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8-GH1057E
Luckhaupt
4/15/93

CS FOR HOUSE BILL NO. 188(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to forfeiture of certain property; and providing for an effective
2 date."

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

4 * Section 1. AS 17.30.110 is amended to read:

5 Sec. 17.30.110. ITEMS SUBJECT TO FORFEITURE. The following
6 property is subject to forfeiture under AS 17.30.110 - 17.30.126 [MAY BE
7 FORFEITED TO THE STATE]:

8 (1) a controlled substance that [WHICH] has been
9 manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter
10 or AS 11.71;

11 (2) raw materials, products, and equipment that [WHICH] are used or
12 intended for use in manufacturing, distributing, compounding, processing, delivering,
13 importing, or exporting a controlled substance in violation of [WHICH IS A FELONY
14 UNDER] this chapter or AS 11.71;

1 (3) property that [WHICH] is used or intended for use as a container
2 for property described in (1) or (2) of this section;

3 (4) a right, title, or interest in real property, including buildings
4 and any other improvements, or a conveyance, including but not limited to aircraft,
5 vehicles, or vessels, that [WHICH] has been used or is intended for use in
6 manufacturing, transporting, or in any manner in facilitating the manufacture,
7 transportation, sale, receipt, possession, or concealment of property described in (1) or
8 (2) of this section in violation of a felony offense under this chapter or AS 11.71 [
9 HOWEVER,

10 (A) A CONVEYANCE MAY NOT BE FORFEITED UNDER
11 THIS PARAGRAPH IF THE OWNER OF THE CONVEYANCE
12 ESTABLISHES, BY A PREPONDERANCE OF THE EVIDENCE, AT A
13 HEARING BEFORE THE COURT AS THE TRIER OF FACT, THAT USE
14 OF THE CONVEYANCE IN VIOLATION OF THIS CHAPTER OR AS 11.71
15 WAS COMMITTED BY ANOTHER PERSON AND THAT THE OWNER
16 WAS NEITHER A CONSENTING PARTY NOR PRIVY TO THE
17 VIOLATION;

18 (B) A FORFEITURE OF A CONVEYANCE ENCUMBERED
19 BY A VALID SECURITY INTEREST AT THE TIME OF SEIZURE IS
20 SUBJECT TO THE INTEREST OF THE SECURED PARTY IF THE
21 SECURED PARTY ESTABLISHES, BY A PREPONDERANCE OF THE
22 EVIDENCE, AT A HEARING BEFORE THE COURT AS THE TRIER OF
23 FACT, THAT USE OF THE CONVEYANCE IN VIOLATION OF THIS
24 CHAPTER OR AS 11.71 WAS COMMITTED BY ANOTHER PERSON AND
25 THAT THE SECURED PARTY WAS NEITHER A CONSENTING PARTY
26 NOR PRIVY TO THE VIOLATION];

27 (5) books, records, and research products and materials, including
28 formulas, microfilm, tapes, data processing equipment, and data, that [WHICH] are
29 used in violation of this chapter or AS 11.71;

30 (6) money, securities, negotiable instruments, or other things of value
31 used in financial transactions derived from or used to facilitate a violation of

1 [ACTIVITY PROHIBITED BY] this chapter or AS 11.71; [AND]

2 (7) a dangerous instrument that [FIREARM WHICH] is visible,
3 carried during, or used in furtherance of a violation of this chapter or AS 11.71; and

4 (8) property of any type traceable to a violation of this chapter or
5 AS 11.71, except that for property that is real property, the violation must be a
6 felony under this chapter or AS 11.71.

7 * Sec. 2. AS 17.30.112 is repealed and reenacted to read:

8 Sec. 17.30.112. PROCEEDINGS RESULTING IN FORFEITURE; ORDERS
9 OF FORFEITURE. (a) Property listed in AS 17.30.110(2) - (8) may be forfeited to
10 the state in a criminal proceeding or in a separate civil proceeding in rem under
11 procedures set out in AS 17.30.116, if the state proves that the property is subject to
12 forfeiture by (1) a preponderance of the evidence for property other than real property,
13 or (2) clear and convincing evidence for real property. It is prima facie evidence,
14 sufficient to support an order of forfeiture, that a defendant has been convicted of
15 conduct making the property subject to forfeiture, or that a grand jury has returned an
16 indictment finding that the evidence, if unexplained or uncontradicted, would warrant
17 a court to conclude that property identified in the indictment is subject to forfeiture.

18 (b) In commencing a forfeiture proceeding, the state shall provide notice of the
19 property to be forfeited and of the connection the state will attempt to prove between
20 the property and the conduct making it subject to forfeiture.

21 (c) At the request of either party, a forfeiture proceeding, including discovery,
22 shall be held in abeyance until the conclusion of a pending criminal action relating to
23 the conduct making the property subject to forfeiture.

24 (d) It is not a defense to a forfeiture proceeding that a criminal offense has not
25 been prosecuted, or has resulted in a conviction of a different offense or an acquittal.

26 (e) A forfeiture order or an order granting relief under AS 17.30.124 removes
27 all liens, encumbrances, or other clouds on the title that are a direct result of the
28 forfeiture proceedings.

29 (f) A person whose conduct causes property to be subject to forfeiture shall,
30 in addition to any other fine, be assessed the reasonable charge of maintenance,
31 storage, disposal, or other expenses of the forfeiture proceeding, including attorney fees

1 of the state. These charges may be ordered paid as part of a sentence, a condition of
2 probation or suspended imposition of sentence, or as an assessment of costs or attorney
3 fees as appropriate in a civil or criminal proceeding.

