

SB

93

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23-LS0518X
Kurtz
5/2/03

CS FOR SENATE BILL NO. 93()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR WAGONER

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to limitations on actions to quiet title to, eject a person from, or recover
2 real property or the possession of it; relating to adverse possession; and providing for an
3 effective date."

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

5 * Section 1. AS 09.10.030 is amended to read:

6 Sec. 09.10.030. Actions to recover real property [IN 10 YEARS]. (a)
7 Except as provided in (b) of this section, a [A] person may not bring an action for
8 the recovery of real property [,] or for the recovery of the possession of it unless the
9 action is commenced within 10 years.

10 (b) An action may be brought at any time by a person whose ownership
11 interest in real property is recorded under AS 40.17 to

12 (1) quiet title to that real property; or

13 (2) eject a person from that real property.

14 (c) An action may not be maintained under this section [FOR THE

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1 RECOVERY] unless it appears that the plaintiff, an ancestor, a predecessor, or the
2 grantor of the plaintiff was seized or possessed of the premises in question at some
3 time [WITHIN 10 YEARS] before the commencement of the action.

4 * Sec. 2. AS 09.45.052(a) is amended to read:

5 (a) The uninterrupted adverse notorious possession of real property under
6 color and claim of title for seven years or more, or the uninterrupted adverse
7 notorious possession of real property for 10 years or more because of a good faith
8 but mistaken belief that the real property lies within the boundaries of adjacent
9 real property owned by the adverse claimant, is conclusively presumed to give title
10 to the property except as against the state or the United States. For the purpose of this
11 section, land that is in the trust established by the Alaska Mental Health Enabling Act
12 of 1956, P.L. 84-830, 70 Stat. 709, is land owned by the state.

13 * Sec. 3. AS 09.45.052 is amended by adding new subsections to read:

14 (c) Notwithstanding AS 09.10.030, the uninterrupted adverse notorious use of
15 real property by a public utility for utility purposes for a period of 10 years or more
16 vests in that utility an easement in that property for that purpose.

17 (d) Notwithstanding AS 09.10.030, the uninterrupted adverse notorious use,
18 including construction, management, operation, or maintenance, of private land for
19 public transportation or public access purposes, including highways, streets, roads, or
20 trails, by the public, the state, or a political subdivision of the state, for a period of 10
21 years or more, vests an appropriate interest in that land in the state or a political
22 subdivision of the state.

23 * Sec. 4. The uncoded law of the State of Alaska is amended by adding a new section to
24 read:

25 APPLICABILITY. AS 09.10.030, as amended in sec. 1 of this Act, applies to actions
26 that have not been barred before the effective date of this Act by AS 09.10.030 as it read
27 before the effective date of this Act.

28 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

Paul Costello

From: Paul Costello
Sent: Monday, May 05, 2003 4:53 PM
To: Linda Anderson; David Leone
Cc: Bea Hagen
Subject: SB 93 Comments May 5, 2003

Linda,

Here are my comments in response to the changes made to SB93. Thank you for your help.

SB 93 - Adverse Possession-Comments by the Fairbanks North Star Borough-May 5, 2003

The Fairbanks North Star Borough, Department of Land Management, has reviewed the working draft dated 5.2.2003 CSSB 93. In addition, we have had a chance to discuss the legislation with Jon K. Tillinghast, representative of its supporters, in response to our comments which were e-mailed to members of the interior delegation on Friday and Saturday, May 2&3, 2003. Our comments were intended to ask questions about the legislation. The doctrine of adverse possession has been around for 800 years, and any state law essentially doing away with most of it by eliminating the statute of limitations only for the record owners, should be thoroughly evaluated for its larger implications.

It appears that our concerns regarding the impact on our municipality, from a municipal land management perspective, have been abated by this version and therefore we have no further comment on SB 93 as a municipality unless there are further amendments. The apparent impact of this version of the new law on municipalities is merely neutral, other than the litigation it may spawn regarding interpretation.

Thank you for this opportunity to comment.

