



# FISCAL NOTE

**STATE OF ALASKA**  
**2008 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 331  
 ( ) Publish Date: \_\_\_\_\_

Identifier (file name): HB331-DOA-DMV-01-24-08 Dept. Affected: Administration  
 Title: \_\_\_\_\_ RDU: Division of Motor Vehicles  
 "Mandatory motor vehicle insurance, license suspensions ..."  
 Component: Motor Vehicles  
 Sponsor: Reps ROSES, Harris, Gara  
 Requester: (H) L&C Component Number: 2348

**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
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**CAPITAL EXPENDITURES** 0.0

**CHANGE IN REVENUES ( )** 0.0

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
1156 Receipt Supported Services								
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2008) cost: \_\_\_\_\_

**POSITIONS**

Full-time							
Part-time							
Temporary							

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

This bill does not have a financial impact on the Division of Motor Vehicles; therefore, the Division submits a zero fiscal note.

Prepared by: Whitney H. Brewster, Director  
 Division: Motor Vehicles  
 Approved by: Kevin Brooks, Deputy Commissioner  
Department of Administration

Phone 907-269-5574  
 Date/Time 1/24/08 4:00 PM  
 Date 1/24/2008

# STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

ANNETTE KREITZER, COMMISSIONER

SARAH PALIN, GOVERNOR

P.O. BOX 110200  
JUNEAU, ALASKA 99811-0200

PHONE: (907) 465-2200  
FAX: (907) 465-2135

February 19, 2008

The Honorable Bob Roses  
State Capitol Room 416  
Juneau, AK 99801

Dear Representative Roses,

Your continued concern for proper notification of licensed drivers is admirable, and HB331 demonstrates that concern.

The passage of this legislation will allow the Division of Motor Vehicles (DMV) to mail licensing notices to the most current address available following a motor vehicle crash. This will alleviate instances where the address on the departmental record has not yet been updated and drivers do not receive notices that may affect their driving privilege. DMV supports your bill that will enhance the notification procedures for the department thus helping the drivers who unfortunately have been involved in a motor vehicle crash.

Thank you for your concern. You have the Department's support.

Sincerely,



Annette Kreitzer

# 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

February 20, 2008

## Memorandum

TO: Representative Bob Roses

FROM: Tim Spengler *TES*  
Legislative Analyst

RE: Mandatory Auto Insurance Law

You asked whether states have mandatory automobile insurance laws. You also wished to know what penalties states impose for individuals who do not comply with the law.

According to the Insurance Information Institute, liability insurance is currently compulsory in 48 states and the District of Columbia. Only New Hampshire and Wisconsin do not require liability insurance. The Institute's *Issues Update on Compulsory Auto/Uninsured Motorist* from February 2008 notes that although automobile insurance is mandatory across the vast majority of states, as many as 30% of drivers in some states are estimated to be uninsured.

The following information about penalties is from *AutoInsuranceRemedy.com*.

Most states require proof of insurance which typically must be shown when the car is registered, following an accident or when driving on the highway. **Many states have severe penalties for drivers who do not carry the necessary coverage. These penalties can range from as little as a \$100 fine to the following: a suspension of a driver's license and suspension of the car registration for up to six months, up to a \$5000 fine, and up to one year in jail.<sup>2</sup>**

Below is a sampling of penalties states impose on individuals who do not comply with their mandatory automobile insurance laws:

- ◆ Alabama—Possible fine of \$500 for the first offense and a \$1,000 fine and/or license suspension for six months for the second offense
- ◆ California—Fine of up to \$200
- ◆ Massachusetts—Fine up to \$5,000 plus jail term of up to one year in jail

<sup>1</sup> The Insurance Information Institute (I I I) is a primary source of information, analysis and referral concerning insurance issues.

<sup>2</sup> AutoInsuranceRemedy.com is a full service auto insurance site. It includes information about the different kinds of car insurance policies and rates, plus ways to shop, compare and save on car insurance sites.

- ◆ Minnesota—First Offense—Fine of up to \$100 or jail term of up to ninety days.
- ◆ North Dakota—Fine up to \$150 plus license suspension and registration revocation.
- ◆ Ohio—First Offense—Suspension of license for ninety days plus reinstatement fee of \$75.
- ◆ Oregon—License suspension or revocation.
- ◆ Rhode Island—First offense is \$500 fine and/or 3 months suspension of license or registration
- ◆ Texas—First offense is a fine of \$175 to \$300. Subsequent convictions, \$350 to \$1,000, suspension of license, and impoundment of vehicle.
- ◆ Washington—Fine of up to \$250.
- ◆ Wyoming—Fine up to \$750 plus jail term up to 6 months.

We hope this information is helpful. Please call if you have questions or need additional information.

Home Licenses Registrations Titles License Plates Manuals Parking Permits Notices

Search DMV  find

Department of Administration

## Division of Motor Vehicles

State of Alaska > Administration > DMV > Mandatory Insurance

### Mandatory Insurance Suspension

Alaska has both Mandatory Insurance and Financial Responsibility laws. The purpose of these laws is to ensure that drivers and owners of vehicles using the streets and highways are financially responsible for any damage or injury caused by motor vehicle collisions and to remove financially irresponsible drivers from the highways.

The mandatory insurance law requires the operator or owner of a motor vehicle subject to registration to have motor vehicle liability insurance in effect when the vehicle is driven on a highway, vehicular way or area, or other public property in the state. The owner's or driver's motor vehicle liability insurance policy must meet the minimum coverage amounts required by law. The minimum coverage amounts are \$50,000.00 for injuries or death to any one person, \$100,000.00 for total injuries or death per collision, and \$25,000.00 for property damages.

A driver who has been involved in a collision, regardless of fault, is required to show proof of motor vehicle liability insurance if the collision resulted in personal injury or death, or damage to property exceeding \$500.00. A driver may show proof by completing the Certificate of Insurance form provided by the investigating police office at the collision scene. The form is also available from any Division of Motor Vehicles Office.

The Division of Motor Vehicles must suspend the driver's license, privilege to drive or privilege to obtain a license of drivers who fail to provide proof of liability insurance. The suspension period can be 90 days to 1 year depending on prior license actions. The license suspension will occur even if the driver is not at fault in the collision.

A person may apply for a limited work purpose license during the suspension period. The application for mandatory insurance limited license may be obtained at any Division of Motor Vehicle Office. There is not a fee for this specific type of limited license due.

Drivers must reinstate their privilege to drive at the end of their suspension period.

A person's license may also be suspended for non-compliance with the Financial Responsibility law.

If you have additional questions you can call, write, e-mail or visit a DMV office.

DOA DMV JDL@Alaska.gov



#### Quick Links

- DMV Web Cameras
- Online Address Change
- Online Registration Renewal
- Personalized Plates Online

#### Of Interest

- Forms
- General Information
- Links to Other Related Sites
- Office Locations/Hours
- Office Closures
- Regulations
- Research Materials
- Senior Citizen Information
- Statistics
- Table of Contents
- Partner Information

Vehicle Registrations (10/15/07) | Corporate Registrations | Driver's License (10/15/07) | Commercial Driver's License (10/15/07) | Alaska DMV

**STATE OF ALASKA - DIVISION OF MOTOR VEHICLES**

**CERTIFICATE OF INSURANCE**

<b>CRASH INFORMATION</b>	Crash Date: _____ Location: _____
<b>DRIVER</b>	Name: _____ Date of Birth: _____ License #: _____ State: _____ Mailing Address: _____ Street or Box _____ City _____ State _____ Zip _____
<b>OWNER OF VEHICLE</b>	Name: _____ Date of Birth: _____ License #: _____ State: _____ Mailing Address: _____ Street or Box _____ City _____ State _____ Zip _____
<b>VEHICLE</b>	Year: _____ Make: _____ Model: _____ License Plate #: _____ VIN: _____
<b>INSURANCE</b>	Was an automobile liability policy in effect covering this crash? YES <input type="checkbox"/> NO <input type="checkbox"/>
	Name of Insurance Company: _____ Policy Number: _____
	Name and Address of Policyholder: _____ Policy Period: From _____ To _____
<b>SIGNATURE</b>	Your Signature: _____ Date: _____
<b>Do not write below this line. The Division of Motor Vehicles will contact your Insurance Company.</b>	

**Insurance Verification:** If the motor vehicle liability insurance policy listed above was not in effect for the motor vehicle listed at the time of the crash indicated above, the insurance company is to complete the following and return this form to the Division of Motor Vehicles at the address listed on the reverse of this form. If indicated coverage was in effect at the time of the accident, no action is required

**REASON FOR DENIAL:**

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> Policy Expired Before Crash  | <input type="checkbox"/> Policy Number Given is Incorrect | <input type="checkbox"/> Lapse in Policy |
| <input type="checkbox"/> Policy Effective After Crash | <input type="checkbox"/> Driver Not Covered on Policy     | <input type="checkbox"/> Other _____     |

Signature of Authorized Representative \_\_\_\_\_ Date \_\_\_\_\_

**CUT ON LINE ABOVE. RETURN TOP PORTION ONLY.**

**MANDATORY INSURANCE AND FINANCIAL RESPONSIBILITY NOTICE**

If the actual or estimated damages of any one person's property involved in the crash exceeds \$501.00, or if there is any personal injury or death, you are subject to the Alaska mandatory insurance and financial responsibility laws. The mandatory insurance laws require you to file proof of insurance with the State of Alaska. Failure to do so will result in the suspension of your driver's license.

The financial responsibility laws require a person to show financial responsibility by one of the following methods: (1) an automobile liability insurance policy in effect at the time of the crash; (2) a release of liability; (3) a settlement agreement and proof of future financial responsibility (SR22 insurance); (4) a deposit of security and proof of future financial responsibility (SR22 insurance); (5) a finding of no liability by the court in a civil action (a finding of not guilty of a traffic citation does not apply). Failure to show financial responsibility by one of the listed methods will also result in the suspension of your driver's license for a period of 3 years if there is a possibility you are liable.

After any suspension you must show future financial responsibility (SR22 insurance), and pay a reinstatement fee of \$100.00 to \$500.00, in addition to the fee for the license being requested, to have your driving privileges restored. A notice of suspension returned by the post office because of an incorrect address on your driver license or DMV records will not invalidate the suspension if the notice was mailed to the last address you provided to DMV.

**IMPORTANT:** THE FORM ON THE REVERSE MUST BE FILLED IN AND SENT TO THE DIVISION OF MOTOR VEHICLES WITHIN 15 DAYS FROM THE DATE OF THE CRASH. A participant's accident report is also required if the crash was not investigated by a peace officer, and the total amount of damage exceeds \$2,000.00, or there was personal injury.

Mail Completed Form To:

**STATE OF ALASKA  
DIVISION OF MOTOR VEHICLES  
ATTN: DRIVER LICENSING  
PO BOX 110221  
JUNEAU AK 99811-0221  
(907) 465-4361**



**HB**

**333**



## 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: March 13, 2008

To: Representative John Coghill  
Chair House Rules Committee

From: Representative Jay Ramras  
Chair House Judiciary Committee

Re: Referral File HB 333 – "An Act relating to the reporting of  
Child Pornography"

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Attached please find the referral file for the above-referenced bill. Attached you will find the following documents:

- Sponsor Statement
- HB 333 (25-LS1027C)
- 0 Fiscal Notes
  - DPS
  - LAW
  - ADM – OPA
  - ADM – PDA
- Relevant Statutes
- Back-up documentation
- Bill History
- HJUD Committee Report



## Alaska State Legislature

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### Representative Anna Fairclough – House District 17

#### Sponsor Statement for HB 333

#### **“An Act relating to the reporting of Child Pornography.”**

The distribution and possession of child pornography is arguably one of the most despicable crimes that exists in our society today. The exploitation of the most vulnerable members of our society is appalling and Alaskans should do all they can to protect our children and prevent the distribution and possession of child pornography.

HB 333 would strengthen Alaska's existing laws on the reporting of child pornography by expanding it to include not just those who are "processing or producing visual or printed matter," but also computer technicians, those who provide internet and cellular phone services and film and photo finishers. The penalty for failure to report such materials can result in a class A misdemeanor.

In June 2007, an Elmendorf soldier was arrested with 15,000 images of child pornography on his computer. In July, a Girdwood man with more than 7,000 images was arrested. In October, a Palmer man with more than 8,000 images. These statistics are from our state newspapers. Anyone who doesn't think that child pornography is a problem in this state needs to be very aware of these facts.

The National Center for Missing and Exploited Children's Child Pornography Fact Sheet states that during a one-year study 40% of those arrested for possession of child pornography were "dual offenders," meaning they also sexually victimized children. They went on to state that both crimes were discovered in the same investigation. That would certainly lead us to believe that the more people we arrest for possession of child pornography, the more children we can save from molestation and victimization.

The idea for this legislation was brought to me by a constituent who works in the field of technology who saw a need for this legislation. While most people in the vocations covered by this legislation would report such activity to the proper authorities, concerns about loss of business might deter some from making the right decision.

I urge your support of HB 333. The more people we have fighting to stop the possession and distribution of child pornography the better.

---

Session: Alaska State Capitol • Juneau, AK 99801 • 907-465-3777 • Fax 907-465-2819

Interim: 10928 Eagle River Road, Suite 238 • Eagle River, AK 99577 • 907-694-8944 • Fax 907-694-8945

Representative\_Anna\_Fairclough@legis.state.ak.us

# FISCAL NOTE

**STATE OF ALASKA**  
**2008 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 333  
 ( ) Publish Date: \_\_\_\_\_

Identifier (file name): HB333-DPS-DET-03-7-08 Public Safety  
 Title "An Act relating to the reporting of child pornography." RDU Alaska State Troopers  
 Component AST Detachments  
 Sponsor Representative Fairclough  
 Requester House Judiciary Component Number 2325

**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
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2008) cost: 0.0

**POSITIONS**

Full-time								
Part-time								
Temporary								

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

This bill requires those involved in certain professions that come into contact with printed material, or computer files that appear to depict child pornography, as defined by (AS 11.41.455), to immediately report the observation to law enforcement.

Passage of this legislation may result in a slight increase in the number of arrests made or cases referred to prosecution. This bill will have no fiscal impact on the department.

