

**ALASKA LEGISLATURE**

**2539**

**HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004**

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: HB 224  
 (H) Publish Date: 3/28/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
 Title Hearing Process: BRU Revenue Operations  
Master Settlement Agreement Component Tax Division  
 Sponsor Rules Committee  
 Requester Governor Component No. 2476

**Expenditures/Revenues (Thousands of Dollars)**

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Buildings and Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

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

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This legislation would have no significant fiscal impact on the Department of Revenue. The intent is to aid the state in the enforcement of the nationwide tobacco products Master Settlement Agreement, therefore preserving, to the fullest extent possible, the revenue stream from that agreement.

The legislation would aid the state in its enforcement efforts against non-participating tobacco manufacturers that may try to circumvent the terms of the agreement.

Prepared by: Larry Persily, Deputy Commissioner Phone 465-5469  
 Division: Department of Revenue Date/Time 1/29/03 11:23 AM  
 Approved by: Larry Persily, Deputy Commissioner Date 1/29/2003  
 Agency: Department of Revenue

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FRANK H. MURKOWSKI,  
GOVERNOR

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HB 224  
House Finance Committee  
April 16, 2003  
1:30pm

Testimony of Michael A. Barnhill, Asst. Attorney General

Thank you Mr. Chair. My name is Mike Barnhill. I am employed by the Alaska Dep't of Law as an Assist. Attorney General in the Commercial Section. I am pleased to testify on behalf of the administration in support of HB 224, the bill before you.

In your bill packets you should have a copy of the background and sectional analysis I prepared. I don't intend to read the entire document for you, but I will touch the salient points for your consideration.

By way of background, as you all know, the State of Alaska, along with 45 other states settled its tobacco litigation with the major tobacco manufacturers in 1998, in exchange for a stream of payments that would last indefinitely. One of the terms of this "Master Settlement Agreement" is that the payments can be reduced by what's called a "non-participating manufacturer adjustment" or "NPM adjustment." The MSA provides, however, that states can avoid an NPM adjustment by doing two things: (1) enact the model NPM statute and (2) diligently enforce that statute.

The model NPM statute is basically a statute that levels the playing field between tobacco manufacturers that participated in the settlement agreement and those that did not—it requires the non-participating manufacturers to deposit certain amounts of money into an escrow account for every cigarette sold in the state. In 2001, for instance, an NPM was required to deposit approximately 1.5 cents into escrow for every cigarette sold.

Alaska enacted the model NPM statute in 1999 (AS 45.53) and has been diligently enforcing it since its enactment.

Since the enactment of the NPM statute, however, Alaska and many other states have found that enforcing the NPM statute is unnecessarily difficult in some situations. Usually these situations involve cases where the tobacco manufacturer is located in a far-flung jurisdiction like India or the Phillipines. While it is possible to seek enforcement of Alaska laws on companies in foreign countries it is not necessarily easy.

As a solution, states began looking for ways to enhance their ability to enforce the NPM statutes. In 2001, Alaska and Maine became the first states to enact "complimentary legislation". Alaska's complimentary legislation is found at AS 43.50.145 and basically creates a list of companies that have failed to comply with our NPM laws and declares their cigarettes to be contraband and subject to seizure.

Other states followed suit and enacted their own versions of complimentary legislation. By 2002, there were various versions of complimentary legislation around the country and it became clear that there was a need for uniformity.

The National Association of Attorneys General formed a working group in 2002 with the goal of drafting a model complimentary legislation statute. HB 224 is the product of that working group and NAAG has urged all states to enact this legislation as a high priority.

Simply put, HB 224 enhances our ability to enforce Alaska's NPM statute by creating a "directory" of cigarettes that are permitted to be sold in Alaska. A company can be added to the directory simply by annually certifying to the Dep't of Revenue that they are either (a) a participating manufacturer under the MSA or (b) a non-participating manufacturer that has complied with AS 45.53 by depositing all required amounts into escrow.

HB 224 requires tobacco manufacturers to provide information about their products to the Dep't of Revenue to aid in enforcement efforts. It provides penalties for failure to comply. It provides for service of process upon the Dep't of Community and Econ. Development for companies that refuse to comply with our law and fail to appoint an instate agent for service of process. Lastly, it provides a tax credit for cigarette distributors that import cigarettes that are listed on the directory and that are subsequently de-listed—this ensures that distributors will not be left "holding the bag" on cigarette taxes for a tobacco manufacturer that fails to comply with Alaska law.

I'm delighted that the administration supports this bill and I urge your support of it. I'd be happy to answer any questions the committee might have.

HB 224



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STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

March 27, 2003

The Honorable Pete Kott  
Speaker of the House  
Alaska State Legislature  
State Capitol, Room 208  
Juneau, AK 99801-1182

Dear Speaker Kott:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to a tobacco product manufacturer's compliance with certain statutory requirements regarding cigarette sales.

The model for the bill was drafted by the National Association of Attorneys General in cooperation with a working group of participating states and is designed to aid state enforcement of the tobacco product Master Settlement Agreement and AS 45.53, and thus preserve, to the fullest extent possible, the revenue stream under the Master Settlement Agreement. We understand that most of the 46 participating states will seek to pass this legislation in their respective upcoming legislative sessions. We also understand that the bill has been reviewed and approved by two of the principal tobacco parties to the Master Settlement Agreement, Phillip Morris and RJ Reynolds.

In 1999, 46 states, including Alaska, collectively settled their claims against certain tobacco manufacturers and entered into the "Master Settlement Agreement" (MSA). Under the MSA, the participating tobacco product manufacturers agreed to pay certain amounts to the settling states in perpetuity in exchange for dismissal of the states' lawsuits. One of the provisions of the MSA, however, required that the states enact legislation that would "level the playing field" for non-participating tobacco manufacturers. This leveling legislation required such non-participating tobacco manufacturers to deposit money into escrow for every cigarette they sold in the state. The intent of this escrow requirement was to prevent the non-participants from undermining the overall goals of MSA by guaranteeing "a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise." See sec. 1, ch. 4 LA 1999.

The Honorable Pete Kott  
March 27, 2003  
Page 2

Since 1999, the participating states have detected concerted efforts by non-participating tobacco manufacturers to evade the legislated escrow requirements. Various schemes have been employed, often through use of elusive foreign tobacco manufacturers, to attempt to circumvent the requirement of escrow deposits.

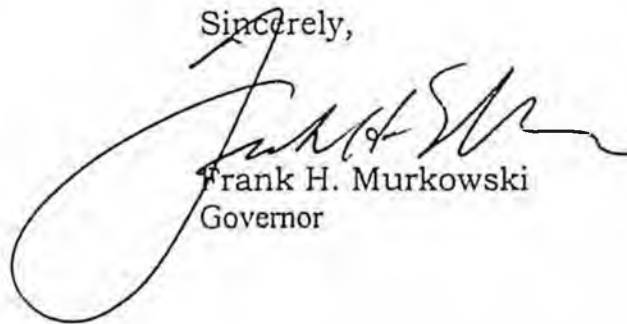
This bill seeks to bring an end to these schemes. In order to sell cigarettes in this state, a tobacco product manufacturer will have to annually certify that it is in compliance with AS 45.53. Additionally, tobacco product manufacturers must include certain information that will assist the Department of Revenue in its enforcement efforts in this regard.

The Department of Revenue will publish and update a directory of cigarettes that are approved for sale in this state. Cigarettes that are not listed in this directory are contraband and may not be sold in the state. The bill provides for civil penalties for selling or possessing contraband cigarettes.

The enactment of this bill will bring an end to efforts by non-participating manufacturers to evade their obligations to deposit escrow for their in-state cigarette sales.

I urge your prompt and favorable action on this measure.

Sincerely,



Frank H. Murkowski  
Governor

HB 224

# STATE OF ALASKA

**DEPARTMENT OF LAW**  
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## *HB 224*

### **Background and Sectional Analysis**

#### **I. BACKGROUND**

On November 23, 1998, Alaska and 45 other states (plus the District of Columbia and 5 territories) entered into the Tobacco Master Settlement Agreement ("MSA") with certain Tobacco Product Manufacturers (known as "Participating Manufacturers" or "PMs"). The MSA provides that in exchange for the PMs' agreement to make specified payments to the Settling States -- estimated to exceed \$200 billion through 2025 -- and their agreement to abide by extensive public health restrictions on the advertising, promotion and marketing of cigarettes, the Settling States agreed to release the PMs from claims by the States.<sup>1</sup>

Those non-participating Tobacco Product Manufacturers that did not sign the MSA ("Non-Participating Manufacturers" or "NPMs") were not released from potential State claims and did not undertake any of the payment obligations or agree to abide by the public health restrictions. In order to ensure that Settling States that successfully sue NPMs in the future will have a fund against which they can recover any judgment or settlement moneys, the MSA includes a proposed "Model Statute" that, if enacted by a Settling State, requires NPMs to make annual payments into a qualified escrow fund based on the number of that NPM's cigarettes sold in the State.<sup>2</sup> The Model Statute is also intended to prevent NPMs from reaping a windfall benefit by selling cigarettes in a Settling State without bearing the costs that cigarette smoking imposes on the State.

The Model Statute declares:

It would be contrary to the policy of the state if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost

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<sup>1</sup> The released claims generally include claims arising out of or in any way related to (a) the use, sale, distribution, manufacture, development, advertising, marketing or health effects of, (b) the exposure to, or (c) research, statements, or warnings regarding, tobacco products. MSA §II(m).

<sup>2</sup> Alaska's "model statute" was enacted in 1999 (ch. 46, SLA 1999) and is found at AS 45.53.

advantage to derive large, short-term profits in the years before liability may arise without ensuring that the state will have an eventual source of recovery from them if they are proven to have acted culpably; it is thus in the interests of the state to require that such manufacturers establish an escrow fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

§ 1, ch. 46, SLA 1999.

The MSA encouraged States to enact the Model Statute by creating a significant financial incentive: Settling States that enact and 'diligently enforce' a Model Statute are not subject to certain potential downward adjustments in receiving their annual MSA payments. All Settling States have enacted Model Statutes.

