

SB

104

SENATE COMMITTEE REPORT

DATE: 2/28/05

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered SENATE BILL NO. 104

SB 104 PERMANENT FUND DIVIDEND FRAUD

"An Act relating to the crime of misrepresenting permanent fund dividend eligibility; requiring the establishment of a permanent fund dividend fraud investigation unit in the Department of Revenue; and providing for an effective date."

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to _____ Committee

Senate Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____


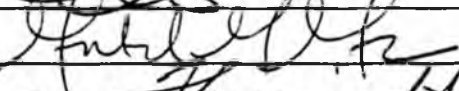
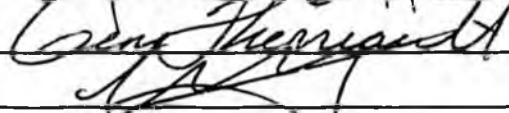
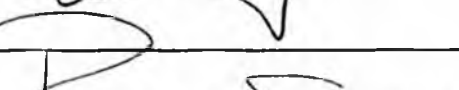
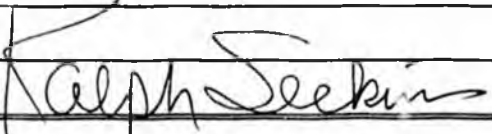
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
			X	
			X	
	X			
	X			
CHAIR: 	✓			

24-LS0519V
Cook
3/1/05

CS FOR SENATE BILL NO. 104()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR SEEKINS

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the crimes of unsworn falsification in the first and second degrees**
2 **and false information or report; requiring the establishment of a permanent fund**
3 **dividend fraud investigation unit in the Department of Revenue; and providing for an**
4 **effective date."**

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

6 *** Section 1. AS 05.15.095(a) is amended to read:**

7 (a) The applications and reports to the department required by this chapter
8 shall be signed under penalty of unsworn falsification in the second degree by the
9 following person, as applicable:

- 10 (1) the member in charge for the qualified organization;
- 11 (2) a person authorized to sign on behalf of the municipality;
- 12 (3) the operator or the operator's agent;
- 13 (4) the licensed pull-tab distributor or the distributor's agent; or
- 14 (5) the licensed pull-tab manufacturer or the manufacturer's agent.

1 * Sec. 2. AS 05.15.680(b) is amended to read:

2 (b) A person who, with the intent to mislead a public servant in the
3 performance of the public servant's duty, subn.its a false statement in an application
4 for a permit, license, or vendor registration under this chapter is guilty of unsworn
5 falsification in the second degree.

6 * Sec. 3. AS 06.05.045(a) is amended to read:

7 (a) Each state bank shall make at least four reports of condition each year to
8 the department on days designated by, and on forms prescribed by, the department.
9 The report shall be signed by a duly authorized officer of the bank and shall be signed
10 by at least three directors who certify under penalty of unsworn falsification in the
11 second degree under AS 11.56.210 that they, and each of them, have personal
12 knowledge of the facts stated in the report and that the facts are true. The reports must
13 exhibit in detail and under appropriate heads the resources and liabilities of the bank
14 and must be received by the department within 30 calendar days after the end of the
15 period covered by the report.

16 * Sec. 4. AS 06.50.310(a) is amended to read:

17 (a) On or before March 15 of each year, a licensee shall file with the
18 department a composite annual report for the preceding calendar year in the form
19 prescribed by the department relating to all advances made by the licensee. The
20 department may require that the report be submitted under oath or affirmation, or with
21 notice that false statements made are punishable as unsworn falsification in the
22 second degree under AS 11.56.210.

