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UNIFORM UNCLAIMED PROPERTY ACT (1981)

If an individual abandons an automobile on a street in almost any city in the United States, it is generally a problem of litter, of junk. Nobody is likely to want it, although abandonment provides another person with the opportunity to take it if he wants to do so. Abandonment implies opportunity to others - an opportunity that most people don't bother about.

An automobile is tangible property, an object composed of steel, cloth, plastic, and other substances. Abandonment as a legal doctrine concerns property rights between people, and the object is merely the object of those rights, but having an object such as an automobile makes the task of determining rights relatively simple.

But what about intangible property? It poses a question of pure rights normally identified only by a piece of paper. For example, a share of stock has no tangible presence, only a certificate as evidence of its existence. Sometimes, the evidence may exist in the records of somebody, somewhere, and may not be in the hands of the owner (for example, uncertificated shares of stock). And values may be very great. Besides shares of stock, bank accounts, bank checks, and traveler's checks are other good examples of valuable intangible property. What happens when the rights represented are abandoned?

Actually, the problem is twofold. The first step is ascertaining that property is, in fact, abandoned. Has the owner relinquished the property, or is it simply that he or she, or a proper successor, has not notified the record keeper of the intent to continue as owner? If that question can be convincingly answered in the favor of abandonment, then the next question becomes, "Who gets it?"

Since 1954, the ULC has offered to the states an act known as the Uniform Disposition of Unclaimed Property Act. It was revised in 1966. Thirty-one states and the District of Columbia adopted a version of it. It answered the key questions in this manner. Abandonment would be presumed after notice to

owners and a sufficient time lapse (generally seven years) to signify that the original owner had, in fact, abandoned the intangible property. As to the second question, the state got it, but, in a sense, the original owner never lost it. The state took the property, held it for a prescribed time, and then disposed of it by sale. However, an original owner could show up and claim the property, or the proceeds of sale, at any time. The state performed a perpetual custodial function on behalf of the original owner.

In 1981, these general principles remain good. The Uniform Unclaimed Property Act (1981) conforms to them faithfully. Two distinct problems prompted a revision in 1981. These problems were: (1) jurisdiction over unclaimed property under the Act; and, (2) interstate cooperation. The 1981 revision remedies these problems. In addition, it updates the existing text of the earlier Acts, a matter of clarification, in the main.

The ULC was aware of the potential for "multiple liability" between states under the earlier Acts. They tied jurisdiction to the ability of a state's courts to assert personal jurisdiction over the holder (or debtor). The prior Acts left potential conflicts between states with a reciprocity provision.

In Texas v. New Jersey, 379 U.S. 670 (1965), the U.S. Supreme Court applied a different rule. The Court held that the state of the owner's last known address, as shown by the holder's books and records, has jurisdiction. After that case, the existing Uniform Act's basic jurisdictional approach was untenable. The 1981 revision realigns all of the jurisdictional content of the Act in conformity with Texas v. New Jersey, taking into account some tricky individual problems.

Interstate cooperation, also, needed some work beyond the basic problem of sorting out jurisdiction. There will be times when a state will become a custodian of property, to discover that another state should have been. A procedure for dealing with claims of other states is, therefore, needed. And more than simple reciprocity is essential to real resolution of interstate problems. The new Act attends to this issue, as well.

The 1981 Act addresses the problem of jurisdiction in this fashion. First, determine the last known address of the owner (or creditor). If that fails, then allow jurisdiction to vest, based on combinations of the domicile of the holder and the situs of the transaction out of which the property arose. Another key factor in determining jurisdiction is the fact

that the owner's last known address is in a jurisdiction without an escheat or custodial taking of property statute, or in a foreign country. These rules conform to the Texas v. New Jersey case and cover all contingencies.

Several new provisions enhance interstate cooperation. If a state has assumed custody of abandoned, intangible property, the 1981 Act provides another state with a procedure to claim it, if the second state can find grounds to assert its primacy over the initial state's assumption of custody.

In addition, the 1981 Act authorizes the unclaimed property administrator in each adopting state to enter into agreements with other states for exchange of information on claims, to enforce claims, and to sue for other states and allow other states to sue for his or her state. This provision allows states to pool resources in administering and enforcing this Act.

As the earlier Acts did, the 1981 Act basically provides a procedure for determining whether intangible property is abandoned, for transferring it to the state when it has been abandoned, and for an owner to reclaim it.

Each holder is required to report on property held beyond the time of its presumed abandonment. The debtor must notify the owner at his last known address, with a couple of exceptions. The unclaimed property administrator, then, has the further obligation of giving public notice of property transferred into the state's custody. Property is kept for a basic period, generally three years, and then is sold. Proceeds go to the general fund. As noted before, an owner or successor can claim the property while still held, or the proceeds after sale. No creditor is ever precluded from a claim. With updating, these provisions of the 1981 Act continue the principles of the earlier Acts.

Of particular importance is the factual question of abandonment. If property remains unused or unacknowledged for a specific period of time, its abandonment is presumed. The older Acts used a seven-year period as the general measure. The 1981 Act uses five years, in general. However, for specific types of property (i.e. utility deposits), the presumptive period is as short as one year. Seven years remain for certain property, such as stocks, and traveler's checks are not considered abandoned until fifteen years have passed. Each type of intangible property was studied to determine a relevant period after which abandonment could be presumed.

There are other improvements to the procedures, as well. The 1981 Act provides for civil enforcement with interest penalties based on the value of the property. This replaced the largely ineffective criminal provisions in the earlier Acts. The 1981 Act allows the unclaimed property administrator to destroy incidental property received that is of insubstantial commercial value. These are examples of updating provisions to be found in the 1981 Act.

The 1954 and 1966 Acts served the adopting states well, considering the subsequent legal problems. The ULC hopes the new Act, which solves those problems in an updated version, will prove even more useful to state government.

HB. 82

Uniform Law Memo



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NEW FOCUS on 'W.C. FIELDS ACT'

Uhe Uniform Unclaimed Property Act was one of four new proposals completed by Uniform Law Commissioners during their 1981 annual meeting. An article explaining that act follows. Outlines of the other three new proposals — Uniform Conservation Easement Act, Model State Administrative Procedure Act and Model Real Estate Cooperative Act — begin on page 10.

CHARLOTTE MOULTON

W.C. Fields had a lifelong phobia about theft and poverty, even after he became a world famous comedian and actor. At age 19, he decided to open a bank account everywhere he went.

According to biographer Robert Lewis Taylor, Fields began with banks in large cities and worked down to those that might occupy a corner of a village feed store.

"Sometimes he hopped off trains and opened an account while the engine took on water," Taylor says. "He piled the bank books in a corner of his wardrobe trunk and, for the most part, forgot them."

After Fields' death on Christmas Day 1946, his executors located 30 accounts. But his friends felt that much of his wealth was never found.

Millions of other Americans, most less wealthy than Fields, have forgotten money stashed in banks, savings and loan associations or credit unions. They have also neglected to provide addresses for dividend checks and have left safe-



deposit boxes unopened. Many have failed to collect utility deposits and racetrack winnings. Traveler's checks and money orders have remained uncashed, gift certificates unrepresented and airline

Fields Act RE-VIEWED

tickets unused. Proceeds of insurance policies have never reached beneficiaries because deaths went unreported.

This accumulation adds up to billions of dollars. Every state but Colorado has for years been claiming abandoned property after it has lain dormant for varying lengths of time. Thirty-one have used the Uniform Disposition of Unclaimed Property Act, adopted by ULC in 1954, revised in 1966 and often casually referred to as the "W. C. Fields Act."

At the August 1981 meeting in New Orleans, ULC put the finishing touches on a third version, which has already provided the ground work for a new law in the District of Columbia. There banks and savings and loan associations alone were said to be holding more than \$51.2 million in 43,000 accounts not touched for five years or more.

Like its predecessors, the 1981 Uniform Unclaimed Property Act lays down rules for determining when property is actually abandoned and — when it is — for determining which state gets it. The revision was needed to make the act conform to a 1965 U.S. Supreme Court decision, to strengthen its enforcement provisions and to encourage cooperation among states, particularly those which in the last decade have been energetically trying to pry dormant funds away from holders.

Streamlines Transfers

The 1981 act is designed to help locate rightful owners of abandoned property and to streamline its transfer to the states if they can't be found. The states act as permanent custodians and will return property to owners at any time. Until the owners show up, the funds go into the public treasury for the benefit of taxpayers instead of adding to the financial well-being of banks and other holders.

Under earlier acts, if a state court could assert personal jurisdiction over a property holder, the state could claim the holder's dormant funds. But the Supreme Court applied a different rule in *Texas v. New Jersey*, which dealt with a claim by four states to about \$26,000 in small debts owed

by Sun Oil Co. to about 1,730 small creditors over periods ranging from seven to 40 years.

Texas claimed on the ground that most of the amounts were on the books of Sun's offices in that state or were owed to persons whose last known address was in Texas; Florida, on behalf of persons whose last known address was there; New Jersey, because Sun was incorporated there; and Pennsylvania, as the state of the company's main office.

The Supreme Court ruled that the state of the owner's last known address was entitled to the funds.

A few states changed their laws to reflect the holding, but other statutes remained under a cloud. Many financial institutions argued that their duty was unclear and most made little effort to contact "missing" customers. Meanwhile state officials became increasingly aware of unclaimed property as a source of desperately needed revenue.

States which did press forward with revenue raising programs, which included serious attempts to find lost customers, were California, Florida, Illinois, Massachusetts and Minnesota.

Dormancy Shortened

A major consideration for ULC drafters was the length of the dormancy or holding period before a state takeover could occur. The prior act used seven years. Ten years was a common dormancy period for bank deposits but 13 states had longer ones with Delaware topping all others at 25 years.

The drafting committee chose five years, with exceptions of 15 years for traveler's checks, seven years for money orders and one year for unpaid wages, utility deposits, utility refunds and property held by the state itself.

After first attempting to notify owners in writing, all property holders are required under the 1981 act to file annually with a state administrator a list of property which has been ignored by the owner for the indicated dormancy period. The administrator then advertises property with a value of \$25 or more for two consecutive weeks in an appropriate local newspaper. For amounts of more than \$50, the administrator mails the owner a notice that his property is slated for state custody. Six months from the date of filing, amounts still unclaimed go to the administrator of the state where the apparent owner lives or lived.

If the address is not available, or if it's in a state without an unclaimed property act or in a foreign country, the state of the holder's domicile may take custody, pending proof that the funds belong

elsewhere. If the last-known-address state later enacts a law, the taking state must relinquish its take. Property such as gift certificates and unused airline tickets for which there is no last known address may be claimed by the state of purchase if the state where the issuer is incorporated does not have a pertinent law.

Interstate Cooperation

To save expense and help states collect out-of-state funds belonging to them, the 1981 act breaks new ground. It authorizes agreements under which states may exchange information and jointly audit holders or sue them. The administrator also may sue on behalf of another state and ask another state to do the same for him, provided the state making the request foots the bill.

The National Association of Unclaimed Property Administrators is active in developing such programs, which could simplify matters for holders as well, since they would likely file a single report to a group of states instead of to each separately.

The steady trend toward automation makes interstate cooperation easier and more rewarding. A number of states are already engaged in such joint efforts.

The agreements do not require the consent of Congress because under Supreme Court rulings they do not interfere politically with federal supremacy.

The Association issues a newsletter and sponsors informative annual meetings to keep interested per-

sons abreast of what is going on in the field. Any official dealing with unclaimed property may receive the newsletter by writing Ms. Vivian Herbert, Administrator of Unclaimed Property Division, State Treasurer's Office, P.O. Box 3-R, Richmond, VA 23207.

To correct a weakness in earlier versions of the act, holders are given considerable economic incentive to obey the law. Although states are free to fix an interest penalty for non-compliance, drafters suggested 18 per cent, or 10 per cent above the annual rate of discount — in effect on the date the property should have been paid or delivered — for the most recent issue of 52-week U.S. Treasury bills.

Non-Reporting Penalties

For willful non-reporting, a penalty ranging from \$100 to \$5,000 a day is mentioned. For willful failure to pay or deliver property, the act exacts a civil penalty of 25 per cent of value. A state could also impose criminal penalties but the drafters felt economic sanctions would be more effective.

The 1981 act requires a holder searching for dormant funds to check his records back 10 years from the date the law is passed. If the funds have already been turned over to a non-eligible state, the state that should get them may claim them. Penalties are *not* retroactive.

Massachusetts' experience shows how a state can add income without hiking taxes and at the

KEY POINTS

In addition to imposing record-keeping obligations on property holders, other key features of the 1981 act:

- Provide that upon reasonable notice an administrator may examine any holder's records, regardless of a holder's claim to have no reportable property.
- Require an administrator to hold most property for a year before selling it at public auction within the second year. Stocks will generally be held three years with missing owners entitled to dividends and interest for this period.

- Recommend that a state maintain a separate trust fund of not less than \$100,000 to insure payment of belated claims.

- Bar activity by heir finders (who for a fee locate owners of dormant funds) for two years after state receipt of the property.

- Provide for lawsuits by owners aggrieved at an administrator's decision.

- Presume that proceeds of a life insurance policy are abandoned if the company knows the insured has died. Under the old version, proceeds usually were not reportable until the 103rd anniversary of the decedent's death.

- Allow the administrator to destroy incidental property received that is of insubstantial commercial value.

FIELDS ACT Re-Viewed

same time provide windfalls to many missing or forgetful property owners.

From 1950 to 1975, when the law specified a 14-year dormancy period, state receipts averaged \$250,000 a year. Payouts for the entire period were \$350,000. The dormancy period was then reduced — first to 10 years, then to seven in 1980 — and audits of holders were stepped up. Receipts in 1980 climbed to \$25 million, 25 to 30 per cent of which is expected to be paid to owners. In 1981 the dormancy period was cut to five years.

Illinois Experience

Illinois took in \$8.7 million in the fiscal year ended June 30, 1981, about \$953,000 of which was unearthed by state examiners and should have been reported earlier. Payments on 1,994 claims totaled \$903,000. Over three years, examinations have resulted in a take of \$2.9 million, according to Michael E. Fryzel, Administrator of the Unclaimed Property Division of the Illinois Department of Financial Institutions.

Since the law was enacted in 1962, Illinois has received \$74.3 million and has paid out \$5.9 million on 10,029 claims. Most of the funds have come from banks, followed by savings and loan associations, credit unions, insurance companies and retail establishments and other business corporations — in that order.

A major concern of ULC drafters was the widespread bank practice of discontinuing interest and imposing service charges on dormant accounts without adequately informing depositors of what to expect. Small accounts were simply wiped out.

It has been argued that the cost of posting interest and mailing statements for small accounts more than justifies this practice.

Charlotte Moulton, U.S. Supreme Court correspondent for United Press International 1949-78, now acts as a consultant to the Uniform Law Commissioners.

"I don't consider that a valid argument," said Fryzel. "These banks pay simple interest of five to six per cent on accounts while for years they have had use of the depositors' money invested at 12, 13 or 14 per cent. Statements and posting are part of the cost of doing business and they knew that when they took the accounts."

Fryzel said a suit by Illinois against the Lakeview Trust and Savings Bank in Chicago declares that a financial institution must have a valid, written, enforceable contract with its customers before it can stop interest on and service charge dormant accounts; and that if the bank pays back the interest and charges when an account is reactivated, the state must be treated the same way when dormant funds are turned over.

A precedent was established by a California suit against the giant Bank of America which resulted in a 1980 court order that an estimated \$20 million in service charges, interest and penalties be returned to customers.

In a highlight of the bank's lax performance, California Controller Ken Cory found his own name on the list of "missing" depositors, as well as those of actress Lucille Ball, comedian Bob Hope and former Gov. Edmund G. Brown, Sr.

In Florida persons reported unlocatable have included Gov. D. Robert Graham and former state Supreme Court Justice Fred Karl.

Safe Box Surprises

Those abandoned safe-deposit boxes yield some of the more dazzling examples of unclaimed property.

