can hide their offenses for a year and a day.

That's because the state's campaign watchdog agency is saddled with an almost microscopic **statute of limitations** -- just one year from the illegal act.

Even if the illegal act is detected within a year, the Alaska Public Offices Commission can pursue only civil fines. It's unclear whether the state can pursue criminal penalties against a corporation that makes illegal donations or a candidate who accepts them. **APOC** executive director Brooke Miles says she has asked the state attorney general's office if there are any criminal law enforcement options.

With Veco's illegal donations, **APOC**'s short **statute of limitations** has been a non-issue. Veco and its executives will avoid civil penalties for the firm's illegal contributions, but its two top lobbyists will go to prison for bribery. Several of the legislators who benefited from Veco's illegal contributions face trial or investigation for similar influence-peddling offenses. Veco itself is dead, sold to a firm that couldn't wait to dispose of the tarnished name.

But what about other lawmakers and candidates who got Veco's illegal campaign help? The company routinely did polling about its favored candidates. If Veco shared poll results directly with a campaign, it was an illegal corporate contribution. As long as the candidates took the illegal aid more than a year ago, though, they're home free as far as the Alaska Public Offices Commission is concerned.

And what if the illegal corporate donor is, unlike Veco, still in business? Without any criminal penalties, **APOC**'s one-year **statute of limitations** leaves enormous room to flout the ban on corporate campaign contributions.

Campaign law violations used to have a four-year **statute of limitations** -- until the Republican-dominated Legislature and Frank Murkowski

combined forces on a concerted effort to loosen state campaign financing rules.

The Veco scandal shows that Alaska's campaign laws need more backbone. Restoring the original **statute of limitations** is one obvious and urgent fix. Ensuring the state can impose criminal penalties for large-scale or widespread campaign law violations is another.

When the Legislature convenes next year, tightening up campaign law enforcement should be an early order **of business**.

BOTTOM LINE: Here's a loophole that needs closing, fast.



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VECO polling assistance comes under scrutiny

Statute of limitations may preclude violations from being pursued

The Alaska Public Offices Commission decided Monday to investigate whether VECO Corp. may have violated campaign finance rules by providing poll results to favored candidates without reporting the cost of the poll.

Such contributions could be either illegal corporate contributions or reporting violations on the part of candidates.

The practice is one of the ways the formerly powerful player in Alaska politics asserted its influence in the state, according to a federal indictment. VECO, an oil field services company, is now part of Colorado-based CH2M-Hill.

It's questionable whether APOC can pursue penalties due to the commission's one-year statute of limitations on such investigations, but the investigation may be valuable anyway, said one commissioner, Elizabeth Hickerson.

"I am less concerned about the statute of limitations as I am about getting at the facts," said Hickerson, an attorney and a Democratic commission member from Anchorage.

The commission's authority over campaign finance violations goes back for only one year from the dates of violations. Sen. Bill Wielechowski, D-Anchorage, said he intends to introduce legislation extending that to four years.

Hickerson said an investigation may highlight the need for a longer statute of limitations for the Legislature.

A little more than a year ago, FBI agents revealed to top VECO executives that they were under investigation as part of a widespread probe into influence buying in Alaska politics.

Any violation that could be pursued would have to have occurred after the FBI investigation was revealed.

"I don't think we have a violation within one year before us," said Roger Holl,

commission chairman and a public member of the commission from Anchorage. He also is an attorney.

The allegation that VECO has paid for polls used by numerous candidates over the years was made by former VECO executive Rick Smith in testimony during the federal bribery trial of former Rep. Pete Kott, R-Eagle River, in Anchorage.

Among the federal charges against Kott is that a poll VECO provided for his campaign constituted a bribe.

Former state legislator and APOC critic Ray Metcalfe had earlier urged the commission to investigate all 60 legislators, but had not filed a formal complaint as of the commission's special Monday morning meeting.

Commission members weren't clear on whether Metcalfe wanted unsuccessful candidates to be investigated as well.

Department of Law attorney Margaret Paton-Walsh called Metcalfe's accusations "incredibly vague and general."

The commission, however, decided to investigate the matter on its own.

Sen. Kim Elton, D-Juneau, said he could say that VECO never provided him with any poll results.

"That's probably not a surprise to anyone," he said.

Elton was pushing for a higher oil tax rate than that which VECO executives sought.

One of the first steps taken in the investigation may be to simply call up Smith and see if he'll say who VECO provided the polling data to, commissioners said. Others cautioned that he may not be able to talk, because of the ongoing federal investigation.

Smith has already pleaded guilty, and Hickerson said his testimony against his own interests should be considered reliable.

"If his testimony is correct, and I have no reason to doubt it, there were violations," Hickerson said.

• Contact Pat Forgey at 523-2250 or patrick.forgey@juneauempire.com.

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CSHB 281(STA)

Relevant Statutes

Campaign Finance Complaints

Sec. 15.14.040(f) Contributions, expenditures, and supplying of services to be reported.

Sec. 15.13.380(b) Violations; limitations on actions.

Sec. 24.60.170(a) Proceedings before the committee; limitations. Recommendation to add to Sec. 15.13.380(b)

Sec. 24.45.111(a) Preservation of records.

Sec. 24.45.131 Examination of statements, reports.

Sec. 24.60.170 Proceedings before the committee. Limitations.

Sec. 39.50.100 Enforcement by private citizens.

Sec. 15.56.130 Time limitation.

Definitions related to who can file a complaint (registered voter, qualified voter and person) regarding alleged violations under sections AS 15.13, AS 24.45, AS 24.60 and AS 39.50.

Sec. 15.13.040. Contributions, expenditures, and supplying of services to be reported.

(f) During each year in which an election occurs, all businesses, persons, or groups that furnish any of the following services, facilities, or supplies to a candidate or group shall maintain a record of each transaction: newspapers, radio, television, advertising, advertising agency services, accounting, billboards, printing, secretarial, public opinion polls, or research and professional campaign consultation or management, media production or preparation, or computer services. Records of provision of services, facilities, or supplies shall be available for inspection by the commission.

Sec. 15.13.380. Violations; limitations on actions.

(a) Promptly after the final date for filing statements and reports under this chapter, the commission shall notify all persons who have become delinquent in filing them, including contributors who failed to file a statement in accordance with AS 15.13.040 , and shall make available a list of those delinquent filers for public inspection. The commission shall also report to the attorney general the names of all candidates in an election whose campaign treasurers have failed to file the reports required by this chapter.

(b) A member of the commission, the commission's executive director, or a person who believes a violation of this chapter or a regulation adopted under this chapter has occurred or is occurring may file an administrative complaint with the commission within one year after the date of the alleged violation. If a member of the commission has filed the complaint, that member may not participate as a commissioner in any proceeding of the commission with respect to the complaint. The commission may consider a complaint on an expedited basis or a regular basis.

Sec. 15.56.130. Time limitation.

A prosecution for an offense described in AS 15.05 - AS 15.60 (Alaska Election Code) may not be maintained unless it is begun within one year after the date of the election in connection with which the offense is alleged to have been committed.

To incorporate at the end of 15.13.380(b):

Sec. 24.60.170. Proceedings before the committee; limitations

(a) The committee shall consider a complaint alleging a violation of this chapter if the alleged violation occurred within two years before the date that the complaint is filed with the committee and, when the subject of the complaint is a former member of the legislature, the complaint is filed within one year after the subject's departure from the legislature. The committee may not consider a complaint filed against all members of the legislature, against all members of one house of the legislature, or against a person employed by the legislative branch of government after the person has terminated legislative service. However, the committee may reinstitute proceedings concerning a complaint that was closed because a former employee terminated legislative service or because a legislator left the legislature if the former employee or legislator resumes legislative service, whether as an employee or a legislator, within two years after the alleged violation. The time limitations of this subsection do not bar proceedings against a person who intentionally prevents discovery of a violation of this chapter.

Sec. 24.45.111. Preservation of records.

(a) A person required to register or report as a lobbyist shall preserve all accounts, bills, receipts, books, papers, and documents necessary to substantiate the reports required to be made and filed under this chapter for a period of at least one year from the date of the filing of the report containing these items. These accounts, bills, receipts, books, papers, and other documents shall be made available for inspection by the commission, or members of its staff, at any time. If a lobbyist is required under the terms of the lobbyist's employment contract to turn any records over to the employer, responsibility for the preservation of these records under this section rests with the employer.

