

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 SJUD 12582

Representative Lindsey Holmes

March 21, 2007

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This means that if the amendment proposed in sec. 16 becomes law, a legislator-lawyer, or any other person who is a legislator or a legislative employee, would be prohibited from doing just about anything for a client in a state matter<sup>1</sup> unless or until the matter is before the judicial branch. For example, the legislator or legislative employee would be prohibited from offering any paid assistance to someone in a child support enforcement matter until it has gone from the initial investigation through the final decision of an administrative hearing officer and is on appeal in the court. I think a legislator or legislative employee would still be allowed to be an unpaid witness before the case gets to court, but the person would not be able to do much else, including offer private advice to another person, if the person receives compensation.<sup>2</sup>

Obviously the language goes beyond application only to legislators or legislative employees who are lawyers. Would it prohibit a legislator who is a building contractor, for example, from obtaining a municipal building permit for a customer? I think it might. I am not as certain, and perhaps it is just a question of how the Ethics Committee interprets the meaning of the language in the future, about whether sec. 16 would apply to a legislator or legislative employee who is, for example, a retail worker involved in a retail business's application for a state or municipal license, an accountant involved in preparing her employer's state or municipal compliance documents (i.e., tax forms, etc.), or a restaurant manager communicating with a DEC inspector about compliance issues. I think that many employees can think of at least one instance where they might be involved in "representing" their regular employer, and I don't know if a showing that the representation is simply part of the person's regular employee duties for which the person is already compensated would be enough to exempt the person from the prohibition in sec. 16.

If I may be of further assistance, please advise.

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<sup>1</sup> In my opinion it would be an unreasonable stretch to interpret the statute as applicable to federal legislative and executive branches.

<sup>2</sup> According to the applicable definition in AS 24.60.990(4):

"compensation" means remuneration for personal services rendered, including salary, fees, commissions, bonuses, and similar payments, but does not include reimbursement for actual expenses incurred by a person;

## Westlaw.

AK ST § 24.60.990

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AS 24.60.990

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## ALASKA STATUTES

Title 24. Legislature.

Chapter 60. Standards of Conduct.

Article 5. Miscellaneous and General Provisions.

→Sec. 24.60.990 Definitions.

(a) In this chapter,

(1) "administrative action" means conduct related to the development, drafting, consideration, enactment, defeat, application, or interpretation of a rule, regulation, policy, or other action in a regulatory proceeding or a proceeding involving a license, permit, franchise, or entitlement for use;

(2) "anything of value," "benefit," or "thing of value" includes all matters, whether tangible or intangible, that could reasonably be considered to be a material advantage, of material worth, use, or service to the person to whom it is conferred; the terms are intended to be interpreted broadly and encompass all matters that the recipient might find sufficiently desirable to do something in exchange for; "anything of value," "benefit," or "thing of value" does not include

(A) an item listed in AS 24.60.080(c);

(B) campaign contributions, pledges, political endorsements, support in a political campaign, or a promise of endorsement or support;

(C) contributions to a cause or organization, including a charity, made in response to a direct solicitation from a legislator or a person acting at the legislator's direction; or

(D) grants under AS 37.05.316 to named recipients;

(3) "committee" means the Select Committee on Legislative Ethics and includes, when appropriate, the senate or house subcommittee;

(4) "compensation" means remuneration for personal services rendered, including salary, fees, commissions, bonuses, and similar payments, but does not include reimbursement for actual expenses incurred by a person;

(5) "domestic partner" means a person who is cohabiting with another person in a relationship that is like a marriage but that is not a legal marriage.

(6) "immediate family" means

(A) the spouse or domestic partner of the person; or

(B) a parent, child, including a stepchild and an adoptive child, and sibling of a person if the parent, child, or sibling resides with the person, is financially dependent on the person, or shares a substantial financial interest with the person;

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AS 24.60.990

(7) "income" means assets that are received, regardless of whether they are earned or unearned; inheritances and other gifts are not income;

(8) "knowingly" has the meaning given in AS 11.81.900;

(9) "legislative action" means conduct relating to the development, drafting, consideration, sponsorship, enactment or defeat, support or opposition, to or of a law, amendment, resolution, report, nomination, or other matter affected by legislative action or inaction;

(10) "legislative director" means the director of the legislative finance division, the legislative auditor, the director of the legislative research agency, the ombudsman, the victims' advocate, the executive director of the Legislative Affairs Agency, and the directors of the divisions within the Legislative Affairs Agency;

(11) "legislative employee" means a person, other than a legislator, who is compensated by the legislative branch in return for regular or substantial personal services, regardless of the person's pay level or technical status as a full-time or part-time employee, independent contractor, or consultant; it includes public members and staff of the committee; it does not include individuals who perform functions that are incidental to legislative functions, including security, messenger, maintenance, and print shop employees, and other employees designated by the committee;

(12) "lobbyist" means a person who is required to register under AS 24.45.041 and is described under AS 24.45.171, but does not include a volunteer lobbyist described in AS 24.45.161(a)(1) or a representational lobbyist as defined under regulations of the Alaska Public Offices Commission;

(13) "political action" means conduct in which public officials, including legislators or legislative employees, use their official position or political contacts to exercise influence on state and local government employees or entities; it includes but is not limited to endorsing and pledging support or actively supporting a legislative matter, a nominee, or a candidate for public office;

(14) "registered lobbyist" means a person who is required to register under AS 24.45.041;

(15) "representation" means action taken on behalf of another, whether for compensation or not, including but not limited to telephone calls and meetings and appearances at proceedings or meetings;

(16) "state office" includes the office of governor, lieutenant governor, member of the legislature, or similar state office.

(b) A person has a substantial interest in legislative, administrative, or political action if the person (1) is not a natural person and will be directly and substantially affected financially by a legislative, administrative, or political action; (2) is a natural person and will be directly and substantially affected financially by a legislative, administrative, or political action in a way that is greater than the effect on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry, or region; (3) has or seeks contracts in excess of \$10,000 annually for goods or services with the legislature or with an agency of the state; or (4) is a lobbyist. For the purpose of this subsection, the state, the federal government, and an agency, corporation, or other entity of or owned by the state or federal government do not have a substantial interest in legislative, administrative, or political action.

Current through all 2006 Legislation, Annotations current through Opinions Decided as of July 1, 2006.

# STATE OF ALASKA

DEPARTMENT OF LAW  
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February 26, 2007

The Honorable Bill Stoltze  
State House of Representatives  
State Capitol, Room 501  
Juneau, AK 99801

Re: Amendment of Laws Enacted by Initiative

Dear Representative Stoltze:

During a budget hearing on February 15, 2007, you requested that our office provide you with an analysis on two matters related to voter initiatives. You asked, first, for a summary of the case law on the legislature's authority to amend a law enacted by voter initiative within two years of enactment, and second, for a history of the legislature's amendments to initiatives during those first two years. The reason to examine the legislature's authority to change an initiated law during the first two years that the law is effective is the prohibition in the Alaska Constitution against the repeal of an initiative during those years. Alaska Const., art. XI, sec. 6. This limit on repeal has been interpreted to restrict the legislature's power to amend an initiated law during its first two years even though the Constitution expressly permits amendments to initiated laws at any time.

1. **Summary of the case law**

The Alaska Supreme Court has addressed the legislature's authority to amend an initiated law in three cases, although it has reviewed the actual exercise of this authority in only one case. The first case in which the Court discussed the subject is *Warren v. Boucher*, 543 P.2d. 731, 737 (Alaska 1975), a case reviewing the legislature's exercise of its authority to void an initiative petition by enacting substantially the same measure in legislation. Alaska Const. art. XI, sec. 4. The power to amend was described as "broad" and "a check or balance against the initiative process." 543 P.2d. at 737.

The Court speculated that the purpose of the power to amend was

\* { to assure that initiatives which were ill-advised, which might seriously cripple or frustrate the sound workings of government, or which might be impracticable, could be *altered or corrected* rapidly by the legislature. It was obviously intended by the framers that the initiative process should not be permitted to disrupt vital governmental functions or to impose intolerable burdens upon established administrative systems. [*Id.* (emphasis added).]

Two years later, in *Warren v. Thomas*, 568 P.2d 400, 402-03 (Alaska 1977), the Court considered a challenge to the legislature's amendment of laws adopted by initiative. The initiated laws concerned public official financial disclosure, and the legislature amended them soon after they became effective. The amendments moved the deadline for filing financial disclosure reports from February to April of 1975 and excused public officials leaving office from the obligation to file. Although the amended laws differed in many respects from the initiative measure, the Court found that the amendments did not amount to a repeal: "[t]here are considerable language changes, but, these clarify and render the law more precise. The fines for violations of the law have been reduced but the penalties are still significant," and "the amended law still imposes substantial disclosure requirements on public officials and effectuates the intent of the electorate that those in a position of public trust be held to a high standard of financial disclosure." *Id.* at 402. The changes were not found to so vitiate the regulatory scheme "as to 'constitute its repeal.'" *Id.* (quoting *Boucher*, 543 P.2d. at 737). Although it upheld the amendments under review in *Thomas*, the Court clearly viewed the prohibition against repeal as a limitation on the legislature's authority to amend an initiative. For an amendment to be authorized during the first two years of an initiative, it must continue to further the intent of the voters. \*

The third case in which the Court discussed the legislature's power to amend an initiative was *State v. Trust the People*, 113 P.3d 613, 623 (Alaska 2005). That case concerned the legislature's exercise of its power to supplant an initiative measure by passing a substantially similar law, rather than its power to amend after an initiative is enacted by the voters. Although the Court recognized that the power to supplant is somewhat narrower than the power to amend, the Court relied in part upon its earlier decision in *Thomas*. The Court characterized *Thomas* as holding that "amendments to popularly-initiated legislation must still 'effectuate the intent of the electorate,' and an amendment that 'so vitiates an act passed by initiative as to constitute its repeal' is not acceptable." *Id.* at 623 (quoting *Thomas*, 568 P.2d at 403).

In *Trust the People* the Court identified three factors relevant to determining whether a proposed initiative and legislation were substantially the same. Although this

3 prong test  
re: supplant

test was developed with regard to the power to supplant, rather than the somewhat broader power to amend, the test may also be helpful in determining whether proposed changes would continue to promote the same goals of the electorate in enacting the initiative. First, the scope of the subject matter is important: "The broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative," *Id.* at 620-21 (quoting *Boucher*, 543 P.2d. at 736), and conversely, "the simpler and more focused a law is, the fewer details that can be adjusted without effecting a fundamental change in the measure's purpose and effect." *Id.* at 621. Second, whether the general purpose of the amended initiative would be the same as the original is important. Clues to the purpose of the initiative can be found in the text of the initiative measure, the ballot summary for the measure, and the arguments published in connection with it, such as the supporters' statement in the voter's pamphlet. *Id.* at 622. Third, the Court examines whether the initiative and proposed legislation employ the same means to accomplish its purpose. The means can be similar, rather than identical, so long as they truly accomplish the goals of the initiative measure. *Id.*

In *Trust the People*, the Court applied the test to determine whether a proposed initiative restricting the governor's power to appoint a temporary United States Senator should be supplanted by legislation retaining that authority temporarily until the results of a special election to fill the vacancy could be certified. The Court found that the scope of the initiative was narrow, filling a vacancy, and that its purpose, to eliminate the governor's appointment power, was significantly different from the purpose of the legislation, which provided for the governor to retain this authority. In addition, the means chosen to fill the vacancy, particularly with regard to the role of the governor, were dissimilar. The Court concluded that the proposed initiative and the legislation were not substantially the same and held that the legislation did not supplant the proposed initiative.

## 2. History of legislative amendments during the first two years of an initiative measure's enactment

Our research discovered few amendments to initiated laws during the first two years of their enactment. We found two, in addition to the 1974 public official financial disclosure initiative enacted in 1974 and examined in *Thomas*, 568 P.2d 400, that was discussed previously. The legislature adopted a number of amendments to a 1998 initiative on the medical use of marijuana. A copy of 1999 Inf. Or. Att'y Gen. (May 24; 883-99-0037) (providing an analysis of the bill amending the initiated law) is attached for your information.