4 (g) An order of forfeiture shall forfeit to the state any other assets of the
5 person who caused the property to be subject to forfeiture, up to the value of property
6 subject to forfeiture, if the property subject to forfeiture has been

7 (1) commingled with other property and cannot be separated without
8 difficulty or unreasonable expense to the state;

9 (2) transferred to, sold to, or deposited with a third party, placed
10 beyond the jurisdiction of the court, or removed so it cannot be located;

11 (3) substantially diminished in value by an act or omission of the
12 person who caused the property to be subject to forfeiture; or

13 (4) remitted to a claimant under AS 17.30.124.

14 (h) An order of forfeiture issued under this section may be made regardless of
15 the location of the property, if the state has obtained personal jurisdiction over the
16 person whose interest would be affected by the forfeiture.

17 (i) A perfected priority lien on property that has been ordered forfeited is
18 created in favor of the state up to an amount that is the sum of the expenses of
19 investigation, prosecution, and forfeiture proceeding arising out of the conduct making
20 the property subject to forfeiture. In calculating the amount of the lien, expenses of
21 all state, federal, or local agencies are to be included. The lien has priority over all
22 unsecured debts associated with the property.

23 * Sec. 3. AS 17.30.114(a) is amended to read:

24 (a) Property listed in AS 17.30.110 may be seized by a peace officer upon an
25 order issued by a court having jurisdiction over the property upon a showing of
26 probable cause that the property may be forfeited under AS 17.30.110. Seizure
27 without a court order may be made if

28 (1) the seizure is incident to a valid arrest or a search under a valid
29 search warrant or is otherwise constitutionally permissible;

30 (2) the property subject to seizure has been the subject of an earlier
31 judgment in favor of the state in a criminal proceeding or civil proceeding in rem

1 under this chapter or AS 11.71; or

2 (3) there is probable cause that the property is subject to forfeiture
3 under AS 17.30.110 - 17.30.126 [WAS USED, IS BEING USED, OR IS INTENDED
4 FOR USE, IN VIOLATION OF THIS CHAPTER OR AS 11.71] and the property is
5 easily movable; property seized under this paragraph may not be held for more than
6 48 hours without a court order obtained to continue its detention.

7 * Sec. 4. AS 17.30.116(b) is amended to read:

8 (b) Upon service or publication of notice of commencement of a forfeiture
9 action under this section, a person, including a criminal defendant, claiming interest
10 in the property shall file within 30 days after the service or publication, a notice of
11 claim. The notice of claim shall be made under oath and must set [SETTING] out
12 the nature of the interest, the date it was acquired, the consideration paid, and an
13 answer to the state's allegations. If a claim and answer is not filed within the time
14 specified, the property described in the state's allegation must be ordered forfeited to
15 the state without further proceedings or showings.

16 * Sec. 5. AS 17.30.116(c) is amended to read:

17 (c) Questions of fact or law raised by a notice of forfeiture action and answer
18 of a claimant in an action commenced under this section must be determined by the
19 court sitting without a jury. [THIS PROCEEDING MAY BE HELD IN ABEYANCE
20 UNTIL CONCLUSION OF ANY PENDING CRIMINAL CHARGES AGAINST THE
21 CLAIMANT UNDER THIS CHAPTER OR AS 11.71.]

22 * Sec. 6. AS 17.30.116 is amended by adding a new subsection to read:

23 (d) A criminal defendant or a person claiming an interest in the property under
24 this section and AS 17.30.124 may testify, present evidence and witnesses, and cross-
25 examine witnesses presented by other parties. In addition to other testimony and
26 evidence presented, the court may consider the relevant portions of the record of a
27 related criminal action. The court shall make findings of fact regarding contested
28 issues and shall set out its conclusions of law.

29 * Sec. 7. AS 17.30.122 is amended to read:

30 Sec. 17.30.122. STATE DISPOSAL OF FORFEITED PROPERTY. Property
31 forfeited under AS 17.30.110 - 17.30.126 other than controlled substances shall be

1 disposed of by the commissioner of administration in accordance with applicable law.

2 The commissioner of administration may

3 (1) destroy property harmful to the public;

4 (2) sell the property and use the proceeds for payment of all proper
5 expenses of the proceedings for forfeiture and sale, including expenses of seizure,
6 custody, and court costs;

7 (3) take custody of the property and authorize its use in the
8 enforcement of this chapter or AS 11.71, or transfer it to another agency of the state
9 or a political subdivision of the state for a use in furtherance of the administration of
10 justice;

11 (4) at the direction of the commissioner of public safety, transfer up to 90
12 percent of the net value of the forfeited property to one or more agencies or
13 political subdivisions of the state for use in furtherance of the administration of
14 justice; in directing this transfer, the commissioner of public safety may take into
15 account an equitable allocation based on the amount of the contribution made by
16 each agency to the investigation or prosecution of the conduct making the
17 property subject to forfeiture, or based on any agreements as to the sharing of
18 assets;

19 (5) take custody of the property and remove it for disposition in
20 accordance with law;

21 (6) [(5)] forward it to the Drug Enforcement Administration of the
22 United States Department of Justice for disposition; or

23 (7) [(6)] transfer ownership of an aircraft to the Alaska Wing, Civil Air
24 Patrol.

25 * Sec. 8. AS 17.30.124 is amending by adding a new subsection to read:

26 (c) A person who has filed a timely claim under AS 17.30.116(b) may have
27 the property remitted by the court under (a) of this section upon proof by a
28 preponderance of the evidence that the person

29 (1) has a valid right, title, or interest in the property, acquired in good
30 faith, that takes priority over a lien in favor of the state arising under AS 17.30.112(h);

31 (2) did not knowingly participate in or facilitate the conduct that

1 resulted in the property being subject to forfeiture; and

2 (3) did not know that a person might engage in the conduct that
3 resulted in the property being subject to forfeiture.