Sec. 24.45.131. Examination of statements, reports.

(a) The commission or its staff shall examine each statement or report filed under this chapter within 10 days after the date it is filed. A person required to file a statement or report under this chapter shall be notified immediately if:

(1) it appears that the person has failed to file a statement or report as required by law or that the statement or report filed does not conform to the requirements of this chapter; or

(2) a written complaint is filed with the commission by any qualified voter alleging that a statement or report filed with the commission does not conform to the requirements of this chapter, or to the truth, or that a person subject to the provisions of this chapter has failed to file a statement or report in the manner prescribed by this chapter.

(b) The commission shall conduct an investigation, and may thereafter conduct a hearing, into an allegation under (a)(2) of this section.

(c) The commission shall report any suspected violations of this chapter to the attorney general, to a district attorney in the judicial district where the alleged violation occurred, or to a grand jury.

Sec. 24.60.170. Proceedings before the committee; limitations.

(a) The committee shall consider a complaint alleging a violation of this chapter if the alleged violation occurred within two years before the date that the complaint is filed with the committee and, when the subject of the complaint is a former member of the legislature, the complaint is filed within one year after the subject's departure from the legislature. The committee may not consider a complaint filed against all members of the legislature, against all members of one house of the legislature, or against a person employed by the legislative branch of government after the person has terminated legislative service. However, the committee may reinstitute proceedings concerning a complaint that was closed because a former employee terminated legislative service or because a legislator left the legislature if the former employee or legislator resumes legislative service, whether as an employee or a legislator, within two years after the alleged violation. The time limitations of this subsection do not bar proceedings against a person who intentionally prevents discovery of a violation of this chapter.

Sec. 39.50.100. Enforcement by private citizens.

A qualified Alaska voter may bring a civil action to enforce any of the sections of this chapter.

Sec. 15.56.130. Time limitation.

A prosecution for an offense described in AS 15.05 - AS 15.60 (Alaska Election Code) may not be maintained unless it is begun within one year after the date of the election in connection with which the offense is alleged to have been committed.

Definitions related to who can file a complaint regarding alleged violations under sections 15.13, 24.45, 24.60 and 39.50

REGISTERED VOTER

Chapter 15.07. REGISTRATION OF VOTERS

Sec. 15.07.010. Who may vote.

The precinct election officials at any election shall allow a person to vote whose name is on the official registration list for that precinct and who is qualified under AS 15.05. A person whose name is not on the official registration list shall be allowed to vote a questioned ballot.

Sec. 15.07.020. Registration as a prerequisite. [Repealed, Sec. 231 ch 100 SLA 1980].

Repealed or Renumbered

Sec. 15.07.030. Who may register.

(a) A person who has the qualifications of a voter as set out in AS 15.05.010 (1) - (3) or who will have the qualifications at the succeeding primary or general election is entitled to be registered as a voter in the precinct in which the person resides.

(b) A person qualified under AS 15.05.011 to vote by absentee ballot in a federal election is entitled to be registered as a voter in the house district in which the person resided immediately before departure from the United States.

QUALIFIED VOTER

Sec. 15.60.010. Definitions.

In this title, unless the context otherwise requires,

(30) "qualified voter" means a person who has the qualification of a voter and is not disqualified as provided by art. V, Sec. 2, of the state constitution and AS 15.05.030 :

(continued on next page)

Sec. 15.05.030. Loss and restoration of voting rights.

(a) A person convicted of a crime that constitutes a felony involving moral turpitude under state or federal law may not vote in a state, federal, or municipal election from the date of the conviction through the date of the unconditional discharge of the person. Upon the unconditional discharge, the person may register under AS 15.07.

(b) The commissioner of corrections shall establish procedures by which a person unconditionally discharged is advised of the voter registration requirements and procedures.

Chapter 15.05. QUALIFICATION OF VOTERS

Sec. 15.05.010. Voter qualification.

A person may vote at any election who

(1) is a citizen of the United States;

(2) is 18 years of age or older;

(3) has been a resident of the state and of the house district in which the person seeks to vote for at least 30 days just before the election; and

(4) has registered before the election as required under AS 15.07 and is not registered to vote in another jurisdiction.

PERSON

Sec. 15.13.400. Definitions.

In this chapter,

(14) "person" has the meaning given in AS 01.10.060, and includes a labor union, nongroup entity, and a group;

Sec. 01.10.060. Definitions.

(a) In the laws of the state, unless the context otherwise requires,

(8) "person" includes a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person;

**CSHB 281 (STA) Campaign Finance Complaints
by Rep. Bob Lynn
House Judiciary Committee, Fri., Jan 25, 2008**

**Teleconference requests, including witnesses and sites
requested:**

Offline in Anchorage at 888-295-4546:

Brooke Miles, Executive Director
Alaska Public Offices Commission
276-4176 (Anch), 465-4864 (Jnu)

At the House Judiciary Committee hearing in Room 120:

Joyce Anderson, Administrator
Select Committee on Legislative Ethics
269-0150 (Anch)

At Anchorage Legislative Information Office:

Brenda Page, Attorney
Alaska Department of Law
269-6612

Steve Cleary, Executive Director
Alaska Public Interest Research Group
278-3661

Available to be answer questions:

Alpheus Bullard, Legislative Legal Attorney and bill drafter
465-3867 (office) 463-5703, ext. 4903 (contact for teleconference)

Staff member assigned to legislation:

Mike Sica, 465-4965, staff for Rep. Bob Lynn

HB

286

ALASKA STATE LEGISLATURE

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REPRESENTATIVE NANCY DAHLSTROM

ELMENDORF AFB • FORT RICHARDSON • BIRCHWOOD • FIRE LAKE • GOVERNMENT HILL • MULDOON
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House Bill 286 Sponsor Statement

House Bill 286 "An act relating to impersonating a public servant" makes it a class C felony for those who impersonate a public servant in the first degree. A person commits the crime of impersonating a public servant in the first degree if the person violates AS 11.56.830 by pretending to be a peace officer. Currently in the state of Alaska it is a class B misdemeanor to impersonate any public servant.

Class C felony sentencing guidelines, under AS 12.55.125(e), cover the following presumptive ranges:

First offense: 0-2 years

Second offense: 2-4 years

Third offense: 3-5 years

Class B Misdemeanors are usually handled with little or no jail time unless the person has a significant criminal history. HB 286 targets those who intend to cause harm to an individual or group while appearing as someone whose job it is to protect others and uphold the law. Taking on a persona of a peace officer is a severe breach of trust and should be punished accordingly.

There is a growing concern for safety in our communities. House Bill 286 adds teeth to existing law, and provides another tool to law enforcement agencies. In addition, the bill serves as a strong deterrent for those who deliberately make choices that put our families, neighbors and community at risk.

The sponsor respectfully requests the committee's favorable consideration of House Bill 286. Thank you.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number _____
Bill Version HB 286
() Publish Date _____

Identifier (file name): HB286-DOA-OPA-1-28-08 Dept. Affected Administration
Title "An Act relating to impersonating a public servant" RDU Legal and Advocacy Services
Component Office of Public Advocacy
Sponsor Reps. Dahlstrom, Lynn, Gallo
Requester _____ Component Number 43

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

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

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS (Attach a separate page if necessary)

This bill will create a new felony offense for impersonating a public servant in the first degree for impersonation of a peace officer. The agency does not anticipate many new cases resulting from this bill, and therefore, OPA submits a zero fiscal note.