A Settling State through its attorney general or other official may bring a civil action on behalf of the State against any Tobacco Product Manufacturer that fails to place into escrow the funds required by the Model Statute. While the Settling States have been aggressively enforcing the provisions of the Model Statutes, enforcement has proved costly and cumbersome. Among other things, the Model Statute enables NPMs to sell cigarettes for up to 16 months in a State before the State can bring an action to enforce the Model Statute. In addition, many NPMs are located in foreign countries and it has proved difficult and expensive to obtain service of process or to effect judgments. And, as the Settling States have moved forward with numerous actions against non-compliant NPMs, many NPMs have devised ingenious schemes to evade compliance. The purpose of this "complementary legislation" is to make State enforcement of Model Statutes more effective and thereby promote the purposes for which the Model Statutes were enacted.

Approximately fifteen states, including Alaska, have enacted complementary legislation. Alaska's existing complimentary legislation is AS 43.50.145, which simply provides that NPM cigarettes for which escrow payments have not been made are contraband and subject to confiscation. Other states' complimentary legislation have taken different forms but is largely similar from state to state. Generally, these statutes: prohibit tax-stamping of tobacco products that are not in compliance with a Settling State's Model Statute; require certification that a Tobacco Product Manufacturer is either a Participating Manufacturer under the MSA or, if an NPM, is in full compliance with a State's Model Statute; require an attorney general or revenue department to maintain a list of Tobacco Product Manufacturers that are in compliance with a Settling State's laws; and subject violators to civil and criminal penalties and license revocation/suspension.

Complementary legislation has been effective in promoting compliance with the Model Statutes. This positive experience led the Tobacco Committee to create a Complementary Legislation Working Group, a multi-State staff-level group coordinated by the NAAG Tobacco Project. The Working Group was charged with developing draft

complementary legislation that could be recommended as a model to all of the Settling States. After extensive deliberations, the Working Group has now recommended model legislation to the Tobacco Committee, and the Committee has recommended that the Attorneys General of the Settling States give serious consideration to the legislation and designate its enactment a priority. The Committee believes that enactment of such legislation by all Settling States will promote the purposes the Model Statutes were designed to serve and safeguard payments to the Settling States that might otherwise be imperiled.

## II. COMPLEMENTARY LEGISLATION SUMMARY

The proposed model complementary legislation would require a state to maintain a directory of cigarette products that are permitted to be sold instate. The proposed legislation would prohibit the sale of products that are not listed in the directory. While all Tobacco Product Manufacturers would be required to make specific certifications *before* a brand could be listed in the directory, a Non-Participating Manufacturer would be further required to certify that: a) it is registered to do business in the state or has appointed an agent for service of process; b) it maintains a Qualified Escrow Fund with an executed qualified escrow agreement that has been reviewed and approved by the State; c) it is in full compliance with the escrow statute; and d) it identifies the financial institution where it has established such Qualified Escrow Fund and identifies all deposits and withdrawals to/from said fund. In addition, neither an NPM nor its brands will be listed in the directory unless all escrow payments for any period have been fully paid and all outstanding final judgments for violations of the Model Statutes fully satisfied.

The proposed model complementary legislation will also allow the Settling State through its attorney general or other official to request information to verify the accuracy of reported information and will further permit disclosure of information to other state agencies to facilitate investigation. Civil penalties, including injunctive relief and designation of product as contraband subject to seizure, forfeiture and destruction are among the penalties imposed.

The proposed requirements will ensure that a Tobacco Product Manufacturer has met certain obligations before being permitted to sell its products instate. This will help prevent significant periods of non-compliance and will reduce the expense and difficulty of enforcement actions against NPMs.

The proposed model complementary legislation is intended to complement Alaska's Model Statute (AS 45.53), but it does not replace or amend Alaska's Model Statute.

### III. SECTION REVIEW

#### *Section 1. Findings and Purpose*

Several Settling States emphasized that in order to assist with passage of a proposed model bill, it would be helpful, and in some cases, necessary to have a legislative declaration regarding the relationship between complementary legislation, fiscal soundness of the State and advancement of public health issues.

#### *Section 2.*

##### **AS 43.50.500**

- (a) Requires PMs to annually certify that they are a participating manufacturer. Requires NPMs to annually certify that they are in compliance with the model statute, AS 45.43.
- (b) Requires PMs to attach a list of its brands to its certification.
- (c) Requires NPMs to attach a list of its brands to its certification and provide information about its instate sales.
- (d) Requires NPMs to register to do business instate or appoint an instate agent for service of process. Requires NPMs to set up a "qualified escrow fund."
- (e) Requires NPMs to provide information about its qualified escrow fund.
- (f) Requires tobacco product manufacturers to affirm the identity of the brands it manufactures. This provision is intended to prevent a manufacturer from identifying a particular brand and then attempting to assert that another party, such as an importer or distributor, is responsible for escrow, other payment or certification obligations.
- (g) Requires tobacco product manufacturers to maintain sales records for five years.

##### **AS 43.50.510**

This section establishes the requirements for the directory to be maintained by the Department of Revenue for brands of tobacco products that may be sold in the state. The provisions of this section provide a means by which a cigarette seller will be able to ascertain if a particular brand of tobacco product may be permissibly sold in the State. In addition, this section requires that the Department of Revenue shall update the directory as necessary to keep it current. Notices provided by this section may be provided by electronic mail in order to reduce the cost and expense for disseminating any notices.

##### **AS 43.50.520**

- (a) This subsection establishes that it is unlawful to sell a product that is not

included in the directory.

(b) This subsection provides for a cigarette tax credit for licensees that permissibly import directory-listed cigarettes that are later de-listed prior to retail sale.

#### **AS 43.50.530**

This section requires any non-resident or foreign NPM to establish an agent for service of process before its brands may be included on the directory established in AS 43.50.510. The appointment of such an agent would be limited to actions arising out of the enforcement of the complementary legislation or the Model Statute, AS 45.53. Subsection (c) provides for service on the commissioner of the Department of Commerce and Economic Development for failure to appoint an agent.

#### **AS 43.50.540**

This section establishes the reporting requirements for licensees. This provision will allow monitoring of the sales activity of NPM product and provides an ongoing method to evaluate compliance. This section also provides the authority to share information obtained pursuant to the complementary legislation or Model Statute with the attorney general or other state agencies. The section also grants authority to request additional information as may be necessary to verify the accuracy of information reported and to provide actual product or label samples as may be necessary to effect the purpose of the statute. Finally, subsection (e) permits the adoption of regulations to require escrow deposits on a quarterly basis.

#### **AS 43.50.550**

This section provides for penalties for noncompliance. Penalties include:

- Revocation or suspension of a licensee's license and civil penalty.
- Designation of non-compliant NPM tobacco products as contraband, seizure and forfeiture of unlawful product.
- Injunctive relief against a licensee

#### **AS 43.50.560**

Subsection (a) establishes review procedures in accordance with a AS 44.62 (Administrative Procedure Act) for determinations regarding removal or non-listing of a tobacco product brand. Subsection (b) requires licensees to certify compliance with this law. Subsection (c) provides authority to promulgate regulations. Subsection (d) provides for disgorgement of any profits upon a finding of a violation by a court.

#### **AS 43.50.590**

Most of the definitions mirror those from the MSA or the Model Statute, AS 45.53.

*Brand Family* is intended to cover all variations of a brand of tobacco products that are sold instate. It is further intended to include the brand names of tobacco products that undergo slight modification as a means of evading liability under a Settling State's Model Statute. For example, in order to avoid an ongoing violation or potential injunction against a particular brand, some manufacturers have attempted to modify the name of a brand while maintaining the product the same, i.e., changing the brand name from Distinction to Distinctive or from Bloomberg to Blumburg.

*Section 3.* Conforming amendment to Administrative Procedures Act, AS 44.62.

*Section 4.* Repeal of existing complimentary legislation.

*Section 5.* Transition—initial compliance deadlines.

*Section 6.* Effective date.

#### **IV. ASSURANCES BY PARTICIPATING MANUFACTURERS**

After constructive deliberation with several Participating Manufacturers, Settling States and the PMs agreed upon certain assurances that the PMs would provide to the States. The assurances are intended to facilitate introduction and passage of Complementary Legislation in those States where there may be concerns that the proposed.

Complementary Legislation may be construed as amending the Model Statute or MSA. The language agreed upon States in relevant part that:

the Settling States shall have no duty or obligation to enact the proposed Complementary Legislation or any similar bill, and failure to enact such legislation shall not be used against any State in any proceeding to determine whether that State has diligently enforced its escrow statute.... Additionally, enactment of the proposed Model Complementary Legislation (or similar bill containing no deviation of substance from the Model Complementary Legislation) shall not be construed as an amendment to the Model Statute or to the MSA and shall not constitute any breach of the MSA....

The NAAG Tobacco Project has secured assurances from the following Participating Manufacturers: Philip Morris, RJ Reynolds, Brown & Williamson, Lorillard, Caribbean-America Tobacco, Dharanj Imports, Japan Tobacco Int'l, King Maker, Konci G&D, Liggett, Lignum-2, Nat Sherman, Planta, PT Djarum, Santa Fe Natural Tobacco, Top Tobacco, Vector Tobacco, Virginia Carolina, and Wind River.

## V. CONCLUSION

The enactment of Complementary Legislation will streamline enforcement of the NPM Model Escrow Statutes, safeguard annual MSA payments and help combat the proliferation of youth smoking. The Attorneys General regard this legislation as extremely important and recommend that the proposed model Complementary Legislation be given legislative priority. Attorneys from the Alaska Department of Law as well as the NAAG Tobacco Project and the Complementary Legislation Working Group are available to answer additional questions on this issue of critical importance.

**HB**

**225**

**HFIN**

**FILE**



# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 225  
 (H) Publish Date: 3/28/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
 Title: "An Act relating to certain civil actions ... BRU Civil Division  
monopoly and restraint of trade statutes; ... damages ..." Component Fair Business Practices  
 Sponsor Rules Committee  
 Requester Governor Component No. 2206

**Expenditures/Revenues (Thousands of Dollars)**

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

FUND SOURCE	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
<b>TOTAL</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
 This bill updates Alaska antitrust statutes consistent with a recent United States Supreme Court precedent to allow the attorney general to bring a cause of action on behalf of both direct and indirect purchasers. Current Alaska statutes allow a cause of action only for purchasers who buy directly from the person or manufacturer that violated antitrust statutes. Because these type of actions typically involve civil actions on behalf of numerous persons and sometimes on behalf of numerous governmental entities, the bill provides for proof of antitrust damages by way of statistical methods consistent with federal law. The bill also removes the current requirement in the antitrust statutes that any antitrust plaintiff must prove willful conduct before a court may award treble damages. Federal law does not have this requirement, encouraging plaintiffs to resolve issues important to Alaska businesses and consumers in federal court, rather than state court.  
  