4 * Sec. 9. AS 17.30.900 is amended by adding a new subsection to read:

5 (c) In AS 17.30.110 - 17.30.126, "dangerous instrument" has the meaning
6 given in AS 11.81.900(b).

7 * Sec. 10. AS 17.30.124(b) is repealed.

8 * Sec. 11. This Act takes effect July 1, 1993.

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6 property is subject to forfeiture under AS 17.30.110 - 17.30.126 [MAY BE
7 FORFEITED TO THE STATE]:

8 (1) a controlled substance that [WHICH] has been
9 manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter
10 or AS 11.71;

11 (2) raw materials, products, and equipment that [WHICH] are used or
12 intended for use in manufacturing, distributing, compounding, processing, delivering,
13 importing, or exporting a controlled substance in violation of [WHICH IS A FELONY
14 UNDER] this chapter or AS 11.71;

1 [ACTIVITY PROHIBITED BY] this chapter or AS 11.71; [AND]

2 (7) a dangerous instrument that [FIREARM WHICH] is visible,
3 carried during, or used in furtherance of a violation of this chapter or AS 11.71; and

4 (8) property of any type traceable to a violation of this chapter or
5 AS 11.71, except that for property that is real property, the violation must be a
6 felony under this chapter or AS 11.71.

7 * Sec. 2. AS 17.30.112 is repealed and reenacted to read:

8 Sec. 17.30.112. PROCEEDINGS RESULTING IN FORFEITURE; ORDERS
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10 the state in a criminal proceeding or in a separate civil proceeding in rem under
11 procedures set out in AS 17.30.116, if the state proves by a preponderance of the
12 evidence that the property is subject to forfeiture. It is prima facie evidence, sufficient
13 to support an order of forfeiture, that a defendant has been convicted of conduct
14 making the property subject to forfeiture, or that a grand jury has returned an
15 indictment finding that the evidence, if unexplained or uncontradicted, would warrant
16 a court to conclude that property identified in the indictment is subject to forfeiture.

17 (b) In commencing a forfeiture proceeding, the state shall provide notice of the
18 property to be forfeited and of the connection the state will attempt to prove between
19 the property and the conduct making it subject to forfeiture.

20 (c) It is not a defense to a forfeiture proceeding that a criminal offense has not
21 been prosecuted, or has resulted in a conviction of a different offense or an acquittal.

22 (d) A forfeiture order or an order granting relief under AS 17.30.124 removes
23 all liens, encumbrances, or other clouds on the title that are a direct result of the
24 forfeiture proceedings.

25 (e) A person whose conduct causes property to be subject to forfeiture shall,
26 in addition to any other fine, be assessed the reasonable charge of maintenance,
27 storage, disposal, or other expenses of the forfeiture proceeding, including attorney fees
28 of the state. These charges may be ordered paid as part of a sentence, a condition of
29 probation or suspended imposition of sentence, or as an assessment of costs or attorney
30 fees as appropriate in a civil or criminal proceeding.

31 (f) An order of forfeiture shall forfeit to the state any other assets of the person

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12 intended for use in manufacturing, distributing, compounding, processing, delivering,
13 importing, or exporting a controlled substance in violation of [WHICH IS A FELONY
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2 for property described in (1) or (2) of this section;

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6 manufacturing, transporting, or in any manner in facilitating the manufacture,
7 transportation, sale, receipt, possession, or concealment of property described in (1) or
8 (2) of this section in violation of a felony offense under this chapter or AS 11.71 [;
9 HOWEVER,

10 (A) A CONVEYANCE MAY NOT BE FORFEITED UNDER
11 THIS PARAGRAPH IF THE OWNER OF THE CONVEYANCE
12 ESTABLISHES, BY A PREPONDERANCE OF THE EVIDENCE, AT A
13 HEARING BEFORE THE COURT AS THE TRIER OF FACT, THAT USE
14 OF THE CONVEYANCE IN VIOLATION OF THIS CHAPTER OR AS 11.71
15 WAS COMMITTED BY ANOTHER PERSON AND THAT THE OWNER
16 WAS NEITHER A CONSENTING PARTY NOR PRIVY TO THE
17 VIOLATION;

18 (B) A FORFEITURE OF A CONVEYANCE ENCUMBERED
19 BY A VALID SECURITY INTEREST AT THE TIME OF SEIZURE IS
20 SUBJECT TO THE INTEREST OF THE SECURED PARTY IF THE
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28 formulas, microfilm, tapes, data processing equipment, and data, that [WHICH] are
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31 used in financial transactions derived from or used to facilitate a violation of

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10 the state in a criminal proceeding or in a separate civil proceeding in rem under
11 procedures set out in AS 17.30.116, if the state proves by a preponderance of the
12 evidence ~~that~~ the property is subject to forfeiture. It is prima facie evidence, sufficient
13 to support an order of forfeiture, that a defendant has been convicted of conduct
14 making the property subject to forfeiture, or that a grand jury has returned an
15 indictment finding that the evidence, if unexplained or uncontradicted, would warrant
16 a court to conclude that property identified in the indictment is subject to forfeiture.

17 (b) In commencing a forfeiture proceeding, the state shall provide notice of the
18 property to be forfeited and of the connection the state will attempt to prove between
19 the property and the conduct making it subject to forfeiture.

20 (c) It is not a defense to a forfeiture proceeding that a criminal offense has not
21 been prosecuted, or has resulted in a conviction of a different offense or an acquittal.

