

Introduced: 3/15/79
Referred: Labor & Management and
Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 397

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to administrative entry warrants."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 09 is amended by adding a new chapter to read:

9 CHAPTER 37. ADMINISTRATIVE ENTRY WARRANT.

10 Sec. 09.37.010. SCOPE OF AUTHORITY TO ISSUE. The authority of
11 a judicial officer to issue an administrative entry warrant extends to
12 every circumstance in which a warrantless entry would infringe, or
13 would arguably infringe, upon the constitutionally guaranteed due
14 process or privacy rights of a person or a business entity. These
15 circumstances include, but are not limited to, administrative inspec-
16 tions, tax levies, and distraints.

17 Sec. 09.37.020. ISSUANCE OF ADMINISTRATIVE ENTRY WARRANT. A
18 judicial officer may issue an administrative entry warrant to any
19 appropriate state or local government official upon an ex parte showing
20 that the requirements set out in AS 09.37.030 are satisfied, supported
21 by oath or affirmation particularly describing the place to be entered
22 and stating the purpose of the entry.

23 Sec. 09.37.030. GROUNDS FOR ISSUANCE. An administrative entry
24 warrant may be issued if the agency making application makes a showing
25 that the property is to be entered as part of a statutorily authorized
26 program, and either:

27 (1) reasonable legislative standards, or reasonable admini-
28 strative standards (whether written or oral or established by practice),
29 for conducting the type of entry intended have been established and

1 are satisfied with respect to the particular entry; or

2 (2) in the case of an inspection, there is reason to believe
3 that a condition of nonconformity with required standards exists with
4 respect to the particular place to be inspected; or

5 (3) in the case of an inspection of business records, there
6 is reason to believe that practices which are unlawful under the laws
7 or regulations administered by the agency or official applying for the
8 warrant would be revealed by the inspection of the records or that
9 there is reason to believe that an inspection of records required by
10 law to be made available for inspection by the agency or official
11 would be refused by the custodian of the records; or

12 (4) in the case of a tax levy, there is reason to believe
13 that property belonging to a delinquent taxpayer, which is subject to
14 seizure, is located on the premises or is otherwise within the area to
15 be entered.

16 Sec. 09.37.040. APPLICATION FOR WARRANT NOT ADMISSION OF WARRANT
17 REQUIREMENT. Application for, or issuance of, an administrative entry
18 warrant in any particular entry is not an admission that a warrant is
19 constitutionally required. Where application is made for a warrant in
20 a particular case and it is later determined that in that case a
21 warrant was not constitutionally required, defects in the application
22 or the warrant do not invalidate the entry nor any actions taken
23 pursuant to the entry.

24 Sec. 09.37.050. APPLYING FOR WARRANT NOT PRACTICING LAW. Apply-
25 ing for an administrative entry warrant by appropriate state or local
26 government officials is not the practice of law in the state.

27 Sec. 09.37.060. EXECUTION OF WARRANT. Execution of the warrant
28 must be limited to the purposes of the statutorily authorized program
29 and conducted during the period of 8:00 a.m. to 5:00 p.m. unless the

1 court specifically finds at the time issuing the warrant that such a
2 time restriction would frustrate the purposes of the warrant.

3 Sec. 09.37.070. EXPIRATION AND RETURN OF WARRANT. Unless other-
4 wise designated by the judicial officer, administrative entry warrants
5 expire 30 days after issuance. Return of warrants issued under this
6 chapter must be made as soon as reasonably possible following either
7 execution or expiration of the warrant.

8 Sec. 09.37.080. DEFINITIONS. In this chapter,

9 (1) "administrative entry warrant" means an order in writing
10 signed by a judge or magistrate, directed to a state or local govern-
11 ment official, permitting entry onto or into a private area which is
12 protected or is arguably protected by the state or federal constitu-
13 tion;

14 (2) "entry" means intrusion into an area which is, or
15 arguably is, a private one, and includes, but is not limited to,

16 (A) the physical entry of an official into the dwelling
17 or non-public business area or onto the property of another;

18 (B) the opening of a compartment or container located
19 upon the public or private property of another;

20 (C) the inspection of the premises or of business
21 records located upon the public or private property of another;

22 (3) "statutorily authorized program" includes searches or
23 seizures specifically authorized by statute or ordinance and inspec-
24 tions of business records which a person or business entity is required
25 by law to maintain and make available for inspection by appropriate
26 state or local government officials.
27
28
29