Prepared by Rachel Levitt, Deputy Director
Division Office of Public Advocacy
Approved by Rachael Petro, Deputy Commissioner
Department of Administration

Phone 907-269-3504
Date/Time 1/28/08 2:00 p.m.
Date 1/28/2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number _____
Bill Version HB 286
() Publish Date _____

Identifier (file name) HB286-DOA-PDA-1-28-08 Dept. Affected Administration
Title "An Act relating to impersonating a public servant." RDU Legal and Advocacy Services
Sponsor Representative DAHLSTROM, Lynn, Gatto Component Public Defender Agency
Requester _____ Component Number 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This bill amends the crime of impersonating a public servant, elevating the crime to a class C felony under certain circumstances. It is not expected to have a fiscal impact on the Agency

Prepared by Quinlan Steiner, Director
Division Public Defender Agency
Approved by Rachael Petro, Deputy Commissioner
Department of Administration

Phone 907-334-4414
Date/Time 1/28/08 10:40 AM
Date 1/28/2009

Public Safety Employees Association, Inc.
"Representing Alaska's Finest"

Position Paper
Supporting HB 286

HB 286 increases the penalties for a person who impersonates a peace officer. We must be conscience of every effort to protect the environment and the enforcement persona of those who work to enforce the law and protect persons from those who seek to break the law. One who impersonates a peace officer infiltrates the confidence a law abiding citizen has in our system of law enforcement.

Alaska's citizens must be assured that those who wear the uniform of a peace officer or drive a police vehicle are who they appear to be. Anyone who seeks to impersonate a police officer for whatever reason not only confuse, anger and abuse the public, they place law abiding citizens at risk. If and when a law abiding citizen honors a police vehicle's strobes by pulling over, that individual doesn't need to question whether the person wearing a peace officer's uniform is who they appear to be

An effort to discourage or curtail impersonation is good public policy. The members of the Public Safety Employees Association commend Representatives Dahlstrom, Lynn and Gatto for introducing HB 286 and recommend it passage.

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355



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Christine Lee, Member
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Pres. Fairbanks Chapter

January 24, 2008

Representative Nancy Dahlstrom
House of Representatives
State Capitol
Juneau AK 99801-1182

Dear Representative Dahlstrom:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing HB 286, an act relating to impersonating a public servant.

The APOA State Board's Legislative Committee recently reviewed this proposed legislation and decided to unanimously support this bill.

We thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515, if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

Angella Long
State President

Barry J. Schimmack
24888 Teal Loop, Chugiak, AK 99567
688-5525 barryjay@mtaonline.net

October 22, 2007

Rep. Nancy Dahlstrom
10928 Eagle River Rd.
Eagle River, AK 99577

RE: Impersonating an Officer

Dear Representative Dahlstrom,

It was a pleasure for my son Brett and I to meet you at the recent Eagle River Rotary meeting, and it was great to hear your insights into the events happening in our state government.

You may remember we talked briefly about my concerns on our state and municipal laws concerning Impersonating a Police Officer. You asked me to finish my document and get it to your office as soon as I could.

I'd like you to take a moment and meet my friend's daughter, Lacy. In Ft. Collins, CO, she was pulled over by a man impersonating a police officer, only a few houses away from her own home. The man used flashing red and blue lights to pull Miller over.



Lacy Jo Miller

My name is Lacy Jo Miller. I was born in Billings, Mont., on Aug. 10, 1982. I came to Fort Collins when I was 6 years old. I was a Brownie. I loved school, playing Barbies, tea parties, coloring, dress-up, my best friend Katy, horses, sleepovers, art class and singing.

When I was in junior high school I ran track, played softball and learned to play the piano and the flute. I loved watching my little brother Kenyan and making things for him. I was quiet and shy for the most part, but once you got to know me, I was funny and would say what was on my mind.

In high school, I was in student council and on the yearbook committee. I loved my friends, hanging out during lunch, doing things I thought my mom didn't know about, driving my car, listening to Dave Matthews Band, dancing, dreaming about being a designer or teacher, talking on the phone, instant messaging my friends, watching "Friends," being a couch potato, sleeping, going to movies, Thanksgivings with my Aunt Stacy and lots more. I loved seeing my Dad and brother Jesse and every year spending time with my grandparents in Texas. I loved my family, I loved Jesus, and I loved life.

I was tragically taken from this planet in January 2003. Regretfully, I leave behind my mother, Wendy (Patterson) Cohen; my father, David Miller, my little brothers, Jessie Miller and Kenyan Kreisher, my best friends: Angela, Andrea, Amanda, Kendra and many, many, more girlfriends.

Thank you for loving me, laughing with me, teaching me what I needed to know and for looking and praying so hard to find me so my parents wouldn't have to worry any more.

In Alaska, our Municipal Code and State Law on impersonating a police officer is only a Class B Misdemeanor. (see attached) According to one sergeant at APD, "I'd say most Class B Misdemeanors are handled without jail unless the person has a significant criminal history. Community work, service, fines, etc. are more common."

As you know, there have been a number of "police impersonation" cases in the Anchorage area within the past 2 years, including at least 2 high profile cases. Thankfully, none have resulted in a fatality.

Shortly after Lacy's death, her mother Wendy approached the representatives in Colorado and within months they signed into law a House Bill named **Lacy's Law**:

"Named for slain Fort Collins college student Lacy Miller - makes impersonating a police officer a class 6 felony, which carries a mandatory minimum sentence of 15 months in prison. It also made possession or use of police emergency lights a class 1 misdemeanor, punishable by a fine of up to \$5,000."

This is the 5th year anniversary of Lacy's death, and I can't think of a better way to honor her memory than for our Alaska lawmakers to address these types of crimes to deter this type of crime in Alaska. Let's not lose another Alaskan to somebody impersonating a public servant!

There is more information about House Bill 1003 on Lacy's website at:

http://www.2hearts4lacy.org/page_page_3127061.htm

Thank you.

Barry Schimmack

State Law Sec. 11.56.830. Impersonating a public servant.

- (a) A person commits the crime of impersonating a public servant if the person pretends to be a public servant and does any act in that capacity.
- (b) It is not a defense to a prosecution under this section that
 - (1) the office the defendant pretended to hold did not in fact exist; or
 - (2) the defendant was in fact a public servant different than the one the defendant pretended to be.
- (c) This section does not apply to a peace officer acting within the scope and authority of the officer's employment.
- (d) Impersonating a public servant is a class B misdemeanor.

Municipal Code 8.30.070 Impersonation of public officer.

- A. A person commits the crime of impersonation of a public officer if the person knowingly and falsely represents himself to be a public officer and in such assumed character:
 - 1. Obtains money, property, or other thing of value, or
 - 2. Arrests or detains, threatens to arrest or detain, or otherwise threatens any person; or
 - 3. Searches a person or property; or
 - 4. Obtain or requires the assistance of another in any matter pertaining to the duties of a public officer.
 - B. As used in this section, a public officer includes peace officers, firemen, paramedics, magistrates, judges, municipal attorneys and prosecutors, municipal inspectors, officials, or clerks, but is not limited to them.
 - C. Violation of this section shall, upon conviction, be punished by a fine of not more than \$2,000.00 or imprisonment for not more than six months, or both such fine and imprisonment.
- (AO No. 98-59(S), § 1, 5-19-98; AO No. 2003-73, § 3, 4-22-03)

Peace officer definition 11.81.900



Gov. Owens signs House Bill for Lacy's Law

19 Mar 2004

OWENS SIGNS BILL TO TOUGHEN PENALTIES FOR IMPERSONATING A POLICE OFFICER

(DENVER) – Gov. Bill Owens today signed House Bill 1304 to increase the penalties for impersonating a police officer.

"In our society, the only sure barrier between our citizens and the chaos of lawlessness is a true trust of police officers," said Owens. "The ability of each law enforcement officer to protect us depends on that trust. Today, Colorado takes an important step to restore the trust that every citizen must have in law enforcement."

The legislation comes in the wake of the abduction and murder of Lacy Miller, a twenty-year-old student from Fort Collins, this past January. Miller was abducted when she was pulled over by a man impersonating a police officer.

Wendy Cohen, Lacy Miller's mother, joined the Gov. Owens at the bill signing. Since the death of her daughter, Cohen has been a diligent advocate for tougher penalties for anyone who impersonates a police officer.

"I'm honored to stand alongside Wendy Cohen," said Owens. "Her determination has helped make Colorado a safer place."

House Bill 1304 was originally introduced by Rep. Bob McCluskey and Sen. Steve Johnson.

Under House Bill 1304, a person may be fined up to 18 months in jail, or up to a \$1,000 fine.

