

SB

104

ALASKA STATE SENATE

Session:
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Senator Ralph Seekins
District D

Senate Bill 104 Sponsor Statement

"An Act relating to the crimes of unsworn falsification in the first and second degrees and false information or report; requiring the establishment of a permanent fund dividend fraud investigation unit in the Department of Revenue."

Senate Bill 104 seeks to strengthen the Department of Revenue's ability to investigate fraud associated with making a false application for a permanent fund dividend. Furthermore, submission of a fraudulent permanent fund dividend application would be elevated from a class A misdemeanor to a class C felony.

In 2004 the Department of Revenue (DOR) examined over 1,600 fraud tips and audited over 1,700 permanent fund dividend (PFD) applications suspected of being fraudulent. This resulted in \$1.4 million in denied or assessed dividends (1,500+ applications). Furthermore, there were three federal indictments and one conviction for crimes involving PFD fraud.

The most common PFD fraud offense involves persons who forge the signature of another on the application (or related documents) with the intent of receiving a dividend to which they are not entitled. It's important to note that the bill is not intended to capture, for example, cases where husbands or wives sign for each other. However, the provisions of this legislation would apply in cases where the individual is attempting to steal from another person or from the state.

Within the crime of unsworn falsification, Senate Bill 104 creates *two* offending categories: *second degree*, punishable as a class A misdemeanor, and *first degree*, punishable as a class C felony. Much of the bill is dedicated to sprinkling into the statutes the qualifying phrase "in the second degree". This is necessary to describe the appropriate level of offense now associated with most crimes of unsworn falsification.

The real meat of the bill is found in Sections 7 and 20. Section 7 speaks to unsworn falsification as it relates to a person making an application for a permanent fund dividend. An offense of this nature would be a violation in the first degree punishable as a class C felony.

Section 20 adds language establishing a fraud investigation unit within the Department of Revenue. This unit will assist the Department of Law in its efforts to investigate and prosecute instances of PFD fraud.

In summary, the DOR's proposal to elevate PFD fraud from a simple misdemeanor to a class C felony is expected to provide a more effective deterrent for this type of theft. Furthermore, the establishment of a fraud investigation unit within the DOR will greatly aid in the detection and prosecution of this criminal act.

Sec. 11.56.210. Unsworn falsification. (a) A person commits the crime of unsworn falsification if, with the intent to mislead a public servant in the performance of a duty, the person submits a false written or recorded statement which the person does not believe to be true

- (1) in an application for a benefit; or
- (2) on a form bearing notice, authorized by law, that false statements made in it are punishable.

(b) Unsworn falsification is a class A misdemeanor. (§ 6 ch 166 SLA 1978)

Cross references. — For the crime of false information or report, see AS 11.56.800.

NOTES TO DECISIONS

Double jeopardy. — Criminal prosecution for unsworn falsification was not barred on double jeopardy grounds in the case of a person who had lied in her unemployment insurance benefits application and subsequently agreed to repay the unlawfully obtained benefits plus the fifty-percent penalty specified in AS 23.20.390(f). *Mitchell v. State*, 818 P.2d 1163 (Alaska Ct. App. 1991).

Sec. 11.56.220. Proof of guilt. In a prosecution for perjury or unsworn falsification it is not necessary that proof be made by a particular number of witnesses or by documentary or other type of evidence (§ 6 ch 166 SLA 1973)

NOTES TO DECISIONS

Annotator's notes. — The case cited in the notes below was decided under former AS 11.30.010.

Required proof. — To be guilty of perjury, it was necessary under former law to prove that a person under oath willfully and falsely swore. *Nelson v. State*, 546 P.2d 592 (Alaska 1976).

One could not be convicted of perjury on the uncorroborated testimony of one witness under former law. *Nelson v. State*, 546 P.2d 592 (Alaska 1976).

Testimony of perjury had to be corroborated by other evidence, either direct or circumstantial.