Prepared by: Lt. Rodney Dial  
 Division: Alaska State Troopers  
 Approved by: Walt Monegan, Commissioner  
Department of Public Safety

Phone 907-269-5591  
 Date/Time 3/7/08 1:37 PM  
 Date 3/7/2008

# FISCAL NOTE

**STATE OF ALASKA**  
**2008 LEGISLATIVE SESSION**

Fiscal Note Number: HB333-LAW-CRIM-03-06-08  
 Bill Version: HB333  
 ( ) Publish Date: \_\_\_\_\_

Identifier (file name): \_\_\_\_\_ Dept. Affected: LAW  
 Title: An Act relating to the reporting of child pornography. RDU: Criminal  
 Component: Criminal Justice Litigation  
 Sponsor: REPRESENTATIVE(s) FAIRCLOUGH  
 Requester: HOUSE JUDICIARY Component Number: \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

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

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2008) cost: 0.0

**POSITIONS**

Full-time								
Part-time								
Temporary								

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

This bill expands AS 47.17.023, which currently requires a person processing or producing visual or printed child pornography to report to law enforcement agencies, to require anyone coming into contact with child pornography, including internet or cellular transmitted child pornography to so report.

The department does not expect a significant fiscal impact as a result of this bill.

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

Phone 907-465-5427  
 Date/Time 3/6/08 10:45 AM  
 Date 3/6/2008

# FISCAL NOTE

**STATE OF ALASKA**  
**2008 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 333  
 () Publish Date: \_\_\_\_\_

Identifier (file name): HB333-DOA-OPA-1-29-08 Dept. Affected: Administration  
 Title: "An Act relating to the reporting of child pornography..." RDU: Legal and Advocacy Services  
 Component: Office of Public Advocacy  
 Sponsor: Representative Fairclough  
 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
<b>OPERATING EXPENDITURES</b>								
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
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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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
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2008) cost: \_\_\_\_\_

**POSITIONS**

Full-time								
Part-time								
Temporary								

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

This bill adds individuals providing computer, Internet, cellular telephone and related services to the list of individuals who are required to report finding images of unlawful exploitation of a minor. This bill is not expected to have a fiscal impact on the agency, 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 1/29/08, 5:00 p.m.  
 Date 1/30/2008

# FISCAL NOTE

STATE OF ALASKA  
2008 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB 333  
( ) Publish Date: \_\_\_\_\_

Identifier (file name): HB333-DOA-PDA-1-28-08 Dept. Affected: Administration  
Title: "An Act relating to the reporting of child pornography..." RDU: Legal and Advocacy Services  
Component: Public Defender Agency  
Sponsor: Representative Fairclough  
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
<b>OPERATING EXPENDITURES</b>								
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
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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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
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2008) cost: \_\_\_\_\_

**POSITIONS**

Full-time							
Part-time							
Temporary							

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

This bill adds individuals providing finishing services or computer installation, repair, or other services, or Internet or cellular telephone services to the list of individuals who are required to report finding images of unlawful exploitation of a minor. This bill 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 11:35 AM  
Date 1/28/2008

## **Relevant Statutes**

### **AS 47.17.023 as it currently reads:**

Sec. 47.17.023. Reports regarding child pornography.

A person who, in the course of processing or producing visual or printed matter, either privately or commercially, has reasonable cause to suspect that the matter visually depicts a child engaged in conduct described in AS 11.41.455 (a) shall immediately report this to the nearest law enforcement agency, and provide the law enforcement agency with all information known about the nature and origin of the matter.

### **AS 11.41.455 as referenced in the above statute:**

Sec. 11.41.455. Unlawful exploitation of a minor.

(a) A person commits the crime of unlawful exploitation of a minor if, in the state and with the intent of producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct listed in (1) - (7) of this subsection, the person knowingly induces or employs a child under 18 years of age to engage in, or photographs, films, records, or televises a child under 18 years of age engaged in, the following actual or simulated conduct:

- (1) sexual penetration;
- (2) the lewd touching of another person's genitals, anus, or breast;
- (3) the lewd touching by another person of the child's genitals, anus, or breast;
- (4) masturbation;
- (5) bestiality;
- (6) the lewd exhibition of the child's genitals; or
- (7) sexual masochism or sadism.

### **Alaska Statutes regarding penalty for failure to report:**

Sec. 47.17.068. Penalty for failure to report.

A person who fails to comply with the provisions of AS 47.17.020 or 47.17.023 and who knew or should have known that the circumstances gave rise to the need for a report, is guilty of a class A misdemeanor.

## **Child Pornography Fact Sheet**

National Center for Missing & Exploited Children

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### **What Is Child Pornography?**

Under federal law, child pornography<sup>1</sup> is defined as a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, photograph, film, video, or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where it

- depicts a minor engaging in sexually explicit conduct and is obscene, or
- depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex, and such depiction lacks serious literary, artistic, political, or scientific value.<sup>2</sup>

Sexually explicit conduct includes various forms of sexual activity such as intercourse, bestiality, masturbation, sadistic or masochistic abuse, and lascivious exhibition of the genitals.<sup>3</sup> It is illegal to possess, distribute, or manufacture these images.

These illegal images can be presented in various forms including print media; videotape; film; compact disc, read-only memory (CD-ROM); or digital versatile technology (DVD)<sup>4</sup> and can be transmitted through computer bulletin-board systems (BBS), USENET Newsgroups, Internet Relay Chat, web-based groups, peer-to-peer technology, and an array of constantly changing world wide web sites.<sup>5</sup>

All states and the District of Columbia have laws concerning child pornography. As a result a person who violates federal laws concerning these images may also face additional state charges.

### **Who Is a Minor?**

Federal statute defines "minor" as any person younger than 18.<sup>6</sup> "While a majority of states follow the federal statute, some state laws define 'minor' or 'child' as a youth younger than 14, 16, or 17.<sup>7</sup> Delaware law includes any person 18 years of age and younger in its definition of a 'child.'"<sup>8</sup>

### **Is Child Pornography a Crime?**

Yes, the possession or distribution of child pornography is illegal under federal laws and laws in all 50 states; however, researchers and law-enforcement officials believe this crime is increasing and the increase is related to growing Internet use.<sup>9</sup>

In response to this growing crime, the U.S. Department of Justice (USDoJ) has responded in several ways including funding the National Center for Missing & Exploited Children's CyberTipline, [www.cybertipline.com](http://www.cybertipline.com), acting as the national clearinghouse for reports of Internet-related child pornography and other Internet-related sex crimes committed against children. The USDoJ also created regional Internet Crimes Against Children (ICAC) Task Forces to assist state and local law enforcement in handling these crimes and funded specialized Internet child exploitation units in federal law enforcement agencies.<sup>10</sup>

### **Where Is Child Pornography Predominantly Found?**

The Internet has created an exciting new world of information and communication for anyone with access to online services. While this technology offers unparalleled opportunities for children and adults to learn about the universe we live in, it has also had an immeasurable impact on the sexual exploitation of children, specifically the distribution of sexually exploitive images of children.

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The development, increasing accessibility, and use of home-computer technology has revolutionized the distribution of these images by increasing the ease and decreasing the cost of production and distribution especially across international borders. Computer technology is transforming the production of these images into a "sophisticated global cottage industry."<sup>11</sup>

While the activities of most pornographers are rather covert, it is not unusual for adults and children to encounter illegal images while exploring legitimate areas of the Internet. A current study has estimated that "as much as 20 percent of all pornographic activity on the Internet may involve children";<sup>12</sup> however, accurate estimates are difficult to produce since a reliable methodology to measure the actual extent of these images online has yet to be devised.<sup>13</sup> Nonetheless parents and guardians should closely monitor the online activities of their children and always maintain access to their children's online accounts.

### **What Motivates People Who Possess Child Pornography?**

There is not much research about the motivations of people who possess child pornography. But, from the little information that exists, it suggests these people are a diverse group using this form of pornography for a variety of reasons.<sup>14</sup> Those who possess child pornography include people who are

- sexually interested in prepubescent children (pedophiles) or young adolescents (hebephiles), who use child pornography for sexual fantasy and gratification
- sexually "indiscriminate," meaning they are constantly looking for new and different sexual stimuli
- sexually curious, downloading a few images to satisfy that curiosity
- interested in profiting financially by selling images or setting up web sites requiring payment for access<sup>15</sup>

### **Who Possesses Child Pornography?**

The diversity of these possessors is exemplified by many factors including wide age ranges; incomes ranging from poverty to wealth; levels of education running the gamut from some not finishing high school to others having post college degrees; and those who come from cities, suburbs, small towns, and rural areas. Some are well known, well thought of in their communities, and/or have high-profile jobs. Others seem isolated, seem to be obsessed with the Internet, and/or have long criminal histories.<sup>16</sup>

Almost all child-pornography possessors (estimated 1,713) arrested between July 1, 2000, and June 30, 2001, were male, 91% were white, and 86% were older than 25. Only 3% were younger than 18. Most were unmarried at the time of their crime, either because they had never married (41%) or because they were separated, divorced, or widowed (21%). Thirty-eight (28%) percent were either married or living with partners.<sup>17</sup>

Of those estimated arrestees, most had pornographic images of prepubescent children (83%) and images graphically depicting sexual penetration (80%). Approximately 1 in 5 people arrested (21%) had images depicting sexual violence to children such as bondage, rape, and torture. More than 1 in 3 (39%) had child-pornography videos with motion and sound.<sup>18</sup>

Of those estimated arrestees, law enforcement found about half (48%) had more than 100 graphic still images, and 14% had 1,000 or more graphic images.<sup>19</sup>

Forty percent (40%) of those estimated arrestees were "dual offenders," who sexually

## **Child Pornography Fact Sheet**

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victimized children and possessed child pornography, with both crimes discovered in the same investigation. An additional 15% were dual offenders who attempted to sexually victimize children by soliciting undercover investigators who posed online as minors.<sup>20</sup>

### **How Old Were the Children Found in These Images?**

According to investigators who handled the cases of estimated arrestees, most had images of children who had not yet reached puberty. Specifically 83% had images of children between ages 6 and 12; 39% had images of 3- to 5-year-old children; and 19% had images of toddlers or infants younger than age 3.<sup>21</sup>

### **Are the Children in the Images Boys or Girls?**

According to investigators who handled the cases of estimated arrestees, 62% had pictures of mostly girls. Fourteen percent (14%) had pictures of mostly boys. Fifteen percent (15%) had pictures showing boys and girls in about equal numbers.<sup>22</sup>

### **How Graphic Are the Images?**

According to investigators who handled the cases of estimated arrestees, most had graphic images explicitly showing sexual acts by or on children. Specifically 92% had images of minors focusing on genitals or showing explicit sexual activity; 80% had pictures showing the sexual penetration of a child, including oral sex; 71% possessed images showing sexual contact between an adult and a minor, defined as an adult touching the genitals or breasts of a minor or vice-versa; 21% had child pornography depicting violence such as bondage, rape, or torture and most of those involved images of children who were gagged, bound, blindfolded, or otherwise enduring sadistic sex; and 79% also had what might be termed "softcore" images of nude or semi-nude minors, but only 1% possessed such images alone.<sup>23</sup>

### **What Are the Effects of Child Pornography?**

It is important to realize these images can have a devastating and lasting effect on children. In addition to any physical injuries they might suffer in the course of their molestation, such as genital bruising, lacerations, or exposure to sexually transmitted diseases, child victims may also experience depression, withdrawal, anger, and other psychological disorders.<sup>24</sup> Such effects may continue into adulthood. For instance women abused as children have statistically significant higher rates of nightmares, back pain, headaches, pelvic pain, eating binges, and other similar symptoms.<sup>25</sup> Child victims also frequently experience feelings of guilt and responsibility for the abuse and betrayal, a sense of powerlessness, and feelings of worthlessness and low self-esteem.<sup>26</sup> These feelings are often expressed through increased fearfulness and changes in sleep patterns including re-occurring memories, flashbacks, dreams, and nightmares associated with posttraumatic stress.<sup>27</sup> Younger children tend to externalize stress by re-enacting sexual activities through play, while adolescents may experience negative effects on their growing sexuality as a result of inappropriate early sexual experiences.<sup>28</sup>

The lives of children featured in these illegal images are forever altered, not only by the molestation but by the permanent record of the exploitation. Once sexual exploitation takes place, the molester may document these encounters on film or video. This documentation can then become the "ammunition" needed to blackmail the child into further submission, which is necessary to continue the relationship and maintain its secrecy. In addition these documented images allow molesters to "relive" their sexual fantasies with children long after the exploitation has stopped.

A greater number of child molesters are now using computer technology to organize and maintain their collections of these illegal images. In addition they are also using

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the Internet to increase the size of these collections. Personally manufactured illegal images of children are especially valuable on the Internet, which provide the molester with a respected status among fellow exploiters and traders of this material. Once this status is achieved, molesters will often begin to trade images of their own sexual exploits with children among themselves.

**When these images reach cyberspace, they are irretrievable and can continue to circulate forever. Thus the child is revictimized as the images are viewed again and again.**

### How Do Online Exploiters Find Children?

Individuals looking for potential child victims online have no difficulty finding them. It is quite common for these individuals to frequent "kids only" chatrooms and communicate with children who unwittingly divulge personal information about themselves. A more recent phenomenon is the solicitation of sex over the Internet.

After this initial meeting, these individuals will often continue to communicate with the child electronically or through other means. Some of these individuals may then attempt to lower the child's inhibitions by gradually introducing sexual content into their online conversations and even send pornographic images to the child. When children are shown images of peers engaged in sexual activities, they are led to believe this behavior is acceptable. This lowers their inhibitions and makes it easier for the molester to take advantage of the child sexually.

Parents and guardians are strongly encouraged to speak openly with their children about online dangers and monitor their online activities.

### End Notes

<sup>1</sup>As stated by Janis Wolak, Kimberly Mitchell, and David Finkelhor in *Internet Sex Crimes Against Minors: The Response of Law Enforcement* (Alexandria, Virginia: National Center for Missing & Exploited Children, November 2003, page vii), "The term 'child pornography,' because it implies simply conventional pornography with child subjects, is an inappropriate term to describe the true nature and extent of sexually exploitive images of child victims. Use of this term should not be taken to imply that children 'consented' to the sexual acts depicted in these photographs; however, it is the term most readily recognized by the public, at this point in time, to describe this form of child sexual exploitation. It is used in this [document] to refer to illegal pictorial material involving children under the standards developed by statute, case law, and law-enforcement-agency protocols. It is hoped a more accurate term will be recognized, understood, and accepted for use in the near future."

<sup>2</sup>18 U.S.C. § 1466A and 18 U.S.C. § 2256.

<sup>3</sup>Id.