22 (d) A forfeiture order or an order granting relief under AS 17.30.124 removes
23 all liens, encumbrances, or other clouds on the title that are a direct result of the
24 forfeiture proceedings.

25 (e) A person whose conduct causes property to be subject to forfeiture shall,
26 in addition to any other fine, be assessed the reasonable charge of maintenance,
27 storage, disposal, or other expenses of the forfeiture proceeding, including attorney fees
28 of the state. These charges may be ordered paid as part of a sentence, a condition of
29 probation or suspended imposition of sentence, or as an assessment of costs or attorney
30 fees as appropriate in a civil or criminal proceeding.

31 (f) An order of forfeiture shall forfeit to the state any other assets of the person

1 who caused the property to be subject to forfeiture, up to the value of property subject
2 to forfeiture, if the property subject to forfeiture has been

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4 difficulty or unreasonable expense to the state;

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6 beyond the jurisdiction of the court, or removed so it cannot be located;

7 (3) substantially diminished in value by an act or omission of the
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9 (4) remitted to a claimant under AS 17.30.124.

10 (g) An order of forfeiture issued under this section may be made regardless of
11 the location of the property, if the state has obtained personal jurisdiction over the
12 person whose interest would be affected by the forfeiture.

13 (h) A perfected priority lien on property that has been ordered forfeited is
14 created in favor of the state up to an amount that is the sum of the expenses of
15 investigation, prosecution, and forfeiture proceeding arising out of the conduct making
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23 without a court order may be made if

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25 search warrant or is otherwise constitutionally permissible;

26 (2) the property subject to seizure has been the subject of an earlier
27 judgment in favor of the state in a criminal proceeding or civil proceeding in rem
28 under this chapter or AS 11.71; or

29 (3) there is probable cause that the property is subject to forfeiture
30 under AS 17.30.110 - 17.30.126 [WAS USED, IS BEING USED, OR IS INTENDED
31 FOR USE, IN VIOLATION OF THIS CHAPTER OR AS 11.71] and the property is

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2 48 hours without a court order obtained to continue its detention.

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9 answer to the state's allegations. If a claim and answer is not filed within the time
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11 the state without further proceedings or showings.

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14 this section and AS 17.30.124 may testify, present evidence and witnesses, and cross-
15 examine witnesses presented by other parties. In addition to other testimony and
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22 disposed of by the commissioner of administration in accordance with applicable law.
23 The commissioner of administration may

24 (1) destroy property harmful to the public;

25 (2) sell the property and use the proceeds for payment of all proper
26 expenses of the proceedings for forfeiture and sale, including expenses of seizure,
27 custody, and court costs;

28 (3) take custody of the property and authorize its use in the
29 enforcement of this chapter or AS 11.71, or transfer it to another agency of the state
30 or a political subdivision of the state for a use in furtherance of the administration of
31 justice;

1 (4) at the direction of the commissioner of public safety, transfer up to 90
2 percent of the net value of the forfeited property to one or more agencies or
3 political subdivisions of the state for use in furtherance of the administration of
4 justice; in directing this transfer, the commissioner of public safety may take into
5 account an equitable allocation based on the amount of the contribution made by
6 each agency to the investigation or prosecution of the conduct making the
7 property subject to forfeiture, or based on any agreements as to the sharing of
8 assets:

9 (5) take custody of the property and remove it for disposition in
10 accordance with law;

11 (6) [(5)] forward it to the Drug Enforcement Administration of the
12 United States Department of Justice for disposition; or

13 (7) [(6)] transfer ownership of an aircraft to the Alaska Wing, Civil Air
14 Patrol.

15 * Sec. 7. AS 17.30.124 is amending by adding a new subsection to read:

16 (c) A person who has filed a timely claim under AS 17.30.116(b) may have
17 the property remitted by the court under (a) of this section upon proof by a
18 preponderance of the evidence that the person

19 (1) has a valid right, title, or interest in the property, acquired in good
20 faith, that takes priority over a lien in favor of the state arising under AS 17.30.112(h);

21 (2) did not knowingly participate in or facilitate the conduct that
22 resulted in the property being subject to forfeiture; and

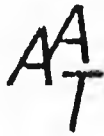
23 (3) did not know or have reasonable cause to believe that a person
24 might engage in the conduct that resulted in the property being subject to forfeiture.

25 * Sec. 8. AS 17.30.900 is amended by adding a new subsection to read:

26 (c) In AS 17.30.110 - 17.30.126, "dangerous instrument" has the meaning
27 given in AS 11.81.900(b).

28 * Sec. 9. AS 17.30.124(b) is repealed.

29 * Sec. 10. This Act takes effect July 1, 1993.



Alaska Action Trust

P.O. Box 102333 • Anchorage, Alaska 99510
Office: 540 "L" Street, Suite 206 • Anchorage, AK 99501
(907) 258-4040 • FAX (907) 276-7185

To: Representative Porter, Chair of House Judiciary
Representative James, Vice-Chair of House Judiciary
Representative Kott
Representative Phillips
Representative Green
Representative Davidson
Representative Nordlund

From: Christine Schleuss

Date: April 13, 1993

RE: HB 188, "An Act related to forfeiture of certain property; and providing for an effective date."

The Alaska Action Trust would not oppose a bill which would provide for the forfeiture of controlled substances and of property traceable to drug dealing when the property is forfeited from convicted drug dealers. However, the Alaska Action Trust opposes HB 188 because it will be unfairly used to take property from innocent citizens who committed no crime and who did not know that their property was being used by drug dealers to complete their illegal deals.