Among the discoveries of Virginia officials were a rare Fairchild fountain pen with a 14K point and mother-of-pearl staff; and a ring, perhaps a copy of royal jewelry, dating from the French Revolution. For appraisals of such finds, the state has gone afield as far as the curator of gems at the Smithsonian Institution and the Louvre in Paris. Auctions of safe-deposit box items are in progress in New York City.

Virginia struck a small "gold mine" in 1980 in the form of almost \$7,000 in gold-backed Liberty Bonds and coupons — some dating to 1917. The U.S. Treasury redeemed them.

HB 182
Uniform Unclaimed Property Act

Historical Note

Thirty-one states, (Alaska not included) and the District of Columbia enacted either the 1954 Uniform Disposition of Unclaimed Property Act or the 1966 revision. These Acts served well as evidence by their numerous adoptions. However, the era of stability was ended with a U.S. Supreme Court decision; Texas v. New Jersey, 379 U.S. 674 (1965).

In the last decade states have become increasingly aware of the opportunities for collecting and returning to their residents unclaimed money and using the "windfall" unreturned funds as general fund receipts for the benefit of citizens of the State. Accordingly several states have sought to enforce their unclaimed property laws with enhanced vigor. They have found, however, that obtaining compliance with the law has been extremely difficult. In some instances the uncertain status of unclaimed property statutes in the wake of Texas v. New Jersey accounts for the high degree of noncompliance; many holders feel they do not know what is required of them. In addition, the enforcement provisions of the Uniform Act are inadequate and have not served to encourage compliance with the Act.

The Uniform Act served its time. However, to conform the Uniform Act expressly to the Supreme Court ruling in Texas v. New Jersey a comprehensive revision was desirable, and was enacted in 1981.

Prepared by:
Department of Revenue
Audit Division
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UNIFORM UNCLAIMED PROPERTY

AS 34.45.110

This section establishes as a general proposition that all intangible property held or owing in the ordinary course of the holder's business is within the coverage of this Act. This section provides that unless a different time period is specified all intangible property which has remained unclaimed for more than five years is presumed abandoned. Sections .130 -.260 deal with specific types of property and prescribable the events which raise a presumption of abandonment.

The general dormancy period of Alaska's current escheat property law is seven years. Some legislatures have recently shortened that time period. Given the greater mobility of the population in 1985 as compared with that of a quarter century ago when the seven year dormancy period was first established, a reduction of the general dormancy period to five years is warranted. Additionally, the experiences of those states with shorter abandonment periods reveal that they are able to return to owners a substantially higher percentage of property reported as abandoned. There are exceptions in this Act to the five year dormancy period, however. For instance, statistical evidence indicates that a period of 15 years continues to be appropriate in the case of travelers checks. A majority of travelers checks will ultimately be presented for payment within the 15 year period. Also, in certain instances a shorter period is appropriate. For instance, the likelihood of finding the owner of a payroll check is materially decreased after one year. Hence, Section .250 has a one year dormancy period for unpaid wages.

Subsection (b) is intended to make clear that property is reportable notwithstanding that the owner, who has lost or otherwise forgotten his entitlement to property, fails to present to the holder evidence of his ownership or to make a demand for payment. Since the holder is indemnified against any loss resulting from the delivery of the property to the Department, no possible harm can result in requiring that holders turn over property, even though the owner has not presented proof of death or surrendered the insurance policy, savings account passbook, the gift certificate, winning racing ticket, or other memorandum of ownership.

A draft issued by a property or casualty insurance company as an offer of settlement of a claim for property damage or personal injury is not subject to the presumption of abandonment if the offer was not accepted by the payee. In this situation, the draft never became payable or distributable. The issue of whether a draft is accepted by a payee is a question of fact that is not addressed by the Act.

AS 34.45.120

This section describes the general circumstances under which a state may claim abandoned intangible property. (There is a special provision for travelers checks and money orders in Section .140). This section closely follows the language of Texas v. New Jersey, in which the court reasoned that unclaimed property is an asset of the creditor and should generally

be paid to the creditor state, i.e., the state of residence of the apparent owner. Consistent with that reasoning it held that unclaimed intangible property is subject to escheat or custody as unclaimed property first by the state of the owner's last known address. If that state cannot claim the property, the state of the holder's domicile is entitled to it.

Consistent with the court's concern for a simple rule which would avoid the complexities of proving domicile and residence the court established the priority on the basis of information contained in the holder's records. Recognizing that the holder's records might be incomplete, the court's ruling permits a claimant state to prove by other means that the last known address of the owner is within its boundaries. Where the holder's records do not show the owner's last address, the second priority claimant, the state of domicile of the holder, is entitled to claim the property. The state of the owner's last known address can later assume custody from the state of the holder's domicile by showing that the last known address of the owner is within its borders. Likewise, if the state of last known address does not have an unclaimed property law which applies to the property, the state of the holder's domicile can take the property, again subject to the right of the state of last known address to recover the property if and when it enacts an unclaimed property or escheat law.

Paragraph (1) restates the factual situation in Texas v. New Jersey. As the court there said ". . . the address on the records of a debtor, which in most cases will be the only one available, should be the only relevant last known address." If the holder's records are erroneous and the owner is in another state, that other state can reclaim the property pursuant to Section 25.

Paragraph (2) covers the situation in which the identity of the person entitled to the property is unknown, but it is established, either through the holder's records or by some other means, that the property was owned by or payable to a person whose last known address was within the claiming state. Reunification of the owner with his property in this circumstance is impossible, and insofar as that issue is concerned, it makes no difference whether the property is delivered to the state of the holder's domicile or the state of the owner's last known address. However, following the equitable concept of distributing unclaimed property among creditor states the subsection directs that, where there is no record of a name but there is a record of last known address, the state of last known address can claim the property.

Paragraph (3) is the secondary rule of Texas v. New Jersey. The Supreme Court ruled that, when property is owed to persons for whom there are no addresses, the property will be subject to escheat by the state of the holder's domicile, provided that another state may later claim upon proof that the last known address of the person entitled to the property was within its borders.

Paragraph (4) provides that, if the law of the state of the owner's last known address does not provide for escheat or taking custody of the unclaimed property or if that state's escheat or unclaimed property law is not applicable to the property in question, the property is subject to claim by the state in which the holder is domiciled. In that instance, the state of the owner's last known address may thereafter claim the property if it enacts an applicable unclaimed property law.

Paragraph (5) provides that, when the last known address of the apparent owner is a foreign nation the state in which the holder is domiciled may claim the property.

Paragraph (6) provides for a situation in which neither of the priority claims discussed in Texas v. New Jersey can be made, but the State has a genuine and important contact with the property.

Gift certificates, unused airline tickets, and other property for which there is no last known address may be claimed by the state of purchase if the state of corporate domicile does not have an abandoned property law covering the property in question under paragraph (6).

Wholly foreign transactions are excluded from the coverage of the Act.

AS 34.45.140

This section concerns travelers checks and money orders which are unclaimed. Subsections (a) and (b) deal with the requirements for presuming this property abandoned. Although the general dormancy period has been reduced for many kinds of property, the 15 year period for travelers checks and the seven year period for money orders is retained. Statistical and economic evidence has shown that these periods continue to be appropriate.

Subsection (c) prohibits holders from reducing outstanding Travelers check and money order balances through service charges unless a written contract had been entered into.

Subsection (d) and (e) adopt the rules, including the dates, provided by congressional legislation which determine the state entitled to claim sums payable on travelers checks, money orders, and similar instruments, see Pub. L. 93-495, §§ 603, 604 (Oct. 28, 1974), 88 Stat. 1525-26, 12 U.S.C. §§ 2501 et seq. The congressional action was in response to the Supreme Court decision in Pennsylvania v. New York, 407 U.S. 206 (1972), which held that the state of corporate domicile was entitled to escheat money orders when there was no last known address of the purchaser although the property had been purchased in other states. Subsection (d) substitutes as the test for asserting a claim to travelers checks and money orders the place of purchase rather than the state of incorporation of the issuer.

AS 34.45.150

This section covers checks and similar instruments issued or certified by banking and financial organizations. Checks and other instruments issued by persons other than banking and financial organizations are covered generally by Section .110. Bank checks are presumed abandoned after five years.

AS 34.45.160

This section covers bank accounts. Bank deposit accounts are generally presumed abandoned unless the depositor has within the past seven years, increased or decreased the account balance or had other written communication with the bank or financial organization. Activity by an owner with another account in the bank or another active relationship between the owner and the holder such as a loan will prevent abandonment.

Subsection (b) forbids a bank, for instance, from imposing service charges on dormant or inactive accounts, or closing the payment of interest.

Subsection (c) prevents a certificate of deposit with automatic renewal provisions from being treated as perpetually exempt from a presumption of abandonment. The subsection also insures that no interest penalty will result from the delivery of such property during the interest term then in effect.

AS 34.45.170

Subsections (a) and (b) require that money held owing under life insurance or endowment insurance policies is presumed abandoned if unclaimed for more than five years after the money became due. The last known address is the address of the insured unless the records of the company show the address of the beneficiary.

Paragraph (1) of subsection (c) provides that proceeds of a life insurance policy are presumed abandoned if the insurer is aware that the insured has died even though actual proof of death has not been furnished to the insurer. Paragraph (2) provides that the policy proceeds are payable if the limiting age under the mortality table on which the reserve is based is reached and there has been no activity with respect to the policy for 2 years.

Subsection (d) provides that the application of an automatic premium loan provision will not be used to consume the proceeds of a policy and prevent the policy from being matured under subsection (a) if the insured has died or if the beneficiaries have otherwise become entitled to the proceeds of the policy.

Subsection (e) imposes an affirmative duty upon the insurer to ascertain a correct address of an insured who fails to receive notice of the exercise of the non-forfeiture option. In these cases it is expected that as a result of the search the insurer will become aware that the insured is deceased. Subsection (f) then requires the insurer to attempt to locate the beneficiaries and pay the policy proceeds.

Subsection (g) provides for the insurer to request the addresses of beneficiaries if the insured changes a beneficiary designation. Most insurance companies do not request address information for beneficiaries. Since in many instances the initial beneficiary resides in the same household as the insured and the administrative burden of accumulating address information is thought to be considerable, the obligation to obtain the address is deferred until such time as a change of beneficiary occurs. By making the commencement date of this subsection 2 years after enactment, insurers will be provided sufficient time within to undertake the necessary administrative steps to implement this provision.

AS 34.45.180

This section requires utility companies to presume abandonment of deposits that remain unclaimed for more than one year after termination of service.

AS 34.45.190

This section provides that court or administrative agency ordered refunds which remain unclaimed for more than one year are presumed abandoned. The short dormancy period of one year is justified since no possible advantage can occur to the owner by leaving his property with the holder, and failure to claim a refund is strong evidence that the property has been abandoned.

AS 34.45.200

This section covers underlying shares of stock and principal amounts of debt securities, i.e., stock certificates in the possession of the record owner. Dividends and other distributions are to be reported pursuant to AS 34.45.110.

Several states have enacted specific provisions for the presumption of abandonment of underlying share certificates. Typical is the provision of California (Cal. Civ. Pro. Code § 1516) which provides that the underlying intangible interest is presumed abandoned if the owner has not contacted the company within the abandonment period and he cannot be found whether or not dividends on that interest are paid. Connecticut, Florida, Indiana, Massachusetts, Montana, New York, Rhode Island, Wisconsin and Virginia also have specific provisions for the presumption of abandonment of underlying shares. States with escheat laws similar to New Jersey's would be entitled to claim underlying shares on the Standard Oil precedent.

This section establishes a longer dormancy period (seven years) for this property than for other property covered by this Act. Further this section requires that there must be at least seven consecutive dividend checks issued during this period of dormancy which remain uncashed. Additionally, the presumption of abandonment will not arise in the event the missing owner has communicated with the association. In this regard, the communication would normally be with an agent of the association such as a transfer agent or a dividend disbursing agent. Of course, such communication would satisfy the provision of this section. This section combines both a period of inactivity, seven years, with the requirement that distributions paid on the underlying intangible interest remain unclaimed, thus avoiding concerns that abandonment should not be presumed where a shareholder has not contacted a non-dividend paying company.

If the conditions leading to a presumption of abandonment have occurred, the holder (issuer of the security) must report to the State and if the holder has in its records an address of the owner, it must send written notice to the owner in an effort to reunite the owner with his property. Thereafter the Department may give notice by advertising the existence of the property and send mailed notice to owners of property valued at \$50 or more.

Many owners will be located through the publication and mail notice requirements of the Act. In the event abandonment is presumed and the owner subsequently appears, there are at least 3 formal opportunities to reunite that owner with the issuer before a duplicate certificate is turned over to the Department.

If the owner is not located, however, a duplicate certificate is issued to the Department pursuant to Section 320 (d) and the original certificate will be cancelled. Thereafter, if the owner appears, the duplicate certificate may be claimed from the Department.

The issuer who delivers a duplicate certificate under the Act is protected, because upon delivery it is relieved of all liability to the extent of the value of the property delivered under Section 20. If any person thereafter makes a claim against the holder, the Department is required to indemnify the holder against any liability on the claim. The required indemnity is complete, and it is not restricted to the value of the property turned over.

Subsection (e) would not require the reporting of interests enrolled in dividend reinvestment plans unless the owner has other stock which is not in dividend reinvestment and which would be presumed abandoned under Section .200.

AS 34.45.210

This section provides a dormancy period of 1 year for intangible property distributable during the course of dissolution of a business association.

AS 34.45.220

This section provides that intangible property held by agents and fiduciaries is presumed abandoned after a five year period after the property became payable or distributable. Intangible property is not "payable or distributable" under subsection (a) if the fiduciary possesses merely the discretion to pay or distribute property and has not exercised the discretion.

Subsection (d) is designed to clarify the status of transfer agents. That is, they are agents for the business association and the Department must look to the principal, the business association, as the holder, unless they have contractually undertaken the obligation to report the property. A later section provides that the department is authorized to examine the records of the holder or records relating to the holder which are in the possession of the transfer agent. See Section .290.

AS 34.45.230

This section provides that property held by the courts, municipalities or governmental agencies is presumed abandoned after one year.

AS 34.45.240

This section provides that both gift certificates and credit memos are covered under abandoned property law if unclaimed for five years.

AS 34.45.250

This section covers wages unclaimed or unpaid. The abandonment period is only 1 year since the chance of locating a missing owner of a wage check materially decreases with the passage of time.

AS 34.45.260

This section provides that all property held in safe depository boxes and remaining unclaimed for five years after the lease or rental period expires is presumed abandoned. This section is not intended to cover property left in place other than safekeeping repositories, for example, airport lockers or field warehouses. Its coverage is limited to safe deposit boxes in banks or other financial institutions.

AS 34.45.280

This section requires holders of abandoned property to report to the Department of Revenue only property with a value of \$25 or more.

Before filing its report, the holder must send written notice to the apparent owner, if the owner's claim is not barred by the statute of limitations, the property has a value of \$50 or more, and the holder's records do not disclose the address to be inaccurate.

The subsection requires that the notice be sent not more than 120 days before the filing of the report.

AS 34.45.290

This section is designed to facilitate compliance with the Act. Subsection (a) provides for the filing of a negative report if the Department requires such a report and will minimize disruption which would otherwise be caused to the holder if an examination of records instead were conducted by the Department.

Subsection (b) provides the Department the authority to conduct examinations of holders.

Subsection (c) is intended to provide a useful method whereby the Department can conduct a single examination of a dividend disbursing agent or transfer agent serving in such capacity for numerous business associations. This section, together with Section .460, will enable several states to conduct joint examinations of numerous holders at one time, saving substantial expense and thus permitting examinations which might otherwise be economically unfeasible.

Subsection (d) permits the use of estimates in instances where the holder has failed to report and deliver property that is abandoned and no longer has records with which to prepare such a report. Additionally, if the holder fails to maintain records of the last known address, states can assert claims based on any other records which might exist. This subsection does not resolve the issue of whether the domiciliary state of the holder can also claim the property from the holder.