23 * Sec. 5. AS 08.88.460(a) is amended to read:

24 (a) Subject to (e) of this section, a person seeking reimbursement for a loss
25 suffered in a real estate transaction as a result of fraud, misrepresentation, deceit, or
26 the conversion of trust funds or the conversion of community association accounts
27 under the control of a community association manager on the part of a licensee
28 licensed under this chapter shall make a claim to the commission for reimbursement
29 on a form furnished by the commission. In order to be eligible for reimbursement by
30 the commission, the claim form must be filed within two years after the occurrence of
31 the fraud, misrepresentation, deceit, or conversion of trust funds or the conversion of

community association accounts under the control of a community association manager claimed as the basis for the reimbursement. The form shall be executed under penalty of unsworn falsification in the second degree and must include the following:

- (1) the name and address of each real estate licensee involved;
- (2) the amount of the alleged loss;
- (3) the date or period of time during which the alleged loss occurred;
- (4) the date upon which the alleged loss was discovered;
- (5) the name and address of the claimant; and
- (6) a general statement of facts relative to the claim.

* Sec. 6. AS 10.20.655(b) is amended to read:

(b) The interrogatories shall be answered within 30 days after mailing, or within the additional time fixed by the commissioner, and the answers shall be full and complete, in writing and under penalty of unsworn falsification in the second degree under AS 11.56.210. If the interrogatories are directed to an individual, they shall be answered by that individual and, if directed to a corporation, they shall be answered by the president, vice-president, secretary, or assistant secretary of the corporation.

* Sec. 7. AS 11.56 is amended by adding a new section to read:

Sec. 11.56.205. Unsworn falsification in the first degree. (a) A person commits the crime of unsworn falsification in the first degree if the person violates AS 11.56.210(a)(1) and the application is an application for a permanent fund dividend.

(b) In this section,

(1) "application for a permanent fund dividend" includes a written or electronic application and any other documentation submitted to support an application for a permanent fund dividend;

(2) "permanent fund dividend" has the meaning given in AS 43.23.095.

(c) Unsworn falsification in the first degree is a class C felony.

* Sec. 8. AS 11.56.210 is amended to read:

Sec. 11.56.210. Unsworn falsification in the second degree. (a) A person commits the crime of unsworn falsification in the second degree if, with the intent to

1 mislead a public servant in the performance of a duty, the person submits a false
2 written or recorded statement that [WHICH] the person does not believe to be true

3 (1) in an application for a benefit; or

4 (2) on a form bearing notice, authorized by law, that false statements
5 made in it are punishable.

6 (b) Unsworn falsification in the second degree is a class A misdemeanor.

7 * Sec. 9. AS 11.56.220 is amended to read:

8 **Sec. 11.56.220. Proof of guilt.** In a prosecution for perjury or unsworn
9 falsification in the first or second degree it is not necessary that proof be made by a
10 particular number of witnesses or by documentary or other type of evidence.

11 * Sec. 10. AS 11.56.800(a) is amended to read:

12 (a) A person commits the crime of false information or report if the person
13 knowingly

14 (1) gives false information to a peace officer

15 (A) with the intent of implicating another in an offense; or

16 (B) concerning the person's identity while the person is

17 (i) under arrest, detention, or investigation for a crime;

18 or

19 (ii) being served with an arrest warrant or being issued a

20 citation;

21 (2) makes a false report to a peace officer that a crime has occurred or
22 is about to occur;

23 (3) makes a false report or gives a false alarm, under circumstances not
24 amounting to terroristic threatening in the second degree under AS 11.56.810, that a
25 fire or other incident dangerous to life or property calling for an emergency response
26 has occurred or is about to occur; [OR]

27 (4) makes a false report to the Department of Natural Resources under
28 AS 46.17 concerning the condition of a dam or reservoir; or

29 (5) gives false information to a public employee relating to a
30 person's eligibility for a permanent fund dividend under AS 43.23 and the false
31 information does not also violate AS 11.56.210.