<sup>4</sup>Eva J. Klain, Heather J. Davies, Molly A. Hicks. *Child Pornography: The Criminal-Justice-System Response* (Alexandria, Virginia: National Center for Missing & Exploited Children, March 2001, page 1) [hereinafter *Response*], citing Daniel S. Armagh, Nick L. Battaglia, and Kenneth V. Lanning, *Use of Computers in the Sexual Exploitation of Children*, Office of Juvenile Justice and Delinquency Prevention, *Portable Guides to Investigating Child Abuse*. Washington, D.C.: U.S. Department of Justice, 1999, page 6.

<sup>5</sup>*Response*, supra note 4, page 1.

<sup>6</sup>Janis Wolak, David Finkelhor, and Kimberly Mitchell. *Child-Pornography Possessors Arrested in Internet-Related Crimes: Findings From the National Juvenile Online Victimization Study* (Alexandria, Virginia: National Center for Missing & Exploited Children, 2005, page ix) [hereinafter *Possessors*] citing 18 U.S.C. § 2256(1).

<sup>7</sup>*Possessors*, pages ix-x citing research conducted by the National Center for Missing & Exploited Children in December 2004 which found, in regard to state statutes criminalizing possession of child pornography, 37 states define "minor" or "child" as a youth younger than the age of 18 (Alaska, ALASKA STAT. § 11.61.127(a); Arizona, ARIZ. REV. STAT. § 13-3551(5); California, CAL. PENAL CODE § 311.11(a); Colorado, COLO. REV. STAT. § 18-6-403(2)(a); Connecticut, CONN. GEN. STAT. § 1-1d; Florida, FLA. STAT. ch. 827.01(2); Georgia, GA. CODE ANN. § 16-12-100(a)(1); Hawaii, HAW. REV. STAT. § 707-752(2); Idaho, IDAHO CODE § 8-1507(2)(b); Illinois, 720 ILL. COMP. STAT. 5/11-20.1(6); Iowa, IOWA CODE § 728.1(4); Kansas, KAN. STAT. ANN. § 21-3516(a)(2); Kentucky, KY. REV. STAT. ANN. § 2.015, 500.080(9); Massachusetts, MASS. GEN. LAWS ch. 272, § 29C; Michigan, MICH. COMP. LAWS § 750.145c(b); Minnesota, MINN. STAT. § 617.246(1)(b); Mississippi, MISS. CODE ANN. § 97-5-

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31(a); Missouri, MO. REV. STAT. § 573.010(2); Montana, MONT. CODE ANN. §§ 45-5-62, 45-8-205; New Mexico, N.M. STAT. ANN. § 30-6A-3(A); North Carolina, N.C. GEN. STAT. § 14-190.13(3); North Dakota, N.D. CENT. CODE § 12.1-27.2-05(1); Ohio, OHIO REV. CODE ANN. § 2907.01(M); Oklahoma, OKLA. STAT. tit. 21, § 1024.1(A); Oregon, OR. REV. STAT. § 163.665(1); Pennsylvania, 18 PA. CONS. STAT. § 6312(d)(1); Rhode Island, R.I. GEN. LAWS § 11-9-1.3(c)(3); South Carolina, S.C. CODE ANN. § 16-15-375(3); South Dakota, S.D. CODIFIED LAWS § 22-22-24.1(3); Tennessee, TENN. CODE ANN. § 39-17-1002(3); Texas, TEX. PENAL CODE ANN. § 43.26(a); Utah, UTAH CODE ANN. § 76-5a-2(5); Virginia, VA. CODE ANN. § 18.2-374.1:1(A); Washington, WASH. REV. CODE § 9.68A.011(4); West Virginia, W. VA. CODE § 61-8C-1(a); Wisconsin, WIS. STAT. § 948.01(1); Wyoming, WYO. STAT. ANN. § 6-4-303(a)(i)); 3 define "minor" or "child" as a youth younger than the age of 17 (Alabama, ALA. CODE § 13A-12-192; Arkansas, ARK. CODE ANN. § 5-27-302(1); and Louisiana, LA. REV. STAT. ANN. § 14:81.1(A)(3)); 7 define "minor" or "child" as a youth younger than the age of 16 (Indiana, IND. CODE § 35-42-4-4(c); Maryland, MD. CODE ANN., Crim. Law § 14-208(a); Nevada, NEV. REV. STAT. 200.730; New Hampshire, N.H. REV. STAT. ANN. § 649-A:2(1); New Jersey, N.J. STAT. ANN. § 2C: 24-4(b)(1); New York, N.Y. PENAL LAW § 263.16; and Vermont, VT. STAT. ANN. tit. 13, § 2821(1)); and 1 defines "minor" or "child" as a youth younger than the age of 14 (Maine, ME. REV. STAT. ANN. tit. 17, § 2924(2-A)).

The age of a "child" in Nebraska depends on whether the child is a participant (younger than 18 years of age) or a portrayed observer (younger than 16 years of age). NEB. REV. STAT. § 28-1463.02(1).

In the District of Columbia possession of child pornography with the intent to disseminate may be prosecuted under the general obscenity statute; however, mere possession is not mentioned. D.C. CODE ANN. § 22-2201(a)(1)(E). There are two criminal offenses that address "sexual performances using minors": "using a minor in a sexual performance" and "promoting a sexual performance by a minor." D.C. CODE ANN. § 22-3102. For these offenses, "minor" is defined as any person younger than 16 years of age. D.C. CODE ANN. §§ 22-3101(2), 22-3102.

<sup>8</sup>Possessors, *supra* note 6, page x citing DEL. CODE ANN. tit. 11, § 1103(e).

<sup>9</sup>Possessors, *supra* note 6, page ix.

<sup>10</sup>*Id.*

<sup>11</sup>Response, *supra* note 4, page 3, citing Child Pornography: An International Perspective, World Congress Against the Commercial Sexual Exploitation of Children, Stockholm, Sweden, August 27-31, 1996, page 9.

<sup>12</sup>Response, *supra* note 4, page 3, citing Allotted Day on Child Pornography, 36th Parliament, 1st Session, Edited Hansard 1, No. 172, February 2, 1999, page 12.

<sup>13</sup>Response, *supra* note 4, page 3.

<sup>14</sup>Possessors, *supra* note 6, page x citing Response, *supra* note 4 and M. Taylor and E. Quayle. Child pornography: An Internet crime. Hove: Brunner-Routledge, 2003.

<sup>15</sup>Possessors, *supra* note 6, page x.

<sup>16</sup>*Id.*, pages 2-3.

<sup>17</sup>*Id.*, pages 1-2.

<sup>18</sup>*Id.*, page vii.

<sup>19</sup>*Id.*, page 7.

<sup>20</sup>*Id.*, page viii.

<sup>21</sup>*Id.*, page 4.

<sup>22</sup>*Id.*, page 5.

<sup>23</sup>*Id.*

<sup>24</sup>Response, *supra* note 4, page 10, citing Bentovim and Bentovim, "The Effects on Children and Their Families" in Organized Abuse: The Current Debate, pages 60-62 [hereinafter Effects on Children].

<sup>25</sup>Response, *supra* note 4, page 10, citing Jeanne McCauley, David E. Kern, Ken Kolodner, et al., Clinical Characteristics of Women with a History of Childhood Abuse: Unhealed Wounds, 277 JAMA 1197, page 1362.

<sup>26</sup>Response, *supra* note 4, page 10, citing Heather Y. Swanston, Jennifer S. Tebbutt, Brian I. O'Toole, and R. Kim Oates, Sexually Abused Children 5 Years After Presentation: A Case-Control Study, 100 Pediatrics, 1997, page 600, 603.

<sup>27</sup>Response, *supra* note 4, page 10, citing Effects on Children, *supra* note 24, pages 60-62.

<sup>28</sup>*Id.*



**HB**

**351**



## HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120  
(907) 465-4990

### COMMITTEE MEMBERS

Rep. Jay Ramras  
Chairman  
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Rep. Mike Doogan  
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Rep. Lindsey Holmes  
Room 405  
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### MEMORANDUM

Date: February 12, 2008

To: Representative Kevin Meyer  
Co-Chair House Finance Committee

From: Representative Jay Ramras  
Chair House Judiciary Committee

Re: Referral file for HB 351 (25-LS1411E)

---

Attached please find the following documents:

- Sponsor Statement
- CS HB351(JUD) 25-LS1411E
- JUD Amendment #1
- HB351 25-LS1411E
- Sectional
- Support
- Fiscal Note - DPS - 0
- HJUD Report 2/11/08

# ALASKA STATE HOUSE OF REPRESENTATIVES

**Contact:**

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**Session**

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

## REPRESENTATIVE JOHN COGHILL

### SPONSOR STATEMENT

*"An Act relating to submission of fingerprints by applicants for a concealed handgun permit; and providing for an effective date."*

Because of changes in the way the Department of Public Safety processes fingerprint cards, it is now possible to notify the Alaska Automated Fingerprint Identification System and the Federal Bureau of Investigation from one fingerprint card.

HB 351 will amend the requirements in AS 18.65.700(a)(4) from submitting two sets of fingerprint cards to submitting one set for individuals applying for a concealed handgun permit.

The benefits of this legislation are savings in cost and effort for those that provide fingerprinting for concealed handgun permit applicants. Additionally the State no longer has to handle and ultimately dispose of the extra fingerprint card.

# ALASKA STATE HOUSE OF REPRESENTATIVES

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**Session**

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State Capitol  
Room 204

## REPRESENTATIVE JOHN COGHILL

### MEMORANDUM

Date: February 11, 2008  
To: Judiciary Committee Members  
From: Representative John Coghill, Chair  
House Rules  
Re: Amendment to HB 351

A handwritten signature in black ink, appearing to read "JCO", written over the "From:" line of the memorandum.

---

The attached proposed Amendment was requested by the Department of Public Safety to change the requirement of the FBI fingerprint card to department approved format, in preparation for the coming change to electronic transmission.

This amendment will eliminate the need to submit another bill when electronic transmission becomes the standard.

I am requesting your support of this amendment. Thank you.

Amendment #1 PASSED

25-LS1411C.1  
Luckhaupt  
2/11/08

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE COGHILL

TO: HB 351

- 1 Page 2, lines 1 - 2:
- 2 Delete "on a Federal Bureau of Investigation approved fingerprint card [CARDS]"
- 3 Insert "in the format approved by the department [ON FEDERAL BUREAU OF
- 4 INVESTIGATION APPROVED FINGERPRINT CARDS]"

# ALASKA STATE HOUSE OF REPRESENTATIVES

**Contact:**

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**State Capitol**  
**Room 214**

## REPRESENTATIVE JOHN COGHILL

### SECTIONAL

*"An Act relating to submission of fingerprints by applicants for a concealed handgun permit; and providing for an effective date."*

**Section 1:** AS 18.65.700 Permit to Carry a Concealed Handgun.

(a) The department shall issue a permit to carry a concealed handgun to a person who

(4) submits one [two] complete set [sets] of fingerprints on a Federal Bureau of Investigation approved fingerprint card [cards] that is [are]

Please enter into the record my testimony to the

HOUSE JUDICIARY

committee name

committee on HB 351dated 2/11/08

Good Afternoon ,

My name is Richard Lampe and I reside in The Glennallen area. I am a current holder of a Concealed Handgun Permit. I obtained my first permit in 2001 after passing the required course, Passing the range test, then being fingerprinted and photographed and paying the required fees including the extra amount to be exempt from the Federal "National Instant Check System" Referred to hereafter as "NICS". In March of 2006, my permit was expiring, so I filled out the necessary paperwork, got fingerprinted twice again, photographed, and enclosed the required Fees. My renewal turned into a nightmare as the FBI had incorrect Information in my records , and the State of Alaska would not renew my permit until I filed for an appeal with the FBI and it took 3 months to do so, 2 more sets of fingerprints and Court documents from Florida to prove I was eligible , during all the prior years, I had not been arrested nor left the State of Alaska.

It is My understanding that 2 fingerprint cards are required by the FBI to do a Criminal records check, reason being one set could be smudged or rejected by the FBI as not sufficiently readable for manual or computer use. Under 13 AAC 30.050. "Processing of Applications; appeals" section "i" reads ... "The department shall issue a permit that states that the permit holder is "NOT NICS Exempt" if the permit holder's fingerprints have been rejected by the Federal Bureau of Investigation as not sufficiently readable for manual or computer use."

So one fingerprint Card may not be sufficient, in some cases. In June of 2006, the Department of Public Safety, Concealed Handgun Licensing Unit stopped issuing permits that are "NICS Exempt" claiming that the FBI would no longer provide the required Information to have this exemption on a holders license. There is Nothing in the Alaska Administration codes or laws addressing this issue.

I respectfully ask that this committee address this issue of "NICS Exemption" on Concealed Handgun Licenses while discussing the fingerprint card issue before you.

Since Alaska citizens are no longer required to have a license to carry a concealed weapon by Law , the only time a license is necessary is if an Alaskan travels to the lower 48 to a State that has reciprocity allowing concealed carry by recognizing the Alaska Concealed Handgun Permit. Many people are delayed when trying to purchase a firearm from a Federally Licensed dealer if the FBI NICS check says "Delay", it is 5 more working days before a person can purchase a firearm if the FBI does not call back and DENY the transaction .

This creates an expensive burden on Alaskans that live in the rural areas where there are no Gun shops, if they have to stay a week in town or make another trip to complete the transaction and pick up a new Firearm.

People who have never been arrested for anything have been delayed by the NICS check because of Errors in the Federal Data Base, Criminals with the same or similar name, Identity theft , or Computer systems being inoperable at the time, and other reasons the FBI will not disclose. If Alaskans are going through the process of getting fingerprinted, whether it be one or two cards, photographed, and qualifying to Carry Concealed Handguns, we should also be "Exempted" from the NICS check which is allowed under Federal Law on the Form 4473 that has to be filled out when purchasing a Firearm from a Dealer. This speeds up the process of buying a firearm and continues to insure that Alaskans can readily purchase the protection they may need without a lot of "Federal Government Red Tape". This was the main reason I got my License , not just to be armed all the time.

Another point that needs to be made is that it is difficult or impossible to find a qualified person to take fingerprints in Rural Alaska villages and communities sometimes. For that reason , Alaska State Troopers or VPSO's should be able to provide this service since they are trained to fingerprint people and because the License is issued by the Department of Public Safety.

Please address these issues and insure that Law abiding Alaskans continue to have the quality of life we deserve and the freedoms we are entitled.

Thank You for your time.

Sincerely,



Richard F. Lampe

P.O. Box 684

Glennallen, Alaska 99588

---

Representing (Optional)

Mile 175.9 Glenn Hwy. Glennallen, Alaska 99588

Address

907 - 822 - 3560

Phone No.