4444

signing has not been determined

"I will be there with bells on," Cohen said

Sarah Larobin 4444

(30) "identification document" means a paper, instrument, or other article used to establish the identity of a person; "identification document" includes a social security card, driver's license, non-driver's identification, birth certificate, passport, employee identification, or hunting or fishing license;

(31) "includes" means "includes but is not limited to";

(32) "incompetent person" means a person who is impaired by reason of mental illness or mental deficiency to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that person;

(33) "intoxicated" means intoxicated from the use of a drug or alcohol;

(34) "law" includes statutes and regulations;

(35) "leased" includes "rented";

(36) "metal knuckles" means a device that consists of finger rings or guards made of a hard substance and designed, made, or adapted for inflicting serious physical injury or death by striking a person;

(37) "misdemeanor" means a crime for which a sentence of imprisonment for a term of more than one year may not be imposed;

(38) "nondeadly force" means force other than deadly force;

(39) "offense" means conduct for which a sentence of imprisonment or fine is authorized; an offense is either a crime or a violation;

(40) "official detention" means custody, arrest, surrender in lieu of arrest, or actual or constructive restraint under an order of a court in a criminal or juvenile proceeding, other than an order of conditional bail release;

(41) "official proceeding" means a proceeding heard before a legislative, judicial, administrative, or other governmental body or official authorized to hear evidence under oath;

(42) "omission" means a failure to perform an act for which a duty of performance is imposed by law;

(43) "organization" means a legal entity, including a corporation, company, association, firm, partnership, joint stock company, foundation, institution, government, society, union, club, church, or any other group of persons organized for any purpose;

(44) "peace officer" means a public servant vested by law with a duty to maintain public order or to make arrests, whether the duty extends to all offenses or is limited to a specific class of offenses or offenders;

(45) "person" means a natural person and, when appropriate, an organization, government, or governmental instrumentality;

(46) "physical injury" means a physical pain or an impairment of physical condition;

(47) "police dog" means a dog used in police work under the control of a peace officer;

(48) "possess" means having physical possession or the exercise of dominion or control over property;

(49) "premises" means real property and any building;

(50) "propelled vehicle" means a device upon which or by which a person or property may be transported, and which is self-propelled, including automobiles, vessels, mopeds, snowmobiles, chain saws, all-terrain vehicles, sailboats, and construction equipment;

(51) "property" means an article, substance, or thing of value, including movable, tangible, and intangible personal property including data or information stored in a computer program, system, or network, real property, an access device, a domestic partnership stock regardless of value, choses in action, and evidence of debt or of contract; a commodity of a public utility such as gas, electricity, steam, or water constitutes property, but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits, or other equipment is considered a rendition of a service rather than a sale or delivery of property;

(52) "public place" means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement,

Rough Cost Estimate

This is the text of an e-mail sent to Cindy Smith from Bernadette Blankenship, Retirement and Benefits:

"We were able to get the information from our actuary as far as the cost for Tier II & III peace officers/firefighters to use military time for eligibility for the health insurance. The cost would be .026% of the payroll. The last valuation indicates the total salary for this group is \$182,848,000 X .026 = \$475,400 (total cost)."

Sec. 39.35.680. Definitions

Peace Officer/Fire Fighter

(29) "peace officer" or "fire fighter" means an employee occupying a position as a peace officer, chief of police, regional public safety officer, correctional officer, correctional superintendent, fire fighter, fire chief, or probation officer, but does not include a village public safety officer employed by a village public safety officer program established under AS 18.65.670 ;

HB

301



HOUSE JUDICIARY COMMITTEE

STATE CAPITOL., ROOM 120
(907) 465-4990

COMMITTEE MEMBERS

Rep. Jay Ramras
Chairman
Room, 118
(907) 465-3004

Rep. Nancy Dahlstrom
Vice-Chairman
Room 409
(907) 465-3783

Rep. John Coghill
Room 214
(907) 465-3719

Rep. Bob Lynn
Room 104
(907) 465-4931

Rep. Ralph Samuels
Room 204
(907) 465-2095

Rep. Max Gruenberg
Room 110
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: January 21, 2008

To: Representative John Coghill, Chairman
House Rules Committee

From: Representative Jay Ramras, Chairman
House Judiciary Committee

Re: Referral File HB301 - PARTIAL-BIRTH ABORTION

Attached please find the following documents regarding the referral file for HB301:

- Sponsor Statement
- HB301 - 25-LS1139\C
- HSS Fiscal Note - 0
- AS 18.16.050
- HJUD Committee Report
- Back-up

ALASKA STATE LEGISLATURE

Interim:

600 East Railroad Avenue
Wasilla, Alaska 99654
Phone (907) 373-1842
Fax: (907) 373-4729



Session:

State Capitol Building
Juneau, Alaska 99801-1182
Phone: (907) 465-2186
Fax: (907) 465-3818

REPRESENTATIVE WES KELLER DISTRICT 14 Sponsor Statement HB 301

Since the Supreme Court of the United States determined that states, not the federal government should control certain medical procedures within their state boundaries, abortions have been legal in Alaska. Despite strong controversies on the abortion issue there is one practice that many people agree needs to stop. Partial-Birth or late term abortion is a process that few people support.

House Bill 301 will end this practice in Alaska. The procedure is well described by its name with the child being partially born and then terminated. Alaska is one of only 14 states that have not restricted this practice, and Congress passed legislation with broad Bi-partisan support to ban it nationwide.

HB 301 sends a message that Alaska will not tolerate this inhumane treatment, and that other better decisions must be made. Your support of HB 301 goes beyond Pro-Life or Pro-Choice.

###

E-Mail: [Representative Wes Keller@legis.state.ak.us](mailto:Representative_Wes_Keller@legis.state.ak.us)
Call Juneau Toll free: (800) 468-2186
Website: www.akrepublicans.org/keller/

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 301
 () Publish Date: _____
 Dept. Affected: Health & Social Services
 RDU: Public Health
 Component: Public Health Admin Svcs

ID(File name) HB301-DHSS-PHAS-1-18-08
 Title: PARTIAL BIRTH ABORTION
 Sponsor: KELLER, COGHILL
 Requester: HOUSE JUDICIARY COMMITTEE

Component No. 292

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation		Information						
	Required		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES									
Personal Services									
Travel									
Contractual									
Supplies									
Equipment									
Land & Structures									
Grants & Claims									
Miscellaneous									
TOTAL OPERATING			0.0	0.0	0.0	0.0	0.0	0.0	0.0

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									
1037 GF/Mental Health									
Other(Specify Type-do not abbreviate)									
Other(Specify Type-do not abbreviate)									
TOTAL			0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time									
Part-time									
Temporary									

ANALYSIS: (Attach a separate page if necessary)

This bill has no programmatic impact on the Division of Public Health or the Department of Health and Social Services.

AS 18.16.010(2) states that the Department's role in regulating abortions is limited to the licensing of facilities where abortions are performed. This bill does not involve facility licensing.

AS 08.64.105 - regulation of abortion procedures - states that the State Medical Board "shall adopt regulations necessary to carry into effect the provisions of AS 18.16.10 and shall define ethical, unprofessional, or dishonorable conduct as related to abortions, set standards of professional competency in the performance of abortions, and establish procedures and set standards for facilities, equipment, and care of patients in the performance of an abortion."

Prepared by: Beverly K. Wooley, Director
 Division: Division of Public Health
 Approved by: Karleen Jackson, Commissioner
 Agency: Department of Health and Social Services

Phone: 269-8045
 Date/Time: 01/18/2008
 Date: 01/19/2008

Sec. 18.16.050. Partial-birth abortions.

(a) Notwithstanding compliance with AS 18.16.010, a person may not knowingly perform a partial-birth abortion unless a partial-birth abortion is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury and no other medical procedure would suffice for that purpose. Violation of this subsection is a class C felony.

(b) A woman upon whom a partial-birth abortion is performed may not be prosecuted under this section or under any other law if the prosecution is based on this section.

(c) In this section, "partial-birth abortion" means an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.

((i ch 15 SLA 1997))

Editor's notes. A Superior Court for the Third Judicial District held that AS 18.16.050 is unconstitutional and enjoined its enforcement. *Planned Parenthood v. State*, 3-AN-97-6019 (Super. Ct., Third Jud. Dist. at Anchorage, Alaska; March 13, 1998), appeal withdrawn, No. S-08610 (June 29, 2000). The State appealed the Superior Court's decision, but withdrew the appeal following the U.S. Supreme Court's decision in *Stenberg v. Carhart*, 530 U.S. 914, 120 S. Ct. 2597, 147 L.Ed.2d 743 (2000).