The legislature also amended the gas line initiative enacted in 2000 by changing the definition of "project." An analysis of that bill is also attached. In addition, various

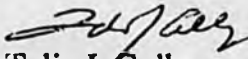
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"housekeeping" amendments to sections enacted by the gas line initiative were made by the 2003 "revisor's bill." CSSB49(STA) (secs. 54, 55, 56, 57 & 58, ch. 35, SLA 2003). These amendments are by definition minor and corrective and do not change the meaning of any law. AS 01.05.031.

If you have additional questions or further assistance is required, please do not hesitate to contact me.

Sincerely,

  
Talis J. Colberg  
Attorney General

Enclosures

cc w/enc: John Bitney, Legislative Liaison, Office of the Governor  
AAG D. Behr, Legislation & Regulations, Acting Legislative Liaison,  
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# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

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May 24, 1999

The Honorable Tony Knowles  
Governor  
P. O. Box 110001  
Juneau, AK 99811-0001

Re: HCS CSSSSB 94(FIN) -- Relating to the  
Medical Use of Marijuana  
A.G. file no: 883-99-0037

Dear Governor Knowles:

At the request of your legislative director, Pat Pourchot, we have reviewed HCS CSSSSB 94(FIN), relating to the medical use of marijuana.

The medical marijuana law enacted by voter initiative in the 1998 general election contained ambiguous language, and as a result contained a large number of provisions that make the law difficult to administer, difficult to enforce, and difficult to interpret. These problems could not have been envisioned by the voters.

The goal of this Administration was to fix the problems in the voter initiative in order to make the law work, that is, to give effect to the intent of the voters to allow marijuana to be used to address debilitating medical conditions under appropriate controls.

In assessing HCS CSSSSB 94(FIN) (hereafter referred to as SB 94), it is helpful to bear in mind that the legislature heard a great deal of testimony about the potency and profitability of marijuana. In addition to consistent police testimony that marijuana grown in Alaska is among the most potent grown anywhere in the world, the legislature took testimony from medical marijuana users. In particular, the House Judiciary Committee heard very compelling testimony from a user who described how, in the last few months, he was able to stop using prescription narcotic pain medications by substituting marijuana. This individual testified that he had been taking an amount of narcotics that would likely kill an ordinary person who had not built up a level of tolerance to the drugs. He also indicated that marijuana of this quality sells for \$500-600 per ounce, which was supported by police testimony that Alaska-grown marijuana often sells for \$4,000-5,000 per pound, or more. Thus the testimony showed that marijuana is a powerful drug capable of producing similar pain-killing effects as narcotics, and creating an enormous profit potential, all of which supported the

legislature's desire that medical use of marijuana remain under appropriate controls and not be subject to abuse.

### Legal Standard

Under art. XI, sec. 6. of the Alaska Constitution, a voter initiative cannot be repealed for two years, but may be amended at any time. Alaska case law holds that the legislature has broad authority to "substitute its judgment for that of the proponents of an initiative." *Warren v. Boucher*, 543 P.2d 731, 737 (Alaska 1975). There seems to be a sliding scale analysis, such that "[t]he broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative." Medical use of marijuana is a fairly narrow topic, so we should assume for purposes of this analysis that a court will look more closely at any amendments than they would if the subject matter were broader. Nevertheless, the legislature can amend an initiative if the amendments "preserve its basic structure and purpose . . ." *Warren v. Thomas*, 568 P.2d 400, 404 (Alaska 1977). As discussed more fully below, we believe that the amendments to the initiative made by this bill are valid because a court will find that they are certainly much more than a "hollow gesture" toward medical use of marijuana. 543 P.2d at 739.

Moreover, much of the original initiative still remains. For example, the proponents of the initiative specifically did not require a prescription by the physician, so as to avoid what they characterized as the practice in other states in which the federal authorities threatened action against doctors writing such prescriptions. SB 94 retains this provision and requires only that the physician consider other approved medications and treatments. By not requiring a formal prescription, SB 94 avoids an argument that the amendment is simply a "subterfuge to frustrate the ability of the public to obtain consideration and enactment" of a law allowing use marijuana for medical purposes. *Id.*

### Main Changes made to the Initiative

The Department of Health and Social Services, Department of Public Safety, and Department of Law identified several changes needed to make the medical marijuana law work, and SB 94 addressed most of these issues. The issues that were important to this Administration were:

- ▶ Recognize that marijuana, like other prescription drugs, should be a controlled substance, regardless of how it is used.
- ▶ Prohibit patients from selling or distributing marijuana.
- ▶ Limit the number of patients who can be supplied marijuana by the same person.
- ▶ Require mandatory registration with the Department of Health and Social Services.

- ▶ Limit possession to one ounce and six plants.
- ▶ Allow police to take action in medical marijuana cases just as with misuse of a prescription for a narcotic drug, and make the legal burden of proof for medical marijuana consistent with that applied to other drugs.
- ▶ Allow access to the registry in criminal investigations.

Each of these points is discussed below and analyzed in terms of the legal standard set out above.

Marijuana Should Be a Controlled Substance, Regardless of How It Is Used. The medical marijuana initiative provides that marijuana used for medical purposes is not a "controlled substance." AS 11.71.190(b). This seemingly insignificant change has serious legal consequences because many other state laws depend on the phrase "controlled substance." For example, it is a crime to possess a firearm while under the influence of alcohol or a controlled substance. AS 11.61.210(a)(1). Thus, because medical marijuana is no longer a "controlled substance," a patient intoxicated on marijuana could lawfully possess and use a firearm. Although the laws relating to driving while intoxicated use a different definition of controlled substance, and thus we believe that a patient can be convicted for driving after using marijuana, an attorney for the legislature has written an opinion that suggests that it is possible a court would not allow prosecution or conviction for driving while intoxicated.

By continuing to treat marijuana as a "controlled substance," SB 94 takes into consideration the potential for abuse of the drug, while at the same time allowing it to be used to address debilitating conditions. This change does not repeal the initiative.

Prohibit Patients from Selling or Distributing Marijuana. The medical marijuana initiative contains an oddly worded provision that would allow registered patients to sell or give marijuana to anyone else, as long as the registered patient did not know that the buyer was not eligible to be registered. AS 17.37.040(a)(3). The legislature heard testimony that this could lead to the problem encountered in California, where retail outlets, euphemistically called "marijuana clubs," sprung up after the medical marijuana initiative was enacted in that state.

There was legislative testimony that the price of marijuana in California clubs ranged from \$20 to \$120 for one-eighth of an ounce, thus offering a product selling for nearly \$1,000 per ounce. One large marijuana club in San Francisco had profits of \$1 million per month before it was shut down. Although California authorities were able to close that business, it appears that the Alaska medical marijuana initiative would allow selling by patients.

SB 94 takes into consideration the potential for abuse of the drug and making a profit on its use, while at the same time allowing it to be used to address debilitating conditions. This change does not repeal the initiative.

Limit the Number of Patients Who Can Be Supplied Marijuana by the Same Person.

The initiative is silent as to the number of patients who can be supplied marijuana by a single caregiver. If one person is allowed to supply marijuana to multiple patients, at least two problems are created. First, the designated caregiver would be allowed to possess one ounce plus six plants for each patient, thus allowing large growing operations, and the caregiver could transport and distribute multiple ounces of marijuana. Second, the caregiver would almost certainly have a large profit-making incentive and could easily take advantage of patients, as was done in the California marijuana club selling marijuana for triple the price of gold. SB 94 also prohibits convicted felony drug offenders from being caregivers and raises the minimum age for caregivers to 21, which is consistent with laws relating to possession of alcohol.

SB 94 also changed the definition of "primary caregiver," so as to give patients a broader choice of persons to assist them in obtaining marijuana. Moreover, the bill also eases a restriction in the initiative by allowing each patient to have a primary caregiver, as well as an alternate caregiver who can take the place of the primary caregiver in that person's absence. Thus, while SB 94 imposes some different requirements on caregivers in light of the potential for abusing the drug and making a profit on its use, at the same time the bill allows patients additional flexibility to designate "caregivers."

The changes to the laws on caregivers do not repeal the initiative.

Mandatory Registration. The marijuana initiative allows patients to register with the Department of Health and Social Services, but does not require it. From a quick reading of the initiative, it is not immediately apparent that persons are allowed to use marijuana for medical purposes even if they have not registered with the Department of Health of Social Services. Yet a careful legal review discloses that this is the result. AS 17.37.030(a).

The optional registration was described in testimony by many police administrators as a serious practical problem for the police. If a person tells a police officer that he or she is possessing marijuana for medical purposes, but is not registered, the officer has two choices, neither of which is acceptable: the officer can seize the marijuana and arrest the person, thus possibly depriving someone of a substance the person legitimately needs for medical care, or the officer can let the person go on his or her way, thus in essence overlooking a criminal act if the person cannot legally use the substance.

The prime sponsor of the initiative testified that some persons with debilitating conditions may choose not to register because they believe it is a violation of their privacy. However,

those fears should be allayed because the application process for registration does not require the patient to disclose the nature or symptoms of their condition. Moreover, the police will not have access to the registry for general investigative purposes and will be allowed access only to confirm that a person who claims to be registered is in fact registered. Mandatory registration is a protection for patients, because the police will be able to determine immediately that they can lawfully use marijuana for medical purposes.

Mandatory registration also cures unintended problems that arise because the initiative treats registered users differently from unregistered users in several ways. One of the examples of this different treatment is that registered patients cannot use marijuana in public. AS 17.37.040(a)(2). Yet there is no similar restriction for unregistered users. Unregistered persons who uses marijuana in public can therefore do so freely, as long as they can show they have a medical need to use marijuana. This difference in treatment is hard to justify, and thus a registered patient is likely to be able to convince a court that it is a denial of equal protection of the laws, and a restriction on their right to use marijuana, that a registered patient is prohibited from doing in public what an unregistered person can do. Without mandatory registration, the initiative would allow marijuana to be openly used in public, which could lead to a backlash against the law.

Even though SB 94 requires registration for all marijuana users, whereas the initiative makes registration optional, we do not believe this change can be characterized as a repeal of the initiative as lawful medical use of marijuana is still permitted under the bill.

Limit Possession to One Ounce and Six Plants. SB 94 limits patients to possessing one ounce plus six plants of marijuana. The one-ounce-plus-six-plants limit is contained in the original ballot initiative that enacted the medical marijuana provisions, and thus is current Alaska law. AS 17.37.020(a). As such, it is presumptively valid. Because SB 94 adopts that same limit, it would also be presumed to be valid by the courts.

The ballot proposition goes on to provide, however, that patients can possess more than one ounce and six plants if they can prove by a preponderance of the evidence that a greater amount is "medically justified." AS 17.37.020(b). SB 94 does not adopt this exception.

Although the prime sponsor of the ballot initiative testified that some patients want to have more than one ounce plus six plants, there was no testimony before any committee that explained why that is so from a medical perspective. One medical marijuana user who testified in House Judiciary Committee did not register any objection to the one-ounce-plus-six-plants limit. Indeed, there was evidence presented that this is a large amount of marijuana for personal use for medical purposes.

There was testimony in committee hearings that the *average* mature marijuana plant seized by the Alaska State Troopers in 1998 provided four ounces of dried and usable marijuana, that

is, the dried leaves, buds and seeds, with roots and stalks removed. There was also testimony in the House HESS Committee from a Fairbanks police officer who participated in the investigation of one of the largest marijuana growing operations, where plants tended by a skilled grower were up to 10 feet tall and yielded up to two pounds of marijuana each.

The three mature marijuana plants allowed by SB 94 provide an average of 12 ounces of usable marijuana. The committee testimony showed that the three other plants provide an average of three more ounces, for a total of 15 ounces of usable marijuana in plant form. Thus the testimony establishes that one ounce plus six plants, on average, yields one pound of usable marijuana.