As presently written, AS 17.30.112 provides for forfeiture upon either a conviction of the defendant for a drug crime, or upon a judgment of a court in a separate civil proceeding. The proposed changes to AS 17.30.112 dramatically increase the circumstances when forfeiture is permitted. These changes will result in seizure and forfeiture of a person's primary residence, a person's boat, airplane, or other vehicle if any minimal

connection is made between such property and any alleged felony narcotics offense.

The reality is that few people can afford effectively to contest forfeiture proceedings. Frequently, the value of the property itself will be less than the cost of resisting forfeiture. What that means is that in the majority of cases, the state will succeed in taking away the private property of Alaskans simply on a showing of probable cause, without ever having to prove, even by a preponderance of evidence, that it is entitled to the property. Innocent owners of real and personal property will be greatly harmed.

1. The Scope Of The Forfeitures Envisioned By This Bill Is Vast.

Without question, the most frequently prosecuted offenses in Alaska consist of alleged violations of drug laws. In addition to providing procedures for forfeiture, HB 188 amends AS 17.30.110, and specifically authorizes the seizure and forfeiture of real property. Under this Bill, if one member of a residence, or even a visitor to the residence, uses or intends to use the family home in order to possess, conceal, or store a small amount of a controlled substance, possession of which is a class C felony, the state may seize the residence on a showing of probable cause connecting the possession to the home, thus shifting the burden of proof as to the narrow, permitted defense or exemption to perfectly innocent co-habitants of the home.

Recommendation:

(1) Forfeiture provisions should be made applicable only to the most serious felony drug offenses. By narrowing the class of cases in which forfeiture is available, the Legislature can minimize the potential for abuse and maximize the compensatory and deterrent effect.

(2) No forfeiture of real property should be permitted unless the interest in the property "contributes directly and materially to the commission of a specified" serious felony offense for which the defendant is convicted. N.Y. CPLR Art. 13A §1310(4)(a); New York Penal Laws §490.00(6).

2. Additional Observations.

The provision in this Bill which permits the proceeds of forfeitures to end up with the Department of Public Safety creates tremendous potentials for unlawful searches and seizures and abuse of the forfeiture process. Any general forfeiture bill should mandate disbursement of any proceeds of forfeitures to the Department of Health & Social Services.

Jurisdiction becomes a problem. Currently state court prosecutions may be coordinated with federal forfeiture proceedings. If the state expands its forfeiture provisions, then the Bill should include a prohibition against state enforcement officers initiating federal forfeiture proceedings.

Proposed AS 17.30.114(a)(1) purports to permit a peace officer to seize property allegedly subject to forfeiture without a court order as "is otherwise constitutionally permissible. . . ."

This provision is hopelessly vague, encourages warrantless privacy invasions, and contains no limits upon the discretion of individual officers. This proposed additional clause must be deleted.

The provisions provide for permanent forfeiture of property upon only a showing of a preponderance of evidence as the burden of proof. This burden of proof is constitutionally deficient. At least clear and convincing evidence should be required before valuable licenses, personal residences, and other substantial interests may be forfeited to the state. Dep't of Law Enforcement v. Real Property, Etc., 588 So.2d 957 (Fla. 1991).

CONCLUSION

A carefully constructed, procedurally fair, and judiciously implemented statute which provides procedures for forfeiture of proceeds from, or instrumentalities used in, the commission of the most serious drug offenses is a desirable legislative goal. HB 188, however, is a procedurally unfair, constitutionally deficient proposal, which will result in the overbroad application of disfavored forfeiture proceedings in virtually every felony drug case.

While the Bill may be an effective way of divesting citizens of their private property, it is not narrowly tailored or closely fitted to divesting only those who have actually used the property in, or benefitted from, criminal conduct. Instead, it will encourage privacy violations by providing an affirmative financial incentive for law enforcement officers to conduct suspect searches and seizures. It will result in a massive redistribution

of private property, not because accurate determinations have been made of the connection between the property and crime, but simply because very few individuals will have the resources or incentive to enter into forfeiture fights with the state. The methods and consequences of an expansive forfeiture scheme are offensive to peculiarly Alaskan beliefs in, and commitments to, the importance of individual privacy, preservation of private property, guarantee of fair process, and minimization of discretionless government intrusion into private lives.

How HB 188 Protects Innocent Owners of Property

Current law allows lienholders and secured creditors (such as banks and other lending institutions) to avoid forfeiture of cars, planes, boats, and other conveyances if they did not consent to it being used to deal drugs, and they were not "privy to the violation". AS 17.30.110(4).

Although there is no statutory definition of "privy", the Alaska Supreme Court has followed federal law in describing when the state can constitutionally forfeit property owned by someone other than the law violator. In *State v. Rice*, 626 P.2d 104 (Alaska 1981), the court held that property must be returned to a security holder if "'prior to parting with the property he did not know, nor have reasonable cause to believe, [either] that the property would be used to violate [the law, or] . . . that the violator had a criminal record or a reputation for'" committing such an offense. *Id.* at 114 (quoting from 19 CFR § 171.13(a)).

Thus, under the supreme court's analysis, if a bank loans money for a new car to a person who is known to be a convicted drug dealer, or who even has a reputation as a drug dealer, the state could constitutionally forfeit the bank's interest in the car if the buyer later uses it to sell drugs. This is a high standard of care that is imposed upon lending institutions, and it is doubtful there is any practical way they can conduct the kind of searching inquiry that will completely insulate them from forfeiture of the security interest.