1 * **Sec. 11.** AS 12.55.045(j) is amended to read:

2 (j) A defendant who is convicted of an offense for which restitution may be
3 ordered shall submit financial information as ordered by the court. The Alaska Court
4 System shall prepare a form, in consultation with the Department of Law, for the
5 submission of the information; the form must include a warning that submission of
6 incomplete or inaccurate information is punishable as unsworn falsification in the
7 second degree under AS 11.56.210. A defendant who is convicted of (1) a felony
8 shall submit the form to the probation office within 30 days after conviction, and the
9 probation officer shall attach the form to the presentence report, or (2) a misdemeanor
10 shall file the form with the defendant's response or opposition to the restitution
11 amount. The defendant shall provide a copy of the completed form to the prosecuting
12 authority.

13 * **Sec. 12.** AS 16.05.450(a) is amended to read:

14 (a) The commissioner or an authorized agent shall issue a crewmember fishing
15 license under AS 16.05.480 to each qualified person who files a written application at
16 a place in the state designated by the commissioner, containing the reasonable
17 information required by the commissioner together with the required fee. The
18 commissioner shall require the reporting of the applicant's social security number on
19 the application. The application shall be simple in form and shall be executed by the
20 applicant under the penalty of unsworn falsification in the second degree. I

21 * **Sec. 13.** AS 16.05.450(b) is amended to read:

22 (b) The Alaska Commercial Fisheries Entry Commission shall issue a vessel
23 license under AS 16.05.490 to each qualified vessel for which a written application
24 has been filed, at a place in the state designated by the commission, containing the
25 reasonable information required by the commission together with the required fee.
26 The application shall be simple in form and shall be executed by the applicant under
27 the penalty of unsworn falsification in the second degree.

28 * **Sec. 14.** AS 16.43.970(b) is amended to read:

29 (b) A person or entity who knowingly makes a false statement to the
30 commission for the purpose of obtaining a benefit, including the issuance, renewal,
31 duplication, or transfer of an entry or interim-use permit, vessel license, vessel

1 interim-use permit, or vessel entry permit, or a person who assists another by
2 knowingly making a false statement to the commission for the purpose of obtaining a
3 benefit for another, is guilty of the crime of unsworn falsification in the second
4 degree as set out in AS 11.56.210. Upon conviction, the person or entity is also
5 subject to suspension of commercial fishing privileges and revocation of commercial
6 fishing permits under (i) of this section.

7 * Sec. 15. AS 18.60.095(f) is amended to read:

8 (f) A person who knowingly makes a false statement, representation, or
9 certification with the intent to mislead in an application, record, report, plan or other
10 document filed or required to be maintained under AS 18.60.010 - 18.60.105 is guilty
11 of unsworn falsification in the second degree.

12 * Sec. 16. AS 18.65.710(a) is amended to read:

13 (a) The application for a permit to carry a concealed handgun must contain the
14 following information:

15 (1) the applicant's name, physical residence, mailing address, place and
16 date of birth, physical description, including height, weight, race, hair color, and eye
17 color, Alaska driver's license or identification card number, and the city and state of
18 each place the applicant has resided in the five years immediately preceding the
19 application;

20 (2) a statement that the applicant qualifies under AS 18.65.705;

21 (3) a statement that the applicant has been furnished with a copy of the
22 state laws and regulations relating to concealed handguns, has read those sections, and
23 understands them;

24 (4) a statement that the applicant desires a permit to carry a concealed
25 handgun for a lawful purpose, which may include self-defense;

26 (5) a statement by the applicant that all statements, answers, and
27 attachments to the application are true and complete;

28 (6) a conspicuous warning that an applicant who supplies a false
29 statement, answer, or document in connection with the application that the applicant
30 does not believe to be true may be prosecuted for unsworn falsification in the second
31 degree and, if found guilty, may be punished for violation of a class A misdemeanor,

1 and that, in such cases, the permit shall be revoked and the applicant may be barred
2 from any further application for a permit; and

3 (7) a statement that the applicant understands that a permit eligibility
4 investigation will be conducted as a part of the application process, that this may
5 involve computerized records searches, and that the applicant authorizes the
6 investigation.