 Costs associated with passage of this bill will depend on the number and complexity of actions brought by the attorney general in any given year, and are too speculative to quantify at this time.

Prepared by: Joan M. Kasson Phone (907) 465-5370  
 Division Attorney General's Office Date/Time 1/27/03 8:29 AM  
 Approved by: Kathryn Daughhetee for Gregg D. Renkes, Attorney General Date 1/27/2003  
 Agency Department of Law

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: HB 225  
(H) Publish Date: 3/28/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
Title: "An Act relating to certain civil actions . . . monopoly and restraint of trade statutes; . . . damages . . ." BRU: Civil Division  
Sponsor: Rules Committee Component: Fair Business Practices  
Requester: Governor Component No.: 2206

**Expenditures/Revenues** (Thousands of Dollars)

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<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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Estimate of any current year (FY2003) cost: 0.0

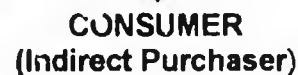
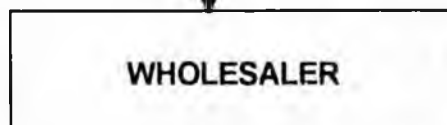
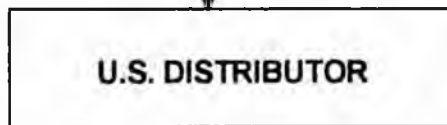
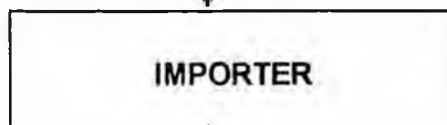
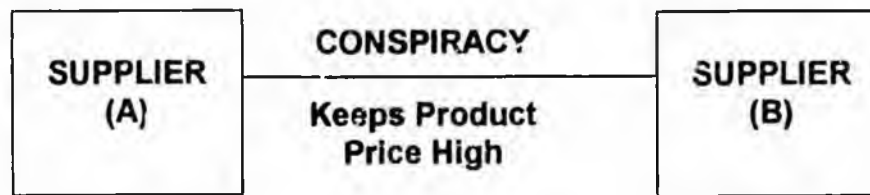
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Costs associated with passage of this bill will depend on the number and complexity of actions brought by the attorney general in any given year, and are too speculative to quantify at this time.

Prepared by: Joan M. Kasson Phone (907) 465-5370  
Division: Attorney General's Office Date/Time 1/27/03 8:29 AM  
Approved by: Kathryn Daughhetee for Gregg D. Renkes, Attorney General Date 1/27/2003  
Agency: Department of Law



In 1977 the U.S. Supreme Court decided *Illinois Brick Co. v. Illinois*, which states that federal antitrust laws do not allow "indirect purchasers" to recover damages from "upstream" antitrust violators.

The Court further held, however, that states are free to formulate their own public policy on the issue of antitrust lawsuits brought on behalf of indirect purchasers.

Inflated price passed on to consumer.

This legislation will give the Attorney General authority to bring actions on behalf of consumers who are "indirect purchasers" of products that have artificially high prices due to upstream antitrust behavior.

# STATE OF ALASKA

**DEPARTMENT OF LAW**  
*OFFICE OF THE ATTORNEY GENERAL*

*Frank H. Murkowski, Governor*

P.O. BOX 110300  
JUNEAU, ALASKA 99811-0300  
PHONE: (907)465-3600  
FAX: (907)465-2075

April 17, 2003

Representative Lesil McGuire  
House Judiciary Committee  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801

Re: HB 225 – “An act relating to certain civil actions brought by the attorney general under monopoly and restraint of trade statutes; relating to the award of damages in actions brought under those statutes”

Dear Representative McGuire:

I am writing to request that you schedule HB 225 for a hearing at your earliest convenience. This bill has passed out of the House Special Committee on Economic Development International Trade and Tourism.

This bill updates the Alaska antitrust statutes consistent with recent United States Supreme Court precedent to provide a statutory basis for the attorney general to bring a parens patrie action on behalf of state businesses, residents, and governmental entities as indirect purchasers for violations of antitrust statutes and to recover damages. In contrast to other states, under current Alaska antitrust statutes, indirect purchasers are without any remedy for antitrust injuries.

Parens patrie actions typically involve civil actions on behalf of numerous persons and sometimes on behalf of numerous governmental entities. Accordingly, the bill provides for proof of antitrust damages by way of statistical methods consistent with federal law.

The bill also removes the current requirement in the antitrust statutes that any antitrust plaintiff must prove willful conduct before a court may award treble damages.

Representative Lesil McGuire  
House Judiciary Committee

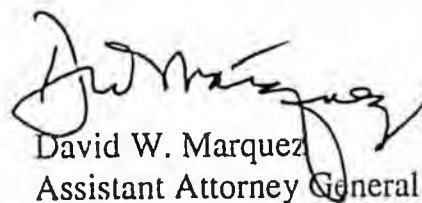
April 17, 2003  
Page 2

If you have any questions about this legislation, please do not hesitate to contact my office.

Sincerely,

GREGG D. RENKES  
Attorney General

By:



David W. Marquez  
Assistant Attorney General

DWM:lb

Cc: Mike Tibbles, Legislative Director, Office of the Governor  
Deborah Behr, Legislation and Regulations Attorney, Department of Law

## SPONSOR STATEMENT

In 1977, the US Supreme Court issued a ruling in a seminal antitrust case called *Illinois Brick Co. v. Illinois*. The case held that federal antitrust laws do not allow "indirect purchasers" to recover damages from "upstream" antitrust violators. The Court further held, however, that states are free to formulate their own public policy on the issue of anti trust lawsuits brought on behalf of indirect purchasers. Since the *Illinois Brick* decision, over 30 states have passed laws that allow recovery of damages by indirect purchasers under various state antitrust statutes. This legislation would update Alaska antitrust statutes to allow the Attorney General to bring actions on behalf of indirect purchasers.

An indirect purchaser is a person who does not buy the suspect product directly from the wrongdoer. For example, suppose two drug manufacturers conspire to keep prescription drug prices high. A consumer who buys the drug from a pharmacy is an "indirect purchaser" because the pharmacy has not violated the antitrust laws. Currently, only direct purchasers, such as the distributor who bought directly from the drug manufacturer, have the option to bring suit for antitrust violations like price-fixing. Since these entities rarely pass on the overcharges they recover, indirect consumers don't really benefit from the suit.

This legislation also removes the requirement of proof of willfulness for treble damages, and provides for statistical methods of proof consistent with federal law. This allows the Attorney General to bring antitrust suits on behalf of Alaska's indirect purchasers, under Alaska law in an Alaskan court, rather than federal court.

## House ECON DEV, INT'L. TRADE & TOURISM Minute



Apr 16, 2003

### HB 225-MONOPOLY AND RESTRAINT OF TRADE ACTIONS

CHAIR HEINZE announced that the committee would hear HOUSE BILL NO. 225, "An Act relating to certain civil actions brought by the attorney general under monopoly and restraint of trade statutes; relating to the award of damages in actions brought under those statutes; and providing for an effective date." [HB 225 was sponsored by the House Rules Standing Committee at the request of the governor.]

Number 0096

CLYDE (ED) SNIFFEN, JR., Assistant Attorney General, Fair Business Practices Section, Civil Division (Anchorage), Department of Law, presented HB 225 to the committee, informing members that his duties include enforcement of Alaska's antitrust and consumer protection statutes. Mr. Sniffen noted that HB 225 is a bill [the department] calls "the Illinois Brick repealer bill." He explained that currently there is a [1977 U.S. Supreme Court] case, Illinois Brick Co. v. Illinois, which stands for the proposition that indirect purchasers of goods cannot sue "upstream antitrust violators" for antitrust violations.

MR. SNIFFEN illustrated with a chart, noting that if a conspiracy between two suppliers results in keeping product prices high, there is a violation of antitrust law. In his example, the direct purchaser of the goods, the importer, then passes the high price on to the distributor, the wholesaler, the retailer, and, ultimately, the consumer. Under current federal and state antitrust law, the only person with authority to bring an action against the antitrust violators would be the importer who'd purchased directly from the wrongdoers.

MR. SNIFFEN said the consumer, however, who ultimately bears the burden of paying a higher price for the product, wouldn't have that right. Therefore, HB 225 gives the attorney general the right to represent consumers who are indirect purchasers in actions against antitrust violators who may have committed harm "upstream."

Number 0250

MR. SNIFFEN indicated this legislation is something [the department] has been trying to get passed for a number of years. The state's antitrust law was passed in 1975, whereas the Illinois Brick case was decided in 1977. Since that time, Alaska just hasn't updated its antitrust law to give the attorney general the authority to bring these kinds of actions. He further explained:

In recent multistate cases that we've been involved in, the State of Alaska has lost out on significant recoveries because we do not have the authority to bring actions on behalf of consumers in these kinds of cases. One involved a couple of vitamin manufacturers [that] a bunch of states sued for conspiring to keep

prices of vitamins high. And the settlement in that case gave a million dollars to every state that had a law like this.

Because Alaska did not have this law, we initially got zero. And we argued with the settlement committee that our laws actually should allow us to recover some money; we ended up with a hundred thousand dollars, but it was far short of the million dollars we would have gotten had we had this kind of law in place.

MR. SNIFFEN indicated there is no opposition to this legislation that the department is aware of, and concluded by saying it makes good sense for Alaska.

Number 0361

MR. SNIFFEN, in response to an observation from Representative Crawford, said this bill had been before [a previous legislature] and was heard by a number of committees without opposition, but hadn't had a floor hearing.

Number 0438

REPRESENTATIVE CISSNA asked what is meant by the following language found in subsection (h) on page 3:

A distribution procedure authorized by the court under this subsection must afford each governmental entity or person participating in the civil action a reasonable opportunity to secure that entity's or person's appropriate portion of the net monetary relief.

MR. SNIFFEN said it essentially means that whatever distribution plan [the state] comes up with as a result of an action against an antitrust violator must be approved by the court. A plan has to return money, first of all, to the consumers who are harmed and, if there is money left over, to other agencies or entities harmed by the conduct. Remaining funds might go to the state, or [the state] could establish other distribution mechanisms. He explained:

For example, if the conduct involved music CDs [compact disks], which is actually a case we're involved in now, we could ... give money to libraries and schools to purchase CDs. But those plans would be drawn together and submitted to the court, and the court would have to approve them in accordance with the instruction of the statute that everyone gets their fair share of the proceeds.

