

**CS FOR SENATE BILL NO. 186(STA)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

**BY THE SENATE STATE AFFAIRS COMMITTEE**

**Offered: 4/28/05**

**Referred: Judiciary**

**Sponsor(s): SENATOR SEEKINS**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the Alaska Executive Branch Ethics Act; establishing the crime of**  
2 **disclosing confidential ethics information; and providing for an effective date."**

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

4 **\* Section 1.** AS 11.56 is amended by adding a new section to read:

5 **Sec. 11.56.823. Disclosing confidential ethics information.** (a) A person  
6 commits the crime of disclosing confidential ethics information if the person  
7 knowingly violates a confidentiality requirement of AS 39.52.340(a).

8 (b) Disclosing confidential ethics information is a class A misdemeanor.

9 **\* Sec. 2.** AS 39.52.110(b) is amended to read:

10 (b) Unethical conduct is prohibited, but there is no [SUBSTANTIAL]  
11 impropriety if, as to a specific matter, a public officer's

12 (1) personal or financial interest in the matter is [INSIGNIFICANT,  
13 OR] of a type that is possessed generally by the public or a large class of persons to  
14 which the public officer belongs; [OR]

1 (2) action or influence would have insignificant or conjectural effect  
2 on the matter;

3 **(3) financial interest in a matter is held in a blind trust or the**  
4 **public officer does not have management control over the financial interest; or**

5 **(4) personal or financial interest in a matter is in regard to a**  
6 **business and the public officer**

7 **(A) does not own a controlling interest in the business;**

8 **(B) does not own more than one percent of the stock in the**  
9 **business and the stock owned has a value of less than \$10,000;**

10 **(C) owns an equity interest in the business worth less than**  
11 **\$10,000;**

12 **(D) is not a member of the board of directors or another**  
13 **governing body of the business;**

14 **(E) is not an elected officer of the business;**

15 **(F) does not provide personal or professional services to the**  
16 **business;**

17 **(G) does not have a contract with the business; and**

18 **(H) is not an employee of the business.**

19 \* **Sec. 3.** AS 39.52.130(f) is amended to read:

20 (f) A public officer who knows or reasonably ought to know that **an**  
21 **immediate** [A] family member **or a business associate** has received a gift because of  
22 the family member's **or business associate's** connection with the public office held by  
23 the public officer shall report the receipt of the gift by the family member **or business**  
24 **associate** to the public officer's designated supervisor if the gift would have to be  
25 reported under this section if it had been received by the public officer or if receipt of  
26 the gift by a public officer would be prohibited under this section.

27 \* **Sec. 4.** AS 39.52.140 is amended to read:

28 **Sec. 39.52.140. Improper use or disclosure of information.** (a) A current  
29 or former public officer may not disclose or use information gained in the course of, or  
30 by reason of, the officer's official duties **or position** that could in any way result in the  
31 receipt of any benefit for the officer, [OR] an immediate family member, **or a**

1           **business associate** if the information has not also been disseminated to the public.

2           (b) A current or former public officer may not disclose or use, without  
3 appropriate authorization, information acquired in the course of official duties **or by**  
4 **reason of the officer's position** that is confidential by law.

5 \* **Sec. 5.** AS 39.52.150(a) is amended to read:

6           (a) A public officer, [OR] an immediate family member, **or a business**  
7 **associate** may not attempt to acquire, receive, apply for, be a party to, or have a  
8 personal or financial interest in a state grant, contract, lease, or loan if the public  
9 officer may take or withhold official action that affects the award, execution, or  
10 administration of the state grant, contract, lease, or loan.

11 \* **Sec. 6.** AS 39.52.150(c) is amended to read:

12           (c) The prohibition in (a) of this section does not apply to a state loan if

13           (1) the public officer does not take or withhold official action that  
14 affects the award, execution, or administration of the loan held by the officer, [OR] an  
15 immediate family member, **or a business associate**;

16           (2) the loan is generally available to members of the public; and

17           (3) the loan is subject to fixed eligibility standards.

