

CS FOR SENATE BILL NO. 186(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 5/3/05

Referred: Rules

Sponsor(s): SENATOR SEEKINS

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Alaska Executive Branch Ethics Act; and providing for an**
2 **effective date."**

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

4 *** Section 1.** AS 39.52.110(b) is amended to read:

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

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

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

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

14 **(4) personal or financial interest in a matter is in regard to a**

1 **business and the public officer**

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

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

5 **(C) owns an equity interest in the business worth less than**
 6 **\$10,000;**

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

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

10 **(F) does not provide personal or professional services to the**
 11 **business;**

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

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

14 * **Sec. 2.** AS 39.52.130(f) is amended to read:

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

22 * **Sec. 3.** AS 39.52.140 is amended to read:

23 **Sec. 39.52.140. Improper use or disclosure of information.** (a) A current
 24 or former public officer may not disclose or use information gained in the course of, or
 25 by reason of, the officer's official duties **or position** that could in any way result in the
 26 receipt of any benefit for the officer, [OR] an immediate family member, **or a**
 27 **business associate** if the information has not also been disseminated to the public.

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

31 * **Sec. 4.** AS 39.52.140 is amended by adding a new subsection to read:

1 (c) A current or former public officer may not disclose information that is
2 confidential under AS 39.52.340(a).

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

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

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

10 (c) The prohibition in (a) of this section does not apply to a state loan if
11 (1) the public officer does not take or withhold official action that
12 affects the award, execution, or administration of the loan held by the officer, [OR] an
13 immediate family member, **or a business associate**;
14 (2) the loan is generally available to members of the public; and
15 (3) the loan is subject to fixed eligibility standards.

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

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

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

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

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

29 (2) direct

30 **(A)** the divestiture or removal by the employee of the personal
31 or financial interests that give rise to the potential violation; **or**

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

5 * **Sec. 9.** AS 39.52.230 is amended to read:

6 **Sec. 39.52.230. Reporting of potential violations.** A person may report to a
 7 public officer's designated supervisor, under oath and in writing, a potential violation
 8 of AS 39.52.110 - 39.52.190 by the public officer. The supervisor shall provide a
 9 copy of the report to the officer who is the subject of the report and to the attorney
 10 general, and shall review the report to determine whether a violation may exist.
 11 **Except where the report concerns the governor, lieutenant governor, or the**
 12 **attorney general, the** [THE] supervisor shall act in accordance with AS 39.52.210 or
 13 39.52.220 if the supervisor determines that the matter may result in a violation of
 14 AS 39.52.110 - 39.52.190. **If the report concerns the governor, lieutenant**
 15 **governor, or the attorney general, the supervisor shall refer the report as**
 16 **provided in (b) of this section.**

17 * **Sec. 10.** AS 39.52.230 is amended by adding a new subsection to read:

18 (b) If a report or allegation of a violation of AS 39.52.110 - 39.52.190 by the
 19 governor, lieutenant governor, or attorney general comes to the attention of the
 20 designated supervisor for the governor, lieutenant governor, or attorney general, other
 21 than by the declaration of a potential violation by the governor, lieutenant governor, or
 22 attorney general under AS 39.52.210(a)(2) or by the filing of an ethics complaint
 23 under AS 39.52.310(b), then,

24 (1) in the case of a report or allegation against the governor or the
 25 lieutenant governor, the attorney general shall refer the matter to the personnel board,
 26 which shall appoint an independent counsel to investigate; the independent counsel
 27 shall have power to issue and enforce subpoenas under AS 39.52.380 and 39.52.390;
 28 the independent counsel shall prepare a written report of the investigation; the written
 29 report must include findings of fact and a conclusion as to whether, in the opinion of
 30 the independent counsel, the facts constitute conduct in violation of AS 39.52.110 -
 31 39.52.190; the report of the independent counsel shall be submitted to the attorney

1 general; the attorney general shall review the report and make an independent
2 determination as to whether the independent counsel's findings of fact, if true, would
3 constitute conduct in violation of AS 39.52.110 - 39.52.190; if the attorney general
4 concludes that the facts as found by the independent counsel would constitute a
5 violation of AS 39.52.110 - 39.52.190, then the attorney general shall treat the
6 independent counsel's report as a complaint and shall refer the report to the personnel
7 board under AS 39.52.310(c); if the attorney general concludes that the facts as found
8 by the independent counsel would not constitute a violation of AS 39.52.110 -
9 39.52.190, the investigation shall be closed and no further enforcement action shall be
10 taken; nothing in this paragraph precludes a person from filing a complaint concerning
11 the same matter under AS 39.52.310(b);

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

1 matter under AS 39.52.310(b).

2 * **Sec. 11.** AS 39.52.240(a) is amended to read:

3 (a) Upon the written request of a designated supervisor or a board or
4 commission, the attorney general shall issue opinions interpreting this chapter. The
5 requester must supply any additional information requested by the attorney general in
6 order to issue the opinion. Within 60 days after receiving a complete request, the
7 attorney general shall issue an advisory opinion on the question. **This section does**
8 **not apply to a report or an allegation investigated under AS 39.52.230(b).**

9 * **Sec. 12.** AS 39.52.310(a) is amended to read:

10 (a) The attorney general may initiate a complaint, or elect to treat as a
11 complaint, any matter disclosed under AS 39.52.210, 39.52.220, **39.52.230(a),**
12 39.52.250, or 39.52.260. The attorney general may not, during a campaign period,
13 initiate a complaint concerning the conduct of the governor or lieutenant governor
14 who is a candidate for election to state office.