MR. SNIFFEN pointed out that in some cases there might not be 100-percent recovery. "We may only recover a portion of the actual damages that we can allege, or we may agree to settle the case for something that's less than 100 percent of everyone's damage," he told members, noting that such a case would require devising a system to equitably - perhaps on a pro rata basis - distribute the recovery among those who were harmed.

Number 0588

REPRESENTATIVE CISSNA requested confirmation that after money was distributed to consumers who were harmed, leftover money could be put into state services that "would make restitution,"

in a manner of speaking.

MR. SNIFFEN affirmed that. He said the state now does cy-pres distribution plans [from a French term that means "as near as (possible)"]. He indicated the department would have that option, and added, "It's broad enough that we could fashion the remedies with the recoveries we get in a number of ways. But that certainly could be one of them."

Number 0687

REPRESENTATIVE CISSNA moved to report HB 225 out of committee with individual recommendations [and accompanying fiscal note(s)]. There being no objection, HB 225 was reported from the House Special Committee on Economic Development, International Trade and Tourism.

---

Bill Root:  |



TO REPORT PROBLEMS WITH BASIS INQUIRY

LIVE KTOO STREAMS

[Return to Basis Main Menu \(23 Legislature\)](#)

[Return to Legislature Home Page](#)

## SECTIONAL ANALYSIS – HB 225 and SB 161

**“An Act relating to certain civil actions brought by the attorney general under monopoly and restraint of trade statutes; relating to the award of damages in actions brought under those statutes; and providing for an effective date.”**

---

Section 1. AS 45.50.576 is amended as follows:

**Sec. 45.50.576. Suits by persons injured; treble damages.**

This section is being modified to remove the requirement that a defendant be found to have acted “willfully” before treble damages can be awarded. Removing this requirement will make this section consistent with other state and Federal antitrust acts. *See* 15 U.S.C. § 15a.

Subsection (b) is modified to remove duplicative language and make the section consistent with the new section added below.

Section 2. AS 45.50 is amended to add a new section as follows:

**Sec. 45.50.577. Enforcement by attorney general.**

This new section will accomplish several things. Currently, the State of Alaska, through the attorney general, is without authority to bring an action on behalf of consumers for “indirect damages.” Indirect damages are damages that a consumer may suffer because of an antitrust violation that occurred “upstream” from the consumer transaction. For example, when a consumer purchases drugs from a pharmacy, the price may be artificially high because of an illegal deal made between two competing manufacturers. The price increase that results from this illegal agreement is passed down to the wholesaler, then to the distributor, then to the retailer, who finally passes the increase to the consumer.

The entity “directly” harmed in the above scenario is the wholesaler who bought the drugs directly from the manufacturer. Thus, under current antitrust law, the only person who can bring an antitrust action against the manufacturers is the wholesaler, or other persons who bought directly from the manufacturer (some

state agencies make these direct purchases). This rule of law was enunciated in a U.S. Supreme Court decision called *Illinois Brick Co. v. Illinois*. That case left open, however, the opportunity for individual states to enact their own laws that would allow the recovery of these “indirect” damages under state-specific antitrust statutes. In response to this case, several states have enacted such laws, called “*Illinois Brick* repealer” statutes because they repeal the effect of the *Illinois Brick* decision.

Alaska has been involved in several multi-state antitrust actions in the last several years. Ever since the tobacco litigation, states’ attorneys general have cooperated with each other to bring these actions against antitrust violators for various kinds of illegal antitrust conduct. The claims Alaska has been able to assert in these cases, however, are limited to claims on behalf of state agencies that have been directly harmed by the alleged illegal conduct. We have limited and questionable authority to make claims on behalf of consumers for their “indirect purchases” of drugs and other products. For example, Alaska lost out on several hundred thousand dollars in consumer relief recently in the “Vitamins” case. That case involved allegations of illegal contracts between vitamin manufacturers. Alaska was initially excluded from the settlement because we did not have an “*Illinois Brick* repealer.” We eventually received about \$100,000, while other states that had such a statute received about \$1 million.

This section provides that the attorney general can bring an action in superior court in the name of the state, and on behalf of consumers and nonstate governmental entities (which includes municipalities) for the recovery of **both** direct and indirect damages.

Subsections (a) and (b) accomplish the above.

Subsection (c) requires the court to exclude from any monetary award any amount that duplicates amounts that have already been awarded for the same injury. The court can also allocate part of an award to persons who have excluded their claims under subsection (e).

Subsection (d) allows the recovery of costs, full reasonable attorney’s fees, and treble damages if the state is the prevailing party.

Subsections (e) and (f) require publication of the proposed action and an opportunity for a person or governmental entity to elect to be excluded from the action. Any judgment issued in the action precludes claims by anyone who does not elect to be excluded.

Subsection (g) provides that any action brought under this section cannot be dismissed without approval of the court.

Subsection (h) provides that any recovery under this section must be distributed in accordance with court instructions, and requires that everyone on whose behalf the action was brought be given an opportunity to recover the participant's appropriate portion of the proceeds.

Subsection (i) provides that only the attorney general can seek monetary relief for persons who suffer indirect injury sustained by a violation of the antitrust laws.

**Section 3.** AS 45.50 is amended by adding a new section as follows:

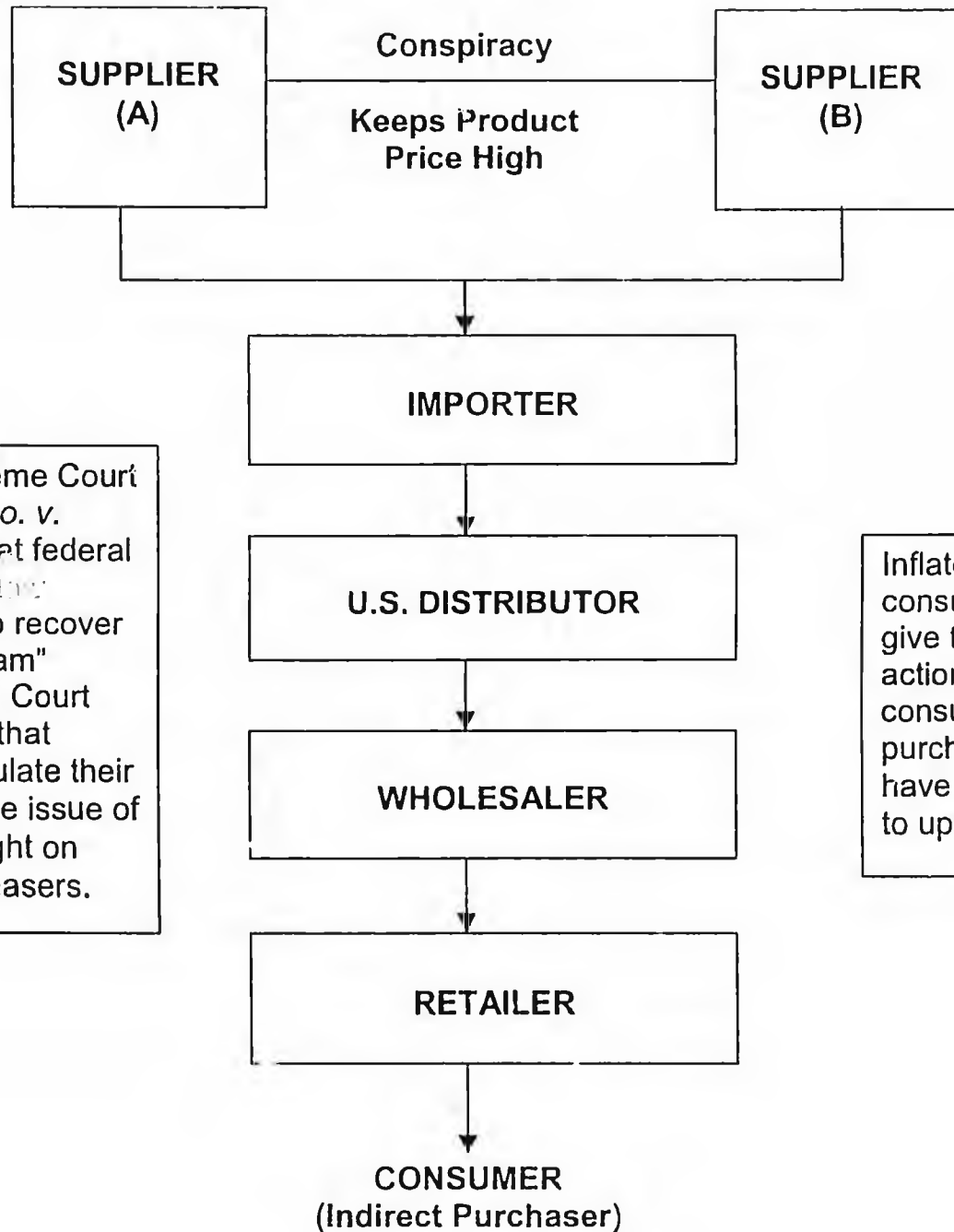
**Sec. 45.50.579. Proof of aggregate damages.**

This section provides that the attorney general can recover aggregate damages using accepted sampling methods approved by the court.

**Section 4. Applicability.** AS 45.50.596 is amended as follows:

This section provides that the Act applies to actions occurring on or after the effective date of the Act.

HB 225



In 1977 the U.S. Supreme Court decided *Illinois Brick Co. v. Illinois*, which states that federal antitrust laws do not allow "indirect purchasers" to recover damages from "upstream" antitrust violators. The Court further held, however, that states are free to formulate their own public policy on the issue of antitrust lawsuits brought on behalf of indirect purchasers.

Inflated price passed on to consumer. This legislation will give the AG authority to bring actions on behalf of consumers who are "indirect purchasers" of products that have artificially high prices due to upstream antitrust behavior.