7 * **Sec. 17.** AS 21.27.110(h) is amended to read:

8 (h) A notice of termination submitted to the director under this section must
9 include a statement of the reasons for the termination. A statement of the reasons for
10 termination is confidential and not subject to inspection and copying under
11 AS 40.25.110. A statement of reasons for the termination may not be admitted as
12 evidence in a civil action or an administrative proceeding against an insurer, reinsurer,
13 or authorized representative by or on behalf of a person affected by the termination,
14 except when the action or proceeding involves perjury, unsworn falsification in the
15 second degree, fraud, or failure to comply with this subsection.

16 * **Sec. 18.** AS 28.35.130 is amended to read:

17 **Sec. 28.35.130. False report or destruction of evidence.** An officer or
18 person who knowingly makes or subscribes a false report concerning an investigation
19 of a vehicle or damage or injury caused by a vehicle, as provided in this chapter, is
20 guilty of unsworn falsification in the second degree. A person who destroys,
21 obliterates, conceals or removes, or who aids, abets, or assists in the destruction,
22 obliteration, concealment, or removal from a vehicle, of evidence showing or tending
23 to show that the vehicle collided with a person or property, is punishable by a fine of
24 not more than \$500, or by imprisonment for not more than six months, or by both.

25 * **Sec. 19.** AS 28.35.135(a) is amended to read:

26 (a) A person may not knowingly make a false affidavit, statement, or
27 representation, or affirm falsely with respect to a matter or fact required to be set out
28 under this title, nor may the person use a name other than the person's true name. A
29 person convicted of violating this section is guilty of unsworn falsification in the
30 second degree and is punishable as prescribed by law.

31 * **Sec. 20.** AS 43.23.055 is amended by adding a new paragraph to read:

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(10) establish a fraud investigation unit for the purpose of assisting the

(A) Department of Law in the prosecution of individuals who apply for or obtain a permanent fund dividend in violation of a provision in AS 11, by detecting and investigating those crimes; and

(B) commissioner to detect and investigate the claiming or paying of permanent fund dividends that should not have been claimed by or paid to an individual and to impose the penalties and enforcement provisions under AS 43.23.035.

* Sec. 21. AS 43.65.020(a) is amended to read:

(a) A person subject to tax under this chapter shall make a return stating specifically the items of gross income from the property, including royalty received and the deductions and credits allowed by this chapter and the exploration incentive credit authorized by AS 27.30, and other information for carrying out this chapter that the department prescribes. The return must show the mining license number and must be signed by the taxpayer or an authorized agent of the taxpayer, under penalty of unsworn falsification in the second degree. If receivers, trustees, or assigns are operating the property or business, they shall make returns for the person engaged in mining, or the recipient of royalty in connection with mining property. The tax due on the basis of the returns shall be collected in the same manner as if collected from the person of whose business they have custody and control. In a tax year in which a taxpayer applies against the tax levied under this chapter the exploration incentive credit authorized by AS 27.30, the commissioner shall require the taxpayer to submit the accounting of mining operation activities form required by AS 27.30.030(b).

* Sec. 22. AS 43.75.030(a) is amended to read:

(a) A person subject to the tax shall file a return stating the value of fisheries resources processed during the license year, computed as required by this chapter, and such other information as the department prescribes by regulation. The return must show the license number and must be signed by the taxpayer or an authorized agent, under penalty of unsworn falsification in the second degree. If a receiver, trustee, or assign is operating the property or business, that person shall file the return for the person. A tax due on the basis of such a return shall be collected in the same manner

1 as if collected from the person of whose business the receiver, trustee, or assign has
2 custody and control.