Paul Costello, SRWA, Director
Department of Land Management

To: BRIAN HOVE
465-3717

SENATE BILL 93-ADVERSE POSSESSION

Background: As of April 30, 2003, this draft legislation proposes to amend Alaska statute and essentially eliminate the doctrine of adverse possession. Adverse possession is a doctrine in law which allows a person to assert a claim to another person's land. The law requires that the possession must have been continuous and uninterrupted, the possessor must have acted as if he were the owner and not merely one acting with the permission of the owner, and the possession must have been reasonable visible to the record owner. The period of possession must be for at least 10 years, or for more than 7 years if the person has some paperwork that supports their claim. The claimant must assert his rights in court, where the property owner has the right to defend his title. This process is most often used to settle boundary disputes between neighbors when one person may have built his garage two feet over the line on his neighbors property. It is also used by Municipalities and the State to clear title to road right of ways.

The proposed legislation would create confusion among those individuals, entities and agencies who use the doctrine to clear title and creates some constitutional questions in the process. It needs further and more detailed study.

The proposed legislation appears to have been sponsored by Sealaska Corporation, which is concerned about persons adversely possessing their ANCSA corporate land. It is unclear why native corporations need this additional protection, because Section 43 USC 1636(d)(1)A was specifically written to grant these large landowners protection from claims of adverse protection and similar claims based upon estoppel.

Statement: The Fairbanks North Star Borough, Department of Land Management, has reviewed the proposed legislation and has a number of questions and concerns regarding its intent and implementation. We recommend that prior to further action by the legislature, the impact of the legislation be considered in detail. If passed in its current form SB 93 may create more uncertainty and litigation than it is intended to prevent. The Borough is speaking as a large landowner holding title to some dedicated right of ways and has concerns for its resident private landowners who may be impacted by this proposed legislation.

As a testifier pointed out on March 11, 2003, the equitable doctrine of adverse possession has evolved over hundreds of years through English common law and the case law of the United States. We would like to emphasize that in the past 100 years it has evolved through Alaska case law into a well-defined legal structure that allows people to assert their claims and landowners to protect their interests. The Alaska Supreme Court's interpretation of the statutory and common law of the doctrine is a known quantity. It is unclear to us why there is a need to change this clearly defined law and doctrine to even more favor landowners of record over landowners that may have equitable title. We agree with the DOT&PF representative who testified at a March 11, 2003 Senate Labor & Commerce meeting, that "Its [the doctrine of adverse possession] purpose is to provide a practical and efficient means of clearing title."

Why is the legislature considering legislation – apparently for the benefit of certain large landowners – that already have the protection of federal law? 43 USC 1636(d)(1)A grants these large landowners protection from claims of adverse protection and similar claims based upon estoppel. If such landowners believe that they do not have protection under state law, why not

introduce legislation that mirrors federal law in this regard? This has been done to benefit their interests in terms of property taxation (AS 29.45.030(m)).

Why is it necessary, when the other 49 states have statutes similar to the current Alaska statutes, to amend ours at this time? Any landowner, regardless of the size of their holdings, already has the ability under existing law to initiate eviction action against trespassers or squatters.

The language proposed to protect the state, municipalities, and utility companies in proposed AS 09.45.052(c) may protect public uses, but it also may raise constitutional questions. The proposed language would appear to permit an entity such as a municipality to expand their title interest from an easement to full fee under this process. Would that action be considered a taking? Proposed AS 09.45.052(c) apparently means that private utility companies have rights of adverse possession to easements along with government entities, but other businesses and individuals do not. Is that a constitutional distinction on these facts?

In any case the effect of the proposed legislation on a landowner's constitutional right to due process and for compensation are not clear. This sows seeds of doubt and litigation into the future.

Also, proposed AS 09.45.052(c) appears to allow a municipality on the basis of some claim of use, to claim title to an interest in land by virtue of a "conclusive presumption" without contemplating the specific legal process by which the affected underlying landowner may defend their title or obtain compensation. I suspect that the owner of the servient parcel could still defend against the "conclusive presumption" by controverting the "uninterrupted" and "notorious" and "possession" elements, so how does the new subsection really change existing law? Also, some of the words are ambiguous in context and would need court definition through litigation. For example, what is the intended definition of the word, "necessary" in proposed AS 09.45.052(c)?

This legislation applies to small landowners as well as large landowners. Large landowners often have the managerial and legal capability to patrol and prosecute adverse possession. On the other hand, doing away with the legal defense of adverse possession eliminates an important equitable protection for individuals who are unintentionally occupying the land of another for a long period of time. In other words, eliminating adverse possession in Alaska may impact real property law in ways not intended by the legislation.