The House Judiciary Committee heard testimony from a user of marijuana for medical purposes, who indicated that his medical needs required one ounce of marijuana every 10 days. The House HESS Committee heard testimony from a federal official who indicated that each marijuana cigarette uses about one-half gram of marijuana, thus yielding 56 cigarettes per ounce. The federal official's testimony assumed a duration of effectiveness lasting only two hours per cigarette, which means a person would need eight cigarettes per day to stay under the influence of marijuana for 16 hours, or essentially all their waking hours. Even at this unrealistically high rate of consumption of low-grade marijuana, one ounce would last a week for a heavy user of marijuana for medical purposes.

The testimony before the legislature thus shows that a patient with one ounce plus six plants has, on average, access to 16 ounces of marijuana, which provides a constantly regenerating 16-week supply, even if they use it at a rate that keeps them intoxicated all the time. There was no evidence, and no testimony, that this amount is not adequate for patients for medical purposes.

The portion of the ballot initiative that allows more marijuana if the patient proves it is "medically justified" raises two primary issues. The first issue is the practical difficulty created for police officers if every patient is allowed to possess a different amount of marijuana, depending upon what the patient can later show in court. Testimony by police officials showed that the best approach for both police officers and patients is a clear "bright line" rule that establishes a set amount that can be possessed. This was a matter of policy for the legislature to consider.

The second issue revolves around the "medical justification" that would authorize more than one ounce plus six plants. While this can be characterized as a question of medical care, it appears that this, too, was a policy matter for the legislature.

In terms of actual *medical* justification, a patient needs only enough marijuana for his or her immediate use. Anything more than that is not a matter of medical *need*, but a matter of convenience for the patient or the patient's caregivers.

It may very well be the case that possessing four ounces of usable marijuana, or eight ounces, or possessing 12 plants or 24 plants is more convenient for the patient than one ounce plus six plants. But there was no testimony in any committee that there is any possible *medical* justification for greater amounts than one ounce plus six plants. The issue for the legislature, then, was whether the increase in convenience outweighs the risks in allowing greater amounts of marijuana to be freely possessed, grown, and transported by patients and caregivers. Whether to allow more marijuana than one ounce plus six plants therefore appears to be a pure policy question for the legislature, rather than a medical one.

Given the testimony before the legislature about the potency and profitability associated with marijuana, we believe that a court would find that the one-ounce-plus-six-plants limit in SB 94, with no provision for possession of greater amounts, is a proper exercise of the legislature's authority to amend the medical marijuana law.

Allow Police to Take Action in Medical Marijuana Cases Just As with Misuse of a Prescription for a Narcotic Drug, and Make the Legal Burden of Proof for Medical Marijuana Consistent with That Applied to Other Drugs. The medical marijuana initiative gave registered patients immunity from arrest, prosecution, and conviction for any offense related to medical use of marijuana, even if the patient possessed more than the legal limit of marijuana. AS 17.37.030(b). Even if the state had evidence that the person possessed a large amount of marijuana, police and prosecutors could take no action. Although the prime sponsor of the initiative has indicated that this was not the intent of the initiative, it is certainly the plain meaning of the initiative. SB 94 removes this provision, and thus allows the police to make arrests just as they would with any other misused prescription drug: if it a felony offense, they can arrest if there is probable cause to believe that a crime has been committed, and if it is a misdemeanor offense the offense must also have been committed in the officer's presence. SB 94 also removes similar restrictions on the authority of police to seize and forfeit evidence, thus allowing general Alaska law to control those actions.

SB 94 brings the medical marijuana law into conformity with other laws that make it an "affirmative defense" if a person seeks to rely on a statutory exemption to otherwise illegal conduct. For example, the concealed handgun law requires the registered person to prove he or she is registered and that the carrying of the handgun conformed to the law. More directly to the point, however, Alaska law for many years has required that users and dispensers of controlled substances have the burden of proving by a preponderance of the evidence that they are entitled to any exemption or exception in the controlled substances laws. AS 11.71.350. Thus SB 94 puts medical users of marijuana in exactly the same position as users of prescription drugs.

Given that this allocation of burden of proof does not appear to unduly restrict access to prescription drugs, it is not a repeal of the marijuana initiative. Similarly, it is not a repeal to remove the practical impediments to police officers, by allowing them to use general laws relating to arrests and forfeiture actions, just as they can with any other prescription drug.

Allow Access to the Registry in Criminal Investigations. This Administration favored a provision allowing police access to the registry in the course of a criminal investigation. SB 94, however, retains the language in the initiative that allows access only if a person claims to be a registered patient or caregiver. We believe that this level of confidentiality will interfere with some police investigations, and make police investigative efforts more difficult. The Administration may wish to consider requesting amendments in the future if this proves to be unworkable or not in the state's best interest.

Other Changes. SB 94 changes the medical standard for a physician to recommend marijuana to a patient, by requiring the doctor to consider other approved medications and treatments. With new pain killers coming on the market all the time, as well as the availability of new nausea medications and FDA-approved synthetic THC (delta-9-tetrahydrocannabinol, the active ingredient in marijuana), it would seem to be sound medical practice to consider these other approved alternatives before advising a patient to use an unregulated substance of unknown purity and potency.

Although SB 94 does change the medical standard, by requiring doctors to consider other approved medications before recommending marijuana, this is certainly a much more flexible standard than expressed in a recent report by the Institute of Medicine of the National Academy of Sciences, and it does not constitute a repeal. The sponsor of SB 94 circulated information to legislative committees about the report, which stated that, given the health risks associated with smoked marijuana, short-term use of marijuana by certain patients was justified only if the "failure of all approved medication to provide relief has been documented." *Marijuana & Medicine: Assessing the Science Base* (Recommendation 6), National Academy Press, Washington, D.C., 1999.

A long-time Alaska physician testified in the House HESS Committee and stated that in his experience almost all requests for marijuana for medical purposes come not from patients with terminal illnesses, but from patients with chronic conditions who will be using marijuana indefinitely. The physician testified that research showed marijuana has seven times the amount of tar and other potentially cancer-causing substances as cigarettes and that there was therefore the potential (although specific research had not been done) that marijuana presented seven times the cancer risk of cigarettes. Thus the legislature certainly had an adequate record upon which to make a change in the standard to be applied by physicians, and the change in the medical standard does not repeal the initiative.

In addition to tightening up the medical marijuana law, SB 94 relaxed some requirements of the initiative. First, it allowed marijuana to be transported by patients and caregivers. The marijuana initiative defined medical use of marijuana to include transportation of marijuana. The initiative went on to say that registered patients could not "engage in medical use of marijuana" in public. This meant that marijuana could not be transported. Although this provision might have been struck down as unconstitutional (as discussed above), the law might very well have imposed a practical burden on patients and caregivers. Second, as discussed above, although SB 94 limits each

caregiver to supplying marijuana to only one patient (except in unusual circumstances), the bill also eases restriction in the initiative by allowing each patient to have a broader range of persons from which to choose caregivers and to designate a primary caregiver as well as an alternate caregiver who can take the place of the primary caregiver in that person's absence. These relaxed requirements also do not repeal the initiative.

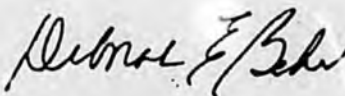
In conclusion, in our opinion the changes to the initiative do not violate the constitution, either singly or in their totality, because they do not constitute a repeal of the initiative. Instead, the amendments appear to be a proper exercise of the legislature's broad authority to "substitute its judgment for that of the proponents of an initiative." *Warren v. Boucher*, 543 P.2d 731, 737 (Alaska 1975). The amendments to the initiative, though numerous, still "preserve its basic structure and purpose . . . ." *Warren v. Thomas*, 568 P.2d 400, 404 (Alaska 1977).

SB 94 has an immediate effective date if it is enacted into law.

#### Conclusion

The bill addresses legal concerns raised by law enforcement and the Department of Health and Social Services.

Sincerely,

  
for Bruce M. Botelho  
Attorney General

BMB:DJG:jf

# STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 465-2075

May 19, 2004

The Honorable Frank H. Murkowski  
Governor  
State of Alaska  
P.O. Box 110001  
Juneau, Alaska 99811-0001

Re: HB 417 -- amending the definition of  
"project" in the act establishing the  
Alaska Natural Gas Development  
Authority  
Our File: 883-04-0044

Dear Governor Murkowski:

At the request of your legislative director, we have reviewed HB 417, which expands the definition of "project" in the act establishing the Alaska Gas Development Authority ("ANGDA") to include a possible gas pipeline terminus at tidewater at a point on Cook Inlet. Before this addition, the definition of "project" included only a terminus at tidewater at a point on Prince William Sound and a spur line from Glennallen to the Southcentral gas distribution grid. This bill has an immediate effective date under AS 01.10.070(c) so, if you sign the bill into law, it would become effective at 12:01 a.m. Alaska Standard Time on the day after you took that action.

The Alaska Natural Gas Development Authority is a public corporation housed in the Department of Revenue. ANGDA was created by public initiative when voters passed Proposition 3 during the November 5, 2002 election. The establishing legislation is codified at AS 41.41.010 - AS 41.41.990. This bill amends the definition of project in AS 41.41.990(3) to read:

(3) "project" means the gas transmission pipeline, together with all related property and facilities, to extend from the Prudhoe Bay area on the North Slope of Alaska either to tidewater at a point on Prince William Sound and the spur line from Glennallen to the South Central gas distribution grid or to tidewater at a point on Cook Inlet and includes

Hon. Frank H. Murkowski, Governor  
Our file: 883-04-0044

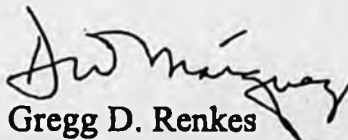
May 19, 2004  
Page 2

planning, design, and construction of the pipeline and facilities as described in AS 41.41.010(a)(1)-(5). [Language in bold added by this bill.]

The Alaska Constitution art. XI, sec. 1 provides that the people may propose and enact laws by initiative. Although an initiated law may not be repealed by the legislature within two years of its effective date, Alaska Const. art. XI, sec. 7 provides that an initiated law may be amended at any time. The Alaska Supreme Court has stated that the legislature has broad authority to vary the terms of an initiated law after its adoption. *See Warren v. Boucher*, 543 P.2d 731, 737 (Alaska 1975). The addition of a new project for ANGDA to consider is a proper exercise of that broad authority and does not constitute a repeal of the initiated legislation.

In summary, we see no legal or constitutional problems presented by this bill.

Sincerely,

  
for Gregg D. Renkes  
Attorney General

GDR:LHH:tag

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## MEMORANDUM

March 6, 2007

**SUBJECT:** Comments by Drafter regarding CSHB 109(STA)  
(Work Order No. 25-GH1059\O)

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

**FROM:** Dan Wayne   
Legislative Counsel

Attached is the above-referenced bill draft for your review. In particular please note the following:

1. On page 28, line 10, I removed sec. 2 from the list of sections that would become effective July 1, 2007. In drafting the amendment that eventually was adopted and became sec. 2, I was permitted to discuss it with your staff, Representative Gruenberg's staff, and David Jones of the Department of Law. In those discussions I think it was generally understood that the effective date of the section, except as specifically noted otherwise in the language of the section itself, would be the same as the general effective date of the bill. Therefore, instead of giving a specific May 1, 2007, effective date for persons campaigning for or against a ballot proposition or initiative, as in the previous draft adopted by the committee (which was later rescinded for other reasons), I was able to accomplish the same thing but in leaner and simpler language. By removing sec. 2 from the list of sections that become effective July 1, 2007, sec. 2 becomes effective at the time as I believe the committee intended.

2. Regarding the section amending AS 39.52.180(d) (page 26, lines 19 - 28), I modified the language of oral amendment 35 (by Representative Bob Roses) to conform with drafting requirements. I conformed the language of new subsection 39.52.180(e) (page 26, line 29, through page 27, line 7) and corresponding applicability sections as well, by adding the amended language.