**HB**

**225**

SFIN

FILE

# SENATE FINANCE COMMITTEE REPORT

REPORTED OUT  
 MAY 15 2003  
 SENATE FINANCE  
 COMMITTEE

DATE: 5/10/03

FURTHER:

DATE TURNED  
 IN TO OFFICE: 15 May 2003

Finance Committee considered

HOUSE BILL NO. 225

## HB 225 MONOPOLY AND RESTRAINT OF TRADE ACTIONS

"An Act relating to certain civil actions brought by the attorney general under monopoly and restraint of trade statutes; relating to the award of damages in actions brought under those statutes; and providing for an effective date."

and recommends:

be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

attached amendment(s)

adopt Letter of Intent by \_\_\_\_\_ Committee

further referral to \_\_\_\_\_ Committee

**Senate Bill:**

same title

new title

**House Bill:**

same title

technical title

new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
Low	1/27/03	*		#1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Chris Heckler</i>	✓			
<i>John ...</i>			✓	
<i>George ...</i>			✓	
<i>J.C. B. Leander</i>	✓			
<i>Ben Stevens</i>	✓			
COCHAIR:				
COCHAIR: <i>Asmy ...</i>	✓			

MAY 15 2003

SENATE FINANCE  
11/16/01 ES

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: HB 225  
(H) Publish Date: 3/28/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
Title: "An Act relating to certain civil actions . . . BRU Civil Division  
monopoly and restraint of trade statutes; . . . damages . . ." Component Fair Business Practices  
Sponsor Rules Committee  
Requester Governor Component No. 2206

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
<b>TOTAL</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>

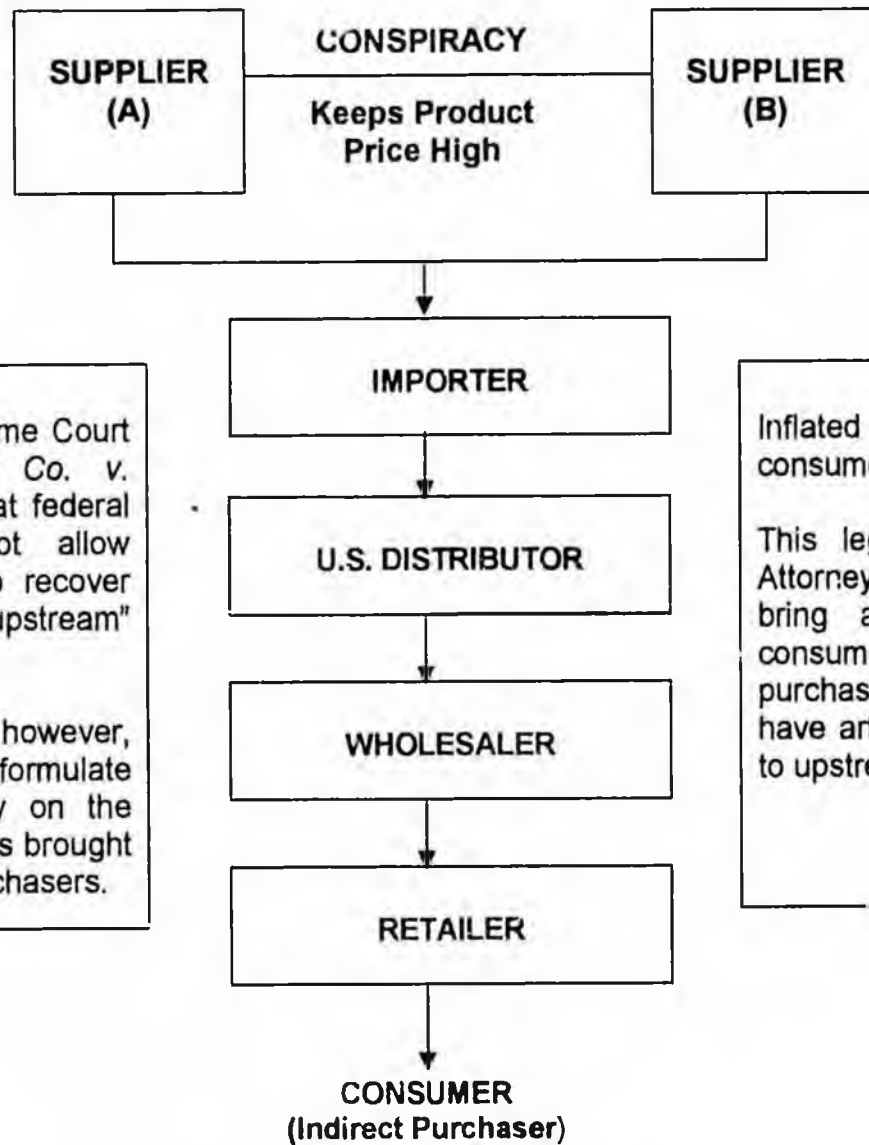
Estimate of any current year (FY2003) cost: 0.0  
Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

POSITIONS	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
This bill updates Alaska antitrust statutes consistent with a recent United States Supreme Court precedent to allow the attorney general to bring a cause of action on behalf of both direct and indirect purchasers. Current Alaska statutes allow a cause of action only for purchasers who buy directly from the person or manufacturer that violated antitrust statutes. Because these type of actions typically involve civil actions on behalf of numerous persons and sometimes on behalf of numerous governmental entities, the bill provides for proof of antitrust damages by way of statistical methods consistent with federal law. The bill also removes the current requirement in the antitrust statutes that any antitrust plaintiff must prove willful conduct before a court may award treble damages. Federal law does not have this requirement, encouraging plaintiffs to resolve issues important to Alaska businesses and consumers in federal court, rather than state court.  
  
Costs associated with passage of this bill will depend on the number and complexity of actions brought by the attorney general in any given year, and are too speculative to quantify at this time.

Prepared by: Joan M. Kasson Phone (907) 465-5370  
Division: Attorney General's Office Date/Time: 1/27/03 8:29 AM  
Approved by: Kathryn Daughhelee for Gregg D. Renkes, Attorney General Date: 1/27/2003  
Agency: Department of Law



In 1977 the U.S. Supreme Court decided *Illinois Brick Co. v. Illinois*, which states that federal antitrust laws do not allow "indirect purchasers" to recover damages from "upstream" antitrust violators.

The Court further held, however, that states are free to formulate their own public policy on the issue of antitrust lawsuits brought on behalf of indirect purchasers.

Inflated price passed on to consumer.

This legislation will give the Attorney General authority to bring actions on behalf of consumers who are "indirect purchasers" of products that have artificially high prices due to upstream antitrust behavior.

Provided by the Department of Law

FRANK H. MURKOWSKI  
GOVERNOR  
GOVERNOR@GOV.STATE.AK.US



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March 26, 2003

The Honorable Pete Kott  
Speaker of the House  
Alaska State Legislature  
State Capitol, Room 208  
Juneau, AK 99801-1182

Dear Speaker Kott:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to legal action brought by the attorney general on behalf of direct and indirect purchasers under the statutes on monopolies and restraint of trade (antitrust statutes).

This bill updates the Alaska antitrust statutes consistent with recent United States Supreme Court precedent to provide a statutory basis for the attorney general to bring a parens patrie action on behalf of state businesses, residents, and governmental entities as indirect purchasers for violations of our antitrust statutes and to recover damages. In contrast to other states, under current Alaska antitrust statutes, indirect purchasers are without any remedy for antitrust injuries. Indirect purchasers are usually consumers, governmental entities, and small businesses in the wholesale and retail distribution chain of goods and services. Alaska antitrust statutes currently allow a cause of action only for purchasers who buy directly from the person or manufacturer that violated the antitrust statutes. By allowing only the attorney general a cause of action on behalf of both direct and indirect purchasers, Alaska consumers, businesses, and governmental entities will have a remedy for redress of antitrust violations without clogging the courts with multiple lawsuits individually brought by those purchasers.

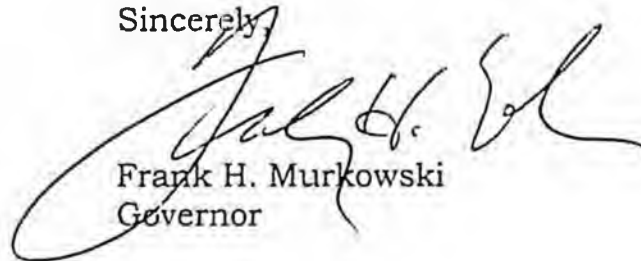
Parens patrie actions typically involve civil actions on behalf of numerous persons and sometimes on behalf of numerous governmental entities. Accordingly, the bill provides for proof of antitrust damages by way of statistical methods consistent with federal law.

The Honorable Pete Kott  
March 26, 2003  
Page 2

The bill also removes the current requirement in the antitrust statutes that any antitrust plaintiff must prove willful conduct before a court may award treble damages. Under federal law, a plaintiff does not have to prove willful conduct to receive treble damages. The current law has the effect of chilling plaintiffs from bringing antitrust cases in Alaska courts, in favor of resolving issues important to Alaska businesses and consumers in the federal courts.

I urge your support of this important legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank H. Murkowski". The signature is stylized and cursive, with a large initial "F" and "M".

Frank H. Murkowski  
Governor

SENATE FINANCE COMMITTEE

SIGN-IN

HB 225-MONOPOLY AND RESTRAINT OF TRADE ACTIONS

NAME: DAVID MARQUEZ Subject/Bill No: 225  
Co./Dept./Title: ASST ATTORNEY GENERAL Phone: 4352132  
Address: 4<sup>th</sup> FLR, DIAMOND COLLEGE Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions



SENATE FINANCE COMMITTEE

SIGN-IN

HB 225-MONOPOLY AND RESTRAINT OF TRADE ACTIONS

NAME: DAVID MARQUEZ Subject/Bill No: HB 225

Co./Dept./Title: ASST ATTORNEY GENERAL Phone: 465-2132

Address: 4<sup>th</sup> floor Diamond Courthouse Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

*ASST A.G. Ed Sniffen will be on line to present bill*

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_

Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_

Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_

Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

**HB**

**226**

**HFIN**

**FILE**



# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 226  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Natural Resources  
 Title Organic Food BRU Agricultural Development  
 Component Agricultural Development  
 Sponsor Rep. Stoltze, Gatto, Harris, Wilson  
 Requester \_\_\_\_\_ Component No. 455

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	30.0	30.0	30.0	30.0	30.0	30.0
Travel	5.0	5.0	5.0	5.0	5.0	5.0
Contractual	1.5					
Supplies	0.5	0.5	0.5	0.5	0.5	0.5
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>37.0</b>	<b>35.5</b>	<b>35.5</b>	<b>35.5</b>	<b>35.5</b>	<b>35.5</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	37.0	35.5	35.5	35.5	35.5	35.5
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>37.0</b>	<b>35.5</b>	<b>35.5</b>	<b>35.5</b>	<b>35.5</b>	<b>35.5</b>

Estimate of any current year (FY2002) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Funding is requested for a part-time Agricultural Inspector I position. In addition, funding is requested for training, travel to conduct inspections and certifications, and supplies.