Jurors find Scott Peterson guilty of first-degree murder



Scott Peterson now faces the death penalty or a life sentence.

By Harriet Ryan
Court TV

REDWOOD CITY, Calif. — After seven days of tumultuous deliberations that saw the removal of two jurors and a mutiny against the foreman, a jury convicted Scott Peterson Friday of first-degree murder in the slaying of his pregnant wife.

The jurors also found the Modesto fertilizer salesman guilty of second-degree murder in the death of the son his wife, Laci, was carrying when he killed her in December 2002.

Scott Peterson Guilty of First-Degree Murder

From Charles Montaldo,

Verdict Comes in 7th Day of Deliberations

Scott Peterson has been found guilty of first-degree murder in the death of his pregnant wife, Laci Peterson, and second-degree murder in the death of his unborn son Conner. The jury reached a verdict in the case in its seventh day of deliberations, after three jurors were replaced during the trial, including the first foreman.

The jury will now hear evidence in the sentencing phase of the trial beginning Nov. 22 before deciding whether Peterson will be sentenced to death or life without parole for his first-degree conviction for killing Laci.

Scott Peterson convicted of murder

First-degree verdict could bring death penalty

AP Associated Press

updated 6:10 p.m. HT, Sat., Nov. 13, 2004

REDWOOD CITY, Calif. - Scott Peterson's lawyers failed to persuade the jury that someone else killed his pregnant wife. Now, they'll try to persuade the same 12 people to spare him from the death penalty.

But Peterson himself is unlikely to take the stand and beg for mercy — doing that would require him to admit to the murders, and throw away any chance of overturning the convictions on appeal.

Six men and six women convicted Peterson Friday of the first-degree murder of his wife, Laci, and the second-degree murder of the fetus she was carrying. The couple had planned to name their son Conner. The jury also agreed on a "special circumstance" that calls for capital punishment — namely that he killed another person — the fetus — while committing a felony — the intentional and premeditated killing of his wife.

Legal restrictions on later abortion

As of 1998, among the 152 most populous countries, 54 either banned abortion entirely or permitted it only to save the life of the pregnant woman.^[15] In contrast, another 44 of the 152 most populous countries generally banned late-term abortions after a particular gestational age: 12 weeks (Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Cuba, Czech Rep., Denmark, Estonia, France, Georgia, Greece, Kazakhstan, Kyrgyz Rep., Latvia, Lithuania, Macedonia, Moldova, Mongolia, Norway, Russian Fed., Slovak Rep., Slovenia, South Africa, Ukraine, Tajikistan, Tunisia, Turkey, Turkmenistan, Uzbekistan, and Yugoslavia), 13 weeks (Italy), 14 weeks (Austria, Belgium, Cambodia, Germany, Hungary, and Romania), 18 weeks (Sweden), viability (Netherlands and to some extent the United States), and 24 weeks (Singapore).^[15]

United States

The United States Supreme Court decisions on abortion, including *Roe v. Wade*, allow states to impose more restrictions on post-viability abortions than during the earlier stages of pregnancy.

As of April 2007, 36 states had bans on late-term abortions that were not facially unconstitutional (i.e. banning *all* abortions) or enjoined by court order.^[16] In addition, the Supreme Court in the case of *Gonzales v. Carhart* ruled that Congress may ban certain late-term abortion techniques, "both previability and postviability".

Some of the 36 state bans are believed by pro-choice organizations to be unconstitutional.^{[17] [18]} The Supreme Court has held that bans must include exceptions for threats to the woman's life, physical health, and mental health, but four states allow late-term abortions only when the woman's life is at risk; four allow them when the woman's life or physical health is at risk, but use a definition of health that pro-choice organizations believe is impermissibly narrow.^[18] Assuming that one of these state bans is constitutionally flawed, then that does not necessarily mean that the entire ban would be struck down: "invalidating the statute entirely is not always necessary or justified, for lower courts may be able to render narrower declaratory and injunctive relief."^[19]

Also, 13 states prohibit abortion after a certain number of weeks' gestation (usually 24 weeks).^[16] The U.S. Supreme Court held in *Webster v. Reproductive Health Services* that a statute may create "a presumption of viability" after a certain number of weeks, in which case the physician must be given an opportunity to rebut the presumption by performing tests.^[20] Therefore, those 13 states must provide that opportunity. Because this provision is not explicitly written into these 13 laws, as it was in the Missouri law examined in *Webster*, pro-choice organizations believe that

such a state law is unconstitutional, but only "to the extent that it prohibits pre-viability abortions".^[17]

Ten states require a second physician to approve.^[16] The U.S. Supreme Court struck down a requirement of "confirmation by two other physicians" (rather than one other physician) because "acquiescence by co-practitioners has no rational connection with a patient's needs and unduly infringes on the physician's right to practice".^[21] Pro-choice organizations such as the Guttmacher Institute therefore interpret some of these state laws to be unconstitutional, based on these and other Supreme Court rulings, at least to the extent that these state laws require approval of a second or third physician.^[16]

Nine states have laws that require a second physician to be present during late-term abortion procedures in order to treat a fetus if born alive.^[16] The Court has held that a doctor's right to practice is not infringed by requiring a second physician to be present at abortions performed after viability in order to assist in saving the life of the fetus.^[22]

LATER-TERM ABORTION POLICIES

STATE	THRESHOLD FOR LATER-TERM ABORTIONS	LATER-TERM ABORTION PERMITTED WHEN THREAT TO WOMAN'S:			WHEN A LATER-TERM ABORTION IS PERFORMED A SECOND PHYSICIANS MUST:	
		Life and Health	Life and Physical Health	Life	Attend	Approve
Alabama	Viability		X			X
Arizona	Viability	X			X	
Arkansas	Viability	X			X	
California	Viability	X				
Connecticut	Viability	X				
Delaware	▼			▼		
Florida	24 weeks	X				X
Georgia	3rd trimester	X				X
Idaho	Viability			X		X
Illinois	Viability	X			X	
Indiana	Viability		X		X	
Iowa	3rd trimester	X				
Kansas	Viability	X				X
Kentucky	Viability	X				
Louisiana	Viability	X			X	
Maine	Viability	X				
Maryland	Viability	X**				
Massachusetts	24 weeks	X				
Michigan	Viability			X		
Minnesota	▼	▼			▼	
Missouri	Viability	X			X	
Montana	Viability		X			X
Nebraska	Viability	X				
Nevada	24 weeks	X				
New York	24 weeks			X	X	
North Carolina	20 weeks	X				
North Dakota	Viability	X				X
Ohio	▼		▼		▼	▼
Oklahoma	Viability	X			X	
Pennsylvania	24 weeks		X		X	X
Rhode Island	24 weeks			X		
South Carolina	3rd trimester	X†				X
South Dakota	24 weeks	X				
Tennessee	Viability	X				
Texas	3rd trimester	X				
Utah	▼		▼			
Virginia	3rd trimester	X				X
Washington	Viability	X				
Wisconsin	Viability	X				
Wyoming	Viability	X				
TOTAL	36	28	4	4	9	10

▼ Enforcement permanently enjoined by a court order; policy not in effect

* Also permitted in case of rape or incest.

** Also permitted in case of fetal abnormality

† If done for mental health reasons, must have the certification of an independent psychiatrist.

FOR MORE INFORMATION:

For information on state legislative and policy activity click on Guttmacher's [Monthly State Update](#) and for state level information and data on reproductive health issues, click on [Guttmacher's State Center](#).

Cohen SA and Saul R, [The campaign against 'partial-birth' abortion: status and fallout](#), *The Guttmacher Report on Public Policy*, 1998, 1(6):6-10.

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U.S. House Gives Final Approval to Partial-Birth Abortion Ban, But Some Democratic Senators Delay Final Senate Vote

WASHINGTON (Oct. 4, 2003) -- Only a single legislative step -- a final vote in the U.S. Senate remains before Congress sends the Partial-Birth Abortion Ban Act (S. 3) to President Bush for his signature.

The bill represents the first direct national restriction on any method of abortion since the Supreme Court legalized abortion on demand in 1973.

The House of Representatives gave final approval to the bill on October 2 by an overwhelming vote of 281-142.