3 * **Sec. 23.** AS 43.75.110 is amended to read:

4 **Sec. 43.75.110. Duty of taxpayer and payment of tax.** A person subject to
5 taxes under AS 43.75.100 shall make a return stating the value of fisheries resources
6 taken, purchased, or otherwise acquired during the license year for sale to fisheries
7 businesses outside of the taxing jurisdiction of the state computed as required by
8 AS 43.75.100, and other information to carry out the provisions of AS 43.75.100 as
9 may be prescribed by the department. The return must contain the license number and
10 must be signed by the taxpayer or an authorized agent, under penalty of unsworn
11 falsification in the second degree. If a receiver, trustee, or assign is operating the
12 property or business, that person shall make the return for the person. A tax due on
13 the basis of such return shall be collected in the same manner as if collected from the
14 person of whose business the receiver, trustee, or assign has custody and control. The
15 requirements for time and place of payment of tax, and the obligation to keep records
16 and make the records available to the commissioner are the same as those prescribed
17 in AS 43.75.011 - 43.75.050.

18 * **Sec. 24.** AS 45.63.010(d) is amended to read:

19 (d) The notice of intent must be on a form or in a format provided and
20 established by the department by regulation. The department may require the notice
21 of intent to be submitted under oath or affirmation or with notice that false statements
22 made are punishable as unsworn falsification in the second degree under
23 AS 11.56.210. The notice of intent must include detailed information about the nature
24 of the solicitation campaign and the identity and business practices of the telephone
25 seller, including information on the employees, agents, and officers affiliated with the
26 telephone seller. The notice of intent must disclose criminal convictions, civil
27 judgments, orders, consent decrees, or administrative determinations involving
28 allegations of unfair or deceptive business practices by the telephone seller.

29 * **Sec. 25.** AS 45.68.010(f) is amended to read:

30 (f) The department may require the registration and registration renewal
31 statement required under (c)(1) and (d) of this section to be submitted

1 (1) under oath or affirmation; or

2 (2) with notice that false statements made in the statement are
3 punishable as unsworn falsification in the second degree under AS 11.56.210.

4 * Sec. 26. AS 45.68.055(c) is amended to read:

5 (c) The authorized contracting agent for the paid solicitor shall sign the report
6 required by (b) of this section. Signature of the report under this subsection must be
7 made under oath or affirmation, but submission of false information in a notice that is
8 not signed under oath or affirmation is punishable as an unsworn falsification in the
9 second degree under AS 11.56.210.

10 * Sec. 27. AS 46.03.550(a) is amended to read:

11 (a) Property for which a notice has been issued under AS 46.03.500 shall be
12 determined by the department to be fit for use if the owner certifies to the department
13 under penalty of unsworn falsification in the second degree that

14 (1) based on sampling and testing procedures established by the
15 department under AS 46.03.520(b) and performed by laboratories that are on the list
16 maintained by the department under AS 46.03.520(c), the limits on substances
17 specified in regulations adopted under AS 46.03.530 are not exceeded on the property;

18 (2) if the property was ever sampled and tested under AS 46.03.520
19 and the test results showed the property to be unfit for use under AS 46.03.530,
20 decontamination procedures were performed in accordance with the guidelines
21 established under AS 46.03.540(b) and the requirements of (1) of this subsection have
22 been met; or

23 (3) a court has held that the determination that the property was an
24 illegal drug manufacturing site was not made in compliance with AS 46.03.500(a).

25 * Sec. 28. AS 47.12.120(b) is amended to read:

26 (b) If the minor is not subject to (j) of this section and the court finds that the
27 minor is delinquent, it shall

28 (1) order the minor committed to the department for a period of time
29 not to exceed two years or in any event extend past the day the minor becomes 19
30 years of age, except that the department may petition for and the court may grant in a
31 hearing (A) two-year extensions of commitment that do not extend beyond the minor's

1 19th birthday if the extension is in the best interests of the minor and the public; and
2 (B) an additional one-year period of supervision past age 19 if continued supervision
3 is in the best interests of the person and the person consents to it; the department shall
4 place the minor in the juvenile facility that the department considers appropriate and
5 that may include a juvenile correctional school, juvenile work camp, treatment facility,
6 detention home, or detention facility; the minor may be released from placement or
7 detention and placed on probation on order of the court and may also be released by
8 the department, in its discretion, under AS 47.12.260;