Prepared by: House Finance Committee Phone \_\_\_\_\_  
 Approved by: *W.K. Williams* Date/Time 5/7/03 9:43 AM  
 Rep. Williams Date 5/7/2003  
 Approved by: *[Signature]* Date 5/7/2003  
 Rep. Harris

# ALASKA STATE LEGISLATURE

*Chair:*  
House Finance Subcommittees for,  
Department of Public Safety  
Department of Law

*Member:*  
House Finance Committee  
Legislative Council



*Session:*  
Alaska State Capitol  
Juneau, AK 99801-1182  
Phone: (907) 465-4958  
Fax: (907) 465-4928

*Interim:*  
PO Box 464  
Chugiak, AK 99567

## REPRESENTATIVE BILL STOLTZE

Representative\_Bill\_Stoltze@legis.state.ak.us

### Sponsor Statement for House Bill 226

"An Act relating to the sale, offer for sale, representation, and labeling of food or other agricultural products as organic, and to the state organic certification program; and providing for an effective date."

---

In 2001 the final rule for the federal definition of "organic" was adopted; the law allowed for a transition period from mid-2001 to October, 2002, giving states 14 months to come into line with the federal definition of organic. House Bill 432 was introduced in April of 2002, and it contained language to make this change. It did not pass before the twenty-second legislative session adjourned, yet the need for the change still lingers.

House Bill 226 is simply a measure to bring the state of Alaska's definition of organic agricultural products in line with the federal definition. It would create an Alaska organic certification program, providing in-state certification for organic agricultural producers, processors, and handlers.

At this time organic operators are paying to fly certification specialists to Alaska whose fees may be as high as \$1,500 to \$3,000 to verify Alaskan operations comply with the federal organic standards. With the passage of HB 226, qualified inspectors would complete the inspection process, with the final certification process being performed by a designated state official.

I ask for your consideration and support of HB 226 to alleviate the unnecessary burden on organic agricultural operators for the expense, and timing issues, created by not having an Alaskan organic certification program.

DISTRICT 16

BIRCHWOOD • BUTTE • CHUGIAK • EKLUTNA • FAIRVIEW LOOP  
KNIK RIVER ROAD • LAZY MOUNTAIN • PALMER • PETERS CREEK

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 226  
 (H) Publish Date: 4/10/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Natural Resources  
 Title: Organic Food BRU: Agricultural Development  
 Component: Agricultural Development  
 Sponsor: Reps. Stoltze, Gatto, Harris, Wilson  
 Requester: (H) RES Component No. 455

**Expenditures/Revenues (Thousands of Dollars)**

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	30.0	30.0	30.0	30.0	30.0	30.0
Travel	5.0	3.0	3.0	3.0	3.0	3.0
Contractual	1.5					
Supplies	0.5	0.5	0.5	0.5	0.5	0.5
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>37.0</b>	<b>33.5</b>	<b>33.5</b>	<b>33.5</b>	<b>33.5</b>	<b>33.5</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF	37.0	33.5	33.5	33.5	33.5	33.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
<b>TOTAL</b>	<b>37.0</b>	<b>33.5</b>	<b>33.5</b>	<b>33.5</b>	<b>33.5</b>	<b>33.5</b>

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

**POSITIONS**

Full-time						
Part-time	1	1	1	1	1	1
Temporary						

**ANALYSIS: (Attach a separate page if necessary)**

Funding is requested for a part-time Agricultural Inspector I position. In addition, funding is requested for training, travel to conduct inspections and certifications, and supplies.

Prepared by: Dean Brown Phone 761-3867  
 Division: Agriculture Date/Time 4/8/2003  
 Approved by: Tom Irwin, Commissioner Date 4/8/2003  
 Agency: Natural Resources

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 7, 2003

**SUBJECT:** Organic food; sectional summary (HB226)

**TO:** Representative Bill Stoltze  
Attn: Barbara Bitney

**FROM:** Tamara Brandt Cook *TBC*  
Director

**Sec. 1.** Prohibits a person from selling or labeling an agricultural product as "organic" unless it has been certified under federal law or under the state organic certification program established in this bill.

**Sec. 2.** Permits the Department of Natural Resources to establish a state organic certification program for agricultural products that meet federal requirements for approval. Permits the department to apply for accreditation as certifying agent under federal law.

**Sec. 3.** Permits the adoption of regulations to carry out this chapter on organic foods (AS 03.58) and to establish fees for services provided by the department.

**Sec. 4.** Provides that the section dealing with enforcement is in addition to remedies available under federal law.

**Sec. 5.** Provides that the chapter does not apply to meat, fish, or poultry. AS 17.06.010-17.06.070, not changed in this bill, applies to the sale as organic of meat, fish, poultry, or processed food.

**Sec. 7.** Repeals definitions that now appear applicable to this chapter.

**Secs. 8 and 10.** Permits the Department of Natural Resources to adopt regulations to implement the changes made in this bill, but the regulations do not take effect before the substantive bill sections take effect. This section is given an immediate effective date.

**Sec. 9.** The revisor is directed to change the name of the chapter.

TBC:med  
03-369.med

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 26, 2003

**SUBJECT:** Organic foods (Work Order No. 23-LS0880A)

**TO:** Representative Bill Stoltze  
Attn: Barbara Bitney

**FROM:** Tamara Brandt Cook *TBC*  
Director

The draft dealing with organic foods contains in bill sec. 6 an "applicability" section that provides: "This chapter does not apply to meat, fish, or poultry." You ask why this provision is included in the draft. The draft amends AS. 03.58. That chapter now does not apply to meat, fish, or poultry. (AS 03.58.070(2)) I have found another chapter, not changed in this draft, that deals with the sale as organic of meat, fish, poultry, and processed food. (AS 17.06.010 - 17.06.070, see definition in AS 17.06.070(2))

TBC:med  
03-358.med

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

Alaska Organic Association  
P.O. Box 2992  
Palmer, Alaska 99645

April 7, 2003

Representative Bill Stoltz  
Juneau, Alaska 99811-0001

Representative Bill Stoltz

On behalf of the Alaska Organic Association (AOA) I urge you to pass the Organic Bill HB 226 that allows the State of Alaska to become accredited with the National Organic Program (NOP) in order to certify Alaskan organic farms and food products.

Until October 21, 2002, when the National Organic Program (NOP) took over the accreditation of state and private agencies that certified organic operations, the Alaska Organic Association performed the role of certifier in Alaska. Now, the specifics of the federal government's accreditation application prohibit AOA from becoming accredited and continuing its organic certification program. Without the State of Alaska taking over this role, all organic growers and producers in this state will have to be certified by an out-of-state program. From a marketing standpoint it will be devastating for Alaskan organic growers and producers to have to stamp a label of certification from another state on their Alaska Grown produce. It will also be an embarrassment to the State of Alaska if it is unable to support a local viable sustainable industry. This year there are organic growers that will have to certify with the Washington State program at the expense of approximately \$2,000.00 or more. This excessive cost eliminates some Alaskan growers from certifying their produce as organic with the Federal government while begrudgingly being paid to Washington State by others.

Please refer to HB 226 that specifically addresses the issue of the State of Alaska becoming accredited with the federal government to certify organic operations. The organic growers in the State of Alaska need your support in assuring the passage of this bill so that we can be certified organic here in Alaska. We now face severe federal fines if we market organic produce without certification.

On behalf of the Alaska Organic Association and all organic growers in the State of Alaska, I thank you for your attention and support of this bill.

Sincerely,

River Beun, president  
Alaska Organic Association

FROM :

FAX NO. :

Apr. 07 2003 11:46AM P1



Washington State Department of Agriculture  
Organic Food Program

### APPLICATION

## ORGANIC CERTIFICATION COST-SHARE PROGRAM

The Organic Certification Cost-Share Program is designed to provide assistance to organic producers, processors, and handlers who receive and/or update their organic certification between October 1, 2002 and September 30, 2003. Cost-Share payments will be limited to 75 percent of an individual producer, processor, or handler's certification costs, up to a maximum of \$500 per certification.

Only producers, processors, and handler within Washington State are eligible to receive cost-share money from the Washington State Department of Agriculture (WSDA). If your certified farm or facility is located in a state outside of Washington State, you must contact your state department of agriculture for a cost-share application.

CONTACT PERSON		
BUSINESS NAME		
MAILING ADDRESS		
CITY	STATE	ZIP
PRIMARY PHONE NUMBER		ALTERNATE PHONE NUMBER
FAX NUMBER		EMAIL ADDRESS

In order to receive cost-share funds, eligible producers, processor, or handlers must complete this application and the W-9 form each time organic certification costs are incurred. Certification costs include those fees designated under chapter 15-157 WAC as "New Applicant Fee", "Facility Fee", "Site Fee", and "Certification Fee". Export fees, late fees, and transitional certification costs are not eligible for cost-share funds.

Please fill in the amount of certification costs.

Certification Costs: \$ \_\_\_\_\_

If someone other than you or your company pays for your certification, please list the name and phone number of the entity who pays the certification costs.

NAME OF ENTITY WHO PAYS	PHONE NUMBER
-------------------------	--------------

Please complete and submit the enclosed W-9 form along with this application. The W-9 form must be submitted in order to receive the full amount available under the cost-share program.

Are you certified by Washington State Department of Agriculture?  Yes  No

If Yes, what is your certification number? Certification Number: \_\_\_\_\_

If No, you must be certified by a USDA accredited organic certification agency and you must attach a copy of your organic certificate to this application for cost-share funds.

Agreement [The person signing the application must be authorized to represent the firm.]

Signature of Representative \_\_\_\_\_ Date \_\_\_\_\_

Print Name \_\_\_\_\_ Title \_\_\_\_\_

SEND APPLICATION TO:  
Washington State Dept of Agriculture  
PO Box 42560  
Olympia, WA 98504-2560



STATE OF WASHINGTON  
DEPARTMENT OF AGRICULTURE  
P.O. Box 42560 • Olympia, Washington 98504-2560 • (360) 902-1800

March 25, 2003

Application Number: 1315

State: Alaska

Mark Rempel  
Rempel Family Farm  
HCO2-7344  
Palmer Ak 99645

---

Dear Mark Rempel:

Your application has been received. An inspection of your facility will take place later this year.

**Cost Share** - Though the 2002 National Farm Bill, you are eligible to receive 75% of your annual certification fees up to \$500. Although you are seeking certification through the Washington Department of Agriculture, the cost share reimbursement is allocated through the individual states. If you choose to apply for this Cost-Share Program you must contact the Alaska Department of Agriculture.