# FISCAL NOTE

**STATE OF ALASKA**  
**2008 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 351  
 ( ) Publish Date: \_\_\_\_\_

Identifier (file name): HB351-DPS-R&I-02-08-08 Dept. Affected: Public Safety  
 Title "An Act relating to submission of fingerprints by applicants for a concealed handgun permit." RDU Statewide Support  
 Component Records & Identification  
 Sponsor Representative Coghill  
 Requester House Judiciary Committee Component Number 1190

**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
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2008) cost: \_\_\_\_\_

**POSITIONS**

Full-time								
Part-time								
Temporary								

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

The changes in this bill would reduce, from two to one, the number of complete sets of fingerprints a person who is applying for a concealed handgun permit is required to provide to the department. The department does not expect this bill to have any fiscal impact.

Prepared by: David Schade, Director  
 Division: Statewide Services  
 Approved by: Walt Monegan, Commissioner  
Department of Public Safety

Phone (907) 269-0202  
 Date/Time: 1/8/08 4:27 PM  
 Date 1/22/2008





**State of Alaska**  
Department of Public Safety  
Division of

# Statewide Services

Sarah H. Palin, Governor  
Walter Monegan, Commissioner

February 11, 2008

Representative Jay Ramras  
Chair, House Judiciary Committee  
Capitol Building Room 118  
Juneau, AK 99801

Dear Representative Ramras:

During the House Judiciary Committee meeting reference HB 351, pertaining to the Alaska Concealed Handgun Program, AS 18.65.700, a question arose pertaining to the term 'physical infirmity' as mentioned in AS 18.65.700.(a)(8). I was unable to answer the question immediately, but promised to obtain the answer to the question and report that answer in writing to you.

AS 18.65.700(a)(8) states "(a) The department shall issue a permit to carry a concealed handgun to a person who:

(8) does not suffer a physical infirmity that prevents the safe handling of a handgun."

The term 'physical infirmity' is not defined in either the Alaska Concealed Handgun Permit statute or the associated regulations (13 AAC 68.30). 13 AAC 30.130 discusses the qualifications for safe handling of a handgun. Paragraph (a) indicates that the department will discontinue review of an application for a permit, permit upgrade or permit renewal "If the department has reason to believe that the applicant suffers from a physical infirmity...". Paragraph (c) states that the department will not investigate a report relating to the handling of a handgun unless the report is in writing, signed and provides specific information pertaining to the permittee's physical condition, or handling of a handgun. Suspension and revocation of a permit and appeal procedures are discussed in 13 AAC 30.080.

I hope this information answers the Representative's concerns about the 'physical infirmity' clause in the Alaska Concealed Handgun Permit law.

Sincerely,

A handwritten signature in cursive script that reads "Kathryn M. Monfreda".

Kathryn M. Monfreda  
Chief, Criminal Records & Identification Bureau

*"Public Safety through Public Service"*

Alaska Concealed Handgun Permits  
5700 East Tudor Road - Anchorage, AK 99507 - Voice (907) 269-0392 - Fax (907) 269-5609

**HB**

**354**



## 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: March 14, 2008

To: Representative Kevin Meyer  
Co-Chair House Finance Committee

From: Representative Jay Ramras  
Chair House Judiciary Committee

Re: Referral File for HB 354 - HARD-TO-PLACE CHILD  
SUBSIDY/CHILD SUPPORT

---

Attached please find the following documents, which represents the referral file for HB 354. The following documents are included:

- Sponsor Statement
- CSHB354(JUD) 25-LS1414\M
- Legal memo re: CSHB354(JUD)
- Amendments made in HJUD
- CSHB354(HES) 25-LS1414\E
- HB354 25-LS1414\A
- Fiscal Notes
  - LAW
  - HSS
  - ADM
  - ADM
- Support
- HJUD Committee Report

# ALASKA STATE HOUSE OF REPRESENTATIVES

**Contact:**

Interim Address:

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

**Session**

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

## REPRESENTATIVE JOHN COGHILL

HB 354 OCS Revisions

### SPONSOR STATEMENT

This legislation was introduced at the request of Department of Law and the Office of Children's Services to address three issues of concern.

First the bill transfers to the department authority to adopt regulations to set the amount and length of time that a subsidy for a hard-to-place child may be granted. Currently that decision is made by the commissioner of HSS without clear guidelines to be consistent with eligibility. Also, with current statutory language the department could be determined to be required to give a subsidy for children from birth to three years old, even when the department determines there would not be a need for a subsidy.

Second, the bill clarifies that an employee can be charged with a misdemeanor for disclosing confidential or privileged information when that confidential information has been disclosed to them under AS 47.10.092(f), Disclosure to certain public officials and employees.

Third, Secs. 3 and 4 allow OCS could obtain child support orders for minors in state custody under CINA and delinquent minor statutes through administrative support orders by the Child Support Services Division. OCS currently uses this practice but they don't have the statutory authority.

The HESS Committee Substitute adds two provisions to the bill. First, it eliminates a contradiction in statutes dealing with the requirement of notification of parents when an eighteen-year-old wished to be adopted. Under current law, even if the biological had abandoned the 18-year-old eighteen years ago, the 18-year-old would have to attempt to locate the parent and give parental notice.

It also incorporates a provision from HB 377 holding the state civilly liable for actions of employee's acting in an official capacity for the department that result in the injury or death of a child.

# LEGAL SERVICES

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

m

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

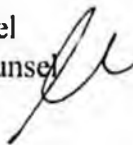
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 14, 2008

**SUBJECT:** Liability (CSHB 354(JUD); Work Order No. 25-LS1414\M)

**TO:** Representative Jay Ramras  
Chair of the House Judiciary Committee  
Attn: Jane Pierson

**FROM:** Jean M. Mischel  
Legislative Counsel 

The Judiciary Committee CS as requested is enclosed. As you discussed with Jerry Luckhaupt, the deletion of the "except as provided" language from section 7 of CSHB 354(HES) results in an inconsistency in AS 47.10.960, as amended by section 6 of CSHB 354(JUD), which in fact provides an exception to existing law. I do not understand the rationale for the deletion but only wish to alert you to the internal inconsistency caused by it.

If I may be of further assistance, please advise.

JMM:ljw  
08-151.ljw

Enclosure

ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY COMMITTEE



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

---

1292 Sadler Way, Suite 324  
Fairbanks, AK 99701

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

State Capitol, Room 120  
Juneau, Alaska 99801-1182

**Fax**

To: Legislative Legal

Fax #: 2029

Number of pages including cover: 3

From: Jane Pierson

Date: March 13, 2008

Re: Final on CSHB 354(HES) 25-LS1414\E

---

Please go final for HJUD on the above referenced bill to include the following two attached amendments.

Should you have any questions concerning this matter, please do not hesitate to contact me.

PASSED

3/308

AMENDMENT #1

OFFERED IN THE

BY Cochill

HOUSE JUDICIARY COMMITTEE

TO CSHB 354 (HESS)

Page 4, lines 12-15:

Delete all material.

PASSES

3/10/08

AMENDMENT #2

OFFERED IN THE BY \_\_\_\_\_  
HOUSE JUDICIARY COMMITTEE  
TO CSHB 354 (HESS)

Page 2, line 29:

After "petition."

Delete "Except as provided in (k) of this section, at [AT]"

Insert "At"

Page 3, line 3:

After "(6)"

Delete "(7)"

Page 3, lines 6-11:

Delete all material

# FISCAL NOTE

**STATE OF ALASKA**  
**2008 LEGISLATIVE SESSION**

Fiscal Note Number: HB354CS(HES)-LAW-CIV-03-05-08  
 Bill Version: CSHB354(HES)  
 ( ) Publish Date: \_\_\_\_\_

Identifier (file name): \_\_\_\_\_ Dept. Affected: LAW  
 Title: An Act relating to subsidies for a hard-to-place child. RDU: Civil  
 Component: Child Protection  
 Sponsor: REPRESENTATIVE(s) COGHILL  
 Requester: HOUSE JUDICIARY Component Number: \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

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

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2008) cost: 00

**POSITIONS**

Full-time								
Part-time								
Temporar,								

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

See attached analysis.

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

Phone 907-465-5427  
 Date/Time 3/5/08 1 35 PM  
 Date 3/5/2008

**FISCAL NOTE**

**STATE OF ALASKA  
2008 LEGISLATIVE SESSION**

**BILL NO. CSHB354(HES)**

**ANALYSIS CONTINUATION**

HB 354 seeks to clean up statutory language to reflect current practice in three areas: 1) amending AS 25.23.210 to provide statutory authority for the OCS practice of awarding "deferred subsidies" (non-monetary subsidies that can become monetary subsidies later) in certain guardianships and adoptions; 2) clarifying AS 47.10.092(f) that the criminal sanctions for unlawful disclosure of confidential information only applies to AS 47.10.092(a); and (3) giving CSSD statutory authority to establish child support orders in child-in-need-of-aid and delinquency proceedings. The bill also amends AS 47.10.960 to include a statement about the availability of a common law negligence action or wrongful death action for a child who is injured or dies while in the custody of the state. The amendment does not change existing law, so it is not expected to have any associated fiscal impact. Finally, the bill dispenses with the requirement of parental consent of adult children and dispenses with parental notice of an adoption when the parent has abandoned the child.

The department does not expect a significant fiscal impact as a result of this bill.

# FISCAL NOTE

**STATE OF ALASKA**  
**2008 LEGISLATIVE SESSION**

Fiscal Note Number: 3  
 Bill Version: CSHB 354(HES)  
 (H) Publish Date: 2/29/08  
 Dept. Affected: Health & Social Services  
 RDU: Children's Services  
 Component: Subsidized Adoptions/Guardians

ID(File name) HB354-DHSS-SAG-02-19-08  
 Title HARD-TO-PLACE CHILD SUBSIDY/CHILD SUPPORT

Component No. 1962

Sponsor COGHILL  
 Requester HOUSE HES

**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
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES (0)</b>								
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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)								
<b>TOTAL</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2008) cost: \_\_\_\_\_

**POSITIONS**

Full-time								
Part-time								
Temporary								

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

The purpose of this legislation is to bring Alaska Statutes into conformity with existing practices in both Child in Need of Aid and Juvenile Delinquency proceedings. The bill amends the penalty for the unlawful disclosure of confidential information and the Department's discretion for governing amounts and durations of subsidy payments. It also refines the process for administering child support orders to reflect current practice.

The Office of Children's Services anticipates no fiscal impact from the passage of this bill.

Prepared by: Tammy Sandoval, Director  
 Division: Office of Children's Services  
 Approved by: Karleen Jackson, Commissioner  
 Agency: Department of Health and Social Services

Phone 465-3191  
 Date/Time 02/07/2008  
 Date 02/20/2008

# FISCAL NOTE

**STATE OF ALASKA**  
**2008 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSHB 354(HES)  
 (H) Publish Date: 2/29/08

Identifier (file name): HB354-DOA-PDA-2-25-08 Dept. Affected: Administration  
 Title "An Act relating to subsidies for a hard-to-place child..." RDU Legal and Advocacy Services  
 Component Public Defender Agency  
 Sponsor Representative Coghill  
 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
<b>OPERATING EXPENDITURES</b>								
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
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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	FUND SOURCE (Thousands of Dollars)						
	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2008) cost: \_\_\_\_\_

**POSITIONS**

Full-time	0.0	0.00	0	0	0	0	0
Part-time	0.0	0	0	0	0	0	0
Temporary	0.0	0	0	0	0	0	0

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

This bill requires the department to adopt regulations regarding hard-to-place children; defines the circumstances for imposing a misdemeanor penalty for violating disclosure restrictions in CINA cases; and grants the department authority to require parents to pay the cost of maintenance for a child in statue custody or a delinquent minor.

This bill is not expected to have a fiscal impact.

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

Phone 907-334-4414  
 Date/Time 2/25/08 1:45 PM  
 Date 2/25/2008

# FISCAL NOTE

**STATE OF ALASKA**  
**2008 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: CSHB 354(HES)  
 (H) Publish Date: 2/29/08

Identifier (file name): HB354-DOA-OPA-2-25-08 Dept. Affected: Administration  
 Title: "An Act relating to subsidies for a hard-to-place child..." RDU: Legal and Advocacy Services  
 Sponsor: Representative Coghill Component: Office of Public Advocacy  
 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
<b>OPERATING EXPENDITURES</b>								
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
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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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
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2008) cost: \_\_\_\_\_

**POSITIONS**

Full-time	0.0	0.00	0	0	0	0	0	0
Part-time	0.0	0	0	0	0	0	0	0
Temporary	0.0	0	0	0	0	0	0	0

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

This bill authorizes the Department of Health and Social Services to adopt regulations regarding subsidies for hard-to-place children, defines the circumstances for imposing a misdemeanor penalty for violating disclosure restrictions in CINA cases, and grants HSS authority to require parents to pay the cost of maintenance for a child in state custody. This bill is not expected to have a fiscal impact, and therefore, OPA submits a zero fiscal note.

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

Phone 907-269-3501  
 Date/Time 2/25/08, 2:10 p.m.  
 Date 2/25/2008

## James Feldman

---

**From:** Rep. Les Gara  
**Sent:** Wednesday, February 20, 2008 5:44 PM  
**To:** msimonian@friedmanrubinwhite.com  
**Cc:** James Feldman  
**Subject:** RE: Duty of care - Foster Care

-----Original Message-----

**From:** msimonian@friedmanrubinwhite.com [mailto:msimonian@friedmanrubinwhite.com]  
**Sent:** Wednesday, February 20, 2008 12:39 PM  
**To:** Rep. Les Gara  
**Subject:** Re: Duty of care - Foster Care

Hi Les. We could get the hearing transcribed. But, I'm not sure how you have a common law cause of action if AS 47 expressly precludes civil liability. A common law duty is derived from either statute, regulation, contract, undertaking, or the parties pre-existing special relationship. I suppose a plaintiff under the new statute could argue that the undertaking and pre-existing special relationship create a common law duty. But, that will be a tough argument in the face of the statutory language. The state will argue that the special relationship and undertaking are created by statute and those statutes preclude liability.

You should look at McGrew v. DFYS, as it illustrates the problem with arguing a duty in the face of statutory language precluding a duty. I've cut and pasted the relevant part of the decision below.

I don't think there is a supreme court decision that finds a common law duty in the face of statutory immunity, and that is essentially the position we are in now. The common law duty that was created by prior case law preceded these changes to the statutory language. As in McGrew, I think the court would find not common law duty with the sort of language that now exists.