9 (2) order the minor placed on probation, to be supervised by the
10 department, and released to the minor's parents, guardian or a suitable person; if the
11 court orders the minor placed on probation, it may specify the terms and conditions of
12 probation; the probation may be for a period of time not to exceed two years and in no
13 event to extend past the day the minor becomes 19 years of age, except that the
14 department may petition for and the court may grant in a hearing

15 (A) two-year extensions of supervision that do not extend
16 beyond the minor's 19th birthday if the extension is in the best interests of the
17 minor and the public; and

18 (B) an additional one-year period of supervision past age 19 if
19 the continued supervision is in the best interests of the person and the person
20 consents to it;

21 (3) order the minor committed to the custody of the department and
22 placed on probation, to be supervised by the department and released to the minor's
23 parents, guardian, other suitable person, or suitable nondetention setting such as with a
24 relative or in a foster home or residential child care facility, whichever the department
25 considers appropriate to implement the treatment plan of the predisposition report; if
26 the court orders the minor placed on probation, it may specify the terms and conditions
27 of probation; the department may transfer the minor, in the minor's best interests, from
28 one of the probationary placement settings listed in this paragraph to another, and the
29 minor, the minor's parents or guardian, the minor's foster parent, and the minor's
30 attorney are entitled to reasonable notice of the transfer; the probation may be for a
31 period of time not to exceed two years and in no event to extend past the day the

1 minor becomes 19 years of age, except that the department may petition for and the
2 court may grant in a hearing

3 (A) two-year extensions of commitment that do not extend
4 beyond the minor's 19th birthday if the extension is in the best interests of the
5 minor and the public; and

6 (B) an additional one-year period of supervision past age 19 if
7 the continued supervision is in the best interests of the person and the person
8 consents to it;

9 (4) order the minor and the minor's parent to make suitable restitution
10 in lieu of or in addition to the court's order under (1), (2), or (3) of this subsection;
11 under this paragraph,

12 (A) except as provided in (B) of this paragraph, the court may
13 not refuse to make an order of restitution to benefit the victim of the act of the
14 minor that is the basis of the delinquency adjudication; under this
15 subparagraph, the court may require the minor to use the services of a
16 community dispute resolution center that has been recognized by the
17 commissioner under AS 47.12.450(b) to resolve any dispute between the minor
18 and the victim of the minor's offense as to the amount of or manner of payment
19 of the restitution;

20 (B) the court may not order payment of restitution by the parent
21 of a minor who is a runaway or missing minor for an act of the minor that was
22 committed by the minor after the parent has made a report to a law
23 enforcement agency, as authorized by AS 47.10.141(a), that the minor has run
24 away or is missing; for purposes of this subparagraph, "runaway or missing
25 minor" means a minor who a parent reasonably believes is absent from the
26 minor's residence for the purpose of evading the parent or who is otherwise
27 missing from the minor's usual place of abode without the consent of the
28 parent; and

29 (C) at the request of the department, the Department of Law,
30 the victims' advocate, or on its own motion, the court shall, at any time, order
31 the minor and the minor's parent, if applicable, to submit financial information

1 on a form approved by the Alaska Court System to the court, the department,
2 and the Department of Law for the purpose of establishing the amount of
3 restitution or enforcing an order of restitution under AS 47.12.170; the form
4 must include a warning that submission of incomplete or inaccurate
5 information is punishable as unsworn falsification in the second degree under
6 AS 11.56.210;

7 (5) order the minor committed to the department for placement in an
8 adventure-based education program established under AS 47.21.020 with conditions
9 the court considers appropriate concerning release upon satisfactory completion of the
10 program or commitment under (1) of this subsection if the program is not satisfactorily
11 completed;

12 (6) in addition to an order under (1) - (5) of this subsection, order the
13 minor to perform community service; for purposes of this paragraph, "community
14 service" includes work

15 (A) on a project identified in AS 33.30.901; or

16 (B) that, on the recommendation of the city council or
17 traditional village council, would benefit persons within the city or village who
18 are elderly or disabled; or

19 (7) in addition to an order under (1) - (6) of this subsection, order the
20 minor's parent or guardian to comply with orders made under AS 47.12.155, including
21 participation in treatment under AS 47.12.155(b)(1).