HB 188, however, takes a more practical approach. First, it protects all types of innocent owners, not merely those who have a security interest in cars, planes, and boats. Second, it specifies that property is to be returned ("remitted" is the term of art used in the bill) to the innocent owner if the person did not "knowingly" participate in or facilitate the crime, and if the person did not "know or have any reasonable cause to believe" that a drug offense would be committed using the property.

Under this provision, persons who loan or rent their property to friends or acquaintances who are drug dealers will have to think twice before doing so, while legitimate business will be able to loan money without fear that they face losing their entire interest if the property is used in a way that was not foreseeable.

HB 188: House Judiciary Committee

Thank you Chairman Porter, Members of the Committee. My name is Shelley Owens. I am an attorney in private practice in Juneau. A few years ago I was employed by the Municipality of Anchorage as an Asst. Municipal Prosecutor. I'm speaking in opposition to HB 188 on behalf of the AK Civil Liberties Union.

HB 188 would broaden a law which already represents a fundamental and basic attack on individual rights guaranteed by State & Federal Constitutions. In forfeiture proceedings, there are no due process rights or right to counsel because forfeiture is an action against the property itself, not the person. Forfeiture creates a punishment mechanism which is outside of the criminal justice process, thereby circumventing the protections that would otherwise be guaranteed to a person accused of a crime.

Currently the law provides for forfeiture following criminal conviction or a civil judgment in a forfeiture action. HB 188 would allow the state to forfeit property following a person's indictment for a criminal offense. One impact of this change would be to allow the State to seize a person's bank accounts after an indictment, possibly eliminating the defendant's ability to retain independent defense counsel, which I have been told would transfer the defense burden to the the State Public Defender Agency. I haven't seen a fiscal note about the added costs to the state of enacting HB 188.

HB 188 also opens the door for the State to forfeit the property of innocent people who haven't been charged with a crime. Nationally, half of people who lose property under forfeiture laws have not been charged w/ a crime, and 80% of people who lose their property don't or can't contest the forfeitures. I came across a few examples of problems with overbroad forfeiture laws in other states in the WA Post and Newsweek Magazine:

- Priest in Wasco, CA bought a Mercury Grand Marquis from a car dealer who was running a drug-smuggling organization on the side. FBI seized the car & 3 mos. for the priest to get car back.
- NY man lost 1986 Camaro & \$40,000 in legal fees: gave ride to customer at bar he worked at (carrying cocaine): charges dismissed but car not returned: prosecutor argued for forfeiture that it was an ideal type of car for undercover work.
- Married couple in SD lost \$100,000 home bought w/ insurance proceeds from accident husband suffered as an ironworker. Police found trace of mj in home & mj roach or butt in daughter's car.

Other states have expanded the law beyond drug offenses:

- NJ woman lost '87 Oldsmobile after lent it to son who drove to Sears, shoplifted pair of pants & ran into a security guard.
- Portland, OR: restaurant owner hired his brother to work as a bartender. The brother engaged in gambling without the restaurant owner's knowledge, and was arrested. The police seized the restaurant & it cost the owner \$20,000 to get restaurant back, incl. \$10,000 in attorney fees.

Forfeiture laws have existed since 1700's when used against pirates & smugglers: revived in 1980's. Since then the Govt has used the law to engage in a little piracy of its own:

Chair of House Govt Operations Committee John Conyers: Fed. program is creating gross miscarriages of justice. Since 1985 Fed. Govt. has seized \$2.6 billion in assets. In 1991, 35,295 seizures were made, incl. a Mr. Coffee & pair of baby shoes. A NJ prosecutor is driving around in a seized yellow Corvette & Denver police seized weight lifting equipment from health club bust for their use.

A 1991 General Accounting Office report noted chronic problems w/ US Dept of Justice program. Head of Office of Asset Forfeiture calls the program "Goose that lays the golden egg".

US SCT is scheduled in July to decide if 8th Amendment prohibition against cruel and unusual punishment should apply to forfeiture proceedings. I'd suggest that you hold the bill over until next year to see what the impact of the Supreme Court rulings on HB 188.

I gave you some examples of forfeiture abuses in other states, but Alaska has had problems as well with Fed. forfeiture law. A few years ago a couple moved into a mother-in-law apartment attached to a single family dwelling on the Hillside in ANC. A day or two after they moved in, before they had unpacked, the police raided the house & apt. The police seized the tenants' property as well, including jewelry and artwork, much of it still in boxes. The property was never returned to them and was sold without their notice at auction. The family has since left Alaska.

Under State law we currently have greater protection against these types of abuses than under Fed. law, which HB 188 would change. Judges now have the discretion to seize contraband, impose hefty fines & to seize conveyances and property following criminal conviction or a judgment in a civil forfeiture action. Expansion of the law to allow forfeiture upon indictment would create an automatic punishment outside of due process protections not only for a criminal defendant but for the uncharged innocent person as well.

A broadening of the forfeiture law coupled with the right to receive the forfeiture proceeds would give law enforcement agencies a direct financial stake in the outcome and an incentive towards overzealous law enforcement activities. A property owner in a forfeiture proceeding has no right to an attorney, and would have to choose between losing his property or engaging in an expensive and lengthy court battle against govt. Even if he gets his property back, he may still have to pay for towing, storage and retrieval fees as well as his attorney fees and costs.

While forfeiture is a useful and powerful tool in the war against drugs, it should not be accessed until a person has been convicted of a crime and where it can be proven that the property was actually used in a crime or represents the profits of criminal activity. If the concern of law enforcement is that the asset will disappear while the criminal action is pending, the preferred solution would be to seek a court order freezing the assets in question, rather than forfeiture and disposal of the asset prior to criminal conviction or civil court judgment.