The price and responsibility of property ownership is vigilance; this legislation proposes to take that responsibility from the landowner unnecessarily.

The old adage of "if it ain't broke, don't fix it" comes to mind here. This legislation needs more clarification and thought before it goes forward.

23-LS0518U
Kurtz
4/14/03

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IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

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RECOVERY] unless it appears that the plaintiff, an ancestor, a predecessor, or the grantor of the plaintiff was seized or possessed of the premises in question at some time [WITHIN 10 YEARS] before the commencement of the action.

(d) The provisions of (b) of this section may not prevent a utility, as that term is defined in AS 42.05.990, from obtaining a prescriptive easement under the provisions of (a) of this section.

* Sec. 2. AS 09.45.052 is amended by adding a new subsection to read:

(c) Notwithstanding AS 09.10.030, the uninterrupted adverse notorious possession by the state or a political subdivision of the state of a public transportation or public access right-of-way or other interest in land necessary for the construction, management, operation, or maintenance of a public transportation or public access right-of-way for a period of 10 or more years is conclusively presumed to give title to the right-of-way to the state or the political subdivision, as appropriate, except as against the United States.

* Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 09.10.030, as amended in sec. 1 of this Act, applies to actions that have not been barred before the effective date of this Act by AS 09.10.030 as it read before the effective date of this Act.

* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

3132 CHANNEL DRIVE
JUNEAU, ALASKA 99801-7898

TEXT: (907) 465-3652
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April 10, 2003

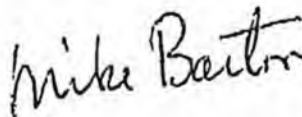
The Honorable Thomas Wagoner
Alaska State Legislature
State Capitol, Room 427
Juneau, AK 99801-1182

Dear Senator Wagoner:

Thank you for taking the time to meet with Deputy Commissioner John MacKinnon and I last week regarding Senate Bill 93. I appreciate you hearing our concerns and accommodating language changes to the bill to address them. With the addition of the language protecting the state's interest, the department no longer has any objection with the passage of the bill.

Thank you again for working with us. I look forward to working with you again.

Sincerely,



Mike Barton
Commissioner



ALASKA STATE LEGISLATURE

SENATOR THOMAS H. WAGONER

CHAIR, SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

VICE-CHAIR, SENATE RESOURCES COMMITTEE

CS for Senate Bill 93

Sponsor Statement

“An Act relating to limitations on actions to quiet to, eject a person from, or recover real property or the possession of it; relating to adverse possession; and providing for an effective date.”

Adverse possession, or “squatters rights”, is the doctrine in which a person may receive the title to property simply by possessing it. The Doctrine of Adverse Possession was born hundreds of years ago during the Middle Ages, but incredibly still applies in the State of Alaska.

The current doctrine places undue hardships on Alaska’s private landowners by charging them with the impossible task of policing their large or remote property. SB 93 would repeal the Doctrine of Adverse Possession, giving private property owner’s security in knowing their property can not be taken by squatters. This bill does not affect any existing rights that one may have already acquired through adverse possession.

Senate Bill 93 gives the state, or political subdivisions, the right to claim land through adverse possession for public transportations or public access right-of-ways. This will enable the Department of Transportation to continue providing maintenance and upgrades on roads with minimal complications.

Under existing law, a person is prohibited from taking government property by adverse possession. SB 93 simply accords equal dignity and protection to private land ownership rights.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB 93
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title Adverse Possession BRU Community Assist. & Econ. Dev. (405)
Component Community & Business
Development
Sponsor Senator Wagoner Component No. 2486
Requester Senate Labor & Commerce

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would change current adverse possession law so that title holders of real property under AS 40.17 would no longer be required to initiate eviction processes within a ten-year limit to preclude adverse possession. A property owner could initiate an eviction process at any time. This legislation has no fiscal impact on this division.

Prepared by: Gene Kane, Acting Director Phone 907-269-4578
Division Community & Business Development Date/Time 3/11/03 9:17 AM
Approved by: Edgar Blatchford, Commissioner Date 3/11/2003
Agency Department of Community & Economic Development



ALASKA STATE LEGISLATURE

SENATOR THOMAS H. WAGONER
CHAIR, SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
VICE-CHAIR, SENATE RESOURCES COMMITTEE

CS for Senate Bill 93

Sectional Analysis

Section 1. Amends AS 09.10.030 by inserting a new subsection (a) which sets out an exception.