It is the experience of other states that many holders are not retaining records of addresses of owners. This section makes it mandatory that holders maintain addresses if they initially had an address. The experience of several states has confirmed that substantial amounts of unclaimed property, for which at one time the holder had records of address, are now subject to claim only by the domiciliary state of the holder since the recorded address has not been retained.

This subsection does not require that the holder in the first instance obtain the address of the owner. For example, a record of the address of the purchaser or recipient of a gift certificate customarily is not obtained, and is not required.

Initially, the period for which records of address must be obtained is established at 10 years from the date the property was first reportable as abandoned property. For example, in the case of property that would be reportable in the aggregate without the name and address of the apparent owner, a state might adopt a rule providing for a relatively short record retention period on condition that the holder maintain a record sufficient to satisfy the requirements of Texas v. New Jersey that there be a last known address or that the State can prove that the last known address of the creditor was within its borders.

Subsection (b) is designed to ensure that the information required for asserting a claim to travelers checks and money orders is retained by the issuers of travelers checks and money orders.

Subsections (a) and (b)(3) of AS 34.45.310 set forth the dates by which the Department must publish the names of missing owners and mail notification to the last known address of each owner.

Subsection (c) and (d) have set \$50 as the minimum value required for advertising and notification.

AS 34.45.320

This section requires the holder to pay over the property within six months after reporting its existence. However, if the holder does not know the owner's name or the value of the property is less than \$25, then the property must be turned over to the Department at the time of filing the report. The notification provisions of sections .290 and .310 often stimulate owners to claim their property and the retention period of six months permits the holder to honor these claims.

Subsection (d) provides that the holder of an underlying stock interest presumed abandoned shall deliver a duplicate certificate to the Department. Upon delivery the holder is relieved of all liability to any person occasioned by the reappearance of the original certificate or the issuance of the duplicate certificate.

AS 34.45.330

This section states that when property is turned over to the State, the holder is relieved of all liability for any turnover made in good faith. Subsection (e) sets forth a definition of good faith which allows the holder to rely on its records if they meet reasonable commercial standards of practice in the industry.

The section also permits the holder to obtain reimbursement for claims it elected to pay to owners who appeared after the property was turned over.

If after turnover, any person or another state makes a claim on the holder, the State, upon request, is required to defend the holder and indemnify him against any liability. This provision is particularly important in light of the underlying share provisions of section .200.

AS 34.45.340

This section provides that an owner will be entitled to dividends, interest or other increment realized or accruing on the property during the period of time held by the Department.

AS 34.45.360

This section provides that within 3 years of receipt the Department will sell abandoned property. Subsection (c) provides an exception, that securities will generally be held a minimum of 1 year.

If the security is one which has been presumed abandoned pursuant to section .200 the Department is expected to hold the security for 3 years. It is permitted to sell the security within this 3 year period, but the missing owner is entitled to receive the proceeds of the sale or the market value of the securities at the time the claim is made. Thus there is a genuine incentive for the Department to hold this property for the requisite three year period.

Subsection (b) permits the Department to sell securities at prevailing prices directly to the issuing companies.

AS 34.45.370

This section provides that the Department will retain in a separate trust fund an amount not less than \$100,000 from which prompt payment of allowable claims shall be made.

AS 34.45.380

This section provides that if a valid claim to property turned over to the Department is made, the Department is to return the property or, if it has been sold, to pay the net proceeds of sale. If the claim is for an underlying share interest presumed abandoned under section .200 and the Department has sold the property within 3 years, the claimant is entitled to the net proceeds of sale or the market value of the property at the time claim was made, whichever is higher, together with any additional amount payable under section .340. Subsection (c) provides that the Department will pay over to the claimant the property it holds less costs incurred in connection with the sale.

Subsection (d) sets forth provisions which provide for the payment of interest and requires the Department to pay interest on property which was interest bearing to the owner. The rate of interest will be fixed at the rate prescribed in AS 45.45.010 or the rate on the unclaimed instrument.

AS 34.45.390

Paragraph (a)(1) provides that, if property was paid to the state of the holder's domicile because the last known address of the owner was unknown and it is later established that the last known address of the person entitled to the property was in another state, the state of domicile should pay over to the state of last known address.

Paragraph (a)(2) provides that if the state of the last known address subsequently enacts an unclaimed property law which covers the property, the taking state must turn it over.

Paragraph (a)(3) provides that the state of the actual owner can reclaim this property from the taking state.

Paragraph (a)(4) provides that property initially claimed under a "contracts" test because there was no last known address and the state of domicile had no applicable unclaimed property law may be reclaimed by the state of corporate domicile if it enacts an applicable unclaimed property law.

Subsection (c) provides that the state that initially receives the property and which is requested to remit it to another state should be indemnified by the claiming state.

AS 34.45.400

This section provides a remedy for both holders and owners in disagreement with an action made by the Department. These appeal rights mirror those established under tax law.

AS 34.45.410

Subsection (a) allows the Department to decline to take property of minimal value.

Subsection (b) authorizes the Department to assume custody of property prior to the time for presuming abandonment. This enables them to take possession of property, such as the contents of a safe deposit box repository, when the holder is terminating business but the property is not yet reportable. The property must be held by the Department until the abandonment period runs and then the property will be subject to the other provisions of the Act.

AS 34.45.420

This section provides for the disposition of property which has no commercial value. As an example, the contents of safety deposit boxes often include such items as rent receipts, personal correspondence and lapsed insurance policies.

Under this section the Department would be free to retain property having no commercial value. Further, the Department could transfer it to other agencies or institutions which might have an interest in the property because of its historical value or other independent significance.

This section provides that the Department in exercising its discretion in disposing of such property is not subject to a claim by the missing owner.

AS 34.45.430

This section is written to ensure that although the owner's claim against the holder may be barred by the statute of limitations prior to the effective date of the Act, the holder is not relieved of his obligation to pay abandoned property to the Department. Even though the statute of limitations has run before the effective date of the Act, the holder must report and deliver the property to the state if the holder does not regularly enforce the statute.

AS 34.45.450

This section allows Alaska to use the courts outside this State to enforce this Act.

AS 34.45.460

This section provides for cooperation among the many states that have unclaimed property laws.

In many instances holder apparently fail to report based on the correct assumption that individual and distant states will not go to the expense of auditing records. This section will permit spreading the very real expense of conducting audits among several collecting states and the pooling of information which should make enforcement of the Act less burdensome to the State and potentially less burdensome to the major corporate holders.

Action by one state for another is expressly permitted by this section. In some cases the administrator of a state may deem it wise to seek council in a foreign jurisdiction.

AS 34.45.470

This section provides monetary penalties which may be assessed against holders failing to turnover unclaimed property.

AS 34.45.700

This section provides that the Department has 24 months in which to locate owners of abandoned property before permitting heir finders access to the Department's records of unclaimed property.

AS 34.45.710

This section excludes from coverage all foreign transactions.

AS 34.45.720

Subsection (a) provides that if a state had an unclaimed property law prior to the adoption of this Act, a holder is not relieved of his duty to report and pay over the property abandoned under the Act then existing.

Subsection (b) deals with the problem of how far back a holder must check his records to determine what property not subject to the prior Act must be paid to the State under this Act. The period chosen is six years. A holder is required to pay to the State any property which six years before the date of enactment would have been payable in the enacting state if this Act had been in effect. For example, if Alaska enacts the new Act effective January 1, 1987 for property not previously presumed abandoned, the holder must report it if, as of January 1, 1981, it had been unclaimed for the abandonment period.

However, some property subject to this Act but which was not covered by a prior Act may have been paid to another state. If a holder has already paid this property to another state under its then existing unclaimed or abandoned property laws, it is not required to pay again this to this State. Nothing in this section, however prohibits this State from making a claim on the state to which the property was originally paid.

AS 34.45.730

This section provides the Department the authority to adopt regulations to carry out the provisions of the legislation.

AS 34.45.750

This section provides that if a holder fails to make a report under the Act or makes a false report, the Department may make a report from the information it is able to obtain.

AS 34.45.770

This section provides definitions for important terms used in the Act.

REVIEW OF THE
DEPARTMENT OF REVENUE AND DEPARTMENT OF LAW
UNCLAIMED PROPERTY

STATE OF ALASKA
OFFICE OF THE GOVERNOR
DIVISION OF INTERNAL AUDIT



04-15

INTRODUCTION

Unclaimed property is property which has been abandoned by its owner. In Alaska, unclaimed property reverts to the State after seven years. Alaska Statutes provide:

"When no claim of ownership has been made to bank deposits, cash or personal property for more than seven years, the property escheats to and becomes the property of the state." (AS 09.50.070)

The statutes also provide a general means for obtaining unclaimed property by providing:

"When the attorney general is informed or has reason to believe that any real or personal property has escheated to the state, he shall bring an action in the superior court to establish whether or not the property has escheated to the state." (AS 09.50.100)

The Department of Law has the administrative authority for implementing the unclaimed property program. Implementation includes locating and recovering unclaimed property and returning it to the rightful owners. No procedures exist for locating unclaimed property. The Department of Revenue only has the authority to receive and account for unclaimed property.

CURRENT LAW IS NOT BEING IMPLEMENTED

The unclaimed property act is not being implemented because the Department of Revenue does not require reporting of unclaimed property and the Department of Law seldom attempts recovery if unclaimed property is reported.

Reporting

The Department of Revenue does not request reporting of unclaimed property because the Department does not have the administrative authority by law to recover property. The Department of Law has authority to recover unclaimed property but rarely has brought action in superior court. Consequently, the property reverting to the state is only that which routinely is forwarded by probate court and from holders voluntarily forwarding unclaimed property.

Recovery

The Department of Law seldom brings action in superior court to recover unclaimed property because of time and economic restraints. Although the amount of unclaimed property is large, it consists of hundreds of sources, each of which would require separate action in the court. Even when some of these sources can be combined, the amount of resources necessary to implement the current law is too great and the procedures are abandoned. As a result most holders of unclaimed property either continue to hold the property or take it into income either directly or by assessing fees.

About three years ago the Department of Law began an action to recover unclaimed property held by banks in Alaska. Although progress is being made, no property as yet has been recovered. This cumbersome, time consuming process is further complicated by strong resistance of the holders. The administrative authority for the law lies with the Department of Law. This is not a normal function of the department. It rightfully belongs with the Department of Revenue.

ALASKA UNCLAIMED PROPERTY
STATUTES NEED UPDATING

The current unclaimed property statutes are insufficient because they do not apply to all unclaimed property. In addition, the statutes are not consistent with model unclaimed property laws, conflict with other Alaska statutes and do not provide a system for locating owners and returning their property.

Unclaimed Property Laws
Do Not Include All Unclaimed
Property

A large amount of unclaimed property is not being recovered by Alaska under current laws because current laws do not apply to all unclaimed property. The laws have never been interpreted to include property in state agencies, insurance companies claims and proceeds, utility company deposits, and stock companies' stock and dividends.

The Sitka Pioneers' Home has about \$55,000 in bank accounts belonging to deceased residents who left no will or heirs. The State jail system has several thousands of dollars of cash abandoned by former inmates.

The state agencies have indicated they do not know where to forward this property or even if they are legally allowed to release the property to other than the rightful owners.

In the past eight years, the Department of Revenue has received only \$425,000 in unclaimed property. Most of this property comes from estates of persons who left no will or heirs and also from an annual remittance by two national traveler's check companies. These companies include Alaska in the remittance of unclaimed property even though current Alaska statutes do not require direct remittance. We estimate that \$4 million in potential unclaimed property is available as of today and an additional \$500,000 annually.

Model Unclaimed Property Act
Provides Guidelines which Would
be Beneficial to Alaska

The National Association of Unclaimed Property Administrators (NAUPA) has proposed a model Uniform Unclaimed Property Act (UUPA). NAUPA is an association of unclaimed property administrators from 35 states. Their goal is to establish similar laws between states through the creation of a uniform unclaimed property act.

Alaska has also proposed an Unclaimed Property Act (HB206), first submitted in 1979. Although this bill was not enacted, passage of a revised Alaska Unclaimed Property Act would provide direction to Alaska's unclaimed property program. However, several sections of the original HB206 need to be updated, changed or deleted to be consistent with the revised UUPA. The Department of Law is drafting a substitute bill and should consider changing the time limits for when property escheats to the state.

Except for traveler's check companies, the time limit in the proposed Unclaimed Property Act is seven years. NAUPA recommends reducing from seven to five years for the time limits when property escheats to the state.

For traveler's check companies, the proposed act sets the time limit at fifteen years. The trend of the unclaimed property administrators is to reduce the time requirement on traveler's check companies to ten years or less. Fifteen years appears to be too long a period of time creating greater difficulty in locating the owner. The two companies currently voluntarily submitting traveler's checks do so after only eight years of inactivity.

Conflict with State Banking Code

A conflict exists between the unclaimed property law AS 09.50.070 (Code of Civil Procedures) and AS 06.05.460 (Alaska Banking Code). AS 06 requires that every bank, upon request, report to the Department of Commerce and Economic Development, deposits which have not been added to or reduced for ten years or more. AS 09 requires that when no claim of ownership has been made for bank deposits for more than seven years, the property escheats to the state. Not only does the time limit conflict, but also the holder could be required to submit information to two separate departments.

No Attempt Made to Locate and Return Property to Owners

The current law does not require the state to attempt to locate and return unclaimed property to the rightful owners. Occasionally there is a claim against escheated property and it is returned. No one is assigned to try to locate owners and no attempts such as published lists of owners are made by the state.

INTERNAL CONTROL

Internal control over receipt of unclaimed property is weak (or is non-existent) because only one employee is assigned to this function. The Department of Revenue acts as the holder of property received either from the superior court or directly from other sources. One employee is assigned, on a part time basis, to process all incoming remittances and inquiries. Approximately five hours per month is devoted to the entire

function. Without proper internal control and accountability of the employee handling these funds, property could be easily delayed or even diverted from reaching the state treasury.

The procedures currently used are as follows: (1) the property, normally in check form, is entered on a perpetual ledger; (2) a file is established containing a copy of the remittance check and a cover letter. The owner's name and occasionally the last known address is provided; (3) a cross-index card containing the remitter and owner names is made to facilitate locating a file; and, (4) the property is transmitted to the state treasury.

RECOMMENDATIONS

We recommend that:

1. The Departments of Revenue and Law:
 - a. Pursue new legislation whereby the Department of Revenue would be given administrative authority to:
 - (1) Locate unclaimed property
 - (2) Recover unclaimed property
 - (3) Require annual reporting by holders of unclaimed property, thereby creating a source to identify, locate and recover unclaimed property.
 - b. Include provisions for locating the rightful owners of escheated property and facilitate its return.
 - c. Include in the proposed legislation, authorization to use the Alaska Administrative Code.
 - d. Use the revised model act of the NAUPA as a guide in preparing proposed legislation including:
 - (1) Implementing a workable system of administering the duties directed by new legislation.
 - (2) Reducing the time limit when property escheats to the state to ten years or less for travelers check companies and five years for all other property.
 - e. Eliminate conflicts with the Alaska Banking Code.
2. The Department of Revenue:
 - a. Establish internal controls including:
 - (1) A logging in of property received and its monitoring to insure timely processing.
 - (2) A cross-check system with the Alaska superior court including signing for and being held accountable for all property sent and received.

- (3) A separation of duties for the receipt and processing of funds received.
 - (4) Maintenance of an expanded ledger including the current perpetual ledger if necessary and/or a ledger maintained for each fiscal year.
 - (5) An annual report containing a recap of property anticipated to be recovered, property received, the disposition of property received and retained by the State, property returned to the owners together with success ratios. This report could and should be used both inside the department as an effective measurement of the program and outside the department to inform the public of the program's purpose.
 - (6) An alphabetical owner's list, published for the benefit of the public, including the last known names and addresses of the owners of record.
 - (7) A policy/procedures manual.
- b. Assign one additional position at a minimum to:
- (1) Answer correspondence when a form letter is not appropriate.
 - (2) Identify and locate holders of unclaimed property through correspondence already on file, further correspondence, annual reports and other sources.
 - (3) Bring these sources to the attention of the attorney general.
 - (4) Enforce current and future statutes and regulations.
 - (5) Begin to locate the owners of escheated property.