18 \* **Sec. 7.** AS 39.52.150(d) is amended to read:

19           (d) A public officer shall report in writing to the designated supervisor a  
20 personal or financial interest held by the officer, [OR] an immediate family member,  
21 **or a business associate** [,] in a state grant, contract, lease, or loan that is awarded,  
22 executed, or administered by the agency the officer serves.

23 \* **Sec. 8.** AS 39.52.210(b) is amended to read:

24           (b) A public employee's designated supervisor shall make a written  
25 determination whether an employee's involvement violates AS 39.52.110 - 39.52.190  
26 and shall provide a copy of the written determination to the public employee and to the  
27 attorney general. If the supervisor determines that a violation could exist or will  
28 occur, the supervisor shall [,]

29           (1) reassign duties to cure the employee's potential violation, if  
30 feasible; or

31           (2) direct

1                    (A) the divestiture or removal by the employee of the  
 2 [PERSONAL OR] financial interest that gives [INTERESTS THAT GIVE]  
 3 rise to the potential violation; or

4                    (B) the placement by the employee of the financial interest  
 5 that gives rise to the potential violation into a blind trust or other  
 6 investment where the employee does not have management control over  
 7 the financial interest.

8 \* **Sec. 9.** AS 39.52.230 is amended by adding a new subsection to read:

9                    (b) If an allegation of a violation of AS 39.52.110 - 39.52.190 by the  
 10 governor, lieutenant governor, or attorney general comes to the attention of the  
 11 designated supervisor for the governor, lieutenant governor, or attorney general, other  
 12 than by the declaration of a potential violation by the governor, lieutenant governor, or  
 13 attorney general under AS 39.52.210(a)(2) or by the filing of an ethics complaint  
 14 under AS 39.52.310(b), then,

15                    (1) in the case of an allegation against the governor or the lieutenant  
 16 governor, the attorney general shall refer the allegation to the personnel board, which  
 17 shall appoint an independent counsel to investigate the allegation; the independent  
 18 counsel shall have power to issue and enforce subpoenas under AS 39.52.380 and  
 19 39.52.390; the independent counsel shall prepare a written report of the investigation;  
 20 the written report must include findings of fact and a conclusion as to whether, in the  
 21 opinion of the independent counsel, the facts constitute conduct in violation of  
 22 AS 39.52.110 - 39.52.190; the report of the independent counsel shall be submitted to  
 23 the attorney general; the attorney general shall review the report and make an  
 24 independent determination as to whether the independent counsel's findings of fact, if  
 25 true, would constitute conduct in violation of AS 39.52.110 - 39.52.190; if the attorney  
 26 general concludes that the facts as found by the independent counsel would constitute  
 27 a violation of AS 39.52.110 - 39.52.190, then the attorney general shall treat the  
 28 independent counsel's report as a complaint and shall refer the report to the personnel  
 29 board under AS 39.52.310(c); if the attorney general concludes that the facts as found  
 30 by the independent counsel would not constitute a violation of AS 39.52.110 -  
 31 39.52.190, the investigation shall be closed and no further enforcement action shall be

1 taken; nothing in this paragraph precludes the filing of a complaint concerning the  
2 same allegation under AS 39.52.310(b);