3. The next committee of referral may want to consider two changes to sec. 20 of the bill, to better define the term "caucus" in AS 24.60.130(p). I recommend adding the word "organizational" following the word majority on page 15, lines 24, 27, and 31, the word minority, on page 15, line 28, and page 16, lines 2 and 3. With that change the sentence on page 16, line 4 that begins "In this paragraph," should be deleted because "minority organizational caucus" is already defined in the section and the extra reference

**Representative Bob Lynn**

**March 6, 2007**

**Page 2**

would not be needed.<sup>1</sup> In my opinion, the meaning of "majority organizational caucus" in this context is self-evident, and needs no further definition in the bill.

DCW:lmb  
07-045.lmb

Enclosure

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<sup>1</sup> Rule number 1(e) of the Alaska State Legislature Uniform Rules says, in part:

For purposes of this subsection "minority" means a group of members who have organized and elected a minority leader and who constitute at least 25 percent of the total house membership.

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**MEMORANDUM**

February 26, 2007

**SUBJECT:** Prohibition on lobbying by legislator spouses and domestic partners in CSHB 109( ) (Work Order No. 25-GH1059K)

**TO:** Representative Max Gruenberg  
 Attn: Norman Cohen

**FROM:** Alpheus Bullard *TAB*  
 Legislative Counsel

You have requested a legal opinion as to the constitutionality of the proposed statutory change that would prohibit the spouse or domestic partner of a legislator from being a lobbyist as is proposed in sec. 5 of the Committee Substitute for House Bill 109, draft version "K". It is my opinion that the prohibition as it is currently structured may be interpreted by a court as unconstitutional.

The First Amendment provides that "Congress shall make no law . . . abridging . . . the right of the people peaceably to assemble, and to petition the Government for a redress of grievances", art. I, sec. 1 of the Alaska Constitution provides that ". . . all persons have a natural right to life, liberty, . . . equal rights, opportunities, and protection under the law . . .", and art. I, sec. 5 of the Alaska Constitution provides that "[e]very person may freely speak, write, and publish on all subjects . . ." Lobbying involves both the petitioning of government agencies and core political speech concerns that "implicates First Amendment guarantees of petition, expression, and assembly." Kimball v. Hooper, 665 A.2d 44, 46 (Vt. 1995); United States v. Sawyer, 85 F.3d 713, 731 n. 15 (1st Cir. 1996) (paid lobbyist's employment goal of attempting to persuade and influence legislators was guaranteed by the First Amendment); Findanque v. Oregon Government Standards and Practices Commission, 969 P.2d 376, 379 (Ore. 1998) ("Lobbying is political speech, and being a lobbyist is the act of being a communicator to the legislature on political subjects."); Liberty Lobby, Inc. v. Person, 390 F.2d 489, 491 (D.C. Cir. 1968) ("While the term 'lobbyist' has become encrusted with invidious connotations, every person or group engaged . . . in trying to persuade Congressional action is exercising the First Amendment right of petition."); and United States v. Harris, 347 U.S. 612, 625 (1954).

The fact that the proposed prohibition applies only to paid lobbyists ("volunteer" and "representational" lobbyists being excluded, see 25-GH1059K p. 4. lines 5 - 7) does not shield the proposed prohibition from constitutional analysis. "The mere fact . . . that one earns a living by exercising First Amendment rights does not vitiate the ability to assert those rights." Moffett v. Killian, 360 F. Supp. 228, 231 (D. Conn. 1973) citing Follett v.

Representative Max Gruenberg  
February 26, 2007  
Page 2

McCormick, 321 U.S. 573 (1944). Additionally, the individual rights afforded by the Alaska Constitution, art. I, sec. 1, include the right to make certain contracts for personal employment. see State v. Enserch Alaska Construction, Inc., 787 P.2d 624 (Alaska 1989) (The right to engage in an economic endeavor within a particular industry is an "important" right for state equal protection purposes) and Malabed v. N. Slope Borough, 70 P.3d 416 (Alaska 2003) (close scrutiny of enactments impairing the important right to engage in economic endeavor requires that the state's interest underlying the enactment be not only legitimate, but important, and that the nexus between the enactment and the important interest it serves be close.) In justifying such an infringement on the personal liberty of legislators' spouses and domestic partners, the state would have to demonstrate a compelling interest in the purposes advanced by the restriction and an absence of less restrictive alternatives in realizing these ends. While the United States Supreme Court has acknowledged that governments have a legitimate interest in regulating lobbyists, see McIntyre v. Ohio Elections Commission, 514 U.S. 334, 356 n. 20 (1995) ("The activities of lobbyists who have direct access to elected representatives, if undisclosed, may well present the appearance of corruption"), "statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society." Broadrick v. Oklahoma, 413 U.S. 601, 611 - 612 (1973) (citations omitted).

While the United States Supreme Court has recognized that governments have a "sufficiently important" interest in preventing political corruption and the appearance of corruption that justifies limits on campaign contributions and a standard of review below that of strict scrutiny, see McConnell v. Federal Election Commission, 540 U.S. 93 (2003), I am not aware of any court that has recognized this rationale as a basis for such a broad prohibition on paid lobbying. While the ban may be intended to promote public confidence in the integrity of legislators and to prevent corruption and any appearance of corruption, the prohibition as it is currently structured disallows all paid lobbying by spouses and domestic partners of legislators; not lobbying on issues before committees on which a legislator spouse or domestic partner might serve, a matter on which the legislator spouse or domestic partner will vote, etc. Therefore, a court might conclude that the ban as structured is not sufficiently narrow to further a compelling state interest and is an unconstitutional infringement on the First Amendment rights of the spouses and domestic partners to whom it applies.

It is my opinion that the state may be unable to meet its burden of demonstrating that no less restrictive alternatives exist to eliminate impropriety, undue influence, and conflicts-of-interest, and that this restriction might be invalidated.

TLAB:med  
07-127.med

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## MEMORANDUM

February 28, 2007

**SUBJECT:** Constitutionality of statutes similar to sec. 5 of CSHB 109( ), draft version "K" (Work Order No. 25-GH1059\K)

**TO:** Representative Max Gruenberg  
Attn: Norman Cohen

**FROM:** Alpheus Bullard *AB*  
Legislative Counsel

In a response to an earlier memorandum, you have requested that I augment my efforts by searching for and examining any existing judicial interpretation of statutes similar to sec. 5 of the proposed Committee Substitute for House Bill 109, draft version "K."

My research for the earlier memorandum began with such an effort, but I did not, and have not, unearthed any judicial examination of a statutory prohibitions on lobbying by a legislative spouse or domestic partner as broad as that found in sec. 5.

While decidedly second best, what I was able to find, was circumstantial evidence of state legislative and congressional consideration of similar provisions. The common thread or denominator discovered, is that while such broad prohibitions have been considered, they are absent from the final enactments of the legislation in which the provisions were to be included. For one example, see the ethics opinion draft concerning the history of Kentucky Senate Bill No. 7, 1993 at "[www.lrc.ky.gov/ethics/Opinions/02-04.doc](http://www.lrc.ky.gov/ethics/Opinions/02-04.doc)."

The most similar provision to sec. 5 that I found, is "S.1, Commission to Strengthen Confidence in Congress Act of 2007" passed by the United States Senate on January 18, 2007. The bill addresses statutory changes affecting lobbyists under the federal Lobbying Disclosure Act and other laws. The bill includes a prohibition on "official contacts" by a senator's spouse or immediate family member with the personal, committee, and leadership staff of that senator if the spouse or immediate family member is a registered lobbyist or retained or employed by a registered lobbyist. If it becomes law, a provision in the bill also would prohibit a senator's spouse from having any "official contacts" with any senator or staff if the spouse is a registered lobbyist or retained or employed by a registered lobbyist. The provision in full reads:

**SEC. 113. PROHIBIT OFFICIAL CONTACT WITH SPOUSE OR IMMEDIATE FAMILY MEMBER OF MEMBER WHO IS A REGISTERED LOBBYIST.**

Rule XXXVII of the Standing Rules of the Senate is amended by--

(1) redesignating paragraphs 10 through 12 as paragraphs 11 through 13, respectively; and

(2) inserting after paragraph 9, the following:

10. (a) If a Member's spouse or immediate family member is a registered lobbyist under the Lobbying Disclosure Act of 1995, or is employed or retained by such a registered lobbyist for the purpose of influencing legislation, the Member shall prohibit all staff employed by that Member (including staff in personal, committee, and leadership offices) from having any official contact with the Member's spouse or immediate family member.

(b) Members and employees on the staff of a Member (including staff in personal, committee, and leadership offices) shall be prohibited from having any official contact with any spouse of a Member who is a registered lobbyist under the Lobbying Disclosure Act of 1995, or is employed or retained by such a registered lobbyist.

(c) The prohibition in subparagraph (a) shall not apply to the spouse of a Member who was serving as a registered lobbyist at least 1 year prior to the election of that Member to office or at least 1 year prior to their marriage to that Member.

(d) In this paragraph, the term 'immediate family member' means the son, daughter, stepson, stepdaughter, son-in-law, daughter-in-law, mother, father, stepmother, stepfather, mother-in-law, father-in-law, brother, sister, stepbrother, or stepsister of the Member.  
([www.govtrack.us/congress/billtext.xpd?bill=s110-1](http://www.govtrack.us/congress/billtext.xpd?bill=s110-1))

This is as similar a provision as I have been able to find.

If you have any questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:med  
07-0132.med

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## MEMORANDUM

February 14, 2007

**SUBJECT:** Constitutionality of Amending AS 15.13.040(b); CSHB 6( )  
(Work Order No. 25-LS0055\K)

**TO:** Representative John Harris  
Speaker of the House  
Attn: Tom Wright

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

You have requested a legal opinion on whether the referenced Committee Substitute for House Bill 6 is constitutional. The potential constitutional violation arises in secs. 2 and 5 of the Committee Substitute for House Bill 6. These two sections amend AS 15.13.040(b) and AS 15.13.070(c), statutory sections that were changed by 2006 Ballot Measure No. 1 initiative. I believe that the bill may be constitutional, but that it is a close question. In this instance, my opinion is without the benefit of a bright-line rule or clear precedent, therefore a review of the relevant legal and historical information is a necessary element in providing a complete answer to your question. Allow me to provide a summary.

### **Constitutionality of Amending an Initiated Law**

Two Alaska court decisions are implicated.

In early 1974, two related initiative petitions were filed with the lieutenant governor. One dealt with conflict of interest, and the other election campaign disclosure. Both petitions were certified as having sufficient signatures and were scheduled for inclusion on a statewide election ballot. The 1974 Legislature considered both matters. The legislature did not take any action on the conflict of interest petition, but did adopt legislation, approved as ch. 76, SLA 1974, on campaign disclosures.

The lieutenant governor concluded that the campaign disclosure enactment was substantially the same as the campaign disclosure petition and voided the initiative. That decision was challenged. The challenger, Cliff Warren, an initiative sponsor, contended that the legislature had short-circuited the initiative process by passing a law determined to be substantially the same as the proposed initiative. In its decision upholding the lieutenant governor's conclusion, the Alaska Supreme Court observed that the legislature enjoys broad authority to amend an initiative:

The final constitutional provision states in pertinent part:

An initiated law . . . is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time . . . .

The constitution thus vests broad authority in the legislature to vary the terms of an initiated law, after its adoption, by the process of amendment. This power amounts to a check or balance against the initiative process. No doubt the legislature was given this power to assure that initiatives which were ill-advised, which might seriously cripple or frustrate the sound workings of government, or which might be impracticable, could be altered or corrected rapidly by the legislature. It was obviously intended by the framers that the initiative process should not be permitted to disrupt vital government functions or to impose intolerable burdens upon established administrative systems. To this end the legislature was given the ability to substitute its judgment for that of the proponents of an initiative.

Warren v. Boucher, 543 P.2d 731, 737 (Alaska 1975).