In the McGrew decision, the supreme court stated that the bar relating to a standard and duty of care in the previous version of AS 47 meant that the statutes could not be relied upon to

In deciding whether a defendant owes a plaintiff a duty of reasonable care, we first determine whether a duty is imposed by statute, regulation, contract, undertaking, the parties' preexisting relationship, or existing case law.FN9 If these sources do not resolve the issue, we apply the multi-factor approach discussed in D.S.W. v. Fairbanks North Star Borough School DistrictFN10 to determine whether an actionable duty of care exists.FN11

FN9. In *Karen L. v. State, Department of Health & Social Services, Division of Family & Youth Services* we stated: "[T]ypical theoretical sources of actionable duties are statutes, regulations, certain contracts, express undertakings, or fiduciary relationships.... If one of those duty sources applied, it would not be necessary to consider the D.S.W. (v. Fairbanks North Star Borough School District) factors." 953 P.2d 871, 875 n. 9 (Alaska 1998) (internal citations omitted). See also *Wongittilin v. State*, 36 P.3d 678, 681 (Alaska 2001); *Waskey v. Municipality of Anchorage*, 909 P.2d 342, 343-44 (Alaska 1996) (finding it unnecessary to resort to the D.S.W. approach? where we had decided other cases more closely related? to the subject duty dispute); *Estate of Day v. Willis*, 897 P.2d 78, 81 n. 7 (Alaska 1995) (holding internal administrative and training manual did not impose duty of care toward fleeing suspects).

FN10. D.S.W. v. Fairbanks N. Star Borough Sch. Dist., 628 P.2d 554, 555 (Alaska 1981).

FN11. Wongittilin, 36 P.3d at 681. The D.S.W. factors include foreseeability of harm; degree of certainty plaintiff suffered injury; closeness of connection between defendant's conduct and injury; moral blame attached to defendant's conduct; policy of preventing future harm; extent of burden to defendant and availability; cost and prevalence of insurance for the risk involved. D.S.W., 628 P.2d at 555.

The McGrews argue that an actionable duty is imposed by AS 47.14.240, which specifies the responsibilities of the local review boards which review DFYS's placement decisions. It requires a review board to allow the child's relatives to participate. FN12 But another statute, AS 47.10.960, states that "[n]othing in this title creates a duty or standard of care for services to children and their families being served under AS 47.10." Lucy was a child being served under AS 47.10. Section .960 therefore precludes the McGrews from contending in a tort suit that AS 47.14.240 can be the basis of an actionable duty.

FN12. AS 47.14.240(d)(2).

The McGrews also assert that other statutes are sources of an actionable duty: "323 AS 47.10.142(a), (e), and (h); FN13 AS 47.10.020(a); FN14 AS 47.10.080(1) and (1)(2)(B); FN15 and AS 47.05.060. FN16 Any claim based on these statutes is likewise barred by AS 47.10.960.

FN13. AS 47.10.142(a) allows the Department of Health and Social Services to take emergency custody of a child in certain circumstances. Subsection .142(e) provides that when a temporary custody hearing is held, a court shall then determine "whether probable cause exists for believing the child to be a child in need of aid." Subsection .142(h) provides that "[w]ithin 12 months after a child is committed to the department under this section, the court shall review the placement plan and actual placement of the child under AS 47.10.080(1)."

FN14. AS 47.10.020(a) provides in pertinent part:

Whenever circumstances subject a child to the jurisdiction of the court under AS 47.10.005-47.10.142, the court shall appoint a competent person or agency to make a preliminary inquiry and report for the information of the court to determine whether the best interests of the child require that further action be taken. If, under this subsection, the court appoints a person or agency to make a preliminary inquiry and to report to it, then, upon the receipt of the report, the court may ... (3) authorize the person or agency having knowledge of the facts of the case to file with the court a petition setting out the facts.

FN15. AS 47.10.080(1) provides in pertinent part:

Within 12 months after the date a child enters foster care as calculated under AS 47.10.088(f), the court shall hold a permanency hearing. The hearing and permanent plan developed in the hearing are governed by the following provisions ... (2) when establishing the permanent plan for the child, the court shall make appropriate written findings, including findings related to whether ... (B) the child should be placed for adoption or legal guardianship and whether a petition for termination of parental rights should be filed by the department....

FN16. AS 47.05.060 provides in pertinent part:

The purpose of this title as it relates to children is ... to preserve and strengthen the

child's family ties unless efforts to preserve and strengthen the ties are likely to result in physical or emotional damage to the child ... and ... to secure for the child adequate custody and care and adequate planning for permanent placement of the child.

In *Karen L. v. State, Department of Health & Social Services, Division of Family & Youth Services*, we considered whether a mother could assert tort claims arising from CINA proceedings addressing placement of a child in DFYS custody.FN17 The superior court there granted summary judgment to the state, DFYS, state social workers, and the child's guardians ad litem, dismissing all of the mother's claims, including her negligence claims. FN18 We held that the state and the social workers did not owe the mother an actionable duty of care.FN19 The mother therefore could not maintain negligence claims against the state or its agencies and employees.

FN17. *Karen L. v. State, Dep't of Health & Soc. Servs., Div. of Family & Youth Serv.*, 953 P.2d 871, 876 (Alaska 1998) (declining to impose duty of care on state and social workers because it was not reasonably foreseeable that their conduct would cause Karen L. ? actionable emotional harm?).

FN18. *Id.* at 873.

FN19. *Id.* at 876, 878.

We recognize here, as we did in *Karen L.*, that ?it is to be expected that any litigation, and certainly a CINA proceeding in which the child is taken from its [relatives] ... will cause the [relatives] some distress. That does not mean that the distress should be actionable.? FN20 *Karen L.* establishes that DFYS does not owe a parent an actionable duty of reasonable care in a CINA proceeding.FN21 *Karen L.* therefore precludes the grandparents' negligence claim in this case.

FN20. *Id.* at 876.

FN21. *Id.* at 878.

The McGrews attempt to distinguish *Karen L.* on the theory there was no claim in that case that the state had bad motives. They assert that DFYS here engaged in intentional deceit and ?affirmatively misled? them by making false statements about its placement plan for the child. That distinction is potentially pertinent only to the McGrews' claims alleging intentional misconduct. As to the McGrews' negligence claim, *Karen L.* controls.

The McGrews also argue that their case is distinguishable from *Karen L.* because DFYS failed to comply with the statutory requirements of AS 47.14.240, denying them their right to be ?meaningfully heard in a timely fashion.? They therefore argue that ?324 *Karen L.* does not apply to them because the court there held that there was no statute that imposed an actionable tort duty.

But as we saw above, AS 47.10.960 establishes that DFYS owes the McGrews no actionable duty arising out of any provision in Title 47. Therefore, *Karen L.* cannot be distinguished on a theory the McGrews were owed a statutory duty not addressed in *Karen L.*

Quoting "Rep. Les Gara" <Representative\_Les\_Gara@legis.state.ak.us>:

- > Hi James and Meg - thanks for the briefing. It still doesn't provide
- > me what I'm looking for.
- >
- > The State brief is careful to say that AS 47 doesn't create a standard
- > or duty of care. I still need an express statement -either a
- > transcript from a hearing, or otherwise in writing, where the state
- > takes the express position that there is no common law negligence
- > liability by the state to foster kids. The brief doesn't expressly
- > state that there is no common law liability.
- >
- > Is there anything else you have in writing Meg? Or any transcript
- > position by the state?
- >
- > I think we can get an amendment adopted, but we have to show the
- > state's express position on the common law issue.
- >
- > Thanks. Les
- >
- >
- > Representative Les Gara
- >
- > Alaska State Legislature
- >
- > 716 W. 4th Avenue, Suite 310
- >
- > Anchorage, Alaska 99501
- >
- > Phone: 907-269-0106
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- > Fax: 907-269-0109
- >
- > [www.akdemocrats.org](http://www.akdemocrats.org)
- >
- >



**HB**

**355**



## HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120  
(907) 465-4990

### COMMITTEE MEMBERS

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Chairman  
Room, 118  
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Vice-Chairman  
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Rep. Max Gruenberg  
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Rep. Lindsey Holmes  
Room 405  
(907) 465-4919

### MEMORANDUM

Date: March 27, 2008

To: Representative Kevin Meyer  
Co-Chair House Finance Committee

From: Representative Jay Ramras  
Chair House Judiciary Committee

Re: Referral File for CSHB 355(JUD) 25-LS1263M

---

Attached please find the following documents, which represent the referral file for HB355:

- Sponsor Statement
- CSHB 355(JUD) 25-LS1263M
- Adopted amendment #3
- Fiscal Notes
  - OOG – Indeterminate
  - ADM – 0
- Failed amendments #1 and #2 with legal opinion
- Sectional Analysis
- CSHB 355 (25-LS1263E) work draft
- Legal Opinions
  - Alpheus Bullard, March 19, 2008
  - Assistant Attorney General, Margaret Paton-Walsh, March 11, 2008
- HB 355 (25-LS1263C)
- Back-up materials
- Letter of Support
- HJUD Report

# Alaska State Legislature

*Interim*  
50 Front Street, Suite 203  
Ketchikan, AK 99901  
Phone: (907) 247-4672  
Fax: (907) 225-7157



*Session*  
State Capitol, Room 13  
Juneau, AK 99801-1182  
Phone: (907) 465-3424  
Fax: (907) 465-3793

Representative Kyle Johansen  
District 1

## Sponsor Statement

### **HB 355: An Act Relating to Ballot Initiative Disclosure Requirements**

Alaska's lawmaking process – in order to maintain its high regard, importance and legitimacy – must be as open and transparent as possible. The integrity of the initiative process must also be protected. HB 355, or the Open and Transparent Initiative Act (OTIA), is a reasonable step towards those goals as it introduces a better way to inform Alaskans about how ballot initiatives are funded.

HB 355 seeks to identify individuals and groups who financially contribute for or against initiative campaigns, requires registration of an initiative group with the Alaska Public Office's Commission (APOC), and requires on-line filing of disclosure forms. These guidelines are similar to those imposed upon elected officials.

Initiative-created law has the same authority and effect as law created by elected officials. Therefore voters should be allowed to know who is making law through the initiative process. This legislation would make the initiative process more available to public scrutiny. HB 355 improves Alaskan's accessibility to information that is important to consider before casting their vote.

Initiative committees are required to disclose financial contributions, but their disclosures are not published in a timely manner or available on the internet to be easily accessed by the public. APOC does have a website that displays initiative committee information, but it is not current and the information provided is minimal. HB 355's electronic filing requirement remedies this situation.

In short, OTIA seeks to allow Alaskan voters to make the most informed decision as possible, and knowing who financially contributes to initiatives is a significant part of that decision.

ADOPTED

25-LS1263\E.2  
Bullard  
3.25.08

AMENDMENT #3

OFFERED IN THE HOUSE

BY REPRESENTATIVE JOHANSEN

TO: CSHB 355( ), Draft Version "E"

1 Page 3, lines 12 - 18:

2 Delete all material and insert:

3 "Sec. 15.45.770. **Registration and reporting.** (a) In addition to those persons  
4 required to register before making an expenditure in support of or in opposition to a  
5 ballot initiative under AS 15.13.050(a), an individual making expenditures exceeding  
6 \$500 in a calendar year in support of or in opposition to an initiative shall register with  
7 the commission.

8 (b) A person making expenditures in support of or in opposition to an  
9 initiative and registered under AS 15.13.050(a) and an individual registered under (a)  
10 of this section shall file reports as required by AS 15.13.040 and AS 15.13.110."

11

12 Reletter the following subsections accordingly.

ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY COMMITTEE

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

1292 Sadler Way, Suite 324  
Fairbanks, AK 99701



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

State Capitol, Room 120  
Juneau, Alaska 99801-1182

**Fax**

To: Alpheus Bullard  
Legislative Legal

Fax #: 2029

Number of pages including cover: 2

From: Jane Pierson

Date: March 26, 2008

Re: Final for HJUD on H1 55 (25-LS1263VE)

Please go final on the above-referenced bill. There is one attached amendment to be included (25-LS1263VE.2).

Should you have any questions concerning this matter, please do not hesitate to contact me.

# FISCAL NOTE

**STATE OF ALASKA**  
**2008 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 355  
 () Publish Date: \_\_\_\_\_

Identifier (file name): HB355-OOG-DOE-2-12-08 Dept Affected: OOG  
 Title An Act requiring the disclosure of the identity of certain RDU Elections  
persons, groups in support or opposition of ballot initiatives. Component Elections  
 Sponsor Representative Johansen  
 Requester House Judiciary Committee Component Number 21

**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
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>	*****	0.0	0.0	0.0	0.0	0.0	0.0	0.0

<b>CAPITAL EXPENDITURES</b>								
-----------------------------	--	--	--	--	--	--	--	--

<b>CHANGE IN REVENUES</b> )								
-----------------------------	--	--	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
<b>TOTAL</b>	*****	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)  
 We are unable to determine what fiscal costs will be incurred by this legislation under the current intent language

Prepared by Gail Fenumiai, Director Phone 465-2644  
 Division Division of Elections Date/Time 2/13/2008, 10:40am  
 Approved by Linda Perez, Administrative Director Date 2/13/2008  
Office of the Governor

# FISCAL NOTE

**STATE OF ALASKA**  
**2008 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 355  
 ( ) Publish Date: \_\_\_\_\_

Identifier (file name): HB355-DOA-APOC-2-11-08 Dept. Affected: Administration  
 Title: "An Act relating to the disclosure of the identity of certain..." RDU: AK Public Offices Commission  
 Component: AK Public Offices Commission  
 Sponsor: Representative Johansen  
 Requester: House Judiciary Committee Component Number: 70

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

	Appropriation Required	Information					
		FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
<b>OPERATING EXPENDITURES</b>							
Personal Services	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
Contractual	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
Equipment	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
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
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>							
-----------------------------	--	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>							
-------------------------------	--	--	--	--	--	--	--

**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	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2008) cost: 0.0

**POSITIONS**

Full-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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 requires groups that support or oppose a ballot initiative to register with APOC and to disclose their contribution and expenditure activities thereafter. This bill will not have a fiscal impact on APOC.

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

Phone: 907-334-1726  
 Date/Time: 2/12/08 12:00 AM  
 Date: 2/12/2008

AMENDMENT #1 w/D

OFFERED IN THE HOUSE

BY REPRESENTATIVE SAMUELS

TO: CSHB 355( ), Draft Version "E"

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

2 Insert "**prohibiting certain expenditures made in support of or in opposition to**  
3 **ballot initiatives; and**"

4  
5 Page 1, line 11, following "that":

6 Insert "prohibiting expenditures originating from outside the state in support of or in  
7 opposition to ballot initiatives and"

8  
9 Page 2, following line 13:

10 Insert new material to read:

11 "(c) It is the intent of the legislature that this Act ensure that monetary expenditures  
12 and contributions originating from outside the state not dictate how Alaska ballot initiatives  
13 are framed and understood.