The proposal of HB 188 to amend the existing law to allow forfeiture of property of a person who has not been charged with a crime, or who has been indicted but not yet convicted significantly enlarges the pool of people whose property is subject to forfeiture and puts every person at risk who lends a car to anyone (including their own teenager), gives a co-worker a ride, owns a joint bank account, owns rental or remote property or rents property from another person.

Thank you for the opportunity to speak on this bill.

Section-by-section description of HB 188 (asset forfeiture for drug offenses)

Section 1 of the bill lists the property subject to forfeiture:

- permits forfeiture of real property, including buildings
- permits tracing of drug money to allow forfeiture of any property purchased by such funds
- permits forfeiture of all dangerous instruments used by drug dealers (current law forfeits only firearms) and modernizes the law by permitting forfeiture of computer equipment used in drug dealing
- deletes the provisions relating to "innocent owners", which are relocated and dealt with more comprehensively in Section 7

Section 2 of the bill lists the procedures used in forfeiture more comprehensively, thus resolving some of the procedural ambiguities noted by the Alaska Court of Appeals in *Badoino v. State*, 785 P.2d 39 (Alaska App. 1990).

- although the burden is on the state, the bill provides that a *prima facie* case has been proven if a defendant who has used the property has been convicted of a drug offense or if a grand jury issues an indictment identifying the property as connected to criminal activity

- requires the costs of the forfeiture proceedings to be paid by the drug dealer
- allows the court to forfeit other assets of the drug dealer if the property to be forfeited is commingled with other property, has been removed from the jurisdiction, or has been destroyed
- gives the state a perfected priority lien on the forfeited property, and thus avoids the pitfalls of *Fehir v. State*, 755 P.2d 1107 (Alaska 1988), which permits unsecured creditors to claim forfeited property

Section 3 permits seizure of property that is subject to forfeiture on any grounds permitted by the constitution.

Sections 4 and 5 resolve other ambiguities noted in *Badoino v. State*, by clarifying that the procedures in AS 17.30.116 also apply to defendants in criminal proceedings, by permitting criminal defendants to resist forfeiture through standard judicial procedures, and by requiring judges to set out findings of fact to support the forfeiture and to facilitate appellate review. The bill also specifies that persons claiming property that is subject to forfeiture must present that claim under oath.

Section 6 permits municipal law enforcement agencies to share in the value of forfeited property that they helped to obtain.

Section 7 provides that an innocent owner of property that is subject to forfeiture may obtain "remission" of that property by proving that the person acquired the property in good faith, did not participate or facilitate the crime, and did not know or have reasonable cause to believe that the property would be used in a drug offense.

Section 8 provides a definition used in Section 1. Section 9 is the repealer section. Section 10 provides an effective date of July 1, 1993.

FISCAL NOTE

No. 4
 Bill Version: HB 188
 (H) Publish Date: 3/1/93

STATE OF ALASKA
 1993 LEGISLATIVE SESSION

Revision Date: February 16, 1993
 Title: "An Act relating to forfeiture of certain property..."
 Sponsor: Rules Committee/Req. of Governor
 Requestor: Governor's Office/OMB

Department Affected: Department of Law
 BRU: Prosecution
 Component: All
 COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Richard I. Peques

Prepared by: Richard I. Peques, Director
 Division: Administrative Services Division

Phone: 465-3672
 Date: February 16, 1993

Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law

Date: February 16, 1993

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. 188

NO. 4

Pg 2 of 2

ANALYSIS (Continued):

This bill amends the state drug asset forfeiture laws (AS 17.30) in order to resolve procedural ambiguities in the existing law, as noted in Badoino v. State. Because of those ambiguities the state has had to rely on federal prosecutors for most drug forfeiture actions in Alaska, thus reducing the proceeds that would otherwise flow to the state as the result of the seizure and sale of assets used in narcotics trafficking.

This bill would also permit the forfeiture of real property, including buildings; permit the tracing of drug money to allow forfeiture of any property purchased with that money; permit the forfeiture of all dangerous instruments used by a drug dealer, while existing law requires forfeiture only of firearms; permit the sharing of forfeited assets between municipal police departments and the state; require the state's costs for forfeiture proceedings to be paid by the drug dealer; allow the court to forfeit other assets of the drug dealer if the property to be forfeited is commingled with other property, has been removed from the court's jurisdiction or has been destroyed by the drug dealer; and give the state a perfected priority lien on the forfeited property ahead of unsecured creditors.

All of these changes are designed to improve the state's forfeiture and disposal of drug trafficking assets, and they are expected to have positive fiscal impact for the state.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

No. 1
Bill Version: HB 188
(H) Publish Date: 3/1/93

Revision Date: _____
Title: 'An Act relating to forfeiture of certain property ...'
Sponsor: Rules Committee
Requestor: Governor

Department Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: John Salemi, Public Defender
Division: Public Defender Agency

Phone: 279-7541
Date: _____

Approved by Commissioner: Nancy Bear Usera
Agency: Administration

Date: 2/10/93

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

No. 2
Bill Version: HB 188
(H) Publish Date: 3/1/93

Revision Date: _____
Title: "An Act relating to forfeiture of certain property;
and providing . . ."
Sponsor: Governor
Requestor: Rules Committee

Department Affected: Administration
BRU: Office of Public Advocacy
Component: Office of Public Advocacy
COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Brant McGee, Public Advocate
Division: Office of Public Advocacy

Phone: 274-1684
Date: _____

Approved by Commissioner: Nancy Bear Usara
Agency: Administration

Date: 3/1/93

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

No. 3
 Bill Version: HB 188
 (H) Publish Date: 3/1/93

Revision Date: _____ Dept. Affected: Public Safety
 Title: "An Act relating to forfeiture
of certain property." BRU: Alaska State Troopers
 Sponsor: Rules Component: Criminal Investigation Bureau
 Requestor: Governor COMPONENT SERIAL NO. 830

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

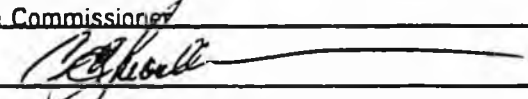
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY 93) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary.) This zero fiscal note is based on the assumption that the Department of Admin. will make forfeiture reports available to the Dept. of Public Safety Commissioner to determine recommendations for the transfer of up to 90% of the net value of forfeited property to one or more agencies or political subdivisions of the State as set out in Sec. 17.30.122(4).