Amends by inserting new subsection (b), which is referenced as the "exception" in subsection (a); specific language stating that action may be brought at any time by a property owner that has property rights recorded under AS 40.17.

Amends by inserting new subsection (c), which is conforming language regarding the application of the new subsections;

Amends by deleted specific time frame of "within 10 years" and replacing with "at some time".

Section 2. Amends AS 09.45.052 by adding a new subsection (c) that gives the state or political subdivisions the ability to get title to land of a public transportation or public access right-of-way through adverse possession if occupied for at least 10 years.

Section 3. Amends by inserting new section in the uncodified laws, stating that as long as court action has not been taken to bar the proceeding, action to quiet title is now allowed.

Section 4. This is the effective date of the act – which is immediate.

Title 09. CODE OF CIVIL PROCEDURE

Chapter 09.10. LIMITATIONS OF ACTIONS

Sec. 09.10.010. General limitations on civil actions.

A person may not commence a civil action except within the periods prescribed in this chapter after the cause of action has accrued, except when, in special cases, a different limitation is prescribed by statute.

Sec. 09.10.020. When action commenced. [Repealed, Sec. 1 ch 27 SLA 1966. For present law, see Civ. R. 3].

Repealed or Renumbered

Sec. 09.10.030. Actions to recover real property in 10 years.

A person may not bring an action for the recovery of real property, or for the recovery of the possession of it unless the action is commenced within 10 years. An action may not be maintained for the recovery unless it appears that the plaintiff, an ancestor, a predecessor, or the grantor of the plaintiff was seized or possessed of the premises in question within 10 years before the commencement of the action.

Sec. 09.10.040. Action upon judgment or sealed instrument in 10 years.

(a) A person may not bring an action upon a judgment or decree of a court of the United States, or of a state or territory within the United States, and an action may not be brought upon a sealed instrument, unless the action is commenced within 10 years.

(b) [Repealed, Sec. 54 ch 132 SLA 1998].

Sec. 09.10.050. Certain property actions to be brought in six years.

Unless the action is commenced within six years, a person may not bring an action for waste or trespass upon real property.

Sec. 09.10.053. Contract actions to be brought in three years.

Unless the action is commenced within three years, a person may not bring an action upon a contract or liability, express or implied, except as provided in AS 09.10.040, or as otherwise provided by law, or, except if the provisions of this section are waived by contract.

...

Chapter 40.17. RECORDING OF DOCUMENTS

- Sec. 40.17.010. Place of recording and access to records.
- Sec. 40.17.020. Recording conveyances.
- Sec. 40.17.030. Formal requisites for recording.
- Sec. 40.17.035. Recording criteria.
- Sec. 40.17.040. Indexing.
- Sec. 40.17.050. Incorporation of master form.
- Sec. 40.17.060. Documents executed under former law.
- Sec. 40.17.070. Duties of recorder: time recording is effective.
- Sec. 40.17.075. Account.
- Sec. 40.17.080. Effect of recording on title and rights: constructive notice.
- Sec. 40.17.090. Conveyances and recorded documents as evidence.
- Sec. 40.17.100. Recording a reconveyance.
- Sec. 40.17.110. Documents eligible for recording.
- Sec. 40.17.120. Recording memorandum of lease.
- Sec. 40.17.130. Action against recorder and state.
- Sec. 40.17.900. Definitions.

Alaska State Legislature

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State Capitol, Room 427
Juneau, AK 99801-1182
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Interim:
145 Main Street Loop Rd. #226
Kenai, AK 99611
Phone: (907) 283-7996
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Senator Tom Wagoner
Kenai/Soldotna

For Immediate Release: February 28, 2003
Contact: Senate Majority Press Office - 465-3803

Wagoner Bill Supports Rights of Private Land Owners **Bill Will End "Doctrine of Adverse Possession"**

(Juneau) – Sen. Tom Wagoner (R-Kenai/Soldotna) is taking on a legal doctrine, which was first put into law roughly 800 years ago.

The "Doctrine of Adverse Possession" first came on the scene during the "Middle Ages." With its enactment anyone, including squatters, could receive title to property simply because they lived on the property, regardless who the legal property owner was. It is a doctrine the State of Alaska still employs and Wagoner says it is time for a change.