14 \* **Sec. 4.** AS 15.13.065(c) is amended to read:

15 (c) Except **as provided in AS 15.13.074(j), except** for reports required by  
16 AS 15.13.040 and 15.13.110, and except for the requirements of AS 15.13.050,  
17 15.13.060, and 15.13.112 - 15.13.114, the provisions of AS 15.13.010 - 15.13.116 do  
18 not apply to limit the authority of a person to make contributions to influence the  
19 outcome of a ballot proposition. In this subsection, in addition to its meaning in  
20 AS 15.60.010, "proposition" includes an issue placed on a ballot to determine whether

21 (1) a constitutional convention shall be called;

22 (2) a debt shall be contracted;

23 (3) an advisory question shall be approved or rejected; or

1 (4) a municipality shall be incorporated.

2 \* Sec. 5. AS 15.13.074 is amended by adding a new subsection to read:

3 (j) An individual who is a resident of another state or a group or nongroup  
4 entity organized under the laws of another state, resident in another state, or whose  
5 participants are not residents of this state may not make a contribution in support of or  
6 in opposition to an initiative.

7 \* Sec. 6. AS 15.13.084 is amended by adding a new subsection to read:

8 (b) Notwithstanding (a) of this section, an individual who is a resident of  
9 another state or a group or nongroup entity organized under the laws of another state,  
10 resident in another state, or whose participants are not residents of this state may not  
11 make an expenditure in support of or in opposition to an initiative."

12

13 Renumber the following bill sections accordingly.

14

15 Page 2, following line 29:

16 Insert a new bill section to read:

17 \*\* Sec. 9. AS 15.13.140(b) is amended to read:

18 (b) An independent expenditure for or against a ballot proposition or question  
19 (1) shall be reported in accordance with AS 15.13.040 and 15.13.100 -  
20 15.13.110 and other requirements of this chapter; and  
21 (2) may not be made if the expenditure is prohibited by  
22 AS 15.13.084(b) or 15.13.145 [AS 15.13.145]."

23

24 Renumber the following bill sections accordingly.

AMENDMENT #2 w/d

OFFERED IN THE HOUSE

BY REPRESENTATIVE SAMUELS

TO: CSHB 355( ), Draft Version "E"

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

2 Insert "restricting contributions made in support of or in opposition to ballot  
3 initiatives; and"

4  
5 Page 1, line 11, following "that":

6 Insert "limiting the amount of contributions made in support of or in opposition to  
7 ballot initiatives and"

8  
9 Page 2, following line 13:

10 Insert new material to read:

11 "(c) It is the intent of the legislature that this Act ensure that contributions made in  
12 support of or in opposition to ballot initiatives are restricted in the same manner as other  
13 political contributions.

14 \* **Sec. 4.** AS 15.13.065(c) is amended to read:

15 (c) Except for reports required by AS 15.13.040 and 15.13.110 and except for  
16 the requirements of AS 15.13.050, 15.13.060, and 15.13.112 - 15.13.114, the  
17 provisions of AS 15.13.010 - 15.13.116 do not apply to limit the authority of a person  
18 to make contributions to influence the outcome of a ballot proposition. In this  
19 subsection, [IN ADDITION TO ITS MEANING IN AS 15.60.010,] "proposition"  
20 means a referendum, a constitutional amendment submitted at an election to the  
21 public for vote, and [INCLUDES] an issue placed on a ballot to determine whether

22 (1) a constitutional convention shall be called;

23 (2) a debt shall be contracted;

- 1 (3) an advisory question shall be approved or rejected; or
- 2 (4) a municipality shall be incorporated.

3 \* Sec. 5. AS 15.13.070(b) is amended to read:

4 (b) An individual may contribute not more than

5 (1) \$500 a [PER] year to a nongroup entity for the purpose of  
6 influencing the nomination or election of a candidate, to a candidate, to an individual  
7 who conducts a write-in campaign as a candidate, or to a group that is not a political  
8 party;

9 (2) \$5,000 a [PER] year to a political party; or

10 (3) \$500 a year to an individual, group, or nongroup entity for the  
11 purpose of influencing an initiative.

12 \* Sec. 6. AS 15.13.070(f) is amended to read:

13 (f) A nongroup entity may contribute not more than \$1,000 a year to another  
14 nongroup entity for the purpose of influencing an initiative or the nomination or  
15 election of a candidate, to a candidate, to an individual who conducts a write-in  
16 campaign as a candidate, to a group, or to a political party."

17  
18 Renumber the following bill sections accordingly.

# LEGAL SERVICES

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

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

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 26, 2008

**SUBJECT:** Requested amendments to CSHB 355( )  
(Work Order Nos. 25-LS1263\E.3 and \E.4)

**TO:** Representative Ralph Samuels  
Attn: Linda Hay

**FROM:** Alpheus Bullard *LAB*  
Legislative Counsel

This memorandum accompanies the two amendments to CSHB 355( ), draft version "E," that you requested. Both are likely to be held unconstitutional because they burden the First Amendment interests of certain individuals, groups, and nongroup entities.

### **Freedom of Speech**

The First Amendment of the Constitution of the United States protects freedom of speech and freedom of association. The freedom of speech is not absolute, Messerli v. State, 626 P.2d 81, 86 (Alaska 1981), but any content-based restriction on speech in Alaska must serve a "compelling" state interest. Mickens v. City of Kodiak, 640 P.2d 818, 821 (Alaska 1982) and State v. Metcalfe, 110 P.3d 976 (Alaska 2005). Political campaign contributions and expenditures fall within the protections of the first amendment. Buckley v. Valeo, 424 U.S. 1 (1976). Any restriction on the ability of individual groups and nongroups inside or outside the state of Alaska to make contributions or expenditures in support of or in opposition to ballot initiatives is likely to face a first amendment challenge.

The only state interest the United States Supreme Court has thus far found adequate to support campaign contribution limits is the prevention of corruption or the appearance of corruption, and the court has concluded that this rationale does not extend to initiative campaigns. "[B]allot initiatives do not involve the risk of 'quid pro quo' corruption present when money is paid to, or for, candidates." Buckley v. American Constitutional Law Foundation, 525 U.S. 182 (1999), citing Meyer v. Grant, 486 U.S. 414 (1988), citing Bellotti. See also Randall v. Sorrell, 126 S. Ct. 2479 (2006) (striking down state contribution caps as too stringent).

Based on this precedent, it is likely that a court would invalidate the dollar limits on contributions to initiative campaigns in amendment E.4.

Representative Ralph Samuels

March 26, 2008

Page 2

Amendment E.3 would allow only state residents and groups organized under Alaska law, resident in this state, and whose participants are Alaska residents to make contributions or expenditures in support of or in opposition to a ballot initiative. In VanNatta v. Keisling, 151 F.3d 1215 (9th Cir. 1998), the Ninth Circuit invalidated a similar geographically based restriction enacted by initiative in Oregon. The court found:

Measure 6 bans all out-of-district donations, regardless of size or any other factor that would tend to indicate corruption. Appellants are unable to point to any evidence which demonstrates that all out-of-district contributions lead to the sort of corruption discussed in *Buckley*. . . . Measure 6 is not closely drawn to advance the goal of preventing corruption and under this analysis fails to pass muster under the *First Amendment*.

Id. at 1221. Preventing corruption and the appearance of corruption is the only justification which has been found adequate to justify infringing on the First Amendment freedom of association by limiting or banning campaign contributions, and the Ninth Circuit found that a complete ban on out-of-district contributions was not closely drawn to serve this goal. Amendment E.3 would likely be invalidated for the same reasons.

#### **Privileges and Immunities**

Amendment E.3, because it applies only to non-residents, would also be subject to challenge under the privileges and immunities clause.

The federal privileges and immunities clause restricts the state's ability to interfere with the fundamental rights of non-residents. See Robison v. Francis, 713 P.2d 259, 263 (Alaska 1986). The Alaska Supreme Court has summarized the effect of the privileges and immunities clause as follows:

Article IV, section 2 prohibits discrimination against nonresidents "where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other states." No "substantial reason" will be found absent some showing that nonresidents are "a peculiar source of the evil" which the state's action is meant to remedy. In addition, the discrimination worked upon nonresidents must "bear a substantial relationship to the particular 'evil' they are said to present." Only if the challenged discriminatory action surmounts both of these hurdles will it survive privileges and immunities clause scrutiny.

Noll v. Alaska Bar Association, 649 P.2d 241, 244 (Alaska 1982) (quoting Toomer v. Witsell, 334 U.S. 385, 396 (1948), and Hicklin v. Orbeck, 437 L.Ed.2d 397, 404 (1978); citations omitted). So, in addition to having to provide a "compelling justification" for the measure to satisfy the First Amendment, you would also need to show a "substantial reason" why the measure should apply only to non-residents in order to withstand a privileges and immunities clause challenge.

Representative Ralph Samuels  
March 26, 2008  
Page 3

**Conclusion**

Imposing contribution limits for ballot initiatives, or prohibiting out-of-state contributions or expenditures made in support of or in opposition to ballot initiatives, is likely to be interpreted by a court as an unconstitutional burden on the freedom of speech under the First Amendment to the Constitution of the United States, and article I, section 5 of the Constitution of the State of Alaska.

If you have any questions, please do not hesitate to contact me.

TLAB:ljw  
08-176.ljw

Enclosures

# ALASKA STATE LEGISLATURE

Session  
State Capitol  
Juneau, AK 99801-1102  
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Interim  
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REPRESENTATIVE KYLE JOHANSEN  
DISTRICT ONE

Chair  
Transportation

Vice Chair  
Fisheries

Member  
Economic Development  
Trade and Tourism  
State Affairs

## Sectional Analysis – House Bill 355

- Section 1.** Establishes the Act to be known as the Open and Transparent Initiative Act.
- Section 2.** Provides legislative findings that informing the electorate of the identity of persons, groups, and nongroup entities that make significant contributions or expenditures in support of or in opposition to ballot initiatives would improve the state's electoral and legislative processes.
- Section 3.** States that it is the intent of the legislature that the Act's purpose is to ensure that the people of Alaska are able to learn the identity of persons, groups, and nongroup entities that make significant contributions or expenditures in support of or in opposition to ballot initiative and the aggregate amount of such contributions.
- Section 4.** Conforms AS 15.13.110(e) to the change made by section 5 of the Act.
- Section 5.** Adds a new subsection to AS 13.13.110 that requires an initiative committee, person, group, or nongroup entity receiving contributions or making expenditures exceeding \$500 in a calendar year in support of or in opposition to a ballot initiative to make certain reports.
- Section 6.** Adds a new article entitled "Initiative Disclosure Requirements" to AS 15.45.
- Section 15.45.750** States that it is the purpose of AS 15.45.780 is to ensure that significant contributions and expenditures made in support of or in opposition to ballot initiatives are disclosed so that the electorate may be fully informed.
- Section 15.45.760** Establishes rules for initiative committee names.
- Section 15.45.770** Requires initiative committees to register with the Alaska Public Offices Commission and file certain reports, and provides that the commission will publish these reports on the internet.

# ALASKA STATE LEGISLATURE

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Chair  
Transportation

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Member  
Economic Development,  
Trade and Tourism  
State Affairs

REPRESENTATIVE KYLE JOHANSEN  
DISTRICT ONE

**Section 15.45.780** Provides that advertising and promotional material paid for by an initiative committee, person, group, or nongroup entity receiving contributions or making expenditures exceeding \$500 in a calendar year in support of or in opposition to a ballot initiative must include the name of the committee, person, group, or nongroup entity.

**Section 7.** Establishes that the Act applies to initiatives for which the applications are filed with the lieutenant governor after the effective date of the Act.

25-LS1263VE  
Bullard  
3/20/08

**CS FOR HOUSE BILL NO. 355( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FIFTH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): REPRESENTATIVES JOHANSEN, Johnson, Samuels, Wilson, Lynn**

**A BILL**  
**FOR AN ACT ENTITLED**

1 "An Act requiring the disclosure of the identity of certain persons, groups, and  
2 nongroup entities that expend money in support of or in opposition ( ballot initiatives  
3 and the aggregate amounts of significant contributions or expenditures made by those  
4 persons, groups, and nongroup entities."

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

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

8 **SHORT TITLE.** This Act may be known as the Open and Transparent Initiative Act.

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

11 **FINDINGS.** The legislature finds that informing the electorate of the identity of  
12 persons, groups, and nongroup entities that make significant contributions or expenditures in  
13 support of or in opposition to ballot initiatives would enhance the integrity of the state's  
14 electoral and legislative processes.

1 \* Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to  
2 read:

3 LEGISLATIVE INTENT. (a) It is the intent of the legislature that this Act ensure that  
4 the people of Alaska are able to cast informed votes on election day by having the opportunity  
5 to know

6 (1) the identity of persons, groups, and nongroup entities that make significant  
7 contributions or expenditures in support of or in opposition to a ballot initiative; and

8 (2) the aggregate amount of significant contributions or expenditures made by  
9 persons, groups, and nongroup entities in support of or in opposition to a ballot initiative.

10 (b) It is the intent of the legislature that the Alaska Public Offices Commission collect  
11 and provide to the people of Alaska readily accessible information related to the identity of  
12 the sources of significant financial contributions and expenditures made in support or  
13 opposition to a ballot initiative.

14 \* Sec. 4. AS 15.13.110(e) is amended to read:

15 (e) A group formed to sponsor [AN INITIATIVE,] a referendum or a recall  
16 shall report 30 days after its first filing with the lieutenant governor. Thereafter, each  
17 group shall report within 10 days after the end of each calendar quarter on the  
18 contributions received and expenditures made during the preceding calendar quarter  
19 until reports are due under (a) of this section.

20 \* Sec. 5. AS 15.13.110 is amended by adding a new subsection to read:

21 (g) An initiative committee or any person, group, or nongroup entity receiving  
22 contributions or making expenditures exceeding \$500 in a calendar year in support of  
23 or in opposition to a ballot initiative shall make a full report in accordance with  
24 AS 15.13.040 on the contributions received and expenditures made for the period  
25 beginning on the last day covered by the most recent previous report and ending three  
26 days before the due date of the report. Reports must be filed as provided under (a) and  
27 (b) of this section. If the report is a first report, it must cover the period beginning on  
28 the day an application is filed under AS 15.45.020 and ending three days before the  
29 due date of the report.