But the legislature's authority to amend is not without limits. At the August 1974 primary election, the voters approved the second initiative petition, the conflict of interest proposal, and it was certified and became law on December 11, 1974. The 1975 Legislature amended the law to change deadlines and to exclude certain former officials, who under the initiative were required to file disclosures, from having to file. Ch. 2, SLA 1975. The law was amended again that session by adding a further delay to the filing deadline. Ch. 25, SLA 1975. Mr. Warren challenged the amendments, contending that the changes were beyond the authority of the legislature to approve and amounted to a "repeal" of the initiated law.

The court rejected his contentions in its decision in Warren v. Thomas, 568 P.2d 400 (Alaska 1977):

The central issue in the case at bar is whether the legislature has exceeded the broad power by passing an amendment which so vitiates the initiative as to "constitute its repeal." [Warren v. Boucher, 543 P.2d 731,] at 737. Warren argues that the changes are so drastic that they make a mockery of the law, that the trial court erred in concluding the legislation was merely "housekeeping," and that the amendments . . . amount to a repeal of the law. We disagree. "[A]n amendment of an act operates as a repeal of its provisions to the extent that they are materially changed by, and rendered repugnant to, the amendatory act." Meyers v. Board of Supervisors of Los Angeles County. . . . 243 P.2d 38, 42 (Cal. 1952); see also W.R. Grasle

Representative John Harris  
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Company v. Alaska Workmen's Comp. Board, 517 P.2d 999 (Alaska 1974) . . . .

[T]here remains the question whether the amendments so emasculate the law that it is effectively repealed. We conclude that they do not. There are considerable language changes, but these clarify and render the law more precise. The fines for violations of the law have been reduced but the penalties are still significant . . . . Finally, the amended law still imposes substantial disclosure requirements on public officials and effectuates the intent of the electorate that those in a position of public trust be held to a high standard of financial disclosure.

For the purposes of this appeal it is unnecessary for us to decide at what point an amendment might be so drastic as to constitute a repeal of an initiated law in violation of the Alaska Constitution. In this case the amendments only reduced the penalties for violation of the law and clarified some of the language. We are of the opinion that such an amendment did not constitute a repeal of an initiated law.

Warren v. Thomas, 568 P.2d 400, 402 - 404.

This pair of cases has not been the court's last word. In Yute Air Alaska, Inc. v. McAlpine, 698 P.2d 1173 (Alaska 1985), the court decided an appeal by setting out the full text of the trial court opinion, "which explains the questions presented and, in our view, properly resolves them." Id. at 1175. The trial court opinion, which the Supreme Court acknowledged, declared that "[t]he two Warren cases establish the proposition that the provisions of section 6 of article XI on amendment of adopted initiatives and on voiding pending initiatives vest the legislature with broad powers to protect the state against the untoward effects of initiatives." Id. at 1179.

#### AS 15.13.040(b)

AS 15.13.040(b) was most recently amended by the 2006 Initiative entitled "An Initiative Relating to contribution limits, lobbyists, and disclosure; and providing for an effective date." The initiative repealed and reenacted AS 15.13.040(b) to provide that groups need only report the "the name, address, principal occupation, and employer of the contributor, and the date and amount contributed by each contributor. . ." for contributions exceeding \$100 in the aggregate a year. At that time AS 15.13.040(b) provided that the name, address, date, and amount contributed by each contributor be reported in all instances, and that for contributions in excess of \$250 in the aggregate during a calendar year, that the principal occupation and employer of the contributor also be provided. The effect of this section (section three of six) of the initiated law was to dispense with reporting requirements for contributions of \$100 or less in the aggregate a year (name, address,

Representative John Harris  
Speaker of the House  
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date, and amount up contributed up to \$100) and require the additional information of the principal occupation and employer of the contributor for contributions of \$100.01 - \$250.00 (the principal occupation and employer of the contributor was already required contributor information for contributions in excess of \$250).

In a paragraph summarizing the entirety of the initiative, the August 22, 2006 Ballot<sup>1</sup> encapsulated the effect of sec. 3 as "requir[ing] groups to disclose the name, address, occupation, employer, date and amount given by each contributor for contributions more than \$100 during a calendar year". The Legislative Affairs Agency Summary in the 2006 Official Primary Election Voter Pamphlet was marginally more informative; "[g]roups would have to report more about donors. For gifts over \$100 to a group, the group would have to provide the true source of the gift. The group would also have to report the donor's job and the donor's employer." In the voter pamphlet, in the "Ballot Measure 1, Statement In Support" and "Ballot Measure 1, Statement In Opposition" pages, the lifting of the disclosure requirements for contributions of up to \$100 dollars to groups received mention only in the text of the "Statement in Opposition" page as a "change eliminat[ing] the disclosure of some names and addresses". It received no mention in the "Statement of Support." This was the sum of information provided to the electorate about sec. 3 of the initiative.

Conspicuous in its absence from the ballot language and Legislative Affairs Summary of the 2006 Official Primary Election Voter Pamphlet is any mention of how sec. 3 of the initiative would operate to dispense with the required disclosure of the name, address, date, and amount contributed by each contributor for contributions of up to \$100 during a calendar year. The change was not reflected in the title of the initiative nor in the summaries provided to the voters. The change, which dispenses with the disclosure of previously required contributor information, is arguably less than consistent with the reduced contribution limits, limitations on lobbying, and more stringent disclosure requirements that made up the other 5/6 of the initiative.

If this initiative is understood as "effectuat[ing] the intent of the electorate" Warren v. Thomas, the operation of the initiative's sec. 3, unexplained to voters, to dispense with the required disclosure of the name, address, date, and amount contributed by each contributor for contributions of up to \$100 during a calendar year could be interpreted by the court as effecting something less than the intent or will of the electorate. While sec. 3 of the initiative is the best statement of its contents, the section did not appear on the ballot itself, and where it was printed in the voter pamphlet, the text appeared as it would after enactment. The voter did not have the benefit of comparing the proposed amendment with the existing statutory text. While ignorance of the law may not be an excuse, this was a ballot measure labeled by the "Statement In Support" in the voter pamphlet as the "Take Our State Back" initiative, a measure that would limit campaign

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<sup>1</sup> See State of Alaska Primary Election August 22, 2006, Official Primary Election Voter Pamphlet.

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contributions and "close the soft money loophole" . . . words and phrases poorly reconciled with sec. 3 of the initiative.

#### AS 15.13.070(c)

AS 15.13.070(c) was also amended by the 2006 Initiative entitled "An Initiative Relating to contribution limits, lobbyists, and disclosure; and providing for an effective date." The initiative repealed and reenacted AS 15.13.070(b) to provide that "[a] group that is not a political party may contribute not more than \$1,000 per year" to a candidate, an individual conducting a write-in campaign as a candidate, another group, a nongroup entity, or to a political party. Previous to the passage of the initiative AS 15.13.070(c) had provided that "[a] group that is not a political party may contribute not more than \$2,000 per year." The Committee Substitute for House Bill 6 now proposes to further limit such contributions to \$500 per year.

The central issue for a court in interpreting the effect of the legislature's amendment to the initiated law is whether the legislature has exceeded their "broad power" by passing an amendment which "so vitiates the initiative as to "constitute its repeal," Warren v. Boucher, at 737. The changes to AS 15.13.070(c) are not drastic, and do not work against the initiative, but further the stated goals of the initiative by further limiting campaign contributions. I don't believe that this amendment, which changes the statute to further the aims endorsed in the initiative itself, would be interpreted by a court to amount to a repeal of the law.

"[A]n amendment of an act operates as a repeal of its provisions to the extent that they are materially changed by, and rendered repugnant to, the amendatory act." Meyers, at 42.

The amended law imposes substantial campaign contribution restrictions and effectuates the intent of the electorate that campaign contributions from groups be further restricted. If the initiative is understood as "effectuat[ing] the intent of the electorate" Warren v. Thomas, it is my opinion that the Committee Substitute's amendment to this section is constitutional.

#### Conclusions

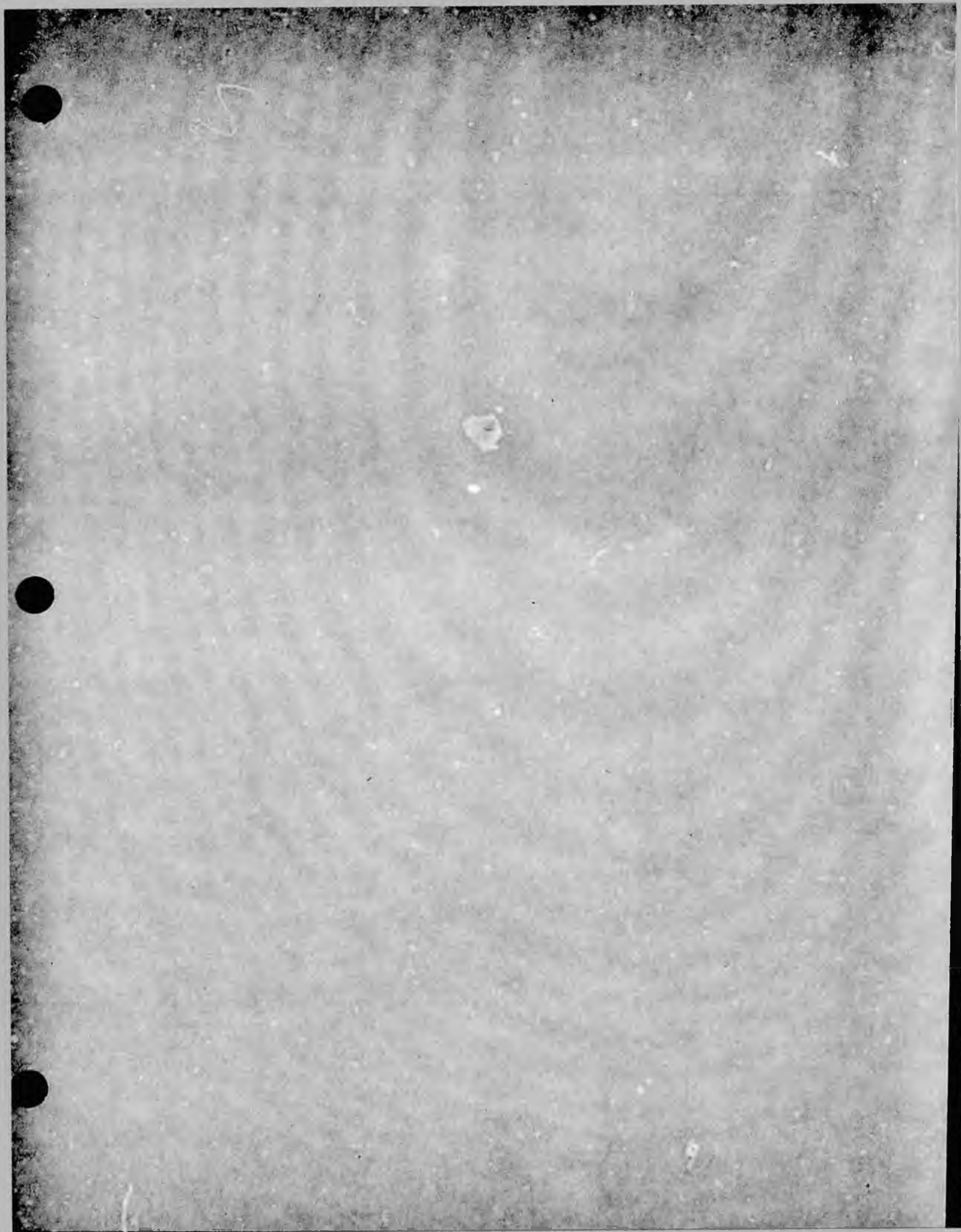
It is my opinion that the Committee Substitute's changes to AS 15.13.040(b) and 15.13.070(c) could be interpreted by a court as a constitutional modification. While a court could decide that these sections were key features to the initiative, and the Committee Substitute's changes are unconstitutional, I believe that the "broad power" of the legislature to amend adopted initiatives recognized by the courts is sufficient in this instance to prevent the present amendment from offending art XI, sec. 6 of the Alaska Constitution. The Committee Substitute's amendment to AS 15.13.040(b) and 15.13.070(c) is in keeping with stated goals and rationales of the initiative, and operates

Representative John Harris  
Speaker of the House  
February 14, 2007  
Page 6

to modify an element of AS 15.13.040(b) that is arguably inconsistent with the initiative's other provisions. For these reasons, I believe a court could find that the present amendment does not operate as a repeal of the initiative's provisions "to the extent that they are materially changed by, and rendered repugnant to, the amendatory act." Meyers, at 42.