Prepared By: C.E. Swackhammer Phone: 465-4322
 Division: Office of the Commissioner Date: 2/12/93
 Approved by Commissioner:  Date: 2/12/93
 Agency: Richard L. Burton, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO: HB 188

Revision Date: _____ Dept. Affected: Public Safety
 Title: "An act relating to forfeiture of BRU: Alaska State Troopers
certain property: " Component: Detachments
 Sponsor: House Rules
 Requestor: House Judiciary COMPONENT SERIAL NO. 799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

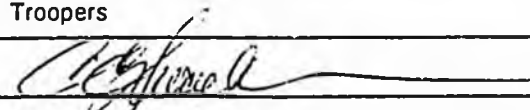
POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY 93) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact is anticipated.

Prepared By: Francis C. Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 3/17/93
 Approved by Commissioner:  Date: 3/25/93
 Agency: Richard L. Burton, Dept. of Public Safety

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HOUSE JOURNAL

490

March 1, 1993

HB 188

"An Act relating to forfeiture of certain property; and providing for an effective date."

was read the first time and referred to the Judiciary and Finance Committees.

The following fiscal notes apply to HB 188:

Zero fiscal notes (2), Dept. of Administration, 3/1/93

Zero fiscal note, Dept. of Public Safety, 3/1/93

Zero fiscal note, Dept. of Law, 3/1/93

"Dear Speaker Barnes:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill amending the state's asset forfeiture laws to make them more effective. Many of these changes are found in the Model Asset Seizure and Forfeiture Act (1991), prepared by the American Prosecutor's Research Institute. This bill

- permits forfeiture of real property, including buildings;
- permits tracing of drug money to allow forfeiture of any property purchased with that money;
- permits forfeiture of all dangerous instruments used by a drug dealer, while existing law requires forfeiture only of firearms;
- permits the sharing of forfeited assets between municipal police departments and the state;
- requires the costs of the forfeiture proceedings to be paid by the drug dealer;
- allows the court to forfeit other assets of the drug dealer if the property to be forfeited is commingled with other property, has been removed from the jurisdiction, or has been destroyed by the drug dealer;
- gives the state a perfected priority lien on the forfeited property, and thus avoids the pitfalls of *Fehir v. State*, 739 P.2d 785

March 1, 1993

491

HB 188

(Alaska App. 1987), which permits unsecured creditors to claim forfeited property; and

-- resolves some of the procedural ambiguities in existing forfeiture law noted in *Badoino v. State*, 785 P.2d 39 (Alaska App. 1990).

This bill is one of four that I am introducing this session to create tough new laws to combat drugs and violent crime. If enacted, these bills will give the state the tools it needs to prosecute serious criminals fairly and effectively.

I urge your favorable action on this bill.

Sincerely,

/s/

Walter J. Hickel
Governor"

HB 189

HOUSE BILL NO. 189 by the House Rules Committee by request of the Governor, entitled:

"An Act relating to the charging, prosecuting, and sentencing of certain minors concerning offenses of murder in the first degree, attempted murder in the first degree, murder in the second degree, and certain other offenses; and providing for an effective date."

was read the first time and referred to the Health, Education & Social Services, Judiciary and Finance Committees.

The following fiscal notes apply to HB 189:

Zero fiscal notes (2), Dept. of Administration, 3/1/93

Zero fiscal note, Dept. of Corrections, 3/1/93

Zero fiscal note, Dept. of Health & Social Services, 3/1/93

Zero fiscal note, Dept. of Law, 3/1/93

Zero fiscal note, Dept. of Public Safety, 3/1/93

The Governor's transmittal letter, dated March 1, 1993, appears below:

BILL NO: HB 188

DATE: March 24, 1993

TITLE: "An Act relating to
forfeiture of certain
property. . ."

CONTACT: C.E. Swackhammer
Deputy Commissioner
465-4322

HB 188 will provide law enforcement with a more effective means of utilizing asset forfeiture as a tool to combatting drugs and violent crimes by taking weapons away from criminals and illegally gained assets from drug dealers.

This bill will:

permit forfeiture of real property including buildings;

permit tracing of drug money to allow forfeiture of any property purchase with that money;

permit forfeiture of all dangerous instruments used by a drug dealer;

permit the sharing of forfeited assets between municipal police departments and the state;

require the cost of all forfeiture proceedings to be paid by the drug dealer;

allow the court to forfeit other assets of the drug dealer if the property to be forfeited is co-mingled with other property, or has been removed from the jurisdiction;

give the state a perfected priority lean on the forfeited property and thus avoids the pitfalls of unsecured creditors claiming forfeited property;

resolve current procedural ambiguities in existing forfeiture law;

This legislation will provide Alaskan law enforcement agencies with the same mechanism presently utilized by the Federal government to seize from drug dealers assets used in the commission of crimes relating to controlled substances.



Richard L. Burton
Commissioner