MEMORANDUM

State of Alaska

TO: John O'Meara
State Internal Auditor
Office of the Governor

DATE: March 26, 1981

FILE NO: J-77-031-81

TELEPHONE NO: 465-3690

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Unclaimed Property

By: 
Sarah T. Kavasharov
Assistant Attorney General

This is in response to your letter of March 23, 1981, requesting our response to the recommendations made in your final report on unclaimed property. The Department of Law concurs in the recommendations and has worked with the Department of Revenue to draft new legislation to be introduced this session. The new legislation contains provisions to implement all the recommendations made in your final report. The legislation does not yet have a bill number, but will go to the governor's office in final form for introduction within a day or two from today's date. We can send a detailed description of the proposed legislation, taken from our analysis of the bill done for the governor, if you wish it.

STK/jb

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Office of the Governor
Division of Internal Audit

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

March 9, 1981

John O'Meara
State Internal Auditor
Office of the Governor
Pouch A
Juneau, Alaska 99811

Dear Mr. O'Meara:

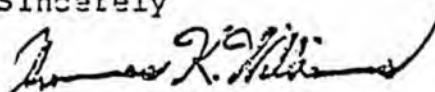
This is in response to your memorandum dated February 26, 1981, regarding the issue of abandoned property in Alaska. The Department of Revenue recognized this problem several years ago and proposed legislation which was introduced by the Governor for the past two sessions of the Legislature. Unfortunately, this legislation was not acted upon by the Legislature in either session.

In anticipation of the present Legislative session, this department in conjunction with the Department of Law, has prepared a comprehensive act based on the model act of NAUPA. I'm confident that this act will resolve all the statutory problems which your audit identified.

With regard to your recommendations regarding the procedural changes recommended, all of these changes will be adopted if the proposed legislation is passed by the Legislature. If the legislation does not pass we will be required to seek additional staffing to implement the recommendations. Since the budget request for FY 82 is already submitted, we will not be able to request any additional positions until FY 83.

I appreciate your staff's review of this issue and hope that your recommendations will provide the needed impetus to obtain favorable action by the Legislature on the proposed law changes.

Sincerely



Thomas K. Williams
Commissioner
(907) 465-2300

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Office of the Governor
Division of Internal Audit

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§ 09.50.070

CODE OF CIVIL PROCEDURE

§ 09.50.080

CURRENT LAW
STATE

Escheat of personal property of intestate domiciled or resident in other state, 50 ALR2d 1375.

Uniform Disposition of Unclaimed Property Act, 98 ALR2d 304.

State regulation of land ownership by alien corporation, 21 ALR4th 1329.

Sec. 09.50.070. Property subject to escheat. When no claim of ownership has been made to bank deposits, cash, or personal property for more than seven years, the property escheats to and becomes the property of the state. (§ 14.01 ch 101 SLA 1962; am § 2 ch 78 SLA 1972):

Cross references. — For passing of intestate estate to state if there is no taker,

see AS 13.11.025; for escheat of unclaimed assets of an estate, see AS 13.16.600.

NOTES TO DECISIONS

Escheats are purely statutory. Kennedy v. Gatz, 194 F. Supp. 795.

It is strictly within the power of the state to prescribe the conditions of escheat. Kennedy v. Gatz, 194 F. Supp. 795 (D. Alas. 1961).

Article does not qualify contracts of banks with depositors. This article does not qualify any contract between a national bank and its customer, but deals only with property the title to which has failed under a rule substantially as of the common law. Territory of Alas. v. First Nat'l Bank, 22 F.2d 377 (9th Cir. 1927).

Escheat vests on death of intestate. — The escheat actually occurs, or takes place, or becomes vested immediately upon the death of the intestate; the right instantly accrues to the sovereign, as some of the authorities express it, as "the last heir"; and the proceedings required by law, in the nature of office found, are merely proceedings to establish by legal proof that right which has already accrued or become vested or fixed. United States v. Fish, 5 Alaska 31 (1914).

Subject to being divested if heirs later establish claim. — As to real estate the escheat actually occurs or becomes vested immediately upon the death of the

intestate, subject to be divested if there are in fact heirs who later make themselves known. Kennedy v. Gatz, 194 F. Supp. 795 (D. Alas. 1961).

Presumption that heirs exist is rebutted by showing no probate proceedings or claim. — While the presumption obtains that a decedent leaves next of kin capable of inheriting, this presumption is rebutted by the absence of the deceased for a period of 10 years without any claim made for the property or institution of probate proceedings and default in asserting claim, after notice, after a show cause order in escheat proceedings. Territory of Alas. v. First Nat'l Bank, 41 F.2d 186 (9th Cir. 1930).

Death is presumed from absence and intestacy presumed from no administration proceedings. — Upon the proof of absence for the statutory period the presumption of death arises, and with the presumption of death, when no administration has been had, for more than 10 years, which is longer than the statutory period, the presumption of intestacy must obtain. Territory of Alas. v. First Nat'l Bank, 41 F.2d 186 (9th Cir. 1930).

Sec. 09.50.080. Enforcement of rights by state. The state may maintain an action to recover the possession of escheated property, or for the enforcement of its rights to the property. (§ 14.02 ch 101 SLA 1962)

Sec. 09.50.090. Transmittal of personal property to state. [Repealed, § 5 ch 78 SLA 1972.]

Sec. 09.50.100. Action by attorney general. When the attorney general is informed or has reason to believe that any real or personal property has escheated to the state, the attorney general shall bring an action in the superior court to establish whether or not the property has escheated to the state. (§ 14.04 ch 101 SLA 1962)

Sec. 09.50.110. Time within which to claim escheated property. Within seven years after the judgment, a person not a party to the escheat proceeding may bring an action in the superior court to prove the person's claim to the property. If the plaintiff establishes the claim and that the plaintiff had no knowledge of the prior escheat proceeding, the court shall award the property to the plaintiff. If it is determined that the plaintiff is entitled to the property or the proceeds from the sale of the property, the commissioner of revenue shall deliver the property or the proceeds to the plaintiff upon payment of the costs of the escheat proceedings, the cost of sale and other expenses connected with the conversion of the property to cash. The rents, profits, interest, or dividends which accrue to the state during its possession of the property are the property of the state and may not be recovered. The time limitation of seven years does not apply to a minor or person of unsound mind, but that person may bring an action to prove a claim only within one year after the disability ceases. (§ 14.05 ch 101 SLA 1962)

NOTES TO DECISIONS

Right of heir is foreclosed if claim is not made. — The right of the heirs is no greater than the right of the owner, and when the right of the owner escheats by reason of absence, the right of the heir is foreclosed, if claim is not made, after an order to show cause is published in escheat proceedings. *Territory of Alas. v. First Nat'l Bank*, 41 F.2d 186 (9th Cir. 1930).

Proof required. — Proof should be clear and conclusive, both as to the identity of the deceased and his relationship to the petitioners, in order to effect recovery of moneys left by deceased and covered into the state treasury by escheat. In re *Miller's Estate*, 8 Alaska 542 (1935).

Proof must be clear and convincing. — Persons seeking the return of property escheated to the state as unclaimed have the burden of proving their relationship to the decedent by clear and convincing evidence. *Waks v. State*, Sup. Ct. Op. No. 111 (File No. 163), 375 P.2d 136 (1962).

And must be of a higher degree than preponderance of the evidence. — Public policy dictates that a higher degree of proof than a preponderance of the evidence should be required of one seeking to establish a claim to money or other property of a decedent which has escheated to the state. *Waks v. State*, Sup. Ct. Op. No. 111 (File No. 163), 375 P.2d 136 (1962).

Facts asserted must be highly probable. — The claimants must induce belief in the mind of the judge or jury that the facts which they assert are not merely probably true, but that they are highly probable. *Waks v. State*, Sup. Ct. Op. No. 111 (File No. 163), 375 P.2d 136 (1962).

But not true beyond a reasonable doubt. — The claimants are not required to discharge the greater burden of persuasion that the facts asserted are almost certainly true, true beyond a reasonable doubt, or conclusive. *Waks v. State*, Sup. Ct. Op. No. 111 (File No. 163), 375 P.2d 136 (1962).

§. [Repealed,

Claimant's recovery limited by statute. — Upon establishment of the heirship the claimant becomes entitled to what the statute gives him and no more. Kennedy v. Gatz, 194 F. Supp. 795 (D. Alas. 1961).

he attorney or personal all bring an property has

Sec. 09.50.120. Sale of property by state. (a) The commissioner of revenue may sell personal property which has escheated to the state as the commissioner considers advantageous and shall execute the proper conveyance. When the value of the property exceeds \$50, the sale shall be at public auction to the highest and best bidder after public notice of the time and place of the auction has been given by posting notices in three public places in the political subdivision where the property is to be sold, and by publication once in a newspaper of general circulation nearest the place of sale 10 days before the auction.

ated prop- party to the irt to prove s the claim proceeding, etermined s from the eliever the he costs of connected s, interest, ion of the ered. The person of e a claim 101 SLA

(b) The commissioner of revenue may sell real property which has escheated to the state with the approval of the governor, and the governor shall sign the conveyance on behalf of the state. Sale of real property shall be at public auction to the highest and best bidder after public notice of the time and place of the auction has been given by publication once a week for four weeks in a newspaper of general circulation nearest the property to be sold. (§ 14.06 ch 101 SLA 1962)

Sec. 09.50.130. Claims to escheated property of value of \$1,000 or less. When property or the proceeds from the sale of the property which has escheated to the state amounts to \$1,000 or less and a rightful owner is discovered and makes a written claim to the property, supported by convincing proof of ownership, the commissioner of revenue, with approval of the attorney general, shall either return the property if still unliquidated, or issue a voucher for the amount of the proceeds or for the amount of money which has escheated in favor of the owner. (§ 14.07 ch 101 SLA 1962; am § 3 ch 78 SLA 1972)

gree than ce. — Pub- r degree of e evidence g to estab- property of ed to the p. No. 111 62).

Sec. 09.50.140. Duty of banks and financial institutions to report escheated property. Every bank, banker, or financial institution having custody of a fund or other property to which no owner is known to them or the owner of which has not been heard from by them for more than seven years shall inform the attorney general of that fact. (§ 14.08 ch 101 SLA 1962)

hly prob- uce belief that the it merely re highly . Op. No. (1962). sonable required rden of rted are d a rea- Vaks v. No. 163),

NOTES TO DECISIONS

Requiring bank to report is reasonable. — The mere requirement that banking associations furnish information touching the status of certain of their accounts, as provided in this section is not an undue or unreasonable interference with the conduct of their business. Territory of Alas. v. First Nat'l Bank, 22 F.2d 377 (9th Cir. 1927).

Bank account may not be disturbed until adjudged escheated. — The attorney general cannot disturb any bank account, or the bank's full control over it, unless and until, with the information he seeks from the bank, or otherwise, he shall have secured a valid judicial determination that the depositor died intestate, without heirs, in which case the deposit,

like other property, is subject to escheatment. In essence the result is the same as where, in the case of an administered estate, the probate court requires the deposit to be delivered to the administra-

tor, and ultimately, upon a finding of no heirs, turns it over to the state. Territory of Alas. v. First Nat'l Bank, 22 F.2d 377 (9th Cir. 1927).

Sec. 09.50.150. Escheat of money or property of defunct organizations or corporations. When an organization or corporation becomes defunct and leaves money or property belonging to it, and no person institutes a proceeding to have the money or property distributed within four years after the organization becomes defunct, the money or property escheats to the state and shall be delivered to the commissioner of revenue. If the person in possession of the money or property refuses to deliver it to the state, the attorney general shall bring an action to recover the money or property for the state. (§ 14.09 ch 101 SLA 1962)

Sec. 09.50.160. Recovery by claimant of money or property of defunct organizations or corporations. A person having a claim or interest in money or property of a defunct organization or corporation may bring an action for recovery of escheated money or property only within seven years after the corporation or organization becomes defunct. (§ 14.10 ch 101 SLA 1962)

Article 3. Abatement of Lewd Houses

Section	Section
170. Abatement of places used for immoral act	210. Order of abatement
180. Injunction	220. Proceeds of sale
190. Dismissal	230. Release of premises to owner
200. Contempt proceeding	240. Fine for contempt as lien on premises

Collateral references. — 24 Am. Jur. 66 C.J.S., Nuisances, §§ 45, 77, 102 — 2d, Disorderly Houses, §§ 23 — 36. 169.

Sec. 09.50.170. Abatement of places used for immoral act. A person who erects, establishes, continues, maintains, uses, owns, or leases a building, structure, or other place used for the purposes of lewdness, assignation, or prostitution or any other immoral act is guilty of maintaining a nuisance, and the building, structure, or place, or the ground itself in or upon which or in any part of which the lewdness, assignation, or prostitution is conducted, permitted, or carried on, continues or exists, and the furniture, fixtures, and other contents constitute a nuisance and may be enjoined and abated. (§ 20.01 ch 101 SLA 1962)

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the disposition of unclaimed real and personal property. A detailed analysis of the bill and its relationship to current statutes follows. In addition, the official commentary on the Uniform Unclaimed Property Act (1981), by the National Conference of Commissioners on Uniform State Laws (NCCUSL), should be consulted with regard to the portion of the bill that deals with unclaimed personal property.

The personal property portion of the bill is derived in large part from the Uniform Unclaimed Property Act (1981) which the NCCUSL has approved and recommended for enactment by all states. The 1981 Act is a revision of the NCCUSL's 1966 Uniform Disposition of Unclaimed Property Act.

This bill applies to a wider range of abandoned intangible personal property than does the present AS 09.50.070, and provides for simple transfer of the custody of the personal property from the holder to the state, rather than transfer of the title. Savings accounts, deposits, drafts, money orders, traveler's checks, and safe deposit box contents are among the various property interests held by banking or financial organizations or by business associations which are covered by the bill (proposed AS 34.45.110, 34.45.140, 34.45.150, 34.45.160, 34.45.260). Also included is money owed by an insurance company, specifically including money owed under a life insurance policy or annuity agreement (proposed AS 34.45.170); deposits and refunds held by utilities (proposed AS 34.45.180); undistributed dividends, stock, and payments relating to a debt, held by a corporation (proposed AS 34.45.200); intangible personal property held by private fiduciaries (proposed AS 34.45.220), public officers, and state courts (proposed AS 34.45.230); and any

unclaimed property of a dissolved corporation (proposed AS 34.45.210).

In general, any of these property interests that have been abandoned might be claimed by the state if it is established that the amount held and owed belongs to a person whose last known address was in this state, or if the holder of the property is domiciled in this state (proposed AS 34.45.120 and 34.45.140). Holders of these property interests would be subject to the reporting requirements of the bill, which are set out in proposed AS 34.45.280. Abandonment would generally be presumed to have occurred if the owner has not claimed the property or contacted the holder in any way concerning it for a period of five years (proposed AS 34.45.110), except that a 15-year period is established for travelers checks and a seven-year period is established for money orders (proposed AS 34.45.140). Also, special provisions are made for abandonment of stock certificates or similar ownership interests in a business association. Stocks may be presumed abandoned (proposed AS 34.45.200) only if at least seven dividends have been paid and unclaimed in a seven-year period; otherwise the period would continue to run until seven dividends have been paid and not claimed. Proposed AS 34.45.200 distinguishes between dividends themselves (or any other money) that may simply be transferred to the department after five years, and the underlying interest in a business association (usually shares) which represents an interest greater than money.

The period currently prescribed in AS 09.50.070 for presumption of abandonment is seven years for all property. The NCCUSL drafting committee recommends a five-year period for most property, with exceptions as discussed. Most other states now either employ a five-year period or are considering it.

