

1069 SJ

SB 511 -

SB 548

prior offenses, was consistently minor and inconsistent with a substantial period or imprisonment. One situation where this factor might be applicable is when the defendant has committed a number of felony property offenses, such as check forgeries, but they all involve relatively small amounts of money. This amendment is also proposed in response to the suggestions and recommendations of the Advisory Committee on Minority Judicial Sentencing Practices.

Section 37. AS 12.80.040. Violations and Infractions.

This amendment should be considered in conjunction with section 30 of the bill discussed supra. It allows peace officers to arrest a person for a violation or an infraction if the person refuses to identify himself or to accept a citation.

Section 38. AS 28.35.135(a). Conforming Amendment to Motor Vehicle Law.

AS 28 35.135(a) deals with false statements on forms required under Title 28. The penalty for this conduct has been classified as unsworn falsification, rather than perjury, since the statements referred to under AS 28.35.135(a) will include statements not made under oath.

Section 39. Repeal of AS 11.41.115(d), and 11.81.610(a).

This amendment repeals two provisions in the criminal code. The first is AS 11.41.115(d) which provides that an unreasonable but honest belief as to the circumstances giving rise to a defense of justification (e.g., self-defense) will mitigate what would otherwise be murder to manslaughter. This section was not recommended by the Criminal Code Revision Commission but was added by the legislature subsequent to a discussion during committee consideration that it correctly stated the applicable law in Alaska.

In a recent decision, Houston v. State, _____ P.2d _____, Op. No. 1970 (Nov. 16, 1979) the Alaska Supreme Court noted that the law in effect in Alaska at the time did not recognize the defense of unreasonable belief as to justification. The effect of the repeal of AS 11.41.115(d) is to make the Code consistent with the law that existed prior to January 1, 1980 and to provide that only reasonable beliefs as to the right of justification will excuse what would otherwise be a murder. Note also that a conforming amendment has also been made in sec. 3 of the bill reflecting the elimination of AS 11.41.115(d).

The second amendment repeals AS 11.81.610 (a) which provides that the use of one culpable mental state in a statute rebutably presumes that the mental state applies

to all elements of the crime. This rule is inappropriately broad and ignores the fact that, by definition, particular mental states only apply to particular elements of a crime. For example, "intentionally" only applies to elements of crimes that can be classified as "results" as opposed to "circumstances" or "conduct" to which the culpable mental "knowingly" applies. Because of the requirement set forth in Section 24 that ordinarily only one culpable mental state is required to be established for each crime, this section is superfluous and misleading.

April 17, 1980

To: All Members of the Senate
From: Senate Judiciary Committee
Re: CSSB 511.

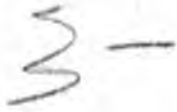
Attached are the explanatory comments relating to CSSB 511 which will probably be scheduled for floor action next week.

As you recall, the new criminal code passed the legislature in 1978, and became effective January 1, 1980.

The committee substitute for SB 511 reflects three categories of changes to the criminal code:

1. Clarifying provisions to reflect more adequately legislative intent and correcting drafting errors and oversights;
2. Conforming the code to decisions of the Supreme Court of Alaska announced simultaneously with or since adoption of the code; and
3. Substantively changing the law. These amendments have been kept to a minimum.

The bill has been approved by various organizations of the criminal justice system and I suggest, if you have any questions prior to floor action, you contact Dan Hickey, Chief Prosecutor, Department of Law, Barry Stern, Assistant Attorney General, Criminal Division, Senator Bill Ray or myself, and we will try to answer them.


Robert H. Ziegler, Sr.,
Chairman

DEPARTMENT OF LAW

CRIMINAL DIVISION

POUCH KC - STATE CAPITOL
JUNEAU, ALASKA 99811

April 16, 1980

The Honorable Thomas E. Schulz
Superior Court Judge
First Judicial District
415 Main Street
Ketchikan, Alaska 99901

Re: SB 511 (Criminal Code Amendments)

Dear Judge Schulz:

Senator Ziegler recently provided me with a copy of the letter you sent to him commenting on SB 511. Because the Department of Law has worked closely with Senator Ziegler on this bill, I wanted to take the liberty of briefly responding to the four points raised in your letter.

Your first comment concerned the statute on Misapplication of Property. As you pointed out, the proposed amendment raises the penalty for the crime from a class A misdemeanor to a class C felony when more than \$500 is involved. This amendment has been recommended for two reasons. First, some of the conduct covered by the offense was previously treated as embezzlement and was classified as a felony when the amount involved was in excess of \$100. Second, the conduct covered by the statute will most frequently involve the misapplication of significant sums of money by fiduciaries such as accountants and lawyers who are required to exercise a high degree of care in their handling of property entrusted to them by others. In reviewing this provision since initial adoption of the code, I have come to believe that it was misclassified. Given the fact that the statute involves fiduciary relationships and potential defendants in whom society places considerable trust, it seems appropriate for it to correspond with the overall approach to theft taken in the code.

Your second comment concerned potential overlapping coverage between the "Contributing" statute and the statute pertaining to Sexual Abuse of a Minor. While the misdemeanor contributing statute prohibits sexual contact by a defendant

19 or older with children between the ages of 13 and 16, the sexual abuse of a minor provision prohibits sexual penetration with children between the ages of 13 and 16 and sexual contact with children under 13. Thus, the statutes are not inconsistent since contributing covers only sexual contact with children between the ages of 13 and 16 while the sexual abuse statute applies to penetration with children within that age group. The overall statutory scheme, however, does tend to be confusing since the sexual abuse statute also applies to acts of sexual contact -- but only with respect to children under 13.