It has been almost a decade since the gruesome practice of partial-birth abortion escaped the shadowy corners of abortion clinics and was disclosed to the public, said Congressman Steve Chabot (R-Oh.), the prime sponsor of the bill in the House. With the House's final approval, we move one step closer to finally banning this horrific procedure, he noted.

House Majority Leader Tom DeLay (R-Tx.) proclaimed the vote a victory for humanity and a pivotal point in the long battle to protect the unborn. Rep. James Oberstar (D-Mn.) said House passage was a landmark day for those who, for more than 30 years, have worked to reduce the number of abortions performed in America.

Approval by the Senate is also assured. Based on past Senate roll calls on the measure and its antecedents, 64 or 65 of the 100 U.S. senators are likely to vote to send the bill to President Bush.

Nevertheless, some Democratic senators who oppose the bill, including Sen. Barbara Boxer (D-Ca.) and Sen. Tom Harkin (D-Iowa), prevented the vote from occurring before the Senate began a 10-day recess on October 3. This means that the necessary Senate vote cannot occur earlier than mid-October.

President Clinton and a minority of senators, mostly Democrats, have blocked enactment of the partial-birth abortion ban for eight years, and now a group made up entirely of Democratic senators is obstructing the bill for additional weeks, commented NRLC Legislative Director Douglas Johnson, who worked with federal lawmakers to originate the legislation in 1995.

The Partial-Birth Abortion Ban Act was originally introduced in 1995 by Congressman Charles Canady (R-Fl.), who retired from Congress in 2000.

Senator Rick Santorum (R-Pa.) is the lead sponsor of the legislation in the Senate.

Senate Majority Leader Bill Frist (R-Tn.), a strong supporter of the ban, expressed regret that Democratic senators did not allow the Senate to give final approval to the bill on October 2, immediately after the House acted.

As soon as we get back, we will be scheduling it for consideration, Frist said on October 3, as the Senate began its recess. It is imperative that the Senate consider this measure in short order so the President can sign this legislation into law.

President Bush urged Congress to pass the ban in his January 28 State of the Union speech. On June 4, he said, I urge Congress to quickly resolve any differences and send me the final bill as soon as possible so that I can sign it into law.

On October 2, as the House completed action on the bill, White House Press Secretary Scott McClellan told reporters, The House right now is voting on the conference committee report on the legislation that would ban the brutal practice of partial-birth abortion. This will be an important step toward building a culture of life in America. And we look forward to the House passage and urge the Senate to move quickly on this important piece of legislation as well.

On the 281-142 October 2 House roll call, the ban was supported by 218 Republicans and 63 Democrats. It was opposed by four Republicans, 137 Democrats, and one independent.

A January Gallup poll found that 70 percent of the public favors the ban.

(The Oct. 2 House roll call will be published in the November issue of *NRL News*. The roll calls by which the Senate and House gave preliminary approval to the bill were published in *NRL News* earlier this year. All of these roll calls, including the Oct. 2 House vote, are posted in the congressional scorecards found at the *Legislative Action Center* on the NRLC website at www.nrlc.org.)

Legal Challenge Expected

The bill legally defines a partial-birth abortion as any abortion in which the baby is delivered either Apast the navel . . . outside the body of the mother,@ or Ain the case of head-first presentation, the entire fetal head is outside the body of the mother,@ before being killed.

The method is usually used in the fifth and sixth months of pregnancy, and usually on healthy mothers of healthy unborn babies. It is sometimes used somewhat earlier, but never during the first three months. It is also sometimes used in the seventh month and later.

The bill would allow the method only if it was ever necessary to save a mother= s life.

Pro-abortion groups have vowed to challenge the ban in federal courts as soon as it is signed into law. Re;portedly these will include challenges by the American Civil Liberties Union on behalf of the National Abortion Federation, and by the Center for Reproductive Rights on behalf of Nebraska abortionist LeRoy Carhart.

In the case of *Stenberg v. Carhart* in 2000, by a 5 to 4 vote, the Supreme Court struck down a Nebraska law banning partial-birth abortions, holding that under *Roe v. Wade* an abortionist must be permitted to use the method when he sees fit.

Johnson noted that NRLC has never predicted whether or not the Supreme Court will uphold the federal ban.

AIn *Stenberg v. Carhart* in 2000, five Supreme Court justices struck down Nebraska= s ban on partial-birth abortion, holding that *Roe v. Wade* guarantees an abortionist's right to perform a partial-birth abortion whenever he chooses,@ Johnson noted. ABut that was a 5-to-4 decision, and we hope that by the time this federal ban reaches the Supreme Court, there will be at least a one vote shift away from the extreme position taken by the five justices in 2000 B either by a justice seeing this bill in a different light, or by a change in personnel.@ In the meantime, AThis bill puts a spotlight on the brutal violence that premature infants suffer every day because of *Roe v. Wade*, as interpreted by five justices on the U.S. Supreme Court,@ Johnson said.

Congressional opponents of the bill said that it failed to show proper deference to past rulings of the Supreme Court.

The bill is Anothing but a veiled attempt to undermine the Supreme Court= s landmark ruling,@ complained House Democratic Whip Steny Hoyer (D-Md.).

Another leading congressional opponent of the ban, Rep. Jerrold Nadler (D-NY), said, AThis bill reads as if the authors carefully studied the Supreme Court decisions, then went out of their way to thumb their noses at 30 years of constitutional law.@

Kate Michelman, president of NARAL, said, "This overly broad bill will strike at the very heart of *Roe*, and creates a legal pathway to the overturn of *Roe* ultimately, so we have to challenge it."

Conference Committee

Both houses approved the legislation earlier this year by about two-to-one margins. The only substantive difference between the House and Senate versions was the Harkin Amendment, an amendment expressing support for *Roe v. Wade* that was narrowly adopted in the Senate.

In order to get rid of the Harkin Amendment, sponsors of the bill decided to send it to a House-Senate conference committee. Opponents were able to delay that step for some weeks, but on September 17 the Senate voted to go to conference. The conference met on September 30.

Because Republicans hold majority control of both the House and Senate, Republican supporters of the bill outnumbered Democratic opponents 3-to-2 among the conferees from both the House and the Senate, and the conference was chaired by the chairmen of the Judiciary committees, Senator Orrin Hatch (R-Utah) and Rep. F. James Sensenbrenner (R-Wi.), both strong supporters of the bill.

On party-line votes, the committee deleted the Harkin Amendment, and also rejected a series of other gutting amendments offered by Sen. Boxer, Sen. Dianne Feinstein (D-Ca.), Rep. Zoe Lofgren (D-Ca.), and Rep. Nadler.

AHealth@ Claims Debated

During the October 2 House debate, opponents insisted that the partial-birth abortion method is sometimes necessary to protect women's health.

In reply, House Judiciary Committee Chairman Sensenbrenner said that the bill includes extensive congressional findings, based upon medical evidence received in a series of legislative hearings, that . . . partial-birth abortion is never medically necessary to preserve a woman's health, poses serious risks to women's health, and in fact is below the requisite standard of medical care.

Some opponents of the ban also resurrected long-discredited claims that the method is used mostly or only in cases of babies who cannot survive after birth because of profound disorders.

These are not children who are going to be born and run around the room, said Rep. Louise Slaughter (D-NY).

In response, Rep. Chris Smith (R-NJ), the co-chairman of the House Pro-Life Caucus, noted that even the head of the National Coalition of Abortion Providers had admitted that such claims were untrue. Most of those who are killed with partial-birth abortion methods are perfectly healthy, perfectly normal -- and those kids, like their disabled brothers and sisters, should not be executed in this terrible way or in any other way, Smith said.

Resources on Partial-Birth Abortion

The NRLC website contains the most extensive archive of documentation on partial-birth abortion available anywhere on the internet, including documentation on all disputed issues surrounding partial-birth abortion, White House statements on the issue, groundbreaking reports by investigative journalists for major newspapers and periodicals, and expert-certified color illustrations of the method.

The color illustrations of the partial-birth abortion method that were displayed on the Senate and House floors during the debates this year, along with documentation of their accuracy by eminent medical authorities, are here.

Medical drawings of a "dilation and evacuation" (D&E) abortion, a different method not covered by the bill, appear [here](#).