Holders of property would be required to file an annual report with the Department of Revenue (proposed AS 34.45.280) after first sending a notice to the last known address of each owner whose property is presumed abandoned (proposed AS 34.45.280(e)). The department would then be required to publish a list of the names of owners believed to have abandoned property interests under the bill, and to otherwise exercise due diligence to ascertain the whereabouts of the owners (proposed AS 34.45.310). Except in certain narrowly defined circumstances, the holders would then be required to pay or deliver the reported property to the department (proposed AS 34.45.320). After that, the holders would be relieved of all liability related to the disposition of the abandoned property (proposed AS 34.45.330). An

owner may forever claim personal property from the department (proposed AS 34.45.380). Also, a person might make a claim in court against the department, but not against the holder (proposed AS 34.45.330).

Under the bill, insurance companies would be required to report proceeds owed to an insured or to a beneficiary under the general provisions of proposed AS 34.45.110. Life insurance companies are specifically covered in proposed AS 34.45.170, which applies a five-year abandonment period to money due and payable under a life or endowment insurance policy or an annuity contract. Most life insurance policies provide for the cash surrender value of a policy to be automatically used to pay any premium payments which the insured has failed to make (or contain other nonforfeiture provisions such as extended term insurance or reduced paid-up life insurance). If an insured has stopped making premium payments because he or she has died, and if the beneficiaries are unaware of the existence of the policy, the cash surrender value of the policy will almost invariably be exhausted before the insured's age reaches the limiting age according to the mortality table on which the reserve is based. Proposed AS 34.45.170(d) provides that a nonforfeiture provision cannot prevent a policy from being matured or terminated under the provisions of proposed AS 34.45.170(a) if the insured has died or the insured or beneficiary has otherwise become entitled to the proceeds of the policy before depletion of the cash surrender value of the policy.

Within three years after receipt of abandoned personal property, the department must sell it to the highest bidder at public sale (proposed AS 34.45.360(a)), except that some types of securities held by the department must be held at least one year (proposed AS 34.45.360(c)); other types must be held at least three years before sale (proposed AS 34.45.360(d)).

The proceeds from sale of abandoned personal property, along with all other funds received by the department under the bill, would be deposited in the general fund of the state, but \$100,000 would be retained in a separate trust fund. The department would be required to make prompt payment from the trust fund of a claim, that it determined to be valid, brought by owners of property that had been turned over to the department (proposed AS 34.45.370 -- 34.45.380). The department would be authorized to determine the merits of a claim to abandoned personal property (proposed AS 34.45.380), and an owner aggrieved by a decision of the department would be required to follow established grievance

procedures of the department and then, if not satisfied, could appeal the department's final decision (proposed AS 34.45.400).

Another state would also be able to make claims to abandoned personal property if it appeared that the property should escheat to that state rather than to the State of Alaska (proposed AS 34.45.390). This section (as well as proposed AS 34.45.110 -- 34.45.140) codifies court decisions determining rights among states to claim abandoned property. Under the bill, the Department of Revenue would be required to adopt regulations to carry out the provisions of the bill (proposed AS 34.45.730), would be authorized to examine the books and records of a person whom the department had reason to believe had failed to report property subject to the bill (proposed AS 34.45.290), and could bring an action to compel delivery of property wrongfully withheld by a holder (proposed AS 34.45.450). The bill provides for the possibility of civil penalties for those who fail to comply with the provisions of the bill; criminal sanctions would be incurred by those who wilfully refuse to pay or deliver property or perform other duties as required under the bill (proposed AS 34.45.470).

The procedures set out in the Uniform Act are designed to safeguard the interests of both the state and the rightful owner of the property, if any. In the first place, the reporting requirements that would be imposed upon a holder, combined with the broader investigation and enforcement powers of the Department of Revenue and the addition of criminal penalties for wilful failure to pay or deliver, would make it possible for the state to ascertain the whereabouts of abandoned property held in this state and claim it. Under existing law, the department has no express enforcement power either to locate or to claim abandoned property. The Department of Law instead must bring an action in superior court to claim any amount of unclaimed property, including amounts under \$1. There is no specific provision in the current law authorizing any department to locate abandoned property, and only financial institutions are expressly required to report unclaimed property (AS 09.50.140).

The expansion of the categories of personal property affected by the Act would help to obtain greater revenue for the state. At the same time, the Act would serve the public purpose of re-uniting owners, or heirs of owners, with their property. Correspondence with Minnesota, a leader in implementation of an earlier version of the Uniform Act, and our own experience shows that approximately 25 percent of aban-

done property is ultimately claimed by rightful owners. The bill satisfies the requirements of due process by requiring both a holder and the department to comply with mailing and notification procedures that are reasonably aimed at locating the real owner of unclaimed personal property. Furthermore, the bill is custodial in nature in that an owner retains the right to establish and claim an interest in personal property or the proceeds from the sale of personal property from the department at any time in the future (proposed AS 34.45.380). It would be necessary for the legislature to appropriate an amount equivalent to a portion of the program receipts to cover the mailing and publication costs of notice to owners and the costs relating to sale of property and to hearings.

Minnesota reported in 1979 that the annual volume of unclaimed property in that state exceeds \$6,000,000. The Alaska Department of Law, acting under the reporting requirements currently contained in AS 09.50.140, received abandoned account reports from several Alaska banks totaling approximately \$345,000 in 1980, \$580,000 in 1981, \$440,000 in 1982, \$654,541 in 1983, and \$852,197 in 1984. These figures deal with only one category of unclaimed property and appear to be understated because of the suspension of interest payments and levying of service charges. Current law contains no prohibition against suspending interest or "charging away" dormant accounts through levying of service charges. The bill has provisions covering both practices. It would prohibit the suspension of interest payments or levying of service charges except under the same terms that the bank's contract with the customer allows charges or suspension of interest (proposed AS 34.45.160(c)). The state would then stand in the shoes of the customer when the five-year period has run, claiming any interest due, without deductions for service charges except those agreed upon between the bank and the customer.

The bill would allow for reciprocal action by states in that the attorney general may bring an action in our courts on behalf of another state to claim property belonging to the other state, and the department may request that the attorney general of another state bring a similar action on our behalf in the other state (proposed AS 34.45.460). The state on whose behalf an action is brought would be required to pay the expenses of an action in another state. Important modifications in this bill also allow for states to claim property from each other (proposed AS 34.45.390) and clarify which state has a superior claim to some types of intangible property that were the subject of conflicting state claims under older versions of the Uniform Act

(proposed AS 34.45.120 -- 34.45.140, 34.45.170, 34.45.220, and 34.45.390). These sections reflect codification of several recent court opinions, including opinions of the United States Supreme Court, resolving conflicting claims among states. The official comments of the NCCUSL offer additional explanation of the purposes of and the need for the parts of the bill that deal with personal property.

Section 8 of the bill differs from the Uniform Act, upon which it is largely based, in the following respects (other differences are wording changes only and not substantive):

1. Proposed AS 34.45.160(c)(1) adds a requirement to that proposed by the Uniform Act covering service charging of bank accounts. The Uniform Act provides only that any charges deducted on abandoned accounts must be the same as those agreed upon by the bank and its customer in a valid written contract; the attached bill adds a requirement that the agreed-upon charges also be reasonable.

2. Under the Uniform Act a bank or financial organization that begins to impose charges or stops paying interest has to notify the owner of the account at the owner's last known address if the account contains more than \$2. The attached bill increases the minimum amount to \$10 (proposed AS 34.45.160(c)(2)).

3. The Uniform Act provides that the department will both "defend and indemnify" a holder who pays or delivers abandoned property in good faith to the department. The attached bill relieves a reporting holder of liability and requires the department to indemnify a holder. But the wording of the bill also avoids the possibility of the state getting involved in defending lawsuits on behalf of a holder. At the same time that it protects a holder from unwarranted lawsuits, it also protects the rights of claimants (because a claimant may file a claim against the department; proposed AS 34.45.330 and 34.45.380). Similar wording in proposed AS 34.45.360(d) protects a holder, or transfer agent of a holder, from liability for the value of appreciation in securities.

4. The provisions of the Uniform Act regarding claimant remedies have been changed to conform to established hearing and grievance procedures of the department (proposed AS 34.45.400).

5. The provisions of the Uniform Act regarding both civil and criminal penalties (for failure to file reports, filing false reports, or failure to deliver abandoned

property) have been changed to be consistent with other statutes governing penalties for violations of department regulations and laws governing the department, and to be consistent with Alaska's new Criminal Code (proposed AS 34.45.470).

Sections 1 -- 6 of the bill amend existing law in AS 13.11, AS 13.16, and AS 34.45. AS 13.11.025 and AS 13.16.600 cover property of a deceased person which is not claimed in a probate proceeding. AS 13.16.381 creates a duty of the personal representative of a deceased's estate to report unclaimed property to the state. The current language in AS 34.45 deals with tangible personal property left in the care of certain bailees or consignees. The bill amends these provisions to make certain personal property unclaimed in these situations subject to the same provisions for intangible property described earlier in this letter. Specifically, the amendments incorporate the reporting and claims procedures and administrative powers provided for by the Uniform Act. Like the Uniform Act, they make the state the custodian only of personal property or the proceeds from sale of personal property; the rightful owner's property interest would never be lost.

Section 9 of the bill deals with escheat of real property. Administration of the real property escheat program is transferred from the Department of Revenue to the Department of Natural Resources. The basic requirements for escheat of real property remain unchanged. Real property escheats to the state under the intestacy laws if a person dies leaving no will and no known heirs, or if a corporation or other organization becomes defunct and real property remains undistributed four years after the organization has become defunct.

The real property escheat program differs in concept from the unclaimed personal property program in that there is an actual transfer of title to the state rather than a custodial holding of property by the state. This requires a judicial determination of escheat. An heir or other person entitled to escheated real property can appear up to seven years after the determination of escheat and claim the property or the value of the property. After that period the state has no further obligation to potential takers of the property. The reason for this difference in approach is to clear title to real property.

The major difference between the existing real property escheat statutes and the proposed statutes is in the management of the property by the state. The bill provides

that the Department of Natural Resources "may sell, lease, exchange, assign, or otherwise manage real property that has escheated to the state consistent with applicable provisions of [AS 38]." AS 38.05.630. The existing statute provides only that escheated real property may be sold.

Under this bill, the department is required to make a written finding that it is in the best interests of the state either to

1. obtain an appraisal of the property and sell, lease, exchange, assign, or otherwise manage the property, including retention in state management; or
2. retain the property without obtaining an appraisal.

Property that has been retained but not appraised must be returned to a qualified heir or other taker who appears within seven years after the determination of escheat. When property has been disposed of or retained with an appraisal, the heir or other taker is entitled to the established value of the property. The established value is the appraised value less expenses of sale, unless the property sold for less than the appraised value at a public sale to the highest bidder.

Proceeds from the sale of escheated real property are placed in an escheated real property trust account. After the redemption period has passed, unclaimed money in the trust account may be transferred to the land disposal income account, AS 38.04.022, in the general fund.


The department may, in its discretion, offer state land of value comparable to the established value to the heir or other taker in place of the established value. If the heir or other taker rejects the land of comparable value or the department does not offer it, the department must pay the established value from the escheated real property trust account.

Section 10 of the bill repeals the current escheat law contained in AS 09.50.070 -- 09.50.160; repeals AS 06.05.460, which contains reporting provisions for banks which conflict with the reporting provisions in the Uniform Act; and repeals AS 10.05.591, which contains reporting provisions for corporations which conflict with the Uniform Act.

Section 11 of the bill provides that property already delivered to the state or already the subject of escheat proceedings would not be subject to the new provisions.

This bill, then, provides a wholesale revamping of Alaska's laws on this subject. It updates and fills in gaps in our current law, and provides for desirable uniformity among the states in an area of law that cannot realistically be handled by each state in isolation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Sheffield".

Bill Sheffield
Governor

HOUSE
COMMITTEE REPORT

(11)

Date referred: 4/8/86

FURTHER REFERRALS:

DATE: 4-14-86

The FINANCE Committee has considered HB 183

"An Act abolishing the Governor's Commission on the Administration of Justice and transferring responsibilities to the attorney general."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS HB 183 (Jud) same title
- new title

and recommends No Recommendation

further referral to the _____ Committee

and attaches:

- letter of intent
- first fiscal note
- new fiscal note
- zero fiscal note New - 4-12-86

SIGNING DO PASS:

Albert P. Adams

Jim Duca

Ronald J. Zarr

Pat Forchot

SIGNING OTHER RECOMMENDATIONS:

Mike Szumanski No-Rec.

Jim Cleary (No Rec.)

Steve Thigp No Recommendation

John No Rec.

Sen Gerte No Rec

John No Rec.

Albert P. Adams
Chairman

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CS HB 183 (JUD)
 Title : Commission on the Administration
of Justice.

 Sponsor : Governor
 Requestor : House Finance Committee
 Date of Request : 4/12/86

FISCAL DETAIL

Agency Affected : Department of Law
 BRU : _____

 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		-0-	-0-	-0-	-0-	-0-
TRAVEL		-0-	-0-	-0-	-0-	-0-
CONTRACTUAL		-0-	-0-	-0-	-0-	-0-
SUPPLIES		-0-	-0-	-0-	-0-	-0-
EQUIPMENT		-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES		-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS		-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS		-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

CAPITAL		-0-	-0-	-0-	-0-	-0-
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REVENUE		-0-	-0-	-0-	-0-	-0-
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FUNDING : (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS		-0-	-0-	-0-	-0-	-0-
OTHER		-0-	-0-	-0-	-0-	-0-
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary. Commission meetings should be conducted by teleconference whenever possible. If travel is necessary, it should be paid for out of the Department of Law's FY 87 Budget.

APA

Prepared by : Representative Al Adams - Chairman Phone : 465-3706
 Division : House Finance Committee Date : 4/12/86

Approved by Commissioner : _____ Date : _____
 Agency : _____

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Offered: 4/8/86
Referred: Finance

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 183 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Governor's Commission on the
7 Administration of Justice and to intelligence infor-
8 mation."

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

10 * Section 1. AS 12.62.010 is amended to read:

11 Sec. 12.62.010. REGULATIONS. (a) The Governor's Commission on
12 the Administration of Justice established under AS 44.19.110 - 44.19.-
13 122 may [IS AUTHORIZED], after appropriate consultation with represen-
14 tatives of state and local law enforcement agencies participating in
15 information systems covered by this chapter, [TO] adopt regulations
16 and, by regulation, establish procedures considered necessary to
17 facilitate and regulate the exchange of criminal justice information
18 and to insure the security and privacy of criminal justice information
19 systems. The notice and hearing requirements of the Administrative
20 Procedure Act (AS 44.62), relating to the adoption of regulations,
21 apply to regulations adopted under this chapter.

22 (b) In addition to regulations adopted under (a) of this sec-
23 tion, the commission shall, after appropriate consultation with rep-
24 resentatives of state and local law enforcement agencies, adopt regu-
25 lations [AND PROCEDURES] governing the gathering of intelligence
26 information and the storage, security, and privacy of the intelligence
27 information collected and maintained by law enforcement agencies in
28 the state. [THE NOTICE AND HEARING REQUIREMENTS OF THE ADMINISTRATIVE
29 PROCEDURE ACT (AS 44.62), RELATING TO THE ADOPTION OF REGULATIONS,

1 APPLY TO REGULATIONS ADOPTED UNDER THIS SUBSECTION.] In adopting
2 these regulations, the commission shall take into account both the
3 interest of law enforcement agencies in maintaining the ability to
4 conduct intelligence operations and each individual's right to pri-
5 vacy.

6 * Sec. 2. AS 12.62.015(a) is amended to read:

7 (a) Regulations of the commission adopted under AS 12.62.010(b)
8 must [SHALL] include requirements and guidelines concerning the cat-
9 egories of intelligence information that [WHICH] may be gathered by
10 law enforcement agencies in the state, the purposes for which intelli-
11 gence information may be collected, and the methods and procedures
12 that [WHICH] may be used in collecting intelligence information. The
13 regulations must restrict methods and procedures for collecting intel-
14 ligence information to methods and procedures likely to result in
15 relevant and reliable information.