If you have questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:ljw  
07-082.ljw



# LEGAL SERVICES

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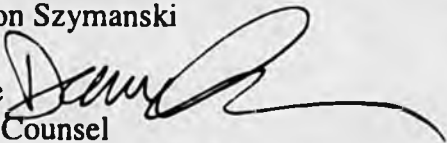
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## MEMORANDUM

April 25, 2007

**SUBJECT:** Ethics (CSHB 109(JUD)am; Work Order No. 25-GH1059N.A)

**TO:** Senator Lesil McGuire  
Attn: Shalon Szymanski

**FROM:** Dan Wayne   
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

**Section 1.** Expands the scope of bribery statutes to include certain public officers.<sup>1</sup>

**Section 2.** Makes applicable to the teachers' defined benefits retirement plan the pension forfeiture provisions added in sec. 45 of the bill.

**Section 3.** Makes applicable to the teachers' defined contribution retirement plan the pension forfeiture provisions added in sec. 45 of the bill.

**Section 4.** Expands the list of persons exempted, in AS 15.13.040(g), from requirements in AS 15.13.040(a) that candidates make a full report which, among other things, lists expenditures made, total contributions received, and, for contributions in excess of \$250 in the aggregate in a calendar year, the name and address of contributors, along with other information related to the contribution. The expanded list exempts constitutional convention delegates, judges, or candidates for municipal office.

**Section 5.** Requires persons, including the Governor, Lieutenant Governor, and proponents of ballot propositions or initiatives, to submit campaign information only in electronic form. It exempts municipal candidates from electronic filing requirements,

---

<sup>1</sup> Political contributions to legislators or legislative candidates may still be excluded from the scope of the bribery statutes, after the change proposed in this section, because only public officers as defined in AS 39.52.960 -- a definition that does not include legislators or legislative candidates -- have authority, under section 1, to take "official action."

and exempts legislative candidates from electronic filing requirements until January 1, 2009.

**Section 6.** Amends the law as would be established by sec. 5 of the bill so that, effective January 1, 2009, all candidates, except candidates for municipal office in a municipality with a population of less than 15,000, would be required to file APOC reports electronically.

**Section 7.** Makes applicable to the (former) Elected Public Officials Retirement System, in AS 37.10.310, the pension forfeiture provisions added in sec. 45 of the bill.

**Section 8.** Adds to the duties of the Alaska Public Office's Commission a duty to administer an annually updated training course for lobbyists and their employers.

**Section 9.** Requires registered lobbyists and volunteer lobbyists to complete the APOC training course annually.

**Section 10.** On page 5, line 14, adds new limits on circumstances in which a lobbyist is allowed to make a gift to a person serving in the executive branch.

**Section 11.** Allows persons to engage in volunteer or representational lobbying in spite of limitations on lobbying activity in AS 39.52.<sup>2</sup> Prohibits a spouse or domestic partner of a legislator from lobbying, except as a volunteer or representational lobbyist.

---

<sup>2</sup> Under this section a volunteer lobbyist is as described in AS 24.45.161(a)(1), which exempts from the requirements of chapter AS 24.45:

(1) an individual

(A) who lobbies without payment of compensation or other consideration and makes no disbursement or expenditure for or on behalf of a public official to influence legislative or administrative action other than to pay the individual's reasonable personal travel and living expenses; and,

(B) who limits lobbying activities to appearances before public sessions of the legislature, or its committees or subcommittees, or to public hearings or other public proceedings of state agencies;

A "representational lobbyist" is not defined in statute, only in regulation. 2 AAC 50.511 reads:

Registering and reporting by a representational lobbyist and his employer.

(a) An individual who attempts to influence legislative or administrative action, and receives only reimbursement for his travel and personal living expenses, is considered a representational lobbyist. "Representational lobbyist" means that the individual is not employed by the person or group on whose behalf he is lobbying and receives no salary, fee, retainer, or any economic consideration whatsoever, other than reimbursement of travel and personal living expenses, for his services as a lobbyist. A

**Section 12.** Adds a definition of "domestic partner" to the chapter regulating lobbyists.

**Section 13.** Modifies language in the applicability section of the Legislative Ethics Act that has at times been misinterpreted as exempting legislators, legislative directors, legislative employees and public members of the committee from disclosure requirements related to the latter part of their time in service.

**Section 14.** Adds language, on page 7, line 21, conforming AS 24.60.030(a) to a new definition of "charity event" elsewhere in the bill.

**Section 15.** Shortens, from 90 days to 60 days, the period right before an election when legislators and legislative employees are not allowed to use state funds to print or distribute political mass mailings to voters.

**Section 16.** Requires a legislator or legislative employee who serves on a board of any organization, including a government entity, to disclose the board membership to the committee.

**Section 17.** Adds a requirement that the ethics committee forward to the legislature, and that the legislature publish in the journal or supplemental journal of the appropriate house, disclosures related to loans received or certain programs participated in by legislators or legislative employees.

**Section 18.** Changes the date of publication by the committee, of disclosures related to loans received or certain programs participated in by legislators or legislative employees, to the next regularly scheduled publication date instead of within three weeks of the date of the disclosure. Allows the committee to edit the information published, upon request, if the committee determines making the entire disclosure public would cause an unjustifiable invasion of personal privacy.

**Section 19.** Changes the definition of "public official" as it applies, in AS 24.60.070(a), to the disclosure by legislators and legislative employees of the formation or existence of certain close economic associations.

**Section 20.** Deletes certain references to "legislator" in order to conform AS 24.60.070(c) with new subsection AS 24.45.121(e) prohibiting the spouse or domestic partner of a legislator from engaging in certain lobbying activity.

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representational lobbyist need not submit reports pursuant to AS 24.45.051, but must register his representation on a form prescribed by the commission. "Personal living expenses" is considered to be an amount equal to the per diem currently allowed by the Administrative Manual of the State of Alaska. "Travel" means the cost of traveling to the capital city or the location of official proceedings of standing, interim, or special legislative or administrative committees or agencies.

**Section 21.** Adds an exception to AS 24.45.121 and AS 24.60.080, sections that limit gifts to legislators and legislative employees, to allow "compassionate gifts" to aid or comfort in time of catastrophe, tragedy, or health-related emergency.

**Section 22.** Amends AS 24.60.080(a) by making the prohibition on gifts from lobbyists during the legislative session a year-round prohibition, and adding to it gifts from family members of lobbyists.

**Section 23.** Amends AS 24.60.080(c), dealing with exceptions to limitations on gifts to legislators and legislative employees, by adding a definition of "immediate family" to the exception in paragraph (c)(5). Adds persons employed by the Office of Victims' Rights to the list of persons not permitted to accept certain discounts and welcome gifts that legislators and their staff employees are permitted by the exception in paragraph (c)(7) to accept during legislative sessions. Adds legislative employees to the transportation exemption in paragraph (c)(9). Paragraphs (c)(10) and (c)(11) conform subsection (c) to changes made in subsection (a) regarding tickets to charitable events.

**Section 24.** Adds gifts to family members (made, by a third party, because of the family member's relationship to the legislator or legislative employee), and gifts of legal services, to the list of gift disclosures by legislators and legislative employees that the committee shall make public, and, in conformity with the bill's proposed changes to deadlines in AS 24.60.105, prescribes a 30-day deadline for disclosure.

**Section 25.** Conforms AS 24.60.080(i) to the changes in sec. 24 of the bill regarding gifts to immediate family members. Changes "reported" to "disclosed," for clarity.

**Section 26.** Prohibits legislators, while serving, from, "directly or by authorizing another to act on the legislator's behalf," accepting or agreeing to accept compensation from anyone but the state for services related to their work.

**Section 27.** Changes current law that allows a legislator or legislative employee to be compensated outside of their legislative pay for representing a person before an agency, board, or commission of the state as long as they disclose it to the committee. The change would prohibit a legislator or legislative employee from representing themselves or any other person, with or without compensation, if the representation is before a "municipal, legislative, or executive branch."

**Section 28.** Establishes that, except in an instance where another legal deadline applies, disclosure of a matter or interest shall be required within "30 days after the commencement of the matter or interest."

**Section 29.** Clarifies that disclosures made under AS 24.60.105(a) shall be made annually as well, under AS 24.60.105(c).

**Section 30.** Codifies a recent opinion by the Select Committee on Legislative Ethics, interpreting the Legislative Ethics Act to require that persons covered by it do not have to disclose conflicts and potential conflicts that arise after they leave service, but after they leave service they are still required to disclose every matter that was subject to disclosure by the Act while the person was still serving. The section would require a final ethics disclosure to be filed within 90 days after the person's last day of service.

**Section 31.** Clarifies the role of the ethics committee in securing the attendance of a regular member's alternate at a meeting, or at a proceeding under the complaint procedure in AS 24.60.170, if the regular member is unable to attend

**Section 32.** Amends AS 24.60.130(o) to add a definition of "majority organizational caucus."

**Section 33.** Establishes a procedure for selection of an alternate member of the committee to serve in a complaint proceeding where the regular member and the regular member's alternate are both accused of a violation in the complaint the committee is hearing.<sup>3</sup>

**Section 34.** Adds to the duties of the ethics committee a requirement that it publish certain educational legislative ethics materials, and administer an ethics course to help people covered by the ethics code understand and follow it.

**Section 35.** Adds a new section requiring that legislators, legislative employees and public members of the ethics committee complete the legislative ethics course offered by the committee.

**Section 36.** Adds APOC and the Select Committee on Legislative Ethics to the list of entities that may request an advisory opinion under AS 24.60.160, and also adds language to that statute that requires advisory opinions to be redacted before publication to protect the identity of persons involved. It adds language that would make the final vote by the committee (the name of the person voting and how they cast their vote) a public record.

**Section 37.** Amends AS 24.60.170(j), to allow persons who have provided legal advice to the committee in the past, but no longer do so, to be appointed by the committee to present the case against the person charged, if the complaint has reached the formal charge phase. It also adds new language that allows the committee to schedule the hearing on a formal charge to a date outside of the 20 - 90 day period in the statute, and allows the committee to dismiss a complaint or take other appropriate action if a delay caused by the complainant in the case is not supported by a compelling reason or would result in the person charged being deprived of a fair hearing.

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<sup>3</sup> The procedure set out in this section is based on the procedure set out in AS 24.60.037(d), regarding open meetings requirements.

**Section 38.** Defines the victims' advocate as the "appointing authority" for the purpose of determining how to sanction an employee of the Office of Victims' Rights found by the committee to have violated the Legislative Ethics Act; and similarly defines the legislature as the "appointing authority" where the question is how to sanction the victims' advocate.

**Section 39.** Revises the list of financial information a legislator, public member of the committee, and a legislative director are required to disclose, by clarifying that disclosure of income received for personal services, or a loan or loan guarantee, are to be reported under AS 24.60.200, not AS 39.50.030. The section adds language to AS 24.60.200, requiring that when personal income is reported the approximate hours worked to earn it must be reported as well, along with any other information the earner chooses to disclose.

**Section 40.** Says that, in addition to the required annual reporting to APOC regarding financial disclosures under AS 24.60.200, a person appointed as a legislator under AS 15.40, a public member of the committee, or a legislative director must also file a disclosure within 30 days after the person's appointment. Under this section a final disclosure is required, after a person leaves service, for the period ending with the person's last day of service.