"Our law, right now, allows a person who has no claim of ownership to squat on someone else's property and as a result of their illegal trespass the squatter could actually secure title to the property they are squatting on," said Wagoner. "That is simply legal thievery – to me that is offensive and it needs to stop."

If Senate Bill 93 passes the Legislature and is signed by the governor it would repeal the Doctrine of Adverse Possession and give private property owner more security in knowing that their land will not be taken away from them summarily. The adverse possession doctrine in Alaska does not apply to state lands; it only applies to private land ownership, which Wagoner says includes Native lands and maybe even University and Mental Health lands.

"In Alaska especially, many people buy large parcels of land, often that land is very remote and this doctrine puts undue hardships upon those landowners to police their property," said Wagoner. "This bill simply accords equal dignity and protection to private land ownership, already afforded to the government."

Senate Bill 93 has been referred to the Senate's Labor and Commerce and Judiciary committees.

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Broadcaster's Note: Sound Actualities are available on this issue at www.akrepublicans.org

*SB 93: Legislation to Limit the Circumstances Under Which
A Person May Divest a Landowner of Title to Its Land
Under the Doctrine of Adverse Possession*

A. Overview of the Legislation

“Adverse possession” is the doctrine under which a person--even a squatter acting in bad faith--can take another person’s property without compensation by simply possessing it, in an open and hostile way, for a certain period of years. It is a doctrine born in the Middle Ages under circumstances that have little applicability to 21st Century Alaska, and it offends Alaska’s abiding respect for private property ownership.

SB 93 would limit the availability of this doctrine to circumstances in which a person has, in good faith, occupied property under color of title for seven years. Beyond that situation, “adverse possession” is a doctrine inimical to the concept of private property ownership. And it imposes a particularly harsh burden on private landowners in Alaska who, because of the doctrine, are often charged with the impossible task of policing large remote landholdings to assure themselves that no squatter has taken residence. That burden is an economic waste, and serves no valid public policy.

B. The Origins and Purpose of the “Adverse Possession” Doctrine

1. The Doctrine’s Original Rationale--Possession was Equated with Ownership

“Adverse possession” is a doctrine that rewards possession of land at the expense of the landowner. The doctrine has its roots in the feudal concept of “seizin.” In the early Middle Ages, “ownership” of land was proven not by title or deed, but rather by actual possession. If a person was forcefully expelled from his property, the trespasser became

the land's new "owner," and the dispossessed person could regain "ownership" only by himself resorting to force. ^{1/}

Gradually, the dispossessed "owner" was given a legal remedy to regain possession--a remedy which, by virtue of a statute issued under Henry VIII, must be exercised within 60 years of dispossession. Thus was borne the thought that a person could recover his land from an "adverse possessor," but only if he acted within a specific period of time. ^{2/}

Remember, though, that in those days possession--or "seizin"--was title. Therefore, by giving the "adverse possessor"--or "disseizor"--the opportunity to bar the person he dispossessed from reclaiming his property after 60 years, feudal courts were, in their minds, doing no injustice to the prior occupant, since that occupant had lost the basis for his claim of "ownership" when he was forceably dispossessed.

2. A New Rationale--Possession was the Best Proof of Ownership

Gradually, English common law came to recognize the concept of conveying and holding land by deed. "Title" became something different from, and superior to, mere "possession." And so the doctrine of "adverse possession" needed a new rationale.

^{1/} 5 George W. Thompson, *Commentaries on the Modern Law of Real Property* (1979) ("Commentaries") at 573-76.

^{2/} *Commentaries, supra* at 574-76. Actually, "adverse possession" rules can be traced further back, to the Code of Hammurabi, which provided, in part, that:

If a captain or a soldier has neglected his field, his garden and his house, instead of working them; and another takes his field, his garden and his house, and works them for three years; if he returns and desires to till his field, his garden, and his house, they shall not be given to him. He that has taken and worked them shall continue to use them.

The Hammurabi Code and the Sinaitic Legislation at 32-33 (Chilperic Edwards ed., 1904).

The virtue of "seizin," of course, was that it was obvious who is "seized" of a particular piece of property--the person living on it. "Title," conversely, was the source of considerable dispute, since there then existed no reliable, centralized recording system to resolve conflicting claims of "title." As a result:

In an era of comparatively scarce land, decentralized records and crude surveying techniques, lengthy possession may have been the best possible proof of ownership.