If you have any questions, Please contact Rachael Jamison at (360) 902-1851, FAX (360) 902-2087, email: [rjamison@agr.wa.gov](mailto:rjamison@agr.wa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Carr".

Richard Carr  
Organic Food Inspector



**Mark Rempel  
Rempel Family Farm**

HC02 Box 7344  
Palmer, Alaska 99645  
(907) 745-5554  
mtrempe!@mtaonline.net

.....

February 26, 2003

Dear Representative Stoltze:

Thank you for your support of Alaska agriculture. I have been farming organically in the Matanuska Valley for over ten years and have been certified organic by Alaska Organic Association since 1999. There are some issues that I believe need to be addressed soon to keep Alaska agriculture moving ahead and not hesitating.

First, Alaska needs to become accredited to certify organic products in accordance with the USDA National Organic Policy. The NOP now outlaws all other standards of organic production in the U. S., so Alaska's law must conform to the federal law if we are to have a State certifying program.

Since Alaska has not conformed its organic law to the national standard, I am having to go out of state (to Washington) to maintain my status as a certified organic farmer for this season. I am ashamed and will not enjoy explaining to customers about the change. It also will cost me about four times as much as it did through Alaska Organic Association (500.00 as opposed to 2000.00).

Second, the Division of Agriculture needs to remain relatively unchanged. There seemed to be some need for better personnel dynamics, but the Division has fulfilled its defined mission well. The suggested change of mission expressed in the Legislative Audit could be explored, but that was not their defined mission. I believe that the conclusions of the auditors were not grounded in sound agriculture or government. People are the best entrepreneurs, not government. Finding new markets may need some assistance by government, but let people grow the industry at a sustainable pace so that we don't get another situation like Mt. McKinley Meats, Della, Pt. McKenzie, etc.

We need the Division to interface with the USDA, one of the largest federal departments, or else we will not be able to effectively interface with that aspect of the Federal Government. Not only farmers would lose if that fell apart.

We need the Division for inspector services. Potato growers, organic growers, and the fishing industry need inspectors that are accessible and not peripheral to some other agency.

We need the Division as a cohesive face for existing and prospective farmers to deal with when they need regulatory guidance, information, and protection. Dealing with government is rarely easy and to scatter it as proposed by the Legislative Audit would be very hard on current Alaska Agriculture let alone improving its future.

I am opposed to having another bureaucrat director in the Division of Agriculture. We need a farmer. Larry DeVilbiss has farmed many different crops in the Matanuska Valley successfully, he is well liked by fellow farmers (conventional and organic alike) and he understands government well. Please, appoint and confirm Larry DeVilbiss Director of Division of Agriculture.

Sincerely,

  
Mark Rempel

**HB**

**226**

**SFIN**

**FILE**

# SENATE FINANCE COMMITTEE REPORT

REPORTED OUT  
 MAY 16 2003  
 SENATE FINANCE COMMITTEE

DATE: 5/13/03

FURTHER:

DATE TURNED  
IN TO OFFICE: 16 May 2003

Finance Committee considered

HOUSE BILL NO. 226

HB 226 ORGANIC FOOD

"An Act relating to the sale, offer for sale, representation, and labeling of food or other agricultural products as organic, and to the state organic certification program; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**

- same title
- new title

**House Bill:**

- same title
- technical title
- new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
DNR	5/7/03	37.0		#2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Adrian Taylor</i>	✓			
<i>St. Elizabeth</i>	✓			
<i>Bea Jensen</i>	✓			
<i>Thomas C. Os</i>			✓	
COCHAIR: <i>Lyle Green</i>	✓			
COCHAIR: <i> </i>				

MAY 16 2003

SENATE FINANCE COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: HB 226  
(H) Publish Date: 5/7/2003

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Natural Resources  
Title: Organic Food BRU: Agricultural Development  
Component: Agricultural Development  
Sponsor: Rep. Stoltze, Gatto, Harris, Wilson  
Requester: \_\_\_\_\_ Component No. 455

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	30.0	30.0	30.0	30.0	30.0	30.0
Travel	5.0	5.0	5.0	5.0	5.0	5.0
Contractual	1.5					
Supplies	0.5	0.5	0.5	0.5	0.5	0.5
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>37.0</b>	<b>35.5</b>	<b>35.5</b>	<b>35.5</b>	<b>35.5</b>	<b>35.5</b>

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

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	37.0	35.5	35.5	35.5	35.5	35.5
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>37.0</b>	<b>35.5</b>	<b>35.5</b>	<b>35.5</b>	<b>35.5</b>	<b>35.5</b>

Estimate of any current year (FY2002) cost: 0.0  
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Funding is requested for a part-time Agricultural Inspector I position. In addition, funding is requested for training, travel to conduct inspections and certifications, and supplies.

Prepared by: House Finance Committee Phone: \_\_\_\_\_  
Date/Time: 5/7/03 10:33 AM  
Approved by: \_\_\_\_\_ Date: 5/7/2003  
Rep. Williams  
Approved by: \_\_\_\_\_ Date: 5/7/2003  
Rep. Harris

# ALASKA STATE LEGISLATURE

*Chair:*  
House Finance Subcommittees for,  
Department of Public Safety  
Department of Law

*Member:*  
House Finance Committee  
Legislative Council



*Session:*  
Alaska State Capitol  
Juneau, AK 99801-1182  
Phone: (907) 465-4958  
Fax: (907) 465-4928

*Interim:*  
PO Box 464  
Chugiak, AK 99567

## REPRESENTATIVE BILL STOLTZE

Representative\_Bill\_Stoltze@legis.state.ak.us

### Sponsor Statement for House Bill 226

“An Act relating to the sale, offer for sale, representation, and labeling of food or other agricultural products as organic, and to the state organic certification program; and providing for an effective date.”

---

In 2001 the final rule for the federal definition of “organic” was adopted; the law allowed for a transition period from mid-2001 to October, 2002, giving states 14 months to come into line with the federal definition of organic. House Bill 432 was introduced in April of 2002, and it contained language to make this change. It did not pass before the twenty-second legislative session adjourned, yet the need for the change still lingers.

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I ask for your consideration and support of HB 226 to alleviate the unnecessary burden on organic agricultural operators for the expense, and timing issues, created by not having an Alaskan organic certification program.

DISTRICT 16

BIRCHWOOD • BUTTE • CHUGIAK • EKLUTNA • FAIRVIEW LOOP  
KNIK RIVER ROAD • LAZY MOUNTAIN • PALMER • PETERS CREEK

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 7, 2003

**SUBJECT:** Organic food; sectional summary (HB226)

**TO:** Representative Bill Stoltze  
Attn: Barbara Bitney

**FROM:** Tamara Brandt Cook *TBC*  
Director

Sec. 1. Prohibits a person from selling or labeling an agricultural product as "organic" unless it has been certified under federal law or under the state organic certification program established in this bill.

Sec. 2. Permits the Department of Natural Resources to establish a state organic certification program for agricultural products that meet federal requirements for approval. Permits the department to apply for accreditation as certifying agent under federal law.

Sec. 3. Permits the adoption of regulations to carry out this chapter on organic foods (AS 17.06.58) and to establish fees for services provided by the department.

Sec. 4. Provides that the section dealing with enforcement is in addition to remedies available under federal law.

Sec. 5. Provides that the chapter does not apply to meat, fish, or poultry. AS 17.06.010-17.06.070, not changed in this bill, applies to the sale as organic of meat, fish, poultry, or processed food.

Sec. 7. Repeals definitions that now appear applicable to this chapter.

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Sec. 9. The revisor is directed to change the name of the chapter.

TBC:med  
03-369.med

# LEGAL SERVICES

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STATE OF ALASKA

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## MEMORANDUM

March 26, 2003

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**TO:** Representative Bill Stoltze  
Attn: Barbara Bitney

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Director

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TBC:med  
03-358.med

Alaska Organic Association  
P.O. Box 2992  
Palmer, Alaska 99645

April 7, 2003

Representative Bill Stoltze  
Juneau, Alaska 99811-0001

Representative Bill Stoltze

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On behalf of the Alaska Organic Association and all organic growers in the State of Alaska, I thank you for your attention and support of this bill.

Sincerely,

River Beun, president  
Alaska Organic Association

**Mark Rempel  
Rempel Family Farm**

HC02 Box 7344  
Palmer, Alaska 99645  
(907) 745-5554  
mtrempe@mtaonline.net

.....

February 26, 2003

Dear Representative Stoltze:

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I am opposed to having another bureaucrat director in the Division of Agriculture. We need a farmer. Larry DeVilbiss has farmed many different crops in the Matanuska Valley successfully, he is well liked by fellow farmers (conventional and organic alike) and he understands government well. Please, appoint and confirm Larry DeVilbiss Director of Division of Agriculture.

Sincerely,

  
Mark Rempel

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STATE OF WASHINGTON  
DEPARTMENT OF AGRICULTURE  
P.O. Box 42560 • Olympia, Washington 98504-2560 • (360) 902-1800

March 25, 2003

Application Number: 1315

State: Alaska

Mark Rempel  
Rempel Family Farm  
HCO2-7344  
Palmer Ak 99645

Dear Mark Rempel:

Your application has been received. An inspection of your facility will take place later this year.

**Cost Share** - Though the 2002 National Farm Bill, you are eligible to recover 75% of your annual certification fees up to \$500. Although you are seeking certification through the Washington Department of Agriculture, the cost share reimbursement is allocated through the individual states. If you choose to apply for this Cost-Share Program you must contact the Alaska Department of Agriculture.

If you have any questions, Please contact Rachael Jamison at (360) 902-1951, FAX (360) 902-2087, email: [rjamison@agr.wa.gov](mailto:rjamison@agr.wa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Carr".

Richard Carr  
Organic Food Inspector



FROM :

FAX NO. :

Apr. 07 2003 11:46AM P1



Washington State Department of Agriculture  
Organic Food Program

### APPLICATION

## ORGANIC CERTIFICATION COST-SHARE PROGRAM

The Organic Certification Cost-Share Program is designed to provide assistance to organic producers, processors, and handlers who receive and/or update their organic certification between October 1, 2002 and September 30, 2003. Cost-Share payments will be limited to 75 percent of an individual producer, processor, or handler's certification costs, up to a maximum of \$500 per certification.

Only producers, processors, and handler within Washington State are eligible to receive cost-share money from the Washington State Department of Agriculture (WSDA). If your certified farm or facility is located in a state outside of Washington State, you must contact your state department of agriculture for a cost-share application.