**Section 41.** Adds a new subsection that would require financial disclosures under AS 24.60.210 to be made electronically starting July 1, 2008, except in a given case where APOC makes an exception. (AS 24.60.110 is the statute prescribing deadlines for disclosure, by legislators, legislative directors, and ethics committee members, of information described in AS 24.60.200.)

**Section 42.** Specifies that when APOC finds a person at the Office of Victim's Rights has failed or refused to file a financial disclosure when required, APOC will notify the Legislative Council.

**Section 43.** Conforms AS 24.60.990(a)(2) (which defines "anything of value," "benefit," or "thing of value") to proposed changes set out in secs. 22 and 23 of the bill (regarding gifts to legislators and legislative employees).

**Section 44.** Amends AS 37.10.220(a) to add the administration of pension forfeitures to the duties of the ARM board.

**Section 45.** Makes pension forfeiture a civil consequence for a public officer, legislator, or legislative director who is convicted of certain crimes of dishonesty, and sets up a process by which the ARM board may award some or all of a to-be-forfeited pension to certain family members of the convicted person.

**Section 46.** Makes applicable to the public employees' defined benefit plan the pension forfeiture provisions of sec. 45 of the bill.

**Section 47.** Makes applicable to the public employees' defined contribution plan the pension forfeiture provisions of sec. 45 of the bill.

**Section 48.** Adds a requirement, regarding financial disclosure by public officials, that within 90 days after leaving office a public official shall file a final statement covering any period during the official's service for which a statement hasn't already been filed.

**Section 49.** Adds to the list of items that must be disclosed by a public official or candidate under AS 39.50, lowers the threshold amount for reporting from \$5,000 to \$1,000, and adds limited liability companies to the list of entities with which an association by the public official or a member of the public official's family might create a need for disclosure to APOC.

**Section 50.** Adds "limited liability company" to the list of entities, in the definition of "close economic association," with which a public official might have a close economic association of a type that must be disclosed to APOC.

**Sections 51 and 52.** These sections are both part of a substantially amended AS 39.50.040, under which a public official would have the option to put certain assets into a blind trust as one way of resolving certain conflicts of interest.

**Section 53.** Requires information submitted to APOC under AS 39.50 (public officials and candidates for public office) to be submitted electronically starting July 1, 2007, unless APOC makes an exception, but provides that municipal officers retain the option of submitting information to APOC on paper.

**Section 54.** Further amends AS 39.50.050(a) to require municipal officers for municipalities with populations of more than 15,000 to submit APOC reports electronically. This section has a delayed effective date of January 1, 2009.

**Section 55.** Conforms AS 39.50.200(a)(10) to secs. 49 and 50 of this bill, by adding the term "limited liability company."

**Section 56.** Adds to the list of state commissions or boards in AS 39.50.200(b), which has the effect of expanding the definition of "public official" in AS 39.50.200(a), which, in turn, would make more board or commission members subject to the requirements of AS 39.50.

**Section 57.** Adds a new subsection to AS 39.52.110, in the Executive Branch Ethics Act, which says that stock or other ownership interest is presumed insignificant if its value is less than \$5,000.

**Section 58.** Adds language to AS 39.52.130 saying that a gift from a registered lobbyist to a public officer or public officer's family member is presumed to be intended to influence the public officer, unless the person giving the gift is an immediate family member of the person receiving the gift.

**Section 59.** AS 39.52.180(a), which this section amends, prohibits public officers from taking some types of work, for two years after leaving office, and allows them to accept other types of work. This section moves a number of types of work from the "permitted" list to the "prohibited" list, by deleting the phrase "but does not include the," on page 26, lines 14 and 15.

**Section 60.** Adds deputy heads of departments and certain employees of the Office of the Governor to the list of persons already prohibited from lobbying for one year after leaving service.

**Section 61.** Prohibits heads of departments and certain employees of the Office of the Governor from serving on a governing board of certain companies, organizations or other entities, for one year after leaving office, depending on the entity's connection with the person's work as a public officer.

**Section 62.** Requires that the Governor make certain advance disclosures to the Attorney General in advance of granting a pardon, and requires that the Attorney General publish a written determination as to whether granting the pardon would be a violation, by the Governor, of the Executive Branch Ethics Act's Code of Ethics.

**Section 63.** Adds the ARM board to the list of boards covered by the Administrative Procedures Act, limited to the ARM board's handling of pension forfeitures.

**Section 64.** Repeals AS 24.60.037(d), which would be made obsolete by passage of the bill because it is subsumed by amending language in bill sec. 33. Repeals AS 24.60.080(k), a definition of "immediate family" which is replaced with a definition of the same in bill sec. 23.

**Section 65.** Restricts applicability of sec. 1 to offenses committed on or after the effective date of the Act, and restricts applicability of secs. 36, 37, and 38 to persons leaving state service on or after the effective date of the Act.

**Section 66.** Amends uncodified law to make AS 37.10.310 (pension forfeiture) applicable to benefits under former AS 39.37 (elected public officers' retirement system).

**Section 67.** Delayed effective dates for secs. 6, 41, 54.

**Section 68.** July 1, 2007, effective date for sec. 53.

**Section 69.** Provides an immediate effective date of the bill, except for secs. 67 and 68.

**HB**

**118**

# Alaska State Legislature

**Senator Hollis French, Chair**  
State Capitol, Room 417  
Juneau, Alaska 99801  
Phone: (907) 465-3892  
Fax: (907) 465-6595



**Committee Members:**  
Senator Charlie Huggins  
Senator Bill Wielechowski  
Senator Lesil McGuire  
Senator Gene Therriault

## Senate Judiciary Committee

### MEMORANDUM

Date: May 11, 2007

TO: Jerry Luckhaupt, Leg. Legal

FROM: Cindy Smith

RE: Committee final CS for HB118

Please prepare a final CS for HB118 with this amendment:

On line 6, delete the word "recklessly" and insert the word "knowingly".

*Jerry -  
Thanks for  
all your  
work this  
year!  
Cindy*



# **REPRESENTATIVE KEVIN MEYER**

**HOUSE DISTRICT 30**

## **MEMORANDUM**

**DATE:** April 9, 2007

**TO:** Senator Hollis French, Chairman  
Senate Judiciary Committee

**FROM:** Representative Kevin Meyer

**RE:** Hearing Request for House Bill 118 *Allowing Minor's to Have Alcohol*

---

Please schedule HB 118 *Allowing Minor's to Have Alcohol* for a hearing in the Senate Judiciary Committee at your earliest convenience.

HB 118 makes it a non-criminal violation to permit minors to possess alcohol in a dwelling over which a person exercises dominion or control.

Included in this packet:

- CSHB 118 (Rules) *Allowing Minors to Have Alcohol* v. I.S-0390\E
- Sponsor Statement
- Letter of Support: Red Ribbon Coalition
- USA Today: *Laws Crash Underage Parties*
- Marin Institute: What's Hot – Adults and Underage Drinking
- Current Status of Underage Drinking in Alaska Power Point



# **REPRESENTATIVE KEVIN MEYER**

---

**HOUSE DISTRICT 30**

## **Sponsor Statement House Bill 118**

*"An Act relating to underage possession of alcoholic beverages in a dwelling."*

While it is against the law in Alaska to rent a hotel room for the purposes of providing alcohol to underage persons (AS 04.16.055) there is no provision in statute that makes it illegal to allow underage drinking in a home. This appears to be a significant oversight in statute since a home is the most commonly cited place underage people consume alcohol.

House Bill 118 closes this gap in statute by making it a non-criminal violation to permit underage persons to possess alcohol in your home. A parent allowing their own child to possess alcohol is not subject to the violation because they are allowed to provide alcohol to their children under AS 04.16.05. Under HB 118 however, a person throwing a party where an underage person possess alcohol (even if they were not responsible for providing the alcohol) would face a \$500 fine.

Alcohol is the drug of choice for young people in Alaska and has very serious impacts on our families, our institutions and our society. HB 118 closes a significant gap in our statutes and gives law enforcement an important tool to deter people from providing a venue for underage drinking.

(Updated 2/6/07)



Red Ribbon Week October 23 - 31

April 9, 2007

Representative Kevin Meyer  
State Capitol, Room 515  
Juneau, AK 99801-1182

Dear Representative Meyer,

On behalf of the Alaska Red Ribbon Coalition, we are writing to express our full support of House Bill 118. As you are aware, there is growing attention on the issue of adults hosting drinking parties for young people in their homes. Some parents and other adults believe that, since young people are going to drink, it is better they drink in their homes rather than somewhere else. On the surface it seems reasonable, but teen drinking parties can be the source of many problems—only one of which is drunken driving. Drinking parties almost always involve binge drinking, and can lead to violence, sexual assault, rape, and even death by alcohol poisoning.

Decreasing the easy access to alcohol in our communities and homes is the best way to decrease teenage alcohol use. This approach involves strengthening statewide alcohol policies and laws, including giving law enforcement the tools to combat and reduce teenage alcohol use as well as the risks associated with this use.

The timing of House Bill 118 could not be better, as you know we are in the middle of our "Parents Who Host Lose The Most" and "Community Heroes" media campaigns, which specifically discourage parents from hosting teenage drinking parties.

The Alaska Red Ribbon Coalition stands in full support of House Bill 118 and applauds you for your efforts. We thank you for encouraging parents to not be a party to teenage drinking. With your leadership, Alaska's future is healthy and bright.

Sincerely,

*Carol Comeau*

Carol Comeau  
Superintendent  
Anchorage School District

*Harvey Gochring*

Harvey Gochring  
Assistant Agent in Charge  
US Drug Enforcement  
Administration

*Audie Holloway*

Col. Audie Holloway  
Director  
Alaska State Troopers

Co-Chairs  
Carol Comeau, Anchorage School District  
Col. Audie Holloway, Alaska State Troopers  
Harvey Gochring, US Drug Enforcement Administration

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## Laws crash underage drinking parties

Posted 1/4/2007 11:12 PM ET  
By John Ritter, USA TODAY

OJAI, Calif. — Tony Barrett and his wife were enjoying a getaway weekend when police called to report they'd broken up an underage drinking party at the couple's home here. Their daughter Shannon, legally an adult but at 19 too young to drink, was cited for hosting the party and was fined \$1,000.

Barrett, who grew up in this art- and music-loving city of 8,000, wasn't happy with his daughter — "the house was trashed and stunk like beer and cigarettes for a week" — but was even angrier at Ojai's "social host" ordinance that gave police the authority to bust the party.

"She called three friends, and before an hour was up, 100 people were here," Barrett says. "I told the police she was a hostage, not a host. I'm still not paying the fine, because I didn't do anything."

Authorities here and in a growing number of cities and counties say their ability to enforce "social host" ordinances to curb such parties, held with or without parents' knowledge, is a key tactic in the battle against underage drinking and its potentially tragic consequences.

### CRACK DOWN: Adults penalized for teen drinking

"We don't want to send parents to jail," says Stacy Saetta, a lawyer with the Center for the Study of Law and Enforcement Policy in Felton, Calif. "We want to get parents to change their behavior when kids want to throw a party."

### A catalyst for action

Underage drinking costs the nation at least \$53 billion a year, mostly because of traffic deaths and violent crime, according to a 2003 report by the National Research Council's Institute of Medicine. The report, which urged communities to hold adults accountable for teen drinking parties, was a catalyst for many recent ordinances, Saetta says.

Ojai, the picturesque setting for Shangri-La in the 1937 Frank Capra film *Lost Horizon*, is one of seven cities in Ventura County that passed social host ordinances last year after the county did. In one three-month period in 2004, police in the Ojai Valley, an affluent enclave north of Los Angeles, responded to nearly 300 parties involving underage drinking, according to sheriff's statistics.

"We had overdose deaths. We had prescription-drug use after hazardous drinking. We had parties where gang members showed up and beat the hell out of people. Close to 70% of the sexual assaults on young women were coming out of home parties," says Dan Hicks, administrator of Ventura County Limits, an initiative to curb underage binge drinking.

"It was like the big elephant in the living room: People thought there was nothing we could do about it," he says.