22 * Sec. 29. This Act takes effect July 1, 2005.

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Senator Ralph Seekins
District D

Senate Bill 104 Sponsor Statement

"An Act relating to the crime of misrepresenting permanent fund dividend eligibility; 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 become 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.

Current law (AS 11.46.500 - 510) describes three separate degrees of forgery — the two most serious offenses are punishable as class B and C felonies, but are limited to cases involving various types of financial instruments such as currency, securities, deeds of trust, etc.

Forgery in the third degree covers instances where a person intentionally makes a false statement on a written instrument (such as a PFD application). However, this offense is punishable as a class A misdemeanor only. 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, Senate Bill 104 aids in identifying and curing instances of permanent fund dividend fraud by codifying in statute a fraud investigation unit within the Department of Revenue. This unit will assist the Department of Law in detecting and investigating instances of PFD fraud.

24-LS0519\Y
Cook
2/28/05

CS FOR SENATE BILL NO. 104()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

BY

Offered:

Referred:

Sponsor(s): SENATOR SEEKINS

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the crime of misrepresenting permanent fund dividend eligibility;**
2 **requiring the establishment of a permanent fund dividend fraud investigation unit in the**
3 **Department of Revenue; and providing for an effective date."**

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

5 *** Section 1.** AS 11.56.210(a) is amended to read:

6 (a) A person commits the crime of unsworn falsification if, under
7 circumstances not proscribed under AS 11.56.225, with the intent to mislead a
8 public servant in the performance of a duty, the person submits a false written or
9 recorded statement that [WHICH] the person does not believe to be true

10 (1) in an application for a benefit; or

11 (2) on a form bearing notice, authorized by law, that false statements
12 made in it are punishable.

13 *** Sec. 2.** AS 11.56 is amended by adding a new section to read:

14 **Sec. 11 56.225. Misrepresenting permanent fund dividend eligibility. (a)**

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A person commits the crime of misrepresenting permanent fund dividend eligibility if the person

(1) submits an application for a permanent fund dividend for that person or for another person for a dividend year knowing that the application contains false information relating to eligibility for the permanent fund dividend;

(2) knowingly gives false information to a public employer relating to any person's eligibility for a permanent fund dividend.

(b) In this section,

(1) "application for a permanent fund dividend" includes a written or electronic application, and any other documentation submitted to support an application for permanent fund dividend;

(2) "permanent fund dividend" has the meaning given in AS 43.23.095.

(c) Misrepresenting permanent fund dividend eligibility is a class C felony.

* Sec. 3. AS 43.23.055 is amended by adding a new paragraph to read:

(10) establish a fraud investigation unit for the purpose of assisting the

(A) Department of Law in the prosecution of individuals who apply for or obtain a permanent fund dividend in violation of a provision in AS 11, by detecting and investigating those crimes; and

(B) commissioner to detect and investigate the claiming or paying of permanent fund dividends that should not have been claimed by or paid to an individual and to impose the penalties and enforcement provisions under AS 43.23.035.

* Sec. 4. This Act takes effect July 1, 2005.

CS FOR SENATE BILL NO. 104(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 2/28/05
Referred: Judiciary

Sponsor(s): SENATOR SEEKINS

A BILL
FOR AN ACT ENTITLED

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10 (1) in an application for a benefit; or
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12 made in it are punishable.