A basic resource, "Key Facts on Partial-Birth Abortion," is posted [here](#).

The NRLC archive also contains NRLC's in-depth testimony presented to Congress, with citations to primary sources, [here](#).

U.S. House Members Speak Out For Ban on Partial-Birth Abortion

Congresswoman Sue Myrick (R-NC): Al must say, as a mother and a grandmother, it is astonishing to me that this horrible practice is even remotely legal in America today. . . . Partial-birth abortion is the procedure where a pregnant woman= s cervix is forcibly dilated over a 3-day period. On the third day, her child is pulled, feet first, through the birth canal until his or her entire body, except for the head, is outside the womb. The head is held inside the womb by the woman= s cervix, and while the fetus is stuck in this position, dangling partly out of the woman's body and just a few inches from a completed birth, the abortionist inserts scissors into the base of the baby's skull, and the scissors are opened, creating a hole in the baby's head. The skull is either then crushed with instruments or a suction catheter is inserted into the hole and the baby's brain is suctioned out. Since the head is now small enough to slip through the mother's cervix, the now lifeless body is pulled the rest of the way out of its mother and the baby's corpse is discarded, usually as medical waste.@

Rep. Mark Kennedy (R-Mn.), who organized a special series of speeches on the House floor the night before the House took up the bill: Al had a young nephew who was born at less than two pounds. Sadly, 3,000 to 5,000 young children a year -- many of them bigger than my nephew when he was born -- die through partial-birth abortion, and it is time that we end this. It is deplorable that a country like ours which was founded on the respect for life has continued to allow this terrible practice.@

Rep. Mike Pence (R-In.): Al am mindful of that Bible verse that whatsoever you do for the least of these, you do for me, the Lord tells us. And I submit what we will do in this Congress tomorrow, banning this barbaric procedure known as partial-birth abortion, is the least we can do for the least of these.@

Congresswoman Ileana Ros-Lehtinen (R-Fl.): ASome of my colleagues who support partial-birth abortion are the first ones to rightly advocate the prohibition of cruelty against others or even against helpless animals. But how can some cringe in horror when an animal is tortured, yet they do not think twice about the unspeakable suffering of an innocent baby being killed through this so-called medical procedure?

Congressman F. James Sensenbrenner (R-Wi.), chairman of the House Judiciary Committee: Almplicitly approving such a brutal and inhumane procedure by choosing not to prohibit it will further coarsen society to the humanity of not only newborns but all vulnerable and innocent human life.@

Congressman Joe Pitts (R-Pa.), chairman of the House Values Action Team: AThis type of abortion, partial-birth abortion, is more like a legal technicality. The baby must be delivered

feet-first so that the doctor actually forces the head to stay in the birth canal. Otherwise, he would be born and actually breathe. Most people would call this murder. But right now, it is just a technicality. There is no excuse for this procedure in a civilized nation.@

Partial-Birth Abortion Ban Act of 2003 (Enrolled as Agreed to or Passed by Both House and Senate)

--S.3--

One Hundred Eighth Congress

of the

United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday,

the seventh day of January, two thousand and three

An Act

To prohibit the procedure commonly known as partial-birth abortion.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Partial-Birth Abortion Ban Act of 2003'.

SEC. 2. FINDINGS.

The Congress finds and declares the following:

(1) A moral, medical, and ethical consensus exists that the practice of performing a partial-birth abortion--an abortion in which a physician deliberately and intentionally vaginally delivers a living, unborn child's body until either the entire baby's head is outside the body of the mother, or any part of the baby's trunk past the navel is outside the body of the mother and only the head remains inside the womb, for the purpose of performing an overt act (usually the puncturing of the back of the child's skull and removing the baby's brains) that the person knows will kill the partially delivered infant, performs this act, and then completes delivery of the dead infant--is a gruesome and inhumane procedure that is never medically necessary and should be prohibited.

(2) Rather than being an abortion procedure that is embraced by the medical community, particularly among physicians who routinely perform other abortion procedures, partial-birth abortion remains a disfavored procedure that is not only unnecessary to preserve the health of the mother, but in fact poses serious risks to the long-term health of women and in some circumstances, their lives. As a result, at least 27 States banned the procedure as did the United

States Congress which voted to ban the procedure during the 104th, 105th, and 106th Congresses.

(3) In *Stenberg v. Carhart*, 530 U.S. 914, 932 (2000), the United States Supreme Court opined 'that significant medical authority supports the proposition that in some circumstances, [partial birth abortion] would be the safest procedure' for pregnant women who wish to undergo an abortion. Thus, the Court struck down the State of Nebraska's ban on partial-birth abortion procedures, concluding that it placed an 'undue burden' on women seeking abortions because it failed to include an exception for partial-birth abortions deemed necessary to preserve the 'health' of the mother.

(4) In reaching this conclusion, the Court deferred to the Federal district court's factual findings that the partial-birth abortion procedure was statistically and medically as safe as, and in many circumstances safer than, alternative abortion procedures.

(5) However, substantial evidence presented at the Stenberg trial and overwhelming evidence presented and compiled at extensive congressional hearings, much of which was compiled after the district court hearing in Stenberg, and thus not included in the Stenberg trial record, demonstrates that a partial-birth abortion is never necessary to preserve the health of a woman, poses significant health risks to a woman upon whom the procedure is performed and is outside the standard of medical care.

(6) Despite the dearth of evidence in the Stenberg trial court record supporting the district court's findings, the United States Court of Appeals for the Eighth Circuit and the Supreme Court refused to set aside the district court's factual findings because, under the applicable standard of appellate review, they were not 'clearly erroneous'. A finding of fact is clearly erroneous 'when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed'. *Anderson v. City of Bessemer City*, North Carolina, 470 U.S. 564, 573 (1985). Under this standard, 'if the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently'. *Id.* at 574.

(7) Thus, in Stenberg, the United States Supreme Court was required to accept the very questionable findings issued by the district court judge--the effect of which was to render null and void the reasoned factual findings and policy determinations of the United States Congress and at least 27 State legislatures.

(8) However, under well-settled Supreme Court jurisprudence, the United States Congress is not bound to accept the same factual findings that the Supreme Court was bound to accept in Stenberg under the 'clearly erroneous' standard. Rather, the United States Congress is entitled to reach its own factual findings--findings that the Supreme Court accords great deference--and to enact legislation based upon these findings so long as it seeks to pursue a legitimate interest that is within the scope of the Constitution, and draws reasonable inferences based upon substantial evidence.

(9) In *Katzenbach v. Morgan*, 384 U.S. 641 (1966), the Supreme Court articulated its highly deferential review of congressional factual findings when it addressed the constitutionality of section 4(e) of the Voting Rights Act of 1965. Regarding Congress' factual determination that section 4(e) would assist the Puerto Rican community in 'gaining nondiscriminatory treatment in public services,' the Court stated that '[i]t was for Congress, as the branch that made this judgment, to assess and weigh the various conflicting considerations * * *. It is not for us to review the congressional resolution of these factors. It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did. There plainly was such a basis to support section 4(e) in the application in question in this case.' *Id.* at 653.

(10) *Katzenbach's* highly deferential review of Congress' factual conclusions was relied upon by the United States District Court for the District of Columbia when it upheld the 'bail-out' provisions of the Voting Rights Act of 1965 (42 U.S.C. 1973c), stating that 'congressional fact finding, to which we are inclined to pay great deference, strengthens the inference that, in those jurisdictions covered by the Act, state actions discriminatory in effect are discriminatory in purpose'. *City of Rome, Georgia v. U.S.*, 472 F. Supp. 221 (D.D.C. 1979) *aff'd* *City of Rome, Georgia v. U.S.*, 446 U.S. 156 (1980).