With respect to the proposed deletion of the requirement in the Title 12 provision pertaining to restitution that the court notify a victim before restitution could be ordered, I share your view that ordinarily restitution should not be settled absent consultation with the victim. However, as presently drafted, the code requires that before a court may order restitution the victim must be notified. The amendment was included in the bill at the specific request of a number of Anchorage judges who were afraid that the failure to notify a victim could expose a sentence of restitution to attack on appeal. For example, assume that when a defendant charged with criminal mischief is sentenced the owner of the property is out of the state, cannot be reached and there is no indication in the record that he was consulted concerning whether he wished restitution be ordered. While notification will occur as a matter of course in most cases, a failure or inability to contact the victim should not prevent the court from imposing a sentence involving restitution.

Your final concern involved the proposed addition as an aggravating factor the fact that a defendant has "three or more" prior felony convictions since three felony convictions were required to trigger a presumptive sentence. Actually, the most serious form of presumptive sentence applies when a defendant has two or more prior felony convictions and so this change is appropriate.

As you pointed out in your letter, most of the changes in the bill involved minor housekeeping matters. Many of these are technical points that we identified in putting together the law enforcement training program on the code. I appreciate your taking the time to review the bill and

The Honorable Thomas E. Schulz
Page 3

forward your comments to the Senate Judiciary Committee.
If you have any additional questions about the bill, please
let me know.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: _____
Daniel W. Hickey
Chief Prosecutor

DWH:gm

cc: The Honorable Robert H. Ziegler, Sr.
Chairman,
Senate Judiciary Committee



JUNEAU, ALASKA

Alaska State Legislature
House

MESSAGE TO THE SENATE

DATE May 28, 1980

MR. PRESIDENT:

The House has passed CSSB 511am (criminal laws of the state; eff date) with the following amendment:

HCS CSSB 511 (same title)


and it is transmitted herewith for consideration.


Chief Clerk of the House

BILL ANALYSIS

ASSIGNMENT DATE _____

UNASSIGNED _____

| | | | |
|---|---------------------|--|--|
| DEPARTMENT | SPONSOR (PRINCIPAL) | BILL NO. | |
| Public Safety | | SB 511 | |
| DEPARTMENT POSITION | | | |
| Support | | | |
| DIVISION DIRECTOR | DATE | COMMISSIONER | DATE |
| Col. Anderson | 3/18/80 | <i>WCF</i> William R. Nix | 3/18/80 |
| GOVERNOR'S OFFICE USE | | | |
| <input type="checkbox"/> POSITION NOTED | | <input type="checkbox"/> POSITION APPROVED | |
| <input type="checkbox"/> POSITION DISAPPROVED | | | |
| BY: | | DATE: | |
| SUMMARY | | | |
| (1) RELATED BILLS (SIMILAR OR CONFLICTING) | | | |
| (2) OTHER AGENCIES AFFECTED BY BILL | | | |
| (2) a. ORGANIZATIONAL SUPPORT FOR BILL | |  | (2) b. ORGANIZATIONAL OPPOSITION TO BILL |
| (3) PROGRAM EFFECTS OF BILL | | | |
| (4) FISCAL IMPACT: <input checked="" type="checkbox"/> NONE <input type="checkbox"/> FISCAL ANALYSIS ATTACHED | | | |
| (5) AMENDMENTS PROPOSED: | | | |
| (6) COMMENTS: | | | |

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

PUBLIC DEFENDER AGENCY

716 W. 4th Avenue, Suite 500
Anchorage, Alaska 99501
Phone: (907) 279-7541

April 14, 1980

Senator Robert H. Ziegler, Sr.
Pouch V
State Capitol
Juneau, AK 99811

Re: SB 511

Dear Senator Ziegler:

I received a copy of SB 511 with a cover letter from Daniel Hickey, Chief Prosecutor, during the month of March. I have looked over the modifications to the new Criminal Code and have some comments to make about them. I hope you will not think that I have examined these provisions exhaustively, but I have circulated them to the various public defender offices around the state and asked for comments. When I receive them, I will certainly pass any relevant criticism or suggestions on to you.

For my own part, I would direct your attention to Section 11.46.220, which makes it a felony to shoplift a firearm. It seems to me that this statute will not do much to protect the public, and it threatens to make felons out of a class who do not need this kind of stigma. Presumably, the intent of the statutory modification is to provide protection for the public by making the penalties for theft of dangerous weapons so stringent that the class of people who might ordinarily shoplift them would be deterred. However, it is my experience that most shoplifters are young and are not the type of people who will pursue a life of crime. They are also frequently fascinated with firearms, not because they want to shoot someone, but because they, like many other Alaskans, are hunting or target practice enthusiasts. Thus, if the statute is modified to make a felony of what has traditionally been a misdemeanor, the class of people the legislature will be penalizing is not one we traditionally think of punishing as felons.

I have some other problems with the concealment of merchandise statute as it would be modified by Section 11.46.220. Addition of the vague phrase, "or with intent to appropriate the merchandise" merely dilutes traditional larceny requirement.

With regard to AS 11.41.440(a), I would ask that the legislature consider carefully the reasons why it would want to add the broad, "aids, induces, causes, or encourages" language to a statute which deals