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Alaska State Legislature

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SB 5 SPONSOR STATEMENT

An Act relating to loss of income and valuing property for orders of restitution

SB 5 strengthens Alaska's restitution laws; helps restore crime victims to a pre-offense condition; and protects the property interests of all Alaskans.

According to the Department of Public Safety's annual report, *Crime in Alaska 2013*, Alaskans suffered over 23 million dollars in loss due to property crimes in 2013, up more than 12% from 2011. Surely we need to do all we can to ensure our laws work for, and not against, restitution to victims of property crimes.

SB 5 amends Alaska's restitution statutes in AS 12.55.045(a) directing courts to take into account the public policy consideration that favors requiring offenders to compensate victim damages and injury, *including loss of income*.

SB 5 further specifies that *loss of income* includes the total loss of income a business or person suffers as a result of not having stolen property available during the time it takes to obtain a replacement.

Finally, SB 5 amends AS 12.55.100(a)(2) to state that in determination of actual damages or loss the court will value the property according to its market value at the time and place of the crime, or, if this value cannot reasonably be determined, the cost of replacement of the property within a reasonable time after the crime.

In December of 2013 Alaska's Appellate Court ruled in *Lori Welsh v. State of Alaska* that the business victim of a theft crime was not entitled restitution that covered loss of income (retail or market value), but only the actual cost paid for the property. This decision is problematic to Alaskans and their business interests, requiring them to disclose confidential pricing information and depriving them of the benefit of our free market economy.

In *Welsh*, the district court ruled in the restitution order that the defendant should restore at market value the property stolen from the business owner, as the defendant should not be better off than a lawful customer paying the market price. The Appellate Court disagreed, stating this reasoning was inconsistent with Alaska's two restitution statutes, finding that AS 12.55.045(a) - restitution orders as a provision of a sentence, does not limit restitution to actual damages or loss caused by the crime; and AS 12.55.100(a)(2) - restitution as a condition of probation, does limit restitution to actual damages or loss.

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The Appellate Court found it unusual that the two statutes would be construed differently, reversed the district court's order, and decided that Alaska courts would impose restitution for actual damages or loss suffered by the victim, and not the amount of the defendant's unjust gain, regardless of whether restitution was made part of the defendant's sentence or as a condition of probation.

SB 5 makes it clear in the law we recognize *loss of income* to be a real loss to persons and businesses, and that we expect the courts to recognize this in determination of restitution orders.

I am committed to protect the rights of crime victims to just and fair restitution orders from our courts, and to the preservation of our free market economy. SB 5 is a substantial step in this direction. Please join me in strengthening Alaska's restitution laws; restoring crime victims to a pre-offense condition; and protecting property interests of all Alaskans.

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