(11) The Court continued its practice of deferring to congressional factual findings in reviewing the constitutionality of the must-carry provisions of the Cable Television Consumer Protection and Competition Act of 1992. See *Turner Broadcasting System, Inc. v. Federal Communications Commission*, 512 U.S. 622 (1994) (*Turner I*) and *Turner Broadcasting System, Inc. v. Federal Communications Commission*, 520 U.S. 180 (1997) (*Turner II*). At issue in the *Turner* cases was Congress' legislative finding that, absent mandatory carriage rules, the continued viability of local broadcast television would be 'seriously jeopardized'. The *Turner I* Court recognized that as an institution, 'Congress is far better equipped than the judiciary to 'amass and evaluate the vast amounts of data' bearing upon an issue as complex and dynamic as that presented here', 512 U.S. at 665-66. Although the Court recognized that 'the deference afforded to legislative findings does 'not foreclose our independent judgment of the facts bearing on an issue of constitutional law,' its 'obligation to exercise independent judgment when First Amendment rights are implicated is not a license to reweigh the evidence de novo, or to replace Congress' factual predictions with our own. Rather, it is to assure that, in formulating its judgments, Congress has drawn reasonable inferences based on substantial evidence.' *Id.* at 666.

(12) Three years later in *Turner II*, the Court upheld the 'must-carry' provisions based upon Congress' findings, stating the Court's 'sole obligation is 'to assure that, in formulating its judgments, Congress has drawn reasonable inferences based on substantial evidence.' 520 U.S. at 195. Citing its ruling in *Turner I*, the Court reiterated that '[w]e owe Congress' findings deference in part because the institution 'is far better equipped than the judiciary to 'amass and evaluate the vast amounts of data' bearing upon' legislative questions,' *id.* at 195, and added that it 'owe[d] Congress' findings an additional measure of deference out of respect for its authority to exercise the legislative power.' *Id.* at 196.

(13) There exists substantial record evidence upon which Congress has reached its conclusion that a ban on partial-birth abortion is not required to contain a 'health' exception, because the facts indicate that a partial-birth abortion is never necessary to preserve the health of a woman,

poses serious risks to a woman's health, and lies outside the standard of medical care. Congress was informed by extensive hearings held during the 104th, 105th, 107th, and 108th Congresses and passed a ban on partial-birth abortion in the 104th, 105th, and 106th Congresses. These findings reflect the very informed judgment of the Congress that a partial-birth abortion is never necessary to preserve the health of a woman, poses serious risks to a woman's health, and lies outside the standard of medical care, and should, therefore, be banned.

(14) Pursuant to the testimony received during extensive legislative hearings during the 104th, 105th, 107th, and 108th Congresses, Congress finds and declares that:

(A) Partial-birth abortion poses serious risks to the health of a woman undergoing the procedure. Those risks include, among other things: An increase in a woman's risk of suffering from cervical incompetence, a result of cervical dilation making it difficult or impossible for a woman to successfully carry a subsequent pregnancy to term; an increased risk of uterine rupture, abruption, amniotic fluid embolus, and trauma to the uterus as a result of converting the child to a footling breech position, a procedure which, according to a leading obstetrics textbook, 'there are very few, if any, indications for * * * other than for delivery of a second twin'; and a risk of lacerations and secondary hemorrhaging due to the doctor blindly forcing a sharp instrument into the base of the unborn child's skull while he or she is lodged in the birth canal, an act which could result in severe bleeding, brings with it the threat of shock, and could ultimately result in maternal death.

(B) There is no credible medical evidence that partial-birth abortions are safe or are safer than other abortion procedures. No controlled studies of partial-birth abortions have been conducted nor have any comparative studies been conducted to demonstrate its safety and efficacy compared to other abortion methods. Furthermore, there have been no articles published in peer-reviewed journals that establish that partial-birth abortions are superior in any way to established abortion procedures. Indeed, unlike other more commonly used abortion procedures, there are currently no medical schools that provide instruction on abortions that include the instruction in partial-birth abortions in their curriculum.

(C) A prominent medical association has concluded that partial-birth abortion is 'not an accepted medical practice', that it has 'never been subject to even a minimal amount of the normal medical practice development,' that 'the relative advantages and disadvantages of the procedure in specific circumstances remain unknown,' and that 'there is no consensus among obstetricians about its use'. The association has further noted that partial-birth abortion is broadly disfavored by both medical experts and the public, is 'ethically wrong,' and 'is never the only appropriate procedure'.

(D) Neither the plaintiff in *Stenberg v. Carhart*, nor the experts who testified on his behalf, have identified a single circumstance during which a partial-birth abortion was necessary to preserve the health of a woman.

(E) The physician credited with developing the partial-birth abortion procedure has testified that he has never encountered a situation where a partial-birth abortion was medically necessary to achieve the desired outcome and, thus, is never medically necessary to preserve the health of a

woman.

(F) A ban on the partial-birth abortion procedure will therefore advance the health interests of pregnant women seeking to terminate a pregnancy.

(G) In light of this overwhelming evidence, Congress and the States have a compelling interest in prohibiting partial-birth abortions. In addition to promoting maternal health, such a prohibition will draw a bright line that clearly distinguishes abortion and infanticide, that preserves the integrity of the medical profession, and promotes respect for human life.

(H) Based upon *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), a governmental interest in protecting the life of a child during the delivery process arises by virtue of the fact that during a partial-birth abortion, labor is induced and the birth process has begun. This distinction was recognized in *Roe* when the Court noted, without comment, that the Texas parturition statute, which prohibited one from killing a child 'in a state of being born and before actual birth,' was not under attack. This interest becomes compelling as the child emerges from the maternal body. A child that is completely born is a full, legal person entitled to constitutional protections afforded a 'person' under the United States Constitution. Partial-birth abortions involve the killing of a child that is in the process, in fact mere inches away from, becoming a 'person'. Thus, the government has a heightened interest in protecting the life of the partially-born child.

(I) This, too, has not gone unnoticed in the medical community, where a prominent medical association has recognized that partial-birth abortions are 'ethically different from other destructive abortion techniques because the fetus, normally twenty weeks or longer in gestation, is killed outside of the womb'. According to this medical association, the 'partial birth' gives the fetus an autonomy which separates it from the right of the woman to choose treatments for her own body'.

(J) Partial-birth abortion also confuses the medical, legal, and ethical duties of physicians to preserve and promote life, as the physician acts directly against the physical life of a child, whom he or she had just delivered, all but the head, out of the womb, in order to end that life. Partial-birth abortion thus appropriates the terminology and techniques used by obstetricians in the delivery of living children--obstetricians who preserve and protect the life of the mother and the child--and instead uses those techniques to end the life of the partially-born child.

(K) Thus, by aborting a child in the manner that purposefully seeks to kill the child after he or she has begun the process of birth, partial-birth abortion undermines the public's perception of the appropriate role of a physician during the delivery process, and perverts a process during which life is brought into the world, in order to destroy a partially-born child.

(L) The gruesome and inhumane nature of the partial-birth abortion procedure and its disturbing similarity to the killing of a newborn infant promotes a complete disregard for infant human life that can only be countered by a prohibition of the procedure.

(M) The vast majority of babies killed during partial-birth abortions are alive until the end of the

procedure. It is a medical fact, however, that unborn infants at this stage can feel pain when subjected to painful stimuli and that their perception of this pain is even more intense than that of newborn infants and older children when subjected to the same stimuli. Thus, during a partial-birth abortion procedure, the child will fully experience the pain associated with piercing his or her skull and sucking out his or her brain.

(N) Implicitly approving such a brutal and inhumane procedure by choosing not to prohibit it will further coarsen society to the humanity of not only newborns, but all vulnerable and innocent human life, making it increasingly difficult to protect such life. Thus, Congress has a compelling interest in acting--indeed it must act--to prohibit this inhumane procedure.

(O) For these reasons, Congress finds that partial-birth abortion is never medically indicated to preserve the health of the mother; is in fact unrecognized as a valid abortion procedure by the mainstream medical community; poses additional health risks to the mother; blurs the line between abortion and infanticide in the killing of a partially-born child just inches from birth; and confuses the role of the physician in childbirth and should, therefore, be banned.

SEC. 3. PROHIBITION ON PARTIAL-BIRTH ABORTIONS.

(a) IN GENERAL- Title 18, United States Code, is amended by inserting after chapter 73 the following:

CHAPTER 74--PARTIAL-BIRTH ABORTIONS

Sec.

1531. Partial-birth abortions prohibited.

Sec. 1531. Partial-birth abortions prohibited

(a) Any physician who, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined under this title or imprisoned not more than 2 years, or both. This subsection does not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself. This subsection takes effect 1 day after the enactment.

(b) As used in this section--

(1) the term 'partial-birth abortion' means an abortion in which the person performing the abortion--

(A) deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living