CONTACT PERSON		
BUSINESS NAME		
MAILING ADDRESS		
CITY	STATE	ZIP
PRIMARY PHONE NUMBER		ALTERNATE PHONE NUMBER
FAX NUMBER		EMAIL ADDRESS

In order to receive cost-share funds, eligible producers, processor, or handlers must complete this application and the W-9 form each time organic certification costs are incurred. Certification costs include those fees designated under chapter 15-157 WAC as "New Applicant Fee", "Facility Fee", "Site Fee", and "Certification Fee". Export fees, late fees, and transitional certification costs are not eligible for cost-share funds.

Please fill in the amount of certification costs.

Certification Costs: \$ \_\_\_\_\_

If someone other than you or your company pays for your certification, please list the name and phone number of the entity who pays the certification costs.

NAME OF ENTITY WHO PAYS	PHONE NUMBER
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Please complete and submit the enclosed W-9 form along with this application. The W-9 form must be submitted in order to receive the full amount available under the cost-share program.

Are you certified by Washington State Department of Agriculture?  Yes  No

If Yes, what is your certification number? Certification Number: \_\_\_\_\_

If No, you must be certified by a USDA accredited organic certification agency and you must attach a copy of your organic certificate to this application for cost-share funds.

Agreement [The person signing the application must be authorized to represent the firm.]

Signature of Representative \_\_\_\_\_ Date \_\_\_\_\_

Print Name \_\_\_\_\_ Title \_\_\_\_\_

SEND APPLICATION TO:  
Washington State Dept of Agriculture  
PO Box 42560  
Olympia, WA 98504-2560

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# SENATE COMMITTEE REPORT

DATE: 5/10/03

FURTHER: Finance

DATE TURNED  
IN TO OFFICE: 5-13-03

Resources Committee considered

HOUSE BILL NO. 226

HB 226 ORGANIC FOOD

"An Act relating to the sale, offer for sale, representation, and labeling of food or other agricultural products as organic, and to the state organic certification program; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**

- same title
- new title

**House Bill:**

- same title
- technical title
- new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
H. FIN DNR	5/7/03	✓		2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
Seckins <i>Alph Seckins</i>	✓			
B. Stevens <i>Ben Stevens</i>	✓			
Wagner <i>Thomas Wagner</i>	✓			
Dyson <i>John Dyson</i>	✓			
Lincoln <i>David Lincoln</i>				
Elton <i>Scott Elton</i>				
ogaw <b>CHAIR:</b> <i>Scott Ogaw</i>				



**HB**

**227**

**HFIN**

**FILE**



# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: HB 227  
(H) Publish Date: 1/23/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
Title District courts and small claims BRU Alaska Court System  
Component Trial Courts  
Sponsor House Judiciary Committee  
Requester House Labor and Commerce Component No. 768

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*	*	*	*	*	*

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: \_\_\_\_\_  
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

House Bill 227 will increase the jurisdictional limit of the district court from \$50,000 to \$75,000 per defendant. The court does not anticipate a significant impact from this change. The bill also increases the jurisdictional limit of small claims court from \$7,500 to \$10,000 and allows a plaintiff to sue an out-of-state defendant in those cases where the claim arose in Alaska. Both changes are likely to increase the number of cases filed in small claims court. The cases with out-of-state defendants are likely to be more lengthy than would otherwise be the case. However, because the increase in the number of cases filed in small claims court will be partially offset by a corresponding decrease in the number of cases filed in the district court and because the number of likely out-of-state defendants is unknown, the impact of the passage of HB 227 is too speculative to support a fiscal note at this time. If the impact turns out to be significant the court may return to the legislature with a request for additional funding.

Prepared by: Douglas Wooliver, Administrative Attorney Phone 463-4750  
Division Alaska Court System Date/Time 1/16/04 8:17 AM  
Approved by: Stephanie Cole, Administrative Director Date 1/16/2004  
Agency Alaska Court System

# ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair  
Rep. Tom Anderson, Vice-Chair  
Rep. Dan Ogg  
Rep. Jim Holm  
Rep. Ralph Samuels  
Rep. Les Gara  
Rep. Max Gruenberg



State Capitol, Room 120  
Juneau, AK 99801-1182  
(907) 465-4990  
Fax (907) 465-6592

## House Judiciary Committee

### Sponsor Statement CSHB 227 (JUD)

**"An Act increasing the jurisdictional limit for small claims and for magistrates from \$7,500 to \$10,000; increasing the jurisdictional limit of district courts in certain civil cases from \$50,000 to \$100,000; expanding the jurisdiction of district courts; and amending Rule 11(a)(4), Alaska District Court Rules of Civil Procedure, relating to service of process for small claims."**

The jurisdictional limit for district courts was last raised in 1990 when the legislature raised the limit from \$35,000 to \$50,000. By raising the jurisdictional limit from \$50,000 to \$100,000, this bill will allow for increases in inflation and provide increased flexibility for litigants regarding whether to file in district court or superior court.

The jurisdictional limit on small claims court and magistrate court was last raised in 1997 when the legislature raised the limit from \$5000 to \$7500. Small claims court offers many advantages over district court to private litigants, including less formal discovery requirements, reduced filing fees, and relaxed evidentiary rules. This bill will increase the limit to \$10,000.

The bill also removes prohibitions against the district court hearing claims for false imprisonment, libel, slander, and malicious prosecution. These restrictions were adopted shortly after statehood. District court judges are well qualified and there is no reason to prohibit them from hearing these types of cases.

Finally, the bill will expand small claims jurisdiction over out-of-state defendants. Under current law, small claims actions against out-of-state defendants may only be brought under the landlord-tenant act or under AS 09.05.020, which authorizes service of process against owners or operators of motor vehicles involved in an accident in the state. The bill would authorize small claims jurisdiction over out-of-state defendants under traditional long-arm principles. This expanded long-arm jurisdiction is limited to district court judges. Magistrates will continue to be limited by the standards set forth in current law.

# ALASKA STATE LEGISLATURE

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## House Judiciary Committee

### Sectional Analysis CSHB 227 (JUD)

**"An Act increasing the jurisdictional limit for small claims and for magistrates from \$7,500 to \$10,000; increasing the jurisdictional limit of district courts in certain civil cases from \$50,000 to \$100,000; expanding the jurisdiction of district courts; and amending Rule 11(a)(4), Alaska District Court Rules of Civil Procedure, relating to service of process for small claims."**

**Section 1** increases the jurisdictional limit of district courts from \$50,000 to \$100,000.

**Sections 2** increases the jurisdictional limits of the small claims court from \$7500 to \$10,000.

**Section 3** extends the jurisdiction of the district court to include claims for false imprisonment, libel, slander and malicious prosecution.

**Section 4** increases the jurisdictional amount for claims heard by magistrates from \$7500 to \$10,000.

**Section 5** precludes magistrates from hearing cases brought under the expanded small claims jurisdiction over out-of-state defendants provided for in Section 6 of the bill. Magistrates will continue to be able to hear claims against out-of-state defendants only under the landlord-tenant act or in accordance with the AS 09.05.20 relating to service of process on nonresident owner or operator of motor vehicle.

**Section 6** amends District Court Rule 11(a) to allow suits in small claims court against out-of-state defendants under traditional long-arm jurisdictional authority.

**Section 7** provides that sections 5 and 6 of the bill only take effect if the court rule change in section 6 of the bill receives the two-thirds majority vote of each house required by art. IV, sec. 15 of the Alaska Constitution.

**HB**

**227**

SFIN

FILE

# SENATE FINANCE COMMITTEE REPORT

REPORTED OUT

MAY 14 2004

SENATE FINANCE  
COMMITTEE

DATE: 04/27/04

FURTHER:

DATE TURNED  
IN TO OFFICE: 4 May 2004

Finance Committee considered CS FOR HOUSE BILL NO. 227(JUD)

## HB 227 DISTRICT COURTS & SMALL CLAIMS

"An Act increasing the jurisdictional limit for small claims and for magistrates from \$7,500 to \$10,000; increasing the jurisdictional limit of district courts in certain civil cases from \$50,000 to \$100,000; expanding the jurisdiction of district courts; limiting magistrates from hearing certain small claims cases; and amending Rule 11(a)(4), Alaska District Court Rules of Civil Procedure, relating to service of process for small claims."

and recommends:

be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

attached amendment(s)

adopt Letter of Intent by \_\_\_\_\_ Committee

further referral to \_\_\_\_\_ Committee

**Senate Bill:**

- Same Title
- New Title

**House Bill:**

- Same Title
- Technical Title Change
- New Title w/ SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero.	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
CRT	4/7/04		*		#2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>				
<i>[Signature]</i>				
<i>[Signature]</i>				
<i>[Signature]</i>				
COCHAIR: <i>[Signature]</i>				
COCHAIR: <i>[Signature]</i>				

MAY 04 2004

SENATE FINANCE COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: CSHB 227(JUD)  
(H) Publish Date: 4/19/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
Title District courts and small claims BRU Alaska Court System  
Component Trial Courts  
Sponsor House Judiciary Committee  
Requester \_\_\_\_\_ Component No. 768

**Expenditures/Revenues (Thousands of Dollars)**

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*	*	*	*	*	*

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

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

Estimate of any current year (FY2004) cost: \_\_\_\_\_  
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Committee Substitute for HB 227 will increase the jurisdictional limit of the district court from \$50,000 to \$100,000 per defendant. The bill also increases the jurisdictional limit of small claims court from \$7,500 to \$10,000 and allows a plaintiff in small claims court greater ability to sue an out-of-state defendant. Both changes to small claims court are likely to increase the number of cases filed. The cases with out-of-state defendants are likely to be more lengthy than would otherwise be the case. However, because the increase in the number of cases filed in small claims court will be partially offset by a corresponding decrease in the number of cases filed in the district court and because the number of likely out-of-state defendants is unknown, the impact of the passage of CSHB 227 is too speculative to support a fiscal note at this time. If the impact turns out to be significant the court may return to the legislature with a request for additional funding.

Prepared by: Douglas Wooliver, Administrative Attorney Phone 463-4750  
Division Alaska Court System Date/Time 4/7/04 12:10 PM  
Approved by: Stephanie Cole, Administrative Director Date 4/7/2004  
Agency Alaska Court System

# ALASKA STATE LEGISLATURE

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## House Judiciary Committee

### Sponsor Statement CSHB 227 (JUD)

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## House Judiciary Committee

### Sectional Analysis CSHB 227 (JUD)

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