16 * Sec. 3. AS 12.62.015 is amended by adding a new subsection to read:

17 (c) A law enforcement agency in the state may not gather or
18 retain intelligence information unless the information pertains to an
19 individual or group that is reasonably suspected of engaging in crimi-
20 nal activity.

21 * Sec. 4. AS 12.62.030(c) is amended to read:

22 (c) A person has [SHALL HAVE] the right to inspect criminal
23 justice information that refers to the person. If a person believes
24 the information to be inaccurate, incomplete, or misleading, the
25 person may request the criminal justice agency having custody or
26 control of the records to purge, modify or supplement them. When the
27 agency responds to the person's request, the agency shall notify the
28 person of the right to request a review from the commission under this
29 subsection. If the agency declines to implement the person's request

1 [DO SO], or if the person believes the agency's decision to be other-
2 wise unsatisfactory, the person may in writing request review by the
3 commission within 60 days after [OF] the decision of the agency. If
4 it finds a basis for complaint, the [THE] commission or [,] its rep-
5 resentative or agent shall [, IN A CASE IN WHICH IT FINDS A BASIS FOR
6 COMPLAINT,] conduct a hearing at which the person may appear with
7 counsel, present evidence, and examine and cross-examine witnesses.
8 Written findings and conclusions shall be issued and a copy of them
9 sent to the person requesting review with a notice of the person's
10 right to appeal under (f) of this section. If the record in question
11 is found to be inaccurate, incomplete or misleading, the commission
12 shall order it to be appropriately purged, modified or supplemented by
13 an explanatory notation. An agency or person in the state with cus-
14 tody, possession or control of the record shall promptly have every
15 copy of the record altered in accordance with the commission's order.
16 The commission shall promptly notify [NOTIFICATION OF A DELETION,
17 AMENDMENT AND SUPPLEMENTARY NOTATION SHALL BE PROMPTLY DISSEMINATED BY
18 THE COMMISSION TO] persons or agencies to which records in question
19 have been communicated, and [AS WELL AS TO] the person whose records
20 have been altered, of a deletion, amendment, or supplementary nota-
21 tion.

22 * Sec. 5. AS 12.62.030(e) is amended to read:

23 (e) The commission shall adopt regulations for access to crimi-
24 nal justice information and establishing reasonable [REASONABLE] hours
25 and places of inspection, and any additional restrictions, including
26 fingerprinting, that are reasonably necessary both to assure the
27 record's security and to verify the identity of a person who seeks to
28 inspect a record [IDENTITIES OF THOSE WHO SEEK TO INSPECT THEM MAY BE
29 PRESCRIBED BY PUBLISHED RULES]. Fingerprints taken under this sub-

1 section may not be transferred to another agency or used for any other
2 purpose.

3 * Sec. 6. AS 12.62.035(a) is amended to read:

4 (a) Notwithstanding any other provision of law, an interested
5 person as defined in (e) of this section may request from the commis-
6 sion records of all convictions involving contributing to the delin-
7 quency of a minor and any sex crimes of a person who holds or applies
8 for a position in which the person has or would have supervisory or
9 disciplinary power over a minor. The requesting interested person
10 shall include with the request a written authorization, signed by the
11 subject of the request, indicating that the subject consents to re-
12 lease of the records to the interested person. If the commission is
13 satisfied that the subject of the request has authorized release of
14 the information, the [THE] commission shall authorize the disclosure
15 of the information to the requesting interested person and shall
16 provide a copy of the information to the person who is the subject of
17 the request.

18 * Sec. 7. AS 12.62.040(a) is amended to read:

19 (a) Criminal justice information systems shall
20 (1) be dedicated to law enforcement purposes and be under
21 the management and control of law enforcement agencies unless exempted
22 under regulations adopted under AS 12.62.010;
23 (2) include operating procedures approved by the commission
24 that [WHICH] are [REASONABLY] designed to assure the security of the
25 information contained in the system from unauthorized disclosure, and
26 [REASONABLY] designed to assure that criminal offender record informa-
27 tion in the system is regularly and accurately revised to include
28 subsequently furnished information;
29 (3) include operating procedures approved by the commission

1 which are designed to assure that information concerning an individual
2 shall be removed from the records, based on considerations of age,
3 nature of record, and reasonable interval following the last entry of
4 information indicating that the individual is still under the juris-
5 diction of a law enforcement agency.

6 * Sec. 8. AS 12.62.040 is amended by adding a new subsection to read:

7 (c) The commission shall adopt regulations that require a law
8 enforcement agency to modify, supplement, or purge from the criminal
9 justice information system

10 (1) inaccurate information; or

11 (2) information gathered or entered in violation of this
12 chapter.

13 * Sec. 9. AS 12.62.060(b) is amended to read:

14 (b) A person who [WILFULLY] disseminates or uses criminal jus-
15 tice information knowing the [SUCH] dissemination or use to be in
16 violation of this chapter, or who knowingly collects, obtains or uses
17 intelligence information in violation of this chapter, is guilty of a
18 class C felony [UPON CONVICTION, IS PUNISHABLE BY A FINE OF NOT MORE
19 THAN \$1,000 OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY
20 BOTH].

21 * Sec. 10. AS 12.62.060(c) is amended to read:

22 (c) A good faith reliance upon the provisions of this chapter or
23 of applicable law governing maintenance, dissemination, or use of
24 criminal justice information, or upon [RULES,] regulations adopted [,
25 OR PROCEDURES PRESCRIBED] under this chapter is a defense to a civil
26 or criminal action brought under this chapter.

27 * Sec. 11. AS 12.62.070(3) is amended to read:

28 (3) "criminal justice information system" means a system [,
29 INCLUDING THE EQUIPMENT, FACILITIES, PROCEDURES, AGREEMENTS, AND

1 ORGANIZATIONS RELATED TO THE SYSTEM FUNDED IN WHOLE OR IN PART BY THE
2 LAW ENFORCEMENT ASSISTANCE ADMINISTRATION,] for the collection, pro-
3 cessing, or dissemination of criminal justice information;

4 * Sec. 12. AS 44.19.112 is repealed and reenacted to read:

5 Sec. 44.19.112. MEMBERSHIP AND MEETINGS. (a) The commission is
6 composed of the attorney general, the public defender, and three
7 public members appointed by the governor. One of the public members
8 must be experienced in the field of computer science.

9 (b) The commission shall elect a member to serve as chair and
10 may elect other officers. Terms of officers are for one year.

11 (c) The commission shall meet at least once each year at the
12 call of the chair.

13 * Sec. 13. AS 44.19.114 is amended to read:

14 Sec. 44.19.114. COMPENSATION AND PER DIEM. Members of the
15 commission receive no salary for their service on the commission. The
16 public members [BUT] are entitled to per diem and travel expenses
17 authorized by law for boards and commissions.

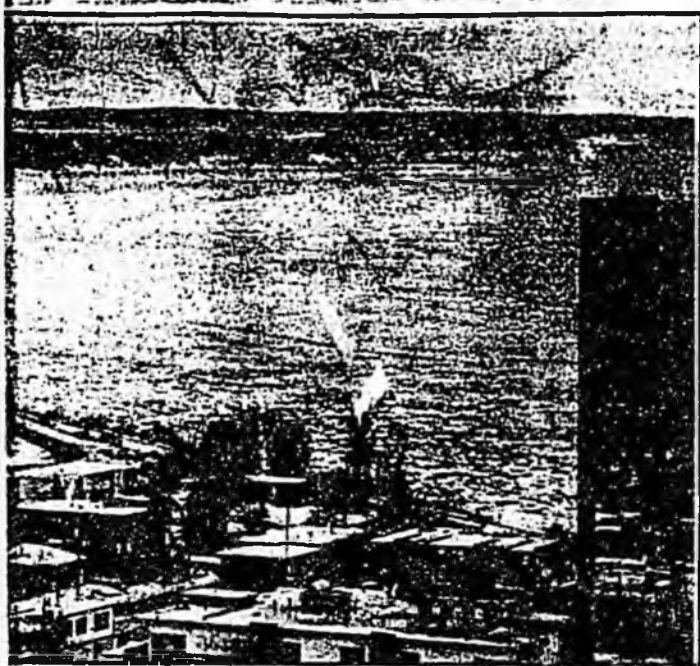
18 * Sec. 14. AS 44.19.122 is repealed and reenacted to read:

19 Sec. 44.19.122. STAFF. The Department of Law shall provide
20 staff for the commission without expense to the commission.

21 * Sec. 15. Each criminal justice agency in the state that has entered
22 intelligence information into the criminal justice information systems
23 shall review that information and immediately purge from the system any
24 information that does not meet the requirements of this Act.

25 * Sec. 16. AS 44.19.118 and 44.19.120(a) are repealed.

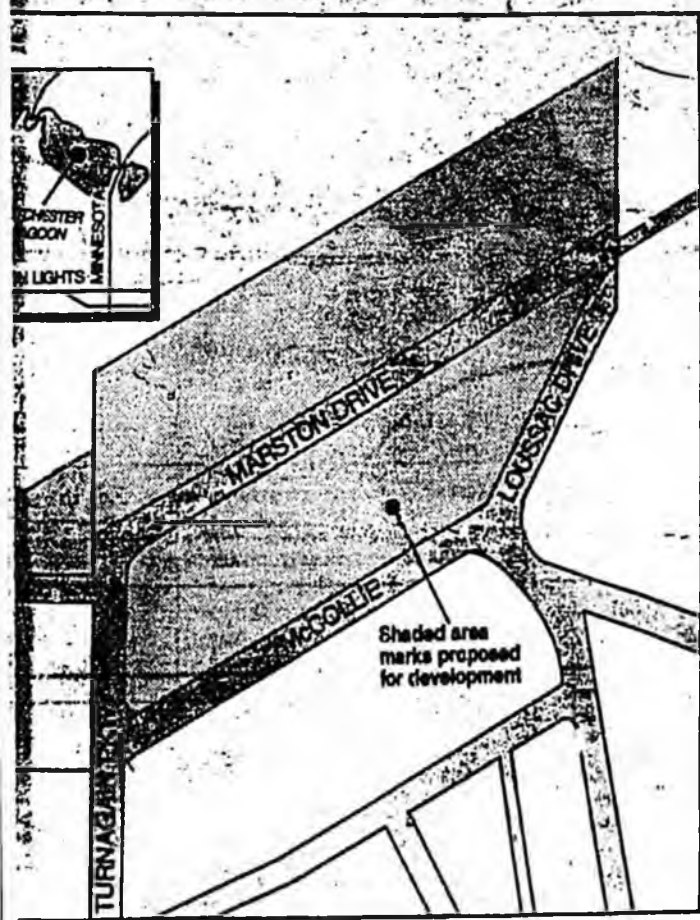
DANGEROUS GROUND



Anchorage Daily News/Michael Perry

left, seen from atop the Hotel Captain Cook.

Turnagain Slide



Daily News file map

Criminal records in disarray

Computer doesn't remember some convicted murderers

By SHEILA TOOMEY
 Daily News reporter

If you remember Charles Meach, who killed four teen-agers in Russian Jack Park in 1982, and Anchorage baker Robert Hansen, who admitted murdering 17 women over about ten years, you have a better memory than the state criminal justice computer.

As far as the computer is concerned, Meach has brown eyes and brown hair and no criminal record.

Hansen and Meach are only a few of Alaska's convicted felons whose records come up empty when someone pushes a button on the state's \$1 million APSIN system — Alaska Public Safety Information Network.

The state criminal justice agencies agree only that someone is doing something wrong — someone else. Until recent months, there was no uniform system for getting criminal records to the computer.

As a result, frustrated prosecutors say they can never be sure they have the correct criminal history for a defendant — information that is necessary at bail hearings to evaluate how dangerous a prisoner is, information that is mandatory at sentencing, where having a record often kicks in additional time to serve.

The head of dispatch for the Anchorage Police Department says the department would rather rely on its own in-house computer system.

"I don't know anybody who's happy with it," said Municipal Prosecutor Jim Ottinger.

A drunken driver can be convicted in Cordova, or even by state prosecutors in Anchorage, and three months later when he gets picked up again, there is no record of him in the computer, Ottinger said. "He's going to avoid the consequences of his previous conviction."

"Some of the worst criminals in Alaska history are not in there," said Anchorage District Attorney Victor Krumm.

In addition to helping a judge determine appropriate bail and the proper sentence, criminal histories are used to obtain search warrants, to help determine the charge in close cases and to decide if a plea bargain is appropriate, Krumm said. "We're more prone to give a guy a break the first time around on the less serious crimes, just like everyone else. We use (histories) to assess risk."

dismiss its potential use by terrorists. The same is true of nuclear weapons, but probably over a longer time period," Jenkins wrote.

The Middle East will remain a focus of terrorists, in part because of religion. "As we have seen throughout history, the presumed approval of God for the killing of pagans, heathens or infidels can permit acts of great destruction and self-destruction," Jenkins wrote.

If the Iranian revolution and its spread to Lebanon become a model for other Third World nations, he said, "We are in for a lot of trouble."

aid to have quit

the Arms Control and Disarmament Agency, also was being mentioned.

Presidential spokesman Larry Speakes, when asked about the reports of McFarlane's departure at his daily briefing on Tuesday, said, "I don't have anything on Bud ... I can't confirm or deny."

But Speakes deliberately left the door open for McFarlane, saying Reagan values his service but would abide by his wishes.

Reagan refused to discuss it as well. Asked at an East Room event whether he had talked with McFarlane about his job, Reagan said only, "We talk every day."

It's tough to convince people,

Computer is a few facts shy: No criminal record for killers

Continued from Page A-1

The man in charge of the computer — Jim Vaden, deputy commissioner of Public Safety — has heard all the complaints, knows the history behind most of the more famous omissions, and says things are getting better.

Robert Hansen was originally booked for rape and a file was opened on him in the state records office. Months later, the records people got a piece of paper that said a man named Robert Hansen had been convicted of murder. But there was nothing to show they were the same person, Vaden said.

Wesley Ladd, convicted of murder in a highly publicized case a decade ago and now out on parole, is also not in the computer. Vaden knows all about that case because he was an Alaska State Trooper at the time and the investigating officer on the case.

Ladd was originally booked on a federal firearms charge and was already in jail when the murder indictment came down, Vaden said, so he wasn't "arrested" for murder.

When the paperwork showing a Wesley Ladd convicted of murder was reviewed during the programming of the new

computer system, they said how could that be the same individual? So his name didn't go in.

The problem has been the absence of a systematic, reliable way to match arrest, prosecution and conviction records for the same person, according to state officials.

State law requires that only verified convictions be entered into the system, Vaden said. When the state converted from the old computer system in 1983 to APSIN, clerks were cautious about whose record got transferred. A programmer error, unintelligible fingerprints and miscellaneous other problems that plague computer conversions resulted in a lot of records not making it into the new system, Vaden said.

But Krumm, Vaden and a spokeswoman for the courts agree that lack of a reliable identification system is the major culprit. They do not agree about whose fault it is that no such system was devised until a few months ago.

In Alaska, an accused criminal passes through four agencies from arrest to prison: police, corrections, prosecutors and courts. Each agency collects information it wants in its own way and gives the defendant a number — a dif-

ferent number. That's the way it was always done and no one changed when the state got big and moved to computers.

Over the past year, representatives of some of these agencies have met and agreed to use, in addition to their own number, a defendant's driver's license number or, if no license, to assign a state I.D. number.

In addition to a defendant's birthdate, his name and, in many cases, his fingerprints, this should provide a foolproof match-up, Krumm said.

One irony of the system is that, while major felons have slipped between the microchips, anyone who has gotten a traffic ticket made it into the computer with no problem because a driver's license number is always included on the conviction record.

Vaden says these years of problems for the system were unnecessary. His department had a state-of-the-art system designed and ready to go when the new program was being planned, he said. It provided that each agency enter information about a defendant as he passes through their hands. The district attorneys didn't want to do that, he said.