13 *** Sec. 2. AS 11.56 is amended by adding a new section to read:**

14 **Sec. 11.56.225. Misrepresenting permanent fund dividend eligibility. (a)**

1 A person commits the crime of misrepresenting permanent fund dividend eligibility if
2 the person

3 (1) submits an application for a permanent fund dividend for that
4 person or for another person for a dividend year knowing that the person or other
5 person is not eligible to receive the dividend;

6 (2) makes a statement in an application for a permanent fund dividend
7 and the person would have violated AS 11.56.210 if the statement were not an
8 application for a permanent fund dividend; or

9 (3) makes a false written, recorded, or oral statement that the person
10 does not believe to be true to a public employee with intent to mislead a public
11 employee about a person's eligibility for a permanent fund dividend.

12 (b) In this section,

13 (1) "application for a permanent fund dividend" includes a written or
14 electronic application, and any other documentation submitted to support an
15 application for permanent fund dividend;

16 (2) "permanent fund dividend" has the meaning given in
17 AS 43.23.095.

18 (c) Misrepresenting permanent fund dividend eligibility is a class C felony.

19 * Sec. 3. AS 43.23.055 is amended by adding a new paragraph to read:

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22 apply for or obtain a permanent fund dividend in violation of a provision in
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24 (B) commissioner to detect and investigate the claiming or
25 paying of permanent fund dividends that should not have been claimed by or
26 paid to an individual and to impose the penalties and enforcement provisions
27 under AS 43.23.035.

28 * Sec. 4. This Act takes effect July 1, 2005.

ral estoppel doctrine; however, un-
cts of this case, there were different
, and the second indictment follow-
dismissal of the original indictment
d. DeMan v. State, 677 P.2d 903
.984).

Prosecutions for same transaction.
nt's perjury and misleading securi-
t at the same act as the mail fraud for
convicted in federal court, AS
t bar the state from pursuing its
a court for the perjury and mislead-
ngs charges, because AS 12.20.010
uccessive prosecutions for offenses
same transaction or episode; rather,
ve prosecutions for offenses based on
l act. State v. Bonham, 28 P.3d 303
2001).

nses. — Count charging that defend-
l specific false statements concern-
nt in a car bombing merged with
hich appeared to include specific
a defendant was charged with in the
therefore only one conviction could
v. State, 797 P.2d 677 (Alaska Ct.

versed. — Where the state did not
eman was unavailable to testify
be interpreted in light of the consti-
confrontation, it was error to admit
d testimony into evidence at trial.
eals could not conclude with any
ity that the erroneous admission
was harmless. Bentley v. State, 70
a Ct. App. 1985).

fficient to sustain conviction
Esmailka v. State, 740 P.2d 46
1987).

to present exculpatory evidence
by withholding FBI report, which
have established defendant's guilt
are the defendant's version of events
incredible. Defendant was guilty
State, 851 P.2d 1365 (Alaska Ct. App.
ed, 510 U.S. 1100, 114 S. Ct. 942
994).

— Where defendant is convicted
t offender, in the absence of aggravat-
ould receive a sentence substantially
than the four-year presumptive
id-felony offender; a sentence of three
and one-half years suspended clear-
quirement. Esmailka v. State, 740 P.
App. 1987).

oyles v. State, 647 P.2d 1113 (Alaska
Gargan v. State, 805 P.2d 993 (Alaska
3 36)

ver v. State, 641 P.2d 1263 (Alaska
sh v. State, 678 P.2d 423 (Alaska
mandez v. State, 691 P.2d 287 (Alaska
Moore v. State, 740 P.2d 472 (Alaska
Stumpf v. State, 749 P.2d 880 (Alaska
Gregg v. Gregg, 776 P.2d 1041 (Alaska
Brueggeman, 24 P.3d 583 (Alaska
wson v. Helmer, 77 P.3d 724 (Alaska
30.
12.

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 1978)

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 wilfully 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 unsworn 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

during the course of the same official proceeding;

and the retraction occurred before discovery of the falsification became known to the defendant;

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 Searles
 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