30 \* Sec. 6. AS 15.45 is amended by adding new sections to read:

31 **Article 4. Initiative Disclosure Requirements.**

1           **Sec. 15.45.750. Statement of purpose.** The purpose of AS 15.45.750 -  
2           15.45.780 is to ensure that significant contributions and expenditures made in support  
3           of or in opposition to initiatives are fully and truthfully disclosed so that the electorate  
4           may be fully informed and improper practices may be inhibited.

5           **Sec. 15.45.760. Initiative committee names.** An initiative committee must  
6           have a name that

7                   (1) includes the ballot title of the initiative and identifies that the  
8           committee is for the initiative;

9                   (2) is not deceptively similar to that of another person, group, or  
10          nongroup entity; and

11                   (3) is not otherwise misleading.

12          **Sec. 15.45.770. Registration and reporting.** (a) An initiative committee under  
13          AS 15.45.030(3) or any person, group, or nongroup entity receiving contributions or  
14          making expenditures exceeding \$500 in a calendar year in support of or in opposition  
15          to an initiative shall

16                   (1) register with the commission, and

17                   (2) file reports as required by AS 15.13.040 and in the manner  
18          provided by AS 15.13.110.

19                   (b) Campaign reports under this section must be submitted electronically.

20                   (c) The commission shall publish reports required under this section on the  
21          Internet, in a format accessible to the general public, within two working days after the  
22          commission receives the report.

23          **Sec. 15.45.780. Advertising and promotional materials.** All political  
24          advertising in support of or in opposition to an initiative that is paid for by an initiative  
25          committee or any person, group, or nongroup entity receiving contributions or making  
26          expenditures exceeding \$500 in a calendar year in support of or in opposition to an  
27          initiative must include the name of the committee, person, group, or nongroup entity.

28          **Sec. 15.45.790. Definitions.** In AS 15.45.750 - 15.45.790, "commission"  
29          means the Alaska Public Offices Commission.

30          \* **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to  
31          read:

1           APPLICABILITY. This Act applies to an initiative for which the application was filed  
2 with the lieutenant governor under AS 15.45.020 after the effective date of this Act.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
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## MEMORANDUM

March 19, 2008

**SUBJECT:** Constitutional issues (HB 355; Work Order No. 25-LS1263\C)

**TO:** Representative Kyle Johansen  
Attn: Sonia Christensen

**FROM:** Alpheus Bullard *ALB*  
Legislative Counsel

You asked if there were any constitutional concerns in reference to HB 355, a bill that requires the disclosure of the identities of certain persons, groups, and nongroup entities that expend money in support of or in opposition to ballot initiatives. It is my opinion that the bill is constitutional.

The relevant constitutional concern is whether the bill infringes on the freedom of speech guaranteed under the First Amendment of the United States Constitution. In the context of the bill's disclosure requirements for initiative committees, persons, groups, and nongroup entities receiving contributions or making expenditures exceeding \$500 in a calendar year in support of or in opposition to a ballot initiative, I believe the state's interest in providing the electorate with information related to certain parties that support or oppose ballot issues has been established.

In McConnell v. Federal Election Commission, 540 U.S. 93 (2003), the United States Supreme Court resolved a key disclosure question, upholding the constitutionality of new disclosure rules in the Federal Bipartisan Campaign Reform Act of 2002 (BCRA) related to contributions and expenditures funding "sham issue advocacy" in candidate elections. See id. at 196 (2003) (opinion of Stevens and O'Connor), quoting McConnell v. FEC, 251 F. Supp. 2d, 176, 237 (D.D.C. 2003):

Curiously, plaintiffs want to preserve the ability to run these advertisements while hiding behind dubious and misleading names like: 'The Coalition-Americans Working for Real Change' (funded by business organizations opposed to organized labor), 'Citizens for Better Medicare' (funded by the pharmaceutical industry), 'Republicans for Clean Air' (funded by brothers Charles and Sam Wyly). Findings PP 44, 51, 52. Given these tactics, *Plaintiffs never satisfactorily answer the question of how 'uninhibited, robust, and wide-open' speech can occur when organizations hide themselves from the scrutiny of the voting public.* McConnell Br. at 44. Plaintiffs' argument for striking down BCRA

disclosure provisions does not reinforce the precious First Amendment values that Plaintiffs argue are trampled by BCRA, but ignores the competing First Amendment interests of individual citizens seeking to make informed choices in the political marketplace.<sup>1</sup>

(Emphasis added.) It is these "interests of individual citizens seeking to make informed choices in the political marketplace" that support the disclosure requirements of HB 355. Knowing who is supporting or opposing a ballot initiative is an effective cue that allows citizens to better make their voting choices.

The use of corporate wealth (like individual wealth) to speak to the electorate is unlikely to "distort" elections--especially if disclosure requirements tell the people where the speech is coming from. The premise of the First Amendment is that the American People are neither sheep nor fools, and hence capable fully capable of considering both the substance of the speech presented to them and its proximate and ultimate source.

McConnell, 540 U.S. at 258-59 (Scalia, dissenting).

Because the courts have held that initiative elections pose no threat of *quid pro quo* corruption<sup>2</sup> the justification for statute and regulations mandating disclosure must rest on these informational concerns highlighted by the District Court in McConnell. In California Pro-life Council Inc., v. Randolph, 507 F.3d 1172 (2007 U.S. App.), the court followed McConnell in accepting a lower court's rationale that California had a compelling interest in informing the electorate regarding contributions and expenditures made to pass or defeat ballot measure initiatives.<sup>3</sup>

A contrary opinion as to the bill's constitutionality would depend on a broad reading of a prior Supreme Court case, McIntyre v. Ohio Elections Commission, 514 U.S. 334 (1995)

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<sup>1</sup> See also First National Bank of Boston v. Bellotti, 435 U.S. 765, 791-92 (1978) (Corporate advertising in support or in opposition to ballot referenda cannot be suppressed, and suppression is unnecessary because the voters could evaluate the corporate speakers themselves - in part through disclosure laws).

<sup>2</sup> See Bellotti, 435 U.S. 765, 789-90 (1978), and Buckley v. Am. Constitutional Law Foundation, 525 U.S. 182, 203 (1999).

<sup>3</sup> The court accepted this "information" rationale but did not accept the lower court's second articulated rationale of preventing veiled political actors from concealing their involvement in the political process, because the notion of deterring corruption has been rejected as a constitutionally sufficient interest in the ballot measure disclosure context, citing Montana Chamber of Commerce v. Argenbright, 226 F.3d 1049, 1056 (9th Cir. 2000) and Bellotti, 435 U.S. 765, 790, (1978).

Representative Kyle Johansen  
March 19, 2008  
Page 3

(court affirmed a plaintiff's right to disseminate an anonymous leaflet containing her views on a school tax referendum). Reliance on McIntyre as support against disclosure provisions in this bill that apply to "[a]n initiative committee or any person, group, or nongroup entity receiving contributions or making expenditures exceeding \$500 in a calendar year in support or in opposition to a ballot initiative"<sup>4</sup> would in my opinion be misplaced, for in McIntyre the Court was concerned with "independent communications by a person like Mrs. McIntyre," *id.* at 354, and "[the Court] recognize[d] that a State's enforcement interest might justify a more limited identification requirement, but Ohio has shown scant cause for inhibiting the leafleting at issue here." *Id.* at 353.<sup>5</sup>

From the Court's opinion it seems clear that McIntyre is not to be extended far beyond its facts, and the informational interests justifying disclosure of the identity of an initiative committee or any person, group, or nongroup entity advertising in a state initiative process (the subject of HB 355) are different from those applied to a lone leafleteer distributing handbills relating to a local school board election (McIntyre).<sup>6</sup>

If you have any questions, please do not hesitate to contact me.

TLAB:ljw  
08-159.ljw

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<sup>4</sup> See sec. 5 of HB 355.

<sup>5</sup> See also McIntyre, 514 U.S. 344 at 349 (little information is imparted "in the case of a handbill written by a private citizen by the identity in the case of a handbill written by a private citizen who is not known to the recipient, the name and address of the author add little, if anything, to the reader's ability to evaluate the document's message"); *id.* at 351 (statute overbroad because it applies to "individuals acting independently and using only their own modest resources"); and *id.* at 358 (Ginsburg, concurring) (emphasizing that the case dealt with "an individual leafleteer who, within her local community, spoke her mind, but sometimes not her name. We do not thereby hold that the State may not in other, larger circumstances require the speaker to disclose its interest by disclosing its identity").

<sup>6</sup> The difference between the disclosures that could be required in McConnell and the mandated disclosure that was found unconstitutional in McIntyre might be summed up by Justice Ginsburg's "[i]n for a calf is not always in for a cow." *id.* at 358.

# STATE OF ALASKA

SARAH PALIN GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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March 11, 2008

The Honorable Jay B. Ramras  
Chair of the House Judiciary Committee  
Alaska State House of Representatives  
Alaska State Capitol, Room 118  
Juneau, Alaska 99801-1182

Re: HB 355 "Open and Transparent Initiative Act"

Dear Representative Ramras:

At the March 3, 2008, meeting of the House Judiciary Committee, the committee requested a written response to two questions that arose in the course of hearing HB 355, the "Open and Transparent Initiative Act." Those questions are:

1. May the State of Alaska prohibit contributions to initiative committees made by anyone other than a natural person without violating the protections of the First Amendment?
2. May the State of Alaska require those who pay for political advertising in support of or opposition to a ballot initiative to include either the name of the payor or a statement indicating that the payor declines to be identified without violating the protections of the First Amendment?

Although when question one was initially raised, my first reaction was that this might be permissible, upon research and further reflection, I believe that the First Amendment constitutes a significant impediment to both of these proposals.

As a first step, it is important to understand the framework within which the courts analyze First Amendment questions. Limitations on political speech cut to the heart of the First Amendment and the United States Supreme Court has typically applied strict scrutiny to any such speech restrictions, requiring that the State demonstrate both a compelling interest that the restriction is designed to protect *and* that the restriction is narrowly tailored to achieve the desired protection. See e.g., *Buckley v. Valeo*, 424 U.S. 1, 44-5 (1976); *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 786 (1978).

In applying this framework, the U.S. Supreme Court has made a clear distinction between limitations that may be imposed on campaigns for public office and those which may be imposed on campaigns regarding initiatives, ballots and referenda. Greater limitations may be imposed on the former because the Court has recognized a compelling state interest in preventing corruption and the appearance of corruption. *See e.g., Buckley*, 424 U.S. at 26-27. As a result, in the service of preventing corruption, the Court has accepted limits on financial contributions to political candidates and disclosure of the source of contributions to candidates and expenditures in support of or opposition to the election of candidates. *Id.* at 29, 66-7.

In contrast, the U.S. Supreme Court has been less sympathetic to restrictions on contributions and speech in the context of ballot initiatives and referenda, because the danger of corruption is absent. "Referenda are held on issues, not candidates for public office. The risk of corruption perceived in cases involving candidate elections . . . simply is not present in a popular vote on a public issue." *Bellotti*, 435 U.S. at 790, citations omitted. The Court has characterized speech regarding ballots and referenda as "core political speech" deserving of the highest level of protection. *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 346-7 (1995). With this context in mind, I will now discuss the two specific questions raised by members of the committee.

1. May the State of Alaska prohibit contributions to initiative committees made by anyone other than a natural person without violating the protections of the First Amendment?

My initial reaction that this might be permissible was based upon my recollection of existing statutes that prohibit corporate contributions to candidates' campaigns. However, the Court's distinguishing between candidate campaigns and ballot initiative campaigns makes this analogy inapposite. In fact, the Court has previously found laws limiting corporate contributions and expenditures on ballot initiatives unconstitutional. *Bellotti*, 435 U.S. 765 (1978). *Bellotti* held that a Massachusetts statute that prohibited corporations from "directly or indirectly giv[ing], pay[ing], expend[ing] or contribut[ing] . . . any money or other valuable thing for the purpose of . . . influencing or affecting the vote on any question submitted to the voters, other than one materially affecting any of the property, business or assets of the corporation." *Id.* at 768.

*Bellotti* also suggests that other kinds of associations would enjoy greater rather than lesser protection. Indeed, the Court commented that "[i]f the speakers here were not corporations, no one would suggest that the State could silence their proposed speech. It is the type of speech indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation rather than an individual. The inherent

worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual.” *Id.* at 777.

It seems then, based on *Bellotti*, that the courts might not look favorably on the sort of large-scale prohibition of contributions to initiative campaigns involved in limiting contributions to individuals. Although the Supreme Court has upheld statutes limiting campaign contributions, it has done so with the explicit understanding that limiting the *size* of a contribution has only a “marginal effect” on the speaker’s ability to communicate: “A limitation on the amount of money a person may give to a candidate or campaign organization thus involves little direct restraint on his political communication, for it *permits the symbolic expression of support* evidenced by a contribution but does not in any way infringe the contributor’s freedom to discuss candidates and issues.” *Buckley*, 424 U.S. at 21 (emphasis added). Moreover, the Court has explicitly rejected an extension of this limitation to contributions to ballot or initiative committees. *Citizens Against Rent Control/Coalition For Fair Housing v. City of Berkeley*, 454 U.S. 290 (1981).

Thus, an outright ban on contributions from particular sources, which would likely be seen as a much greater infringement on the free speech rights of associations, groups, corporations, etc., may be vulnerable to a First Amendment challenge. It is worth noting, however, that both *Bellotti* and *Citizens Against Rent Control* Courts assumed that the State interest in exposing the sources of money supporting or opposing ballot measures could be effectively protected through disclosure and reporting requirements. For example, in *Citizens Against Rent Control*, the Court noted that “[i]t is true that when individuals or corporations speak through committees, they often adopt seductive names that may tend to conceal the true identity of the source,” but nevertheless struck down the proposed limits on contributions, arguing that “[t]he public interest allegedly advanced by [the law]—identifying the sources of support for and opposition to ballot measures—is insubstantial because voters may identify those sources under the provisions of § 112 [which required the publication of lists of contributors before elections].” Thus, although the existing case law is not particularly encouraging, it is possible that the state could make a case, supported by appropriate legislative findings, that the disclosure and reporting requirements were not effectively protecting the strong state interest in public awareness of who is behind campaigns for or against ballot initiatives.

2. May the State of Alaska require those who pay for political advertising in support of or opposition to a ballot initiative to include either the name of the payor or a statement indicating that the payor declines to be identified without violating the protections of the First Amendment?