Krumm and Vaden agree

who lives above the slide area will be a crapshoot.

that fingerprints could have been used to solve much of the I.D. verification problem years ago, but they say the courts refused to cooperate.

There has been for years a law on the books that says a defendant's thumbprint is supposed to be taken at the time of sentencing, but it was never done. "The courts didn't feel it was their responsibility," Vaden said.

Delaplane agreed that some judges had problems with the propriety of the courts becoming involved in ordering defendants to submit to fingerprinting. As part of the new spirit of cooperation, judges in Anchorage have agreed to make time available at the end of a sentencing so district attorneys can get a thumbprint on the conviction form.

A memo to do likewise has gone out to all courts, said Susan Miller, who heads the court system forms committee.

Ottinger says he hasn't seen any evidence yet that things are getting better. His office is still relying on an internal card system and employee memories. Krumm says he is hopeful things are getting better. Vaden says he's spent a small fortune training people and has only about 10,000 problem cases left.

an individual may be cheap, but it may not get you where you want to go

A-1

pig in a poke," Strain ng such tickets. "The o request LD, and then tion."

ticket, the agent knew something was wrong.

"I wasn't nervous," Earle said Tuesday by phone from Seattle. "Someone told me to be sure and put the ticket name on my luggage LD, so I was busy doing that when

between a ticket honestly purchased privately and a lost or stolen ticket. The airline doesn't want to let someone ride on a stolen or lost ticket and then not be able to refund the money, MacKay said.

When a ticket is lost or stolen, the airline

traffic — people going Outside to school or on vacations that last longer than is allowed on super saver deals.

As long as special deals make it cheaper to buy roundtrips over one-way fares, the ticket trade is likely to continue, Strain acknowledged.

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date : _____

REQUEST

FISCAL DETAIL

Bill/Resolution No. : CSHB 183 (Judiciary)
 Title : "An Act Relating to the
 Governor's Commission on the Administration
 of Justice and to Intelligence Information."
 Sponsoring : the Judiciary Committee
 Requestor : House Judiciary Committee
 Date of Request : April 4, 1986

Agency Affected : Department of Law
 BRU : Prosecution
 Components : Administration and Support

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL		4.3	4.4	4.5	4.6	4.7
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		4.3	4.4	4.5	4.6	4.7

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		4.3	4.4	4.5	4.6	4.7
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Please see attached analysis.

Prepared by : Richard I. Pegues, Director Phone : 465-3672
 Division : Administrative Services Division Date : 4/7/86
 Approved by Commission : Harold M. Brown, Att'y General Date : 4/7/86
 Agency : Department of Law

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 183 (Judiciary)

The Committee Substitute continues the Governor's Commission on the Administration of Justice, and it empowers the commission to oversee justice information and criminal intelligence computer systems. The bill provides that the Department of Law shall provide staff for the commission without expense to the commission. The bill also provides that the five-member commission shall meet three times each year in Anchorage. Although the department can provide existing staff time to support the commission's activities, it cannot provide travel and per diem for commission members when its travel budget is being reduced. It is anticipated that three members and staff will have to travel to Anchorage each time the commission meets. Two days of per diem would be required for members and staff who would be on travel status for each meeting. Fiscal note funds are therefore requested as follows:

Travel = 3 x \$322 x 3 trips	=	\$2,898
Per Diem = 3 x \$ 80 x 2 days x 3 trips	=	<u>\$1,440</u>
	TOTAL	\$4,338

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

Louann
HB 183

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill abolishing the Governor's Commission on the Administration of Justice and transferring certain of the commission's responsibilities to the attorney general.

The commission was originally established to be the steering agency for handling federal grants from the Law Enforcement Assistance Administration (LEAA). Since the LEAA no longer exists, the primary function of the commission has been eliminated.

A secondary function of the commission involved overseeing law enforcement uses of criminal justice information systems under AS 12.62. However, the large, 13-member commission has not met for a number of years. Therefore, under administrative regulations, this oversight function has been delegated to the attorney general as ex-officio chairman of the commission.

This bill thus codifies the practice that has evolved, whereby continuous oversight of such systems is maintained by the attorney general. It thus eliminates unnecessary statutes and unnecessary governmental structures. Therefore, I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bill Sheffield".

Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 183
Title: "An Act abolishing the Gov.'s
Comm. on the Admin. of Justice..."
Sponsor: House Rules/Governor
Requestor: Governor's Ofc./OMB
Date of Request: 12/18/84

FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: _____
Administration of Justice
BRU, Program or Subprogram(s) Affected: _____
Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL	--					
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

This bill would abolish the Governor's Commission on the Administration of Justice and transfers the responsibility for regulating security and privacy of criminal justice information and intelligence systems to the Attorney General. The bill would validate what has in fact become practice since the programs formerly provided by the LEAA and the state's Criminal Justice Planning Agency were discontinued in 1982 and 1983, respectively. Consequently, there will not be a fiscal impact.

Prepared By: Richard I. Pegues Director Phone: 465-3672
Division: Administrative Services Date: 12/19/84

Approved by Commissioner: Richard I. Pegues / FOR Date: 12/19/84
Agency: Department of Law

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84



REPRESENTATIVE DON CLOCKSIN

Alaska House of Representatives

MAJORITY LEADER

1024 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 274-4031

M E M O R A N D U M

WHILE IN JUNEAU:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3704

TO: Representative Al Adams
Chairman
House Finance Committee

DATE: April 11, 1986

FROM: Representative Don Clocksin

SUBJECT: CSHB 183

Attached is CSHB 183 entitled "An Act relating to the Governor's Commission on the Administration of Justice and to intelligence information." (Attachment 1) I have a special interest in this bill because I was appointed as a subcommittee for the House Judiciary to review the original bill. This Committee Substitute is the product of my work.

I. Background

The Alaska Justice Information System (AJIS) was the computerized criminal justice network and information system used in Alaska as established by AS 12.62.010 et seq. This system failed and within the past two years, the legislature approved funding for a new system known as ASPIN which operates under the same general principles.

In 1972 the Governor's Commission on the Administration of Justice (AS 44.19.110 - 44.19.122) was authorized to draft regulations (6 AAC 60) and provide oversight over the AJIS system. This 13 member Commission was made up of representatives from the public and private sectors.

However, this Commission is now defunct, and it is my understanding that they have not met since 1981. Under administrative regulations this oversight function is now delegated to the Attorney General as the ex-officio chair of the Commission.

My research shows that the last audit was conducted in 1981 by SRI International of California. This security and privacy audit had three pages of observations and recommendations. (See Attachment 2). I do not know how many of these have been implemented. At Judiciary Committee hearings during this last interim, concerns were voiced on the accuracy, security and control of this system. Forty-seven agencies, including Big

Brothers/Big Sisters of Juneau and the Federal Highway Administration, now have some access to this system. These agencies have to sign a user agreement but no audits are made to check compliance.

I was concerned that there has been no oversight or review of the system since the Commission ceased to exist. I have requested the Legislative Budget and Audit Committee to conduct a performance audit of the entire system and to investigate the following in detail:

1. data quality;
2. record - subject review and challenge;
3. system security;
4. dissemination and use;
5. gathering of intelligence information;
6. record keeping on juveniles; and
7. purging and expungment of information

It is my understanding that the audit will not be released before the session adjourns.

II. Recommendations:

In balancing the competing interests of protecting the public and an individual's right to privacy, I felt it was necessary to retain a scaled-down version of the original 13 member commission. The proposed committee substitute sets up a five member commission composed of the Attorney General, public defender, and three public members appointed by the Governor. One of the public members must be experienced in the field of computer science.

This bill has a fiscal impact of \$4,300 for FY 87 with an increase of \$100 for each new fiscal year. (Attachment 3) This money will be used only to pay travel and per diem for the three public members. Travel and per diem for the attorney general and the public defender would be funded out of their respective existing budgets.

No new positions would be required to assist the commission in carrying out its duties. In fact, this bill validates what is current practice, that is, the Attorney General's office provides staff for the system.

I have also amended existing statutes to take care of the concerns voiced in testimony and by members of the Committee regarding security and access. Furthermore, an additional duty is imposed on users to purge any information currently kept in their system which is not in compliance with this bill.

Thank you for your consideration.

Attachments

Offered: 4/8/86
Referred: Finance

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 183 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Governor's Commission on the
7 Administration of Justice and to intelligence infor-
8 mation."

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

10 * Section 1. AS 12.62.010 is amended to read:

11 Sec. 12.62.010. REGULATIONS. (a) The Governor's Commission on
12 the Administration of Justice established under AS 44.19.110 - 44.19.-
13 122 may [IS AUTHORIZED], after appropriate consultation with represen-
14 tatives of state and local law enforcement agencies participating in
15 information systems covered by this chapter, [TO] adopt regulations
16 and, by regulation, establish procedures considered necessary to
17 facilitate and regulate the exchange of criminal justice information
18 and to insure the security and privacy of criminal justice information
19 systems. The notice and hearing requirements of the Administrative
20 Procedure Act (AS 44.62), relating to the adoption of regulations,
21 apply to regulations adopted under this chapter.

22 (b) In addition to regulations adopted under (a) of this sec-
23 tion, the commission shall, after appropriate consultation with rep-
24 resentatives of state and local law enforcement agencies, adopt regu-
25 lations [AND PROCEDURES] governing the gathering of intelligence
26 information and the storage, security, and privacy of the intelligence
27 information collected and maintained by law enforcement agencies in
28 the state. [THE NOTICE AND HEARING REQUIREMENTS OF THE ADMINISTRATIVE
29 PROCEDURE ACT (AS 44.62), RELATING TO THE ADOPTION OF REGULATIONS,

1 APPLY TO REGULATIONS ADOPTED UNDER THIS SUBSECTION.] In adopting
2 these regulations, the commission shall take into account both the
3 interest of law enforcement agencies in maintaining the ability to
4 conduct intelligence operations and each individual's right to pri-
5 vacy.

6 * Sec. 2. AS 12.62.015(a) is amended to read:

7 (a) Regulations of the commission adopted under AS 12.62.010(b)
8 must [SHALL] include requirements and guidelines concerning the cat-
9 egories of intelligence information that [WHICH] may be gathered by
10 law enforcement agencies in the state, the purposes for which intelli-
11 gence information may be collected, and the methods and procedures
12 that [WHICH] may be used in collecting intelligence information. The
13 regulations must restrict methods and procedures for collecting intel-
14 ligence information to methods and procedures likely to result in
15 relevant and reliable information.

16 * Sec. 3. AS 12.62.015 is amended by adding a new subsection to read:

17 (c) A law enforcement agency in the state may not gather or
18 retain intelligence information unless the information pertains to an
19 individual or group that is reasonably suspected of engaging in crimi-
20 nal activity.

21 * Sec. 4. AS 12.62.030(c) is amended to read:

22 (c) A person has [SHALL HAVE] the right to inspect criminal
23 justice information that refers to the person. If a person believes
24 the information to be inaccurate, incomplete, or misleading, the
25 person may request the criminal justice agency having custody or
26 control of the records to purge, modify or supplement them. When the
27 agency responds to the person's request, the agency shall notify the
28 person of the right to request a review from the commission under this
29 subsection. If the agency declines to implement the person's request

1 [DO SO], or if the person believes the agency's decision to be other-
2 wise unsatisfactory, the person may in writing request review by the
3 commission within 60 days after [OF] the decision of the agency. If
4 it finds a basis for complaint, the [THE] commission or [,] its rep-
5 resentative or agent shall [, IN A CASE IN WHICH IT FINDS A BASIS FOR
6 COMPLAINT,] conduct a hearing at which the person may appear with
7 counsel, present evidence, and examine and cross-examine witnesses.
8 Written findings and conclusions shall be issued and a copy of them
9 sent to the person requesting review with a notice of the person's
10 right to appeal under (f) of this section. If the record in question
11 is found to be inaccurate, incomplete or misleading, the commission
12 shall order it to be appropriately purged, modified or supplemented by
13 an explanatory notation. An agency or person in the state with cus-
14 tody, possession or control of the record shall promptly have every
15 copy of the record altered in accordance with the commission's order.
16 The commission shall promptly notify [NOTIFICATION OF A DELETION,
17 AMENDMENT AND SUPPLEMENTARY NOTATION SHALL BE PROMPTLY DISSEMINATED BY
18 THE COMMISSION TO] persons or agencies to which records in question
19 have been communicated, and [AS WELL AS TO] the person whose records
20 have been altered, of a deletion, amendment, or supplementary nota-
21 tion.

22 * Sec. 5. AS 12.62.030(e) is amended to read:

23 (e) The commission shall adopt regulations for access to crimi-
24 nal justice information and establishing reasonable [REASONABLE] hours
25 and places of inspection, and any additional restrictions, including
26 fingerprinting, that are reasonably necessary both to assure the
27 record's security and to verify the identity of a person who seeks to
28 inspect a record [IDENTITIES OF THOSE WHO SEEK TO INSPECT THEM MAY BE
29 PRESCRIBED BY PUBLISHED RULES]. Fingerprints taken under this sub-

1 section may not be transferred to another agency or used for any other
2 purpose.

3 * Sec. 6. AS 12.62.035(a) is amended to read:

4 (a) Notwithstanding any other provision of law, an interested
5 person as defined in (e) of this section may request from the commis-
6 sion records of all convictions involving contributing to the delin-
7 quency of a minor and any sex crimes of a person who holds or applies
8 for a position in which the person has or would have supervisory or
9 disciplinary power over a minor. The requesting interested person
10 shall include with the request a written authorization, signed by the
11 subject of the request, indicating that the subject consents to re-
12 lease of the records to the interested person. If the commission is
13 satisfied that the subject of the request has authorized release of
14 the information, the [THE] commission shall authorize the disclosure
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25 information contained in the system from unauthorized disclosure, and
26 [REASONABLY] designed to assure that criminal offender record informa-
27 tion in the system is regularly and accurately revised to include
28 subsequently furnished information;
29 (3) include operating procedures approved by the commission

1 which are designed to assure that information concerning an individual
2 shall be removed from the records, based on considerations of age,
3 nature of record, and reasonable interval following the last entry of
4 information indicating that the individual is still under the juris-
5 diction of a law enforcement agency.

6 * Sec. 8. AS 12.62.040 is amended by adding a new subsection to read:

7 (c) The commission shall adopt regulations that require a law
8 enforcement agency to modify, supplement, or purge from the criminal
9 justice information system

10 (1) inaccurate information; or

11 (2) information gathered or entered in violation of this
12 chapter.

13 * Sec. 9. AS 12.62.060(b) is amended to read:

14 (b) A person who [WILFULLY] disseminates or uses criminal jus-
15 tice information knowing the [SUCH] dissemination or use to be in
16 violation of this chapter, or who knowingly collects, obtains or uses
17 intelligence information in violation of this chapter, is guilty of a
18 class C felony [UPON CONVICTION, IS PUNISHABLE BY A FINE OF NOT MORE
19 THAN \$1,000 OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY
20 BOTH].

21 * Sec. 10. AS 12.62.060(c) is amended to read:

22 (c) A good faith reliance upon the provisions of this chapter or
23 of applicable law governing maintenance, dissemination, or use of
24 criminal justice information, or upon [RULES,] regulations adopted [,
25 OR PROCEDURES PRESCRIBED] under this chapter is a defense to a civil
26 or criminal action brought under this chapter.

27 * Sec. 11. AS 12.62.070(3) is amended to read:

28 (3) "criminal justice information system" means a system [,
29 INCLUDING THE EQUIPMENT, FACILITIES, PROCELURES, AGREEMENTS, AND

1 ORGANIZATIONS RELATED TO THE SYSTEM FUNDED IN WHOLE OR IN PART BY THE
2 LAW ENFORCEMENT ASSISTANCE ADMINISTRATION,] for the collection, pro-
3 cessing, or dissemination of criminal justice information;

4 * Sec. 12. AS 44.19.112 is repealed and reenacted to read:

5 Sec. 44.19.112. MEMBERSHIP AND MEETINGS. (a) The commission is
6 composed of the attorney general, the public defender, and three
7 public members appointed by the governor. One of the public members
8 must be experienced in the field of computer science.