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

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

20 [(1)] dismissal or resolution agreed to under AS 39.52.320 or
21 39.52.330 is public [; OR

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

24 * **Sec. 14.** AS 39.52.335(f) is amended to read:

25 (f) After review of the summary, the personnel board may issue a report on the
26 disposition of the complaint **to the attorney general, the subject of the complaint,**
27 **and the complainant. The report is confidential** [. IF THE MATTER IS
28 CONFIDENTIAL AND THE BOARD DETERMINES THAT PUBLICATION OF
29 THE NAME OF THE SUBJECT IS IN THE PUBLIC INTEREST, THE REPORT
30 MAY INCLUDE A RECOMMENDATION THAT THE MATTER BE MADE
31 PUBLIC].

1 * **Sec. 15.** AS 39.52.340(a) is amended to read:

2 (a) Except as provided in AS 39.52.335, before the initiation of formal
3 proceedings under AS 39.52.350, the complaint and all other documents and
4 information regarding an investigation conducted under this chapter or obtained by the
5 attorney general **or independent counsel** during the investigation are confidential and
6 not subject to inspection by the public. In the case of a complaint concerning the
7 governor, lieutenant governor, or attorney general, all meetings of the personnel board
8 concerning the complaint and investigation before the determination of probable cause
9 are closed to the public. If, in the course of an investigation or probable cause
10 determination, the attorney general finds evidence of probable criminal activity, the
11 attorney general shall transmit a statement and factual findings limited to that activity
12 to the appropriate law enforcement agency. If the attorney general finds evidence of a
13 probable violation of AS 15.13, the attorney general shall transmit a statement to that
14 effect and factual findings limited to the probable violation to the Alaska Public
15 Offices Commission. The attorney general, **complainant, subject of the complaint,**
16 and all persons contacted during the course of an investigation shall maintain
17 confidentiality regarding the existence of the investigation **or proceeding. A person**
18 **may not disclose to any other person the filing of or intention to file a complaint**
19 **under AS 39.52.310 except to a person assisting in the filing of the complaint. A**
20 **person may not disclose information regarding the intention of another to file a**
21 **complaint under AS 39.52.310. This subsection does not prevent a person from**
22 **obtaining directly from a state agency a public record of that agency that has also**
23 **been made available in connection with an investigation or a formal proceeding**
24 **under AS 39.52.310 - 39.52.390.**

25 * **Sec. 16.** AS 39.52.340 is amended by adding new subsections to read:

26 (d) A person may not disclose information that is confidential under (a) of this
27 section.

28 (e) Except for a current or former public officer covered by AS 39.52.140(c), a
29 person who violates (d) of this section is subject to a civil penalty of up to \$5,000.

30 (f) The attorney general may enforce this section by filing an appropriate civil
31 action.

1 * **Sec. 17.** AS 39.52.380(a) is amended to read:

2 (a) As provided in AS 39.52.230(b), 39.52.310(g) [AS 39.52.310(g)],
3 39.52.360(b), and 39.52.370(b), the attorney general, independent counsel retained
4 under AS 39.52.230(b) or 39.52.310(c) [AS 39.52.310(c)], a hearing officer, the
5 subject of an accusation, and the personnel board may summon witnesses and require
6 the production of records, books, and papers by the issuance of subpoenas.

7 * **Sec. 18.** AS 39.52.410(a) is amended to read:

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

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

12 (2) may order divestiture, establishment of a blind trust **for a period of**
13 **time or under conditions determined appropriate, placement of the financial**
14 **interest into an investment where the employee does not have management**
15 **control over the financial interest**, restitution, or forfeiture; and

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

18 * **Sec. 19.** AS 39.52.960(9) is amended to read:

19 (9) "financial interest" means

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

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

27 **(C) an interest held by a public officer with a business**
28 **associate;**

29 * **Sec. 20.** AS 39.52.960(11) is amended to read:

30 (11) "immediate family member" means

31 (A) the spouse of the person;

1 (B) another person living in the same household
 2 [COHABITING] with the person in a sexual [CONJUGAL] relationship that is
 3 not a legal marriage;

4 (C) a child, including a stepchild and an adoptive child, of the
 5 person;

6 (D) a parent or [,] sibling [, GRANDPARENT, AUNT, OR
 7 UNCLE] of the person; [AND]

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

9 (F) a child, parent, or sibling of another person living in the
 10 same household with the person in a sexual relationship that is not a legal
 11 marriage;

12 * **Sec. 21.** AS 39.52.960 is amended by adding new paragraphs to read:

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

18 (24) "household" means a social unit of those persons living together
 19 in the same dwelling.

20 * **Sec. 22.** AS 39.52.335(h) is repealed.

21 * **Sec. 23.** This Act takes effect January 1, 2006.