^{3/} Thus, while possession no longer equated with ownership, possession remained the best evidence of "title," and so the doctrine of adverse possession continued to serve some worthwhile purpose. "Ultimately, the 1623 Statute of Limitations required that suits to recover possession of land be brought within twenty years. The Statute recited that this limit was necessary for 'quieting men's estates, and avoiding of suits...'" ^{4/}

3. The New American Purpose--Social Engineering

In James I's England, if a person owned land, he probably lived on it. ^{5/} Even by the 16th century, there was precious little wild land in England that a person might own, but not make productive use of. ^{6/}

This was not true in North America, where vast tracts of wilderness might lie in private ownership. Here, the assumption that ownership was reliably proven by physical possession did not hold true:

Transplanted to the abundant, sparsely populated wild lands of North America, however, the assumptions of the [doctrine of adverse possession] ...failed. The terrain was too hostile, the

^{3/} Sprankling, *An Environmental Critique of Adverse Possession*, 79 Cornell Law Rev. 816, 822 ("Critique") (1994).

^{4/} *Critique, supra* at 823.

^{5/} James I promulgated the 1623 statute just quoted.

^{6/} By 1696, only 16% of England's land were uncultivated forest lands. *Critique, supra* at 822, n. 25.

forests too impenetrable and the distances too vast for most owners to reside upon or even to inspect their properties regularly. More importantly, possession of land in the English sense, characterized by residence, cultivation or improvement, was often impractical. The minor acis, greatly separated in time, that characterized land use in wilderness areas were unlikely to afford constructive notice to the owner who did inspect occasionally.

Critique, supra at 823. "Adverse possession," then, needed a new purpose, and found one in our 19th century urge to settle the West. The modern doctrine " was developed when much of the continental United States was unsurveyed wilderness," and our courts and legislatures resultantly "adopted a public policy that as much land should be put to use as possible." ^{7/} Under the new theory of adverse possession, the squatter was to be rewarded for making use of wild land, even at the expense of the person who owned it:

Beginning in the nineteenth century, American courts serving the ideology of economic expansion reformulated adverse possession in the pursuit of national productivity. These courts transformed the doctrine from a mechanism designed to protect the title of the true owner against false claims into a tool designed to transfer title to wild lands from the idle true owner to the industrious adverse possessor.

Critique, supra at 821 (emphasis original).

The American justification for the doctrine also took on something of a Marxist flavor. Vast expanses of public lands were conveyed to large, absentee landlords--principally, the railroads. As pioneers struck west and inadvertently (or otherwise) homesteaded then-or-future railroad land, Western state legislators, and courts, concluded that disputed land should belong to the worker rather than the absentee capitalist. *Critique, supra* at 843. For this reason, the periods necessary to establish title by "adverse possession" tend to shrink as one proceeds westward--from the old 20-year

English rule still prevalent in the original colonies, to as little as five years in many western states.

C. Adverse Possession in 20th Century Alaska--A Doctrine Without a Reason

To this day, some courts, including the Alaska Supreme Court, maintain that the doctrine of adverse possession serves a useful public purpose because "society will benefit from someone's making use of land the owner leaves idle." ^{7/}

One might argue that there is considerable "idle" land in Alaska's *public* domain. However, in Alaska as elsewhere, neither the state nor federal government can be divested of title through adverse possession. AS 09.45.052(a). And Alaska has precious little "idle" private land.

The largest private landowners in Alaska are the Native corporations established under the Alaska Native Claims Settlement Act. Those lands were conveyed both in settlement of Alaska Natives' aboriginal claims, and to meet the "real economic and social needs of Natives." ANCSA, §1. ANCSA lands, then, and every acre of them, serve an important legal, social and economic purpose. They are not, any of them, "idle" in that sense.

Congress, in fact, has recognized that fact, and has accordingly extended ANCSA lands some protection from adverse possession claims as long as they remain undeveloped. 43 U.S.C. §1636(d). But ANCSA corporations often acquire other remote lands for future resource development purposes, as will other private landowners as time goes by. To the extent that these lands are not developed, it is because development now

^{7/} *Seddon v. Harpster*, 403 So. 2nd 409, 413 (Florida 1981).

^{8/} *Tenala, Ltd. v. Fowler*, 921 P.2nd 1114 (Alaska 1996).

would be an economic waste, and there is no sound public policy that should prevent a private landowner from investing those lands for future generations.