As I indicated at the hearing, the United States Supreme Court held, in *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 349 (1995), that the state's interest in providing voters with additional information was "plainly insufficient to support the constitutionality of" a statute that prohibited anonymous political advertising. Before *McIntyre*, the Court had occasionally suggested, in the course of discussing other election laws, that it might be more amenable to disclosure requirements related to political advertising. For example, in *Bellotti*, the Court noted that "[c]orporate advertising, unlike some methods of participation in political campaigns, is likely to be highly visible. Identification of the source of advertising may be required as a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected." *Bellotti*, 435 U.S. at 792, n.32. In *McIntyre*, however, the Court explicitly distinguished this statement in *Bellotti* and other such suggestions, arguing that they were made in the context of cases involving limitations on candidate campaigns, where the interest in avoiding the appearance of corruption was strong, in contrast to campaigns for and against ballot initiatives where, in the Court's view, the danger of corruption was not an issue. *McIntyre*, 514 U.S. at 354, 356.

The *McIntyre* Court also based its holding partly on the perception that the identification requirement constituted "compelled" speech. *Id.* at 348 ("we think the identity of the speaker is no different from other components of the document's content the author is free to include or exclude."); *see also, id.* at 355. Although I have not found any cases that consider the specific proposal made by Representative Gruenberg, to the extent that *McIntyre* reflects the view that compelled speech violates the First Amendment, the addition of the alternative of declaring that one refuses to identify oneself does not resolve the problem: either declaration would seem to be compelled speech.

The Ninth Circuit has also read *McIntyre* this way, noting "*McIntyre's* understanding that proscribing the *content* of an election communication is a form of regulation of campaign activity subject to traditional strict scrutiny." *ACLU of Nevada v. Heller*, 378 F.3d 979, 987 (9<sup>th</sup> Cir. 2004). In *Heller*, the Ninth Circuit struck down a Nevada statute with a similar ban on anonymous political advertising to that contained in Section 6 of HB 355, holding that "requiring a publisher to reveal her identity on her election-related communication is considerably more intrusive than simply requiring her to report to a government agency for later publication how she spent her money. The former necessarily connects the speaker to a particular message directly while the latter may simply expose the fact that the speaker spoke." *Id.* at 992.


This analysis suggests that the courts may not be more receptive to a requirement that political advertising contain either the identity of the speaker or a declaration that the speaker declines to identify him or herself than they have been to bans on anonymous

political advertising—either way, the speaker would be compelled to include a message that he or she did not wish to. And the Ninth Circuit has explicitly held that “[t]he simple interest in providing voters with additional relevant information does not justify a state requirement that a writer make statements or disclosures she would otherwise omit.” *Id.* at 993.

Despite this apparently inhospitable environment, neither the United States Supreme Court nor the Ninth Circuit has expressed the view that there could never be a sufficiently compelling state interest to warrant some kind of identification requirement. *See e.g., McIntyre*, 514 U.S. at 353 (“We recognize that a State’s enforcement interest might justify a more limited identification requirement, but Ohio has shown scant cause for inhibiting the leafleting at issue here.”); *Heller*, 378 F.3d at 1000 (“An on-publication identification requirement carefully tailored to further a state’s campaign finance laws, or to prevent the corruption of public officials, could well pass constitutional muster. Nevada’s statute, however, is simply not a viable example of such legislation.”) Thus, it may be possible, through amendment of HB 355 and/or legislative findings, to establish a state interest sufficiently compelling to require some form of identification on some political advertising.

Sincerely,

TALIS J. COLBERG  
ATTORNEY GENERAL

By:   
Margaret Paton-Walsh  
Assistant Attorney General

MPW/kmh

cc: Rep. Dahlstrom, Vice-chair, Judiciary House Committee  
Rep. Coghill, Committee Member  
Rep. Lynn, Committee Member  
Rep. Samuels, Committee Member  
Rep. Gruenberg, Committee Member  
Rep. Holmes, Committee Member  
Rep. Johansen, Bill Sponsor  
Russell Kelly, Legislative Liaison, Governor’s Office  
Michael Ford, Legislative Liaison, Dept. of Law  
Deborah Behr, Dept. of Law

## 7. FINANCIAL DISCLOSURE

### Overview

The role of money in the initiative process has grown dramatically during the past decade. Although large contributions to initiative campaigns are not new and date to the turn of the last century, they are even larger and more common today than ever before. The I&R Institute reported in 1998 that issue committees nationwide spent almost \$400 million to support and oppose ballot measures. California led the way in 1998. According to the secretary of state, California committees spent just under \$193 million to support and oppose the 12 general election ballot measures. Combined spending for 214 statewide and legislative candidates in the 1998 general election totaled just under \$136 million for the general election, or about 70 percent of the spending on ballot measures.

Even more concerning than the extraordinary amounts of money raised and spent in initiative campaigns is the fact that such large sums of money come from so few sources. Large contributions overwhelmingly dominate initiative campaigns, and small, grassroots contributions make up a small percentage of the total money spent. Of course, whether that is a problem in and of itself is debatable; nevertheless, voters deserve to know who is funding initiative campaigns. If a measure qualifies for the ballot because one or two wealthy individuals or corporations underwrote the costs, voters should be able to consider that fact as they decide how to vote on the measure.

Unlike candidate campaigns in most states, in which contributions are limited, it is not uncommon for large contributions from a small handful of contributors to fund an initiative, from the drafting and signature-gathering phases through the campaign. A series of U.S. Supreme Court rulings, *Buckley v. Valeo*, 424 U.S. 1 (1976), *National Bank of Boston v. Bellotti*, 435 U.S. 1 (1978), and *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290 (1981) have clearly established the Court's view that limiting contributions and expenditures in initiative campaigns is an impermissible violation of First Amendment rights. The rationale behind the Court's rulings is that, although it is possible that a candidate could be corrupted by large contributions, it is impossible to corrupt an issue.

### Recommendations

**Recommendation 7.1:** States should require financial disclosure by any individual or organization that spends or collects money over a threshold amount for or against a ballot measure.

**Recommendation 7.2:** After a title has been certified for an initiative measure, states should require that proponents and opponents of the initiative measure file a statement of organization as a ballot measure committee prior to accepting contributions or making expenditures.

**Recommendation 7.3:** States should make the disclosure requirements for initiative campaigns consistent with the disclosure requirements for candidate campaigns.

**Recommendation 7.4:** States should prohibit the use of public funds or resources to support or oppose an initiative measure. This should not preclude elected public officials from making statements advocating their position on an initiative measure.

In spite of the Court's reluctance to limit money in initiative campaigns, voters have consistently supported the idea. About half the states have at some time in their history attempted to limit spending in initiative campaigns, and voters have supported spending restrictions on initiative campaigns in at least two states—California and Alaska. Such limits have failed to stand up to judicial scrutiny, however.

### *Initiative Financial Disclosure Requirements*

With contribution and expenditure limits out of the question, states are left with only one avenue of regulating money in initiative campaigns: disclosure. States have a responsibility to ensure that voters receive high-quality, transparent information about the sponsorship and financial support of initiative proponents and opponents. Such information not only minimizes abuse and manipulation of the initiative process, but also provides voters with key tools necessary for deciphering the sometimes veiled motives of initiative proponents. Voters cannot make a fully informed decision without campaign finance information about initiatives.

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The following commissions, individuals and organizations have recommended increasing disclosure requirements for initiative supporters and opponents:

- Speaker's Commission on the California Initiative Process (2002)
- David Broder, *Washington Post* (in testimony before the task force on Dec. 7, 2001)
- California League of Women Voters (1999)
- City Club of Portland, Oregon (1996)
- Citizens' Commission on Ballot Initiatives (California, 1994)
- Sacramento Bee* (1994) and
- Los Angeles Times* (1990)

States use disclosure requirements in various phases of the initiative campaign. In some states, sponsors must disclose the amount of money they pay to petition circulators. In most states, initiative campaign committees are required to disclose their contributions and expenditures. They also are often required to disclose the names of contributors who give more than a threshold amount. A few states also require that initiative committees

identify out-of-state contributors, and at least 11 states require reporting by people or groups that make independent expenditures in support of or opposition to an initiative. Presently, no state requires that expenditures be reported for pre-certification activities, such as polling and drafting.

Every initiative state requires some degree of disclosure of contributions and expenditures by initiative campaigns; states vary in the degree of detail required in such reports and the frequency of reporting. In many states, the information is posted for the public on a Web site (usually the secretary of state's).

### *Effectiveness of Initiative Campaign Spending*

Recent scholarly research suggests that high-spending campaigns often are no more successful in passing an initiative than are low-spending campaigns. Money is instrumental in changing voter opinion, however, when it is spent in opposition to a measure. Research suggests that high spending by opponents can be effective in defeating initiatives by creating a climate of confusion and uncertainty, under which most voters vote "no."

### **Recent Legislative Action**

There has been significant legislative activity in the area of initiative campaign finance reform, as states scramble to equalize the disclosure requirements for initiative campaigns with those imposed on candidate campaigns. During the period of 1999 through 2002, legislatures in 15 states considered 34 bills addressing the issue of money in initiative campaigns. Highlights include the following.

- In 2001, **Arizona** passed HB 2389, requiring that committees that support or oppose ballot measures register before distributing campaign literature or running advertisements, that literature and ads disclose the political committee that funds them, and that ballot measure committees report contributions of \$10,000 or more within 24 hours of receiving them.
- **Montana** passed HB 468 in 1999, requiring the people who employ paid signature gatherers to file financial disclosure reports. The report must include the amount they pay to each signature gatherer. **Utah** also passed a similar measure in 1999.
- In 2001, **North Dakota** passed a pair of bills that tightened financial disclosure requirements for petition sponsors and extended the requirements for last minute contributions to initiative campaigns to include contributions from political parties to initiative campaigns.
- **Oregon** passed a bill in 2001 that added a new report requirement prior to the May primary, and up to two additional reports if aggregate contributions or expenditures exceed \$2,000. Under prior law, proponents had to file just one report two weeks after the July deadline for turning in signatures.
- A 1999 bill passed in **Arkansas** requires that the use of state funds to support or oppose a ballot measure be reported to the Legislative Council if the expenditure exceeds \$100.

- A bill pending in **Massachusetts** would test the U.S. Supreme Court's ruling that prohibited limiting contributions to initiative campaigns. HB 3862 proposes limiting to \$100 contributions made for the promotion or defeat of ballot questions.
- A bill passed in 2002 in **Arizona** voids any signatures gathered before the proponents filed a statement of organization. It also requires that committees include their name, the serial number for the petition, and their support or opposition of a measure in their statement of organization. The bill is SB 1285.
- A failed bill in **Oklahoma** would have swept initiative campaigns into the existing campaign finance disclosure requirements by changing the definitions of "contribution" and "expenditure" to include any communication that clearly advocates the passage or defeat of a ballot measure.

# LEGISLATIVE RESEARCH REPORT

DECEMBER 3, 2007



REPORT NUMBER 08.056

## DISCLOSURE REQUIREMENTS FOR INITIATIVE CAMPAIGNS IN ALASKA, CALIFORNIA, AND WASHINGTON

PREPARED FOR REPRESENTATIVE KYLE JOHANSEN

BY DANIEL LESH, LEGISLATIVE ANALYST

You asked for a side-by-side comparison of the disclosure requirements for initiative campaigns in Alaska, California, and Washington. We summarize these requirements in Table 1 and attach each state's relevant statutes.

As you may know, the Ballot Initiative Strategy Center (BISC) conducted an extensive review of states' financial disclosure requirements in relation to initiatives.<sup>1</sup> This report applied a grading system to state laws based on fifteen different disclosure variables. Just two states—California and Washington—received "A" grades; Alaska received a grade of "C."<sup>2</sup> The BISC identified Alaska's continuing challenges and weaknesses as follows:

1. Accessing the donor data is tedious, requiring many mouse clicks over many separate pages to access the desired data.
2. There is no permanent electronic feature or search option for linking ballot committees to their respective issue (although committee summary data and third party expenditures are organized by issue).
3. There are no electronic sorting options.
4. Ballot committees are not separated from other political committees (although the Alaska Public Offices Commission maintains a separate list of ballot committees from 2000)

We include, as Attachment A, the BISC report, "The Campaign Finance Reform Blind Spot." Jennie Bowser, the principal of the initiative, referendum, and recall program at the National Conference of State Legislatures, suggested the BISC as a quality source for our report. More information on the BISC is available on its website at <http://www.ballot.org>. Ms. Bowser can be reached at (303) 556-1356.

For the 24 states with an initiative process, the BISC gave 2 A's, 2 B's, 4 C's, and 11 F's. Four states received an incomplete, for not presenting ballot initiative donor data online. The BISC did not report a grade for one state.

5. Although Political Action Committees (PACs) involved in ballot campaigns are labeled as "Ballot Measure Groups," PACs are also involved in candidate campaigns.
6. Contributions over \$250 made in the last nine days of the cycle must be reported within 24 hours, but that data is not disclosed online until after the election.
7. Committees can "disband" and rename to avoid reporting signature gathering phase contributions.
8. The electronic filing program is optional; most committees do not participate.
9. There is a large gap in the filing schedule, from February 15 to 30 days prior to the election.

As noted by the BISC, "many of the disclosure problems highlighted in this report would be ameliorated, if not eliminated, if states adopted mandatory electronic filing." Both Washington and California, to which we compare Alaska in Table 1, require groups that oppose or support a ballot measure to file disclosures electronically when contributions or expenditures reach a certain threshold.

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#### ONLINE PRESENTATION OF DISCLOSURE DATA

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Washington and California also received high marks from the BISC for their presentation of disclosure data, while Alaska did not. Although all three states provide extensive data online, the websites for Washington and California are much better organized to facilitate meaningful interpretation of these data. For instance, those states' websites allow users to search for disclosure data by ballot measure to quickly locate all committees accepting contributions or making expenditures to influence a specific ballot measure. In Alaska, this type of search is not possible. Below, we provide selected statutes from Alaska, Washington, and California related to campaign disclosure data presentation—an area in which the BISC focused many of its critiques regarding the state of ballot measure finance disclosure in Alaska.

**Alaska:** AS § 15.13.040(o):

Information required by this chapter that is submitted to the commission on paper and not electronically shall be electronically scanned and published on the Internet by the commission, in a format accessible to the general public, within two working days after the commission receives the information.

**Washington:**<sup>3</sup> Wash. Rev. Code § 42.17.460(1):

It is the intent of the legislature to ensure that the commission provide the general public timely access to all contribution and expenditure reports submitted by candidates, continuing political committees, bona fide political parties,

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The Washington statutes detailing how disclosure data shall be presented to the public are extensive, including both general legislative intent language as well as specific provisions regarding access goals, access performance measures, and an information technology plan. We include Washington's disclosure data presentation statutes as Attachment B.