Social host ordinances give police a tool beyond standard disturbing-the-peace laws. Typically these ordinances call for civil fines, thus avoiding the courts and the higher burden of proof required under criminal laws.

Ordinances give police discretion to target repeat offenders or the most egregious bashes. Most permit officers to cite a host if they identify a handful of underage drinkers among dozens of parties. Fines range from less than \$500 to \$2,500 and more. "The whole purpose is to make the community aware," says Sgt. Pat Ruby of the Ventura County sheriff's station here. "But this won't have an effect on a lot of people unless it hits them in the pocketbook."

Ojai's laid-back image may be part of the problem, Ruby says. "There's not a whole lot for kids to do up here, and a lot of them look at parties as a release," he says. Violent crime is relatively rare in Ojai. The city hasn't had a murder in years. Its gang problem is small enough that police know all the players.

Social host ordinances have been used 20 times around the county to shut down parties in the past year, Hicks says. Ten of those incidents were in Ojai, and Ruby was involved in seven of them.

There was the 19-year-old who got nailed twice while his parents were vacationing in Hawaii. Police responded the first time to a report of a fistfight. Cars lined both sides of a street. Maybe 75 people were milling around a yard, at least 80% of them underage. Beer was everywhere, Ruby says. The host was cited and fined.

A week before the 19-year-old's parents were to return, he hosted another party and was cited again. "You'd think he'd learn the first time. He didn't," Ruby says. "The parents weren't happy."

#### Party trouble

Another time, officers drove by a party of 25 or so people and found a young man with a severe gash in his leg from falling on a beer bottle. An investigation identified underage drinkers.

Once a father hosted a party — "he was well aware the kids were drinking," Ruby says — and police responding to a noise complaint found a young man lying in a driveway where his friends had left him. He had to have his stomach pumped, Ruby says.

A 49-year-old man hosted a small Halloween party for his daughter that got large and out of hand. He was reluctant to step in. "He didn't want to embarrass his daughter. It's a common thing," Capt. Bruce Norris says.

Though most underage drinking parties occur in the summer, there's a feeling among police, not yet backed up by data, that they've declined as word of these crackdowns spread. "So it seems to be working," Norris says.

On a recent Saturday night, Ruby patrolled the city and outlying areas, but the party scene was quiet.

The next night, New Year's Eve, officers in nearby Moorpark had bottles thrown at them as they dispersed 75 people at a party hosted by the mother of an 18-year-old. "She admitted providing alcohol to his friends, and she knew some of the minors were under 21," Capt. Jeff Matson says.

He says her rationale is common among some parents: "If my son is going to drink, it's OK if I provide it at home."

Tony Barrett thinks the city's enforcement is excessive.

"This is all punitive, but they could turn it into a positive," Barrett says. "I told them you have a perfect chance to help these kids, because it's the same core group that go to all these parties. It fell on deaf ears."

#### Find this article at:

[http://www.usatoday.com/news/nation/2007-01-04-teen-drinking-inside\\_x.htm](http://www.usatoday.com/news/nation/2007-01-04-teen-drinking-inside_x.htm)

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## What's Hot - Adults and Underage Drinking

### The Party's Over: San Diego

*"Whenever a young person drinks, an adult is involved in some way," says Dana Stevens, Manager of the North Inland Community Prevention Program in Poway, California.*

*"Whether it is a retailer, parent, older sibling, or friend, it is time we hold adults accountable for underage drinking. Underage drinking is an adult problem, as well as a youth problem."*



Cities in San Diego County are giving local law enforcement new tools to reduce youth access to alcohol. Poway and San Diego passed ordinances that make it illegal for adults to host parties on their property where three or more minors are present and any of the youth are drinking.

Oceanside and La Mesa are also considering "house party" ordinances that close a loophole in California law that meant it was easier to cite teens for possession than penalize the adults who provided the alcohol.

"Before the new ordinance," says Stevens, "criminal penalties required a witness to see the adult provide alcohol to the underage person. Police could only break up a party if it got too loud or if neighbors complained. Now, if police see somebody leaving a party either drinking or intoxicated, and that person appears to be underage, the cops can find out what's going on in the house. If it turns out to be an underage drinking party, the police can cite the parent or other adult at the home."

Penalties under Poway and San Diego's house party ordinances include fines up to \$1,000 and up to six months in jail. Adults are not responsible, under the new law, if they are away from home and teens hold a drinking party without their knowledge.

"When our ordinance came up for a vote in Poway," recalls Stevens, "not a single person spoke in opposition." But, she emphasizes, unanimous support for the measure did not materialize spontaneously. According to Stevens, adoption of the new law was the product of three years of grassroots work and consistent leadership from the San Diego Policy Panel on Youth Access to Alcohol.

The need to close the loophole on house parties emerged as the policy panel reduced or eliminated other sources young people had used to acquire alcohol. Before turning to social access, the panel implemented a series of decoy campaigns to identify retailers who were selling to minors or allowing "shoulder tap" purchases.

"We got better at what we were doing," says Stevens. "And we learned from the kids where they were getting alcohol and where they went to consume it." The panel participants also reviewed the reports filed by police when they cited youth for possession of alcohol. They learned that social access is a significant ingredient in underage drinking.

Some parents believe that hosting a drinking party for teens keeps them safe and "off the streets." A tragedy following one such house party helped to build community support for the ordinance. "A few years ago, some teens were drinking at a party hosted by parents."

recalls Stevens. "The parents thought that they were being responsible because they took the kids' car keys. But then they went to bed, leaving the keys on the kitchen counter. The young people later drove to a store for cigarettes and got in an accident. One teen was killed, and the driver ended up in jail for several years."

Large family celebrations also allow youth access to alcohol. "The adults aren't worried about kids drinking because they are having a good time and it seems safe to them," says Stevens. "But they don't think about what can happen when the young people inevitably leave the party and either drive or go elsewhere unsupervised."

Not all of the adults hosting underage drinking parties are parents. The new law will also help curb underage drinking in and around college campuses where young teens often attend parties hosted by young adults who provide the alcohol.

Advocates of the house party ordinances are happy to have another tool for reducing underage drinking. They are also encouraged to see evidence that the policymakers who passed the new laws recognize that underage drinking is an adult problem.

"If adults face criminal charges," says San Diego Police Detective Larry Darwent, who chairs the Law Enforcement Task Force on Underage Drinking, "they'll think twice before hosting underage drinking parties."

**More information**

**HEB**

**121**



# Alaska State Legislature

**Representative Peggy Wilson**

House District 2

**Putting Alaska's Families First**

## MEMORANDUM

**DATE:** May 4, 2007

**TO:** Senator Hollis French, Chair  
Senate Judiciary Committee

**FROM:** Representative Peggy Wilson, Chair *PW*  
House Health Education and Social Services Committee

**SUBJ:** CS House Bill 121(L&C) am [25-LS0501\E.A] – Request for Hearing

HB 121 is an act relating to the release of information in individual workers' compensation records and providing for an effective date.

I respectfully request a hearing for this bill at your earliest convenience. Attached you will find the current version of this bill, relative sponsor statement, sectional analysis, accompanying positive fiscal note prepared by the Department of Labor and Workforce Development (DOLWD) based on this version of the bill and two prior zero fiscal notes. I've also included additional backup in the form of an email, news story and letters of concern.

Even though I have attached the DOLWD fiscal note dated April 10, 2007 in the amount of \$292,300, the note itself was never transmitted from the last committee of referral – Senate Labor and Commerce Committee. I have also included a draft CS on this bill for your consideration. The work draft is entitled: 25-LS0501\M by Bailey on 5/1/07.

Please let Cliff Stone of my staff know if there is anything else we can provide. Since this bill has picked up a last minute referral to the Senate Judiciary Committee, I would appreciate any due consideration to hear this bill in an expeditious manner.



# Alaska State Legislature

*Representative Peggy Wilson*

*House District 2*

*Putting Alaska's Families First*

## **SPONSOR STATEMENT**

**Committee Substitute House Bill 121(L&C) am**

**“An Act relating to release of information in individual workers’ compensation records; and providing for an effective date.”**

With the call for more transparency in government, it is equally important to protect personal information from falling into the wrong hands. In this day and age of computers and extensive databases, government agencies have the potential to accumulate a tremendous amount of information on their employees.

Under the Alaska Division of Workers’ Compensation, some personal information is considered public record since it is not specifically prohibited by state statute. CSHB 121 will correct this oversight by prohibiting the release of the employee’s social security number, electronic mail address, and telephone number contained on any of the divisions’ files, the Workmen’s Compensation Board’s files, and the Workers’ Compensation Appeals Commission. As amended on the House floor, employee names and addresses can still be released to the general public.

Currently, some of this personal information regarding employees who file workers’ compensation claims can be and has been released for public inspection. For example, a private company outside of Alaska has been requesting the names and addresses of injured workers. They have then used that information for direct marketing purposes of one kind or another.

This practice is very disturbing considering that identity theft is on the rise and a scourge on our society. It should be the right of any individual to keep personal information as cited above confidential. This data should not be revealed without the consent of that individual. This bill does add a provision to allow such disclosure, but only after the employee signs an affidavit to that effect.

March 21, 2007

25-LS0501\E.A



# Alaska State Legislature

Representative Peggy Wilson

House District 2

Putting Alaska's Families First

## SECTIONAL ANALYSIS

Committee Substitute House Bill 121(L&C) am

**“An Act relating to release of information in individual workers’ compensation records; and providing for an effective date.”**

CSHB 121 amends Title 23 under the Labor and Workers’ Compensation Act. It deals specifically with the section for release of information.

**Section 1.** Amends AS 23.30.107(b) with language specifying that an employee’s social security number, electronic mail address, and telephone number contained within the employee’s file under the Division of Workers’ Compensation or held by the Workmen’s Compensation Board or held by the Workers’ Compensation Appeals Commission are not public records subject to public inspection.

**Section 2.** Amends the statute reference above by adding a subsection (d). This provision allows for an employee to authorize the Division of Workers’ Compensation, the Board, or the Commission to disclose his or her personal information as described above. This will be accomplished by the employee signing a declaration on a form provided by the division.

**Section 3.** This bill has an immediate effective date. In effect, the bill becomes law the day after it is signed by the governor.

March 21, 2007

25-LS0501\E.A

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## HB 121 – Workers Compensation Records

### Background info & Notes

- As originally introduced in 2005, SB169 prohibited the Division of Workers' Compensation from assembling or providing information relating to individual records outside the scope of the Workers' Compensation Act.
- Eventually that language was incorporated into SB 130 [FSSLA 05] Located in Section 39. Signed into law on 9/15/05 (24<sup>th</sup> Legislature).
- This omnibus bill amended Title 21 and 23 to increase efficiency and flexibility. Among others, it created a task force on Workers' Compensation, mandates that an employee will be insured, created a Workers' Compensation Benefits Guaranty Fund, created a Workers' Compensation Appeals Commission, created several new positions within the Division of Workers' Compensation to carry out the changes made by the legislature.
- Specifically a subsection (c) was added to AS 23.30.107 – Release of Information. It reads as follows: **The division may not assemble, or provide information respecting, individual records for commercial purposes that are outside the scope of this chapter.**
- In a recent court case; *O'Bryan Baun Cohen Kuebler v. Lisankie et al.*, 1JU-05-557 CI, the Alaska Superior Court found the above statute reference to be ambiguous. Further the Court found that the State did not submit any solid legislative intent or history on the matter.
- HB 121 is not an attempt to overturn this Court decision, it is simply to clarify the legislative intent as the Court opined.
- Remember, this same bill provides an opt-in provision in Sec. 2. If the employee wants to share their private information – they simply have to sign a declaration advising so.
- Furthermore, the day after this bill had its first committee hearing, a law firm in Michigan requested two years worth of private data from the Division of Workers' Compensation on workers claims from 18 different companies doing business in Alaska.
- Bottom line – This bill protects the privacy of individuals who have filed a claim under the Workers' Compensation Act.