The last remaining modern justification for adverse possession is that it "keep[s] stale causes out of court." *Tenala, Ltd. v. Fowler, supra*. But, in fact, it does just the opposite. Adverse possession cases involve untrustworthy testimony about who-possessed-what 10 or 20 years ago; conversely, and "considering current methods of record storage on microfiche, computer disks and data tapes," claims based on record ownership will never grow stale. ^{9/}

Similarly, allowing adverse possession claims promote litigation, while limiting them discourages it. This because:

[b]right line standards generally deter litigation...The record title standard draws an exceedingly bright line: the holder of record title always prevails. In contrast, adverse possession as applied to wild lands is an indeterminate, murky standard under which results can rarely be predicted with certainty.

Critique, supra at 878. The fact of the matter, as Florida's Supreme Court observed, is that "[w]ith modern technology and computerized transactions our society is now more capable of accurately establishing legal interest to property through paper title than through possession." *Seddon v. Harpster*, 493 So.2nd at 414.

Continued recognition of "squatters' rights" serves no useful public purpose in Alaska today, and it disserves others. Apart from its impact on private property ownership generally, and implementation of ANCSA in particular, "[a]dverse

^{9/} "Outlaws of the Past: A Western Perspective on Prescription and Adverse Possession," 31 Land and Water Law Review 79, 104 (1996) ("Outlaws").

possession...erode[s] the effectiveness and utility of both recording and marketable title statutes by creating uncertainty." *Outlaws, supra* at 97.

The doctrine ought to be limited to those few situations where some equity might lie in the adverse possessor's favor, and SB 93 attempts to do just that by amending only AS 09.10.030, which currently allows land to be taken by bad faith trespassers, while leaving untouched AS 09.45.052, which allows adverse possession claims by persons with a good faith claim to the property based on color of title.

AS 09.10.030 is the squatters' statute. The adverse possessor need not occupy the property under "color of title"--that is, a deed or other conveyance. And the squatter need not even occupy the property in good faith. ^{10/} As one commentator puts it, this statute "gives title not only to one who because of good faith error occupies the land of another but also to a person who knowingly sought to appropriate another's land." ^{11/}

Under this statute, the squatter must adversely possess the property for 10 years. After that, the statute, which is framed as a statute of limitations, bars the property's owner from bringing any action against the squatter to recover his property.

Section 1 of SB 93 would amend this statute to provide that the owner of record could recover his or her land--by a quiet title or ejectment action--at any time. ^{12/} Because of computerized land records, the record owner's claim will never, as a practical matter, grow stale.

AS 09.45.052 is Alaska's second adverse possession statute, and it deals with adverse possession that is based on "color of title." In other words, the adverse

^{10/} *Hubbard v. Curtiss*, 684 P.2nd 842, 848 (Alaska 1984).

^{11/} 7 Richard R. Powell, *Powell on Real Property*, ¶1012(3) (1993).

possessor has some deed or other document purporting (but for some reason failing) to convey title to the property being possessed. Unlike the statute amended by Section 1, this statute requires good faith on the part of the possessor--in other words, an honest and reasonable belief that the possessor really owns the land. *Ault v. State*, 688 P.2nd 951, 956 (Alaska 1984). The legislation leaves this section untouched.

Finally, Section 2 of the legislation would make the new legislation applicable to any adverse possession claim that has not "vested" by the effective date of the legislation. Adverse possession claims "vest" when the adverse possessor has met the statutory requirements for the requisite number of years--under current Alaska law, 10 years (or seven years for claims under color of title). ^{13/} Serious constitutional questions would arise if the legislation purported to extinguish already-vested adverse possession claims; conversely, there would appear to be no constitutional difficulty in affecting unvested claims, since an adverse possessor has no protected right in the mere expectation that, eventually, he or she may possess the land for a sufficient period of time. ^{14/}

^{12/} To the extent that this statute governs other types of real property claims, the 10-year statute of limitations would be retained.

^{13/} *Markovich v. Chambers*, 857 P.2nd 906, 908 (Or. App. 1993).

^{14/} See *Lovell v. Magnet Cove School District No. 8*, 782 S.W.2nd 41, 42 (Ark. 1990) (change in Arkansas adverse possession statutes applicable to unvested adverse possession claims).