9 (b) The commission shall elect a member to serve as chair and
10 may elect other officers. Terms of officers are for one year.

11 (c) The commission shall meet at least once each year at the
12 call of the chair.

13 * Sec. 13. AS 44.19.114 is amended to read:

14 Sec. 44.19.114. COMPENSATION AND PER DIEM. Members of the
15 commission receive no salary for their service on the commission. The
16 public members [BUT] are entitled to per diem and travel expenses
17 authorized by law for boards and commissions.

18 * Sec. 14. AS 44.19.122 is repealed and reenacted to read:

19 Sec. 44.19.122. STAFF. The Department of Law shall provide
20 staff for the commission without expense to the commission.

21 * Sec. 15. Each criminal justice agency in the state that has entered
22 intelligence information into the criminal justice information systems
23 shall review that information and immediately purge from the system any
24 information that does not meet the requirements of this Act.

25 * Sec. 16. AS 44.19.118 and 44.19.120(a) are repealed.

Introduced: 2/8/85
Referred: Judiciary
and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 183

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act abolishing the Governor's Commission on the
7 Administration of Justice and transferring responsi-
8 bilities to the attorney general."

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

10 * Section 1. AS 12.62.010 is amended to read:

11 Sec. 12.62.010. REGULATIONS. (a) After [THE GOVERNOR'S COMMIS-
12 SION ON THE ADMINISTRATION OF JUSTICE ESTABLISHED UNDER AS 44.19.-
13 110 -- 44.19.122 IS AUTHORIZED, AFTER] appropriate consultation with
14 representatives of state and local law enforcement agencies partici-
15 pating in information systems covered by this chapter, the attorney
16 general may [TO] adopt regulations and procedures considered necessary
17 to facilitate and regulate the exchange of criminal justice informa-
18 tion and to insure the security and privacy of criminal justice infor-
19 mation systems. The notice and hearing requirements of the Adminis-
20 trative Procedure Act (AS 44.62), relating to the adoption of regula-
21 tions, apply to regulations adopted under this chapter.

22 (b) In addition to regulations adopted under (a) of this sec-
23 tion, the attorney general may [COMMISSION SHALL], after appropriate
24 consultation with representatives of state and local law enforcement
25 agencies, adopt regulations and procedures governing the gathering of
26 intelligence information and the storage, security, and privacy of the
27 intelligence information collected and maintained by law enforcement
28 agencies in the state. The notice and hearing requirements of the
29 Administrative Procedure Act (AS 44.62), relating to the adoption of

1 regulations, apply to regulations adopted under this subsection. In
2 adopting these regulations, the attorney general [COMMISSION] shall
3 take into account both the interest of law enforcement agencies in
4 maintaining the ability to conduct intelligence operations and each
5 individual's right to privacy.

6 * Sec. 2. AS 12.62.015 is amended to read:

7 Sec. 12.62.015. COLLECTION AND SECURITY OF INTELLIGENCE INFORMA-
8 TION. (a) Regulations [OF THE COMMISSION] adopted under AS 12.62.-
9 010(b) must [SHALL] include requirements and guidelines concerning the
10 categories of intelligence information which may be gathered by law
11 enforcement agencies in the state, the purposes for which intelligence
12 information may be collected, and the methods and procedures which may
13 be used in collecting intelligence information.

14 (b) The [COMMISSION'S] regulations adopted under AS 12.62.010(b)
15 must [SHALL] establish standards for the confidentiality and security
16 of intelligence information and provide for controls, access to and
17 dissemination of intelligence information, and methods for updating,
18 correcting and purging intelligence information while maintaining the
19 security and confidentiality of the information.

20 * Sec. 3. AS 12.62.017 is amended to read:

21 Sec. 12.62.017. ANNUAL REPORT [TO COMMISSION]. The chief offi-
22 cer of each state or municipal law enforcement agency shall submit an
23 annual report to the attorney general [COMMISSION], in the form
24 required by the attorney general [COMMISSION], certifying compliance
25 by the agency with the regulations adopted [BY THE COMMISSION] under
26 AS 12.62.010(b).

27 * Sec. 4. AS 12.62.020(a) is amended to read:

28 (a) The attorney general [COMMISSION] shall adopt regulations
29 concerning the specific classes of criminal justice information that

1 [WHICH] may be collected and stored in criminal justice information
2 systems.

3 * Sec. 5. AS 12.62.030 is amended to read:

4 Sec. 12.62.030. ACCESS AND USE. (a) Except as provided in (b)
5 and (c) of this section and in AS 12.62.035, access to specified
6 classes of criminal justice information in criminal justice informa-
7 tion systems is available only to individual law enforcement agencies
8 according to the specific needs of the agency under regulations adopt-
9 ed by the attorney general [COMMISSION] under AS 12.62.010. Criminal
10 justice information may be used only for law enforcement purposes or
11 for those additional lawful purposes necessary to the proper enforce-
12 ment or administration of other provisions of law as the attorney
13 general [COMMISSION] may prescribe by regulations adopted under
14 AS 12.62.010. Criminal justice information may not be disseminated to
15 an agency unless the attorney general [BEFORE THE COMMISSION] deter-
16 mines that the agency is eligible [THE AGENCY'S ELIGIBILITY] to re-
17 ceive that information.

18 (b) Criminal justice information may be made available to quali-
19 fied persons for research related to law enforcement under regulations
20 adopted by the attorney general [COMMISSION]. These regulations must
21 include procedures to assure the security of information and the
22 privacy of individuals about whom information is released.

23 (c) A person has [SHALL HAVE] the right to inspect criminal
24 justice information that refers to the person. If a person believes
25 the information to be inaccurate, incomplete, or misleading, the
26 person may request the criminal justice agency having custody or
27 control of the records to purge, modify, or supplement them. If the
28 agency declines to do so, or if the person believes the agency's
29 decision to be otherwise unsatisfactory, the person may in writing

1 request review by the attorney general [COMMISSION] within 30 [60]
2 days after [OF] the decision of the agency. If the attorney general
3 [THE COMMISSION, ITS REPRESENTATIVE OR AGENT SHALL, IN A CASE IN WHICH
4 IT] finds a basis for complaint, [CONDUCT] a hearing may be conducted
5 at which the person may appear with counsel, present evidence, and
6 examine and cross-examine witnesses. Written findings and conclusions
7 must [SHALL] be issued. If the record in question is found to be
8 inaccurate, incomplete, or misleading, the attorney general [COMMIS-
9 SION] shall order it to be appropriately purged, modified, or supple-
10 mented by an explanatory notation. An agency or person in the state
11 with custody, possession, or control of the record shall promptly

12 (1) have every copy of the record altered in accordance
13 with the attorney general's [COMMISSION'S] order; and

14 (2) disseminate notification [. NOTIFICATION] of a dele-
15 tion, amendment or [AND] supplementary notation [SHALL BE PROMPTLY
16 DISSEMINATED BY THE COMMISSION] to persons or agencies to which re-
17 cords in question have been communicated, as well as to the person
18 whose records have been altered.

19 (d) An agency holding or receiving criminal justice information
20 shall maintain, for a period determined by the attorney general [COM-
21 MISSION] to be appropriate, a listing of the agencies to which it has
22 released or communicated the information. These listings must [SHALL]
23 be reviewed from time to time by the attorney general [COMMISSION OR
24 STAFF MEMBERS OF THE COMMISSION] to determine whether the provisions
25 of this chapter or any applicable regulations have been violated.

26 (e) Reasonable hours and places of inspection, and any addi-
27 tional restrictions, including fingerprinting, that are reasonably
28 necessary both to assure the record's security and to verify the
29 identities of those who seek to inspect them may be prescribed by

1 published rules. Fingerprints taken under this subsection may not be
2 transferred to another agency or used for any other purpose.

3 (f) A person who requests the attorney general's review [OR
4 AGENCY AGGRIEVED BY AN ORDER OR DECISION OF THE COMMISSION] under (c)
5 of this section may appeal the order or decision to the superior
6 court. The court shall in each case conduct a de novo hearing and may
7 order the relief it determines to be necessary. If a person about
8 whom information is maintained by an agency challenges that informa-
9 tion in an action under this subsection as being inaccurate, incom-
10 plete, or misleading, the burden is on the agency to prove that the
11 information is not inaccurate, incomplete, or misleading.

12 * Sec. 6. AS 12.62.035(a) is amended to read:

13 (a) Notwithstanding any other provision of law, an interested
14 person as defined in (e) of this section may request [FROM THE COMMIS-
15 SION] records of all convictions involving contributing to the delin-
16 quency of a minor and any sex crimes of a person who holds or applies
17 for a position in which the person has or would have supervisory or
18 disciplinary power over a minor. The attorney general [COMMISSION]
19 shall authorize the disclosure of the information to the requesting
20 interested person and [SHALL PROVIDE] a copy of the information must
21 be provided to the person who is the subject of the request.

22 * Sec. 7. AS 12.62.035(b) is amended to read:

23 (b) A request for records under (a) of this section must [SHALL]
24 include within it the fingerprints of the person who is the subject of
25 the request and any other data specified in regulations adopted by the
26 attorney general [COMMISSION]. The request must [SHALL] be on a form
27 approved by the attorney general [COMMISSION], and [THE COMMISSION MAY
28 CHARGE] a fee may be charged to [BE PAID BY] the requesting interested
29 person for the actual cost of processing the request. Applications

1 for information under (a) of this section must be destroyed [THE
2 COMMISSION SHALL DESTROY AN APPLICATION] within six months after the
3 requested information is sent to the requesting interested person and
4 the person who is the subject of the request.

5 * Sec. 8. AS 12.62.035(c) is amended to read:

6 (c) The attorney general [COMMISSION] shall adopt regulations to
7 implement the provisions of this section.

8 * Sec. 9. AS 12.62.040(a) is amended to read:

9 (a) Criminal justice information systems must [SHALL]

10 (1) be dedicated to law enforcement purposes and be under
11 the management and control of law enforcement agencies unless exempted
12 under regulations adopted under AS 12.62.010;

13 (2) include operating procedures approved by the attorney
14 general [COMMISSION] which are reasonably designed to assure the
15 security of the information contained in the system from unauthorized
16 disclosure, and reasonably designed to assure that criminal offender
17 record information in the system is regularly and accurately revised
18 to include subsequently furnished information;

19 (3) include operating procedures approved by the attorney
20 general [COMMISSION] which are designed to assure that information
21 concerning an individual must [SHALL] be removed from the records,
22 based on considerations of age, nature of record, and reasonable
23 interval following the last entry of information indicating that the
24 individual is still under the jurisdiction of a law enforcement agen-
25 cy.

26 * Sec. 10. AS 12.62.050 is amended to read:

27 Sec. 12.62.050. INTERSTATE SYSTEMS FOR THE EXCHANGE OF CRIMINAL
28 JUSTICE INFORMATION. (a) The attorney general [COMMISSION] shall
29 regulate the participation by all state and local criminal justice

1 agencies in an interstate system for the exchange of criminal justice
2 information, and is [SHALL BE] responsible for assuring [TO ASSURE]
3 the consistency of the participation with the provisions and purposes
4 of this chapter. The attorney general [COMMISSION] may not compel any
5 criminal justice agency to participate in an interstate system.

6 (b) Direct access to an interstate system for the exchange of
7 criminal justice information must [SHALL] be limited to those criminal
8 justice agencies that are expressly designated for that purpose by the
9 attorney general [COMMISSION]. When the system employs telecommuni-
10 cations access terminals, the attorney general [COMMISSION] shall
11 limit the number and placement of the terminals to those for which
12 adequate security measures may be taken and as to which the attorney
13 general [COMMISSION] may impose appropriate supervisory regulations.

14 * Sec. 11. AS 12.62.070 is amended to read:

15 Sec. 12.62.070. DEFINITIONS. In this chapter

16 (1) "attorney general" means the principal executive offi-
17 cer of the Alaska Department of L'w or that person's designee ["COM-
18 MISSION" MEANS THE GOVERNOR'S COMMISSION ON THE ADMINISTRATION OF
19 JUSTICE ESTABLISHED UNDER AS 44.19.110 -- 44.19.122;]

20 (2) "criminal justice information" means information con-
21 cerning an individual in a criminal justice information system and
22 indexed under the individual's name, or retrievable by reference to
23 the individual by name or otherwise and which is collected or stored
24 in a criminal justice information system;

25 (3) "criminal justice information system" means a system,
26 including the equipment, facilities, procedures, agreements, and
27 organizations related to the system funded in whole or in part by the
28 Law Enforcement Assistance Administration, for the collection, pro-
29 cessing, or dissemination of criminal justice information;

1 (4) "intelligence information" means information concerning
2 the background, activities, or associations of the individual or group
3 collected or obtained by a law-enforcement agency for preventive,
4 precautionary, or general investigative purposes not directly connect-
5 ed with the investigation of a specific crime which has been committed
6 nor with the apprehension of a specific person in connection with the
7 commission of a particular crime;

8 (5) "interstate systems" means agreements, arrangements,
9 and systems for the interstate transmission and exchange of criminal
10 justice information, but does not include record keeping systems in
11 the state maintained or controlled by a state or local agency, or a
12 group of agencies, even if the agency receives information through, or
13 otherwise participates in, systems for the interstate exchange of
14 criminal justice information;

15 (6) "law enforcement" means any activity relating to crime
16 prevention, control, or reduction; [OR] the enforcement of the crimi-
17 nal prevention, control, or reduction; or the enforcement of the
18 criminal law, including, but not limited to, police efforts to pre-
19 vent, control, or reduce crime or to apprehend criminals, activities
20 of criminal prosecution, courts, public defender, corrections, pro-
21 bation, or parole authorities;

22 (7) "law enforcement agency" means a public agency which
23 performs as one of its principal functions activities pertaining to
24 law enforcement, and includes the child support enforcement agency
25 created by AS 47.23.

26 * Sec. 12. AS 14.43.250(b) is amended to read:

27 (b) The purposes of the several memorial scholarship accounts in
28 the memorial scholarship revolving loan fund are as follows:

29 (1) the Michael Murphy Memorial Scholarship perpetuates the

1 memory of Michael Murphy, a member of the Alaska State Troopers, who,
2 while on leave from that division, gave his life for his adopted
3 community in Vietnam on May 22, 1968;

4 (2) the Carroll L. "Butch" Swartz Memorial Scholarship
5 perpetuates the memory of Carroll L. "Butch" Swartz, of Juneau, who
6 was a student intern with the Criminal Justice Planning Agency and the
7 former Governor's Commission on the Administration of Justice during
8 the summer months of 1972 and 1973 and whose accidental and untimely
9 death in November 1973, occurred while he was completing his under-
10 graduate education at Yale University, thus never realizing his educa-
11 tional goals or career objective;

12 (3) the Harvey Golub Memorial Scholarship perpetuates the
13 memory of Harvey Golub, of Juneau, who was chief engineer of the
14 bridge design section of the Department of Highways of the State of
15 Alaska and whose accidental and untimely death September 13, 1971, cut
16 short a widely-respected career in civil engineering; and

17 (4) the Robert L. Thomas Memorial Scholarship perpetuates
18 the memory of Robert L. Thomas, of Juneau, who as deputy commissioner
19 of education, and for 13 years as a member of the professional staff
20 of that department contributed significantly to the creation, opera-
21 tion and administration of a sound system of public education in
22 Alaska and whose tragic and untimely death March 12, 1974, terminated
23 a distinguished career in education and public administration that
24 long will be exemplary for those who aspire to service in that profes-
25 sion.

26 * Sec. 13. AS 14.43.310(b)(2), AS 18.65.250, AS 39.50.200(b)(17),
27 AS 44.19.110, 44.19.112, 44.19.114, 44.19.116, 44.19.118, 44.19.120, and
28 44.19.122 are repealed.