3 (2) in the case of an allegation against the attorney general, the  
4 governor shall refer the allegation to the personnel board, which shall appoint an  
5 independent counsel to investigate the allegation; the independent counsel shall have  
6 power to issue and enforce subpoenas under AS 39.52.380 and 39.52.390; the  
7 independent counsel shall prepare a written report of the investigation; the written  
8 report must include findings of fact and a conclusion as to whether, in the opinion of  
9 the independent counsel, the facts constitute conduct in violation of AS 39.52.110 -  
10 39.52.190; the report of the independent counsel shall be submitted to the governor;  
11 the governor shall review the report and make an independent determination as to  
12 whether the independent counsel's findings of fact, if true, would constitute conduct in  
13 violation of AS 39.52.110 - 39.52.190; if the governor desires legal advice in making  
14 this determination, the personnel board, at the governor's request, shall appoint an  
15 additional independent counsel to advise the governor on legal issues; if the governor  
16 concludes that the facts as found by the independent counsel would constitute a  
17 violation of AS 39.52.110 - 39.52.190, then the governor shall refer the report to the  
18 personnel board for appropriate action in accordance with the procedures set out in  
19 AS 39.52.310(c); if the governor concludes that the facts as found by the independent  
20 counsel would not constitute a violation of AS 39.52.110 - 39.52.190, the  
21 investigation shall be closed and no further enforcement action shall be taken; nothing  
22 in this paragraph precludes the filing of a complaint concerning the same allegation  
23 under AS 39.52.310(b).

24 \* **Sec. 10.** AS 39.52.240(a) is amended to read:

25 (a) Upon the written request of a designated supervisor or a board or  
26 commission, the attorney general shall issue opinions interpreting this chapter. The  
27 requester must supply any additional information requested by the attorney general in  
28 order to issue the opinion. Within 60 days after receiving a complete request, the  
29 attorney general shall issue an advisory opinion on the question. **This section does**  
30 **not apply to allegations investigated under AS 39.52.230(b).**

31 \* **Sec. 11.** AS 39.52.310(a) is amended to read:

1 (a) The attorney general may initiate a complaint, or elect to treat as a  
 2 complaint, any matter disclosed under AS 39.52.210, 39.52.220, **39.52.230(b)**,  
 3 39.52.250, or 39.52.260. The attorney general may not, during a campaign period,  
 4 initiate a complaint concerning the conduct of the governor or lieutenant governor  
 5 who is a candidate for election to state office.

6 \* **Sec. 12.** AS 39.52.335(c) is amended to read:

7 (c) If a complaint is dismissed under AS 39.52.320 or resolved under  
 8 AS 39.52.330, the attorney general shall promptly prepare a summary of the matter  
 9 and provide a copy of the summary to the personnel board, **the subject of the**  
 10 **complaint**, and the complainant. The summary is confidential unless the

11 [(1)] dismissal or resolution agreed to under AS 39.52.320 or  
 12 39.52.330 is public [; OR

13 (2) SUPERIOR COURT MAKES THE MATTER PUBLIC UNDER  
 14 (h) OF THIS SECTION].

15 \* **Sec. 13.** AS 39.52.335(f) is amended to read:

16 (f) After review of the summary, the personnel board may issue a report on the  
 17 disposition of the complaint **to the attorney general, the subject of the complaint,**  
 18 **and the complainant. The report is confidential** [. IF THE MATTER IS  
 19 CONFIDENTIAL AND THE BOARD DETERMINES THAT PUBLICATION OF  
 20 THE NAME OF THE SUBJECT IS IN THE PUBLIC INTEREST, THE REPORT  
 21 MAY INCLUDE A RECOMMENDATION THAT THE MATTER BE MADE  
 22 PUBLIC].

23 \* **Sec. 14.** AS 39.52.340(a) is amended to read:

24 (a) Except as provided in AS 39.52.335, before the initiation of formal  
 25 proceedings under AS 39.52.350, the complaint and all other documents and  
 26 information regarding an investigation conducted under this chapter or obtained by the  
 27 attorney general **or independent counsel** during the investigation are confidential and  
 28 not subject to inspection by the public. In the case of a complaint concerning the  
 29 governor, lieutenant governor, or attorney general, all meetings of the personnel board  
 30 concerning the complaint and investigation before the determination of probable cause  
 31 are closed to the public. If, in the course of an investigation or probable cause