Nelson v. State, 546 P.2d 592 (Alaska 1976).

The purpose of such a rule was to prevent ill-founded retaliatory attacks by perjury prosecution upon a witness based on no more than the contrary oath of another. *Nelson v. State*, 546 P.2d 592 (Alaska 1976).

What was corroborative evidence. — In order to be corroborative, evidence had to induce a rational belief that what the witness said was true. *Nelson v. State*, 546 P.2d 592 (Alaska 1976).

Sufficiency of evidence. — See *Nelson v. State*, 546 P.2d 592 (Alaska 1976).

Sec. 11.56.230. Perjury by inconsistent statements. (a) A person commits the crime of perjury by inconsistent statements if

- (1) in the course of one or more official proceedings the person makes two or more sworn statements which are irreconcilably inconsistent to the degree that one of them is necessarily false;
- (2) the person does not believe one of the statements to be true at the time the statement is made; and
- (3) each statement is made within the jurisdiction of this state and within the period of the statute of limitations for the crime charged.

(b) In a prosecution under this section, it is not necessary for the state to prove which statement was false but only that one or the other was false and not believed by the defendant to be true at the time the defendant made the statement. Proof of the irreconcilable inconsistency of the statements is prima facie evidence that one or the other of the statements was false.

(c) Perjury by inconsistent statements is a class C felony. (§ 6 ch 166 SLA 1978)

Sec. 11.56.235. Retraction as a defense. (a) In a prosecution under AS 11.56.200 or 11.56.230, if the false statement was made in an official proceeding, it is an affirmative defense that the defendant expressly retracted the false statement

- (1) during the course of the same official proceeding;
- (2) before discovery of the falsification became known to the defendant;

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...7 P.3d 724 (Alaska

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSSB 104(STA)
 (S) Publish Date: 2/28/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title Permanent Fund Dividend Fraud RDU Revenue Programs & Support
 Component Permanent Fund Dividend
 Sponsor Seekins
 Requester _____ Component No. 981

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 ()						
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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 (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

SB 104 defines misrepresentation of permanent fund dividend eligibility and authorizes a class C felony penalty for misrepresenting permanent fund eligibility. Current Title 11 provisions for forgery only cover the forging of financial instruments and therefore do not cover PFD application documents.

The bill also authorizes an investigation unit in the Department of Revenue to detect and investigate fraud in the permanent fund dividend program and to assist the Department of Law in the prosecution of such individuals. Although the department has administratively established an investigation unit, statutory designation is required for access to certain federal data bases (NCIC and NLETS). These data bases would facilitate more efficient and effective investigation of PFD crimes, especially those perpetrated by individuals living out of state.

Prepared by: Sharon Barton Phone 465-4785
 Division Permanent Fund Dividend Date/Time 2/22/05 1:17 PM
 Approved by: Tom Boutin Date 2/22/2005
 Agency Department of Revenue

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSSB 104(STA)
 (S) Publish Date: 2/28/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to the crime of misrepresenting RDU CIVIL
permanent fund eligibility..." Component Commercial & Fair Business
 Sponsor Senator Seekins
 Requester Senate State Affairs Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 ()						
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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 (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill would create a new statute in the criminal code making the crimes commonly associated with fraudulently applying for a permanent fund dividend a class C felony. Additionally, this bill would statutorily require the Department of Revenue to create a fraud investigation unit designed to detect and investigate permanent fund dividend crimes to aid in the prosecution of these offenses and the imposition of civil penalties. Currently Revenue has created a fraud investigation unit, but creating the unit in statute is necessary to facilitate access to information held by other law enforcement agencies. Passage of this legislation will not have a foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhete, Director Phone 465-3673
 Division Administrative Services Division Date/Time 2/22/05 11:21 AM
 Approved by: K. Daughhete for Scott Nordstrand, Acting Attorney General Date 2/22/2005
 Agency Department of Law