1 determination, the attorney general finds evidence of probable criminal activity, the  
 2 attorney general shall transmit a statement and factual findings limited to that activity  
 3 to the appropriate law enforcement agency. If the attorney general finds evidence of a  
 4 probable violation of AS 15.13, the attorney general shall transmit a statement to that  
 5 effect and factual findings limited to the probable violation to the Alaska Public  
 6 Offices Commission. The attorney general, **complainant, subject of the complaint,**  
 7 and all persons contacted during the course of an investigation shall maintain  
 8 confidentiality regarding the existence of the investigation **or proceeding. A person**  
 9 **may not disclose to any other person the filing of or intention to file a complaint**  
 10 **under AS 39.52.310 except to a person assisting in the filing of the complaint. A**  
 11 **person may not disclose information regarding the intention of another to file a**  
 12 **complaint under AS 39.52.310. This subsection does not prevent a person from**  
 13 **obtaining directly from a state agency a public record of that agency that has also**  
 14 **been made available in connection with an investigation or a formal proceeding**  
 15 **under AS 39.52.310 - 39.52.390.**

16 \* **Sec. 15.** AS 39.52.380(a) is amended to read:

17 (a) As provided in **AS 39.52.230(b), 39.52.310(g)** [AS 39.52.310(g)],  
 18 39.52.360(b), and 39.52.370(b), the attorney general, independent counsel retained  
 19 under **AS 39.52.230(b) or 39.52.310(c)** [AS 39.52.310(c)], a hearing officer, the  
 20 subject of an accusation, and the personnel board may summon witnesses and require  
 21 the production of records, books, and papers by the issuance of subpoenas.

22 \* **Sec. 16.** AS 39.52.410(a) is amended to read:

23 (a) If the personnel board determines that a public employee has violated this  
 24 chapter, it

25 (1) shall order the employee to stop engaging in any official action  
 26 related to the violation;

27 (2) may order divestiture, establishment of a blind trust **for a period of**  
 28 **time or under conditions determined appropriate**, restitution, or forfeiture; and

29 (3) may recommend that the employee's agency take disciplinary  
 30 action, including dismissal.

31 \* **Sec. 17.** AS 39.52.960(9) is amended to read:

1 (9) "financial interest" means

2 (A) an interest held by a public officer, or an immediate family  
3 member, which includes an involvement or ownership of an interest in a  
4 business, including a property ownership, or a professional or private  
5 relationship, that is a source of income, or from which, or as a result of which,  
6 a person has received or expects to receive a financial benefit;

7 (B) holding a position in a business, such as an officer, director,  
8 trustee, partner, employee, or the like, or holding a position of management; **or**

9 **(C) an interest held by a public officer with a business**  
10 **associate;**

11 \* **Sec. 18.** AS 39.52.960(11) is amended to read:

12 (11) "immediate family member" means

13 (A) the spouse of the person;

14 (B) another person **living in the same household**  
15 [COHABITING] with the person in a **sexual** [CONJUGAL] relationship that is  
16 not a legal marriage;

17 (C) a child, including a stepchild and an adoptive child, of the  
18 person;

19 (D) a parent **or** [,] sibling [, GRANDPARENT, AUNT, OR  
20 UNCLE] of the person; [AND]

21 (E) a **child**, parent, or sibling of the person's spouse; **and**

22 **(F) a child, parent, or sibling of another person living in the**  
23 **same household with the person in a sexual relationship that is not a legal**  
24 **marriage;**

25 \* **Sec. 19.** AS 39.52.960 is amended by adding new paragraphs to read:

26 (23) "business associate" means any person with whom a public officer  
27 jointly shares the management, control, or majority ownership of a business for the  
28 conduct of trade, commerce, the practice of a profession, or any other occupation  
29 engaged in for the purpose of providing income or potential income to the public  
30 officer, regardless of how the business is organized;

31 (24) "household" means a social unit of those persons living together

- 1           in the same dwelling.
- 2    \* **Sec. 20.** AS 39.52.335(h) is repealed.
- 3    \* **Sec. 21.** This Act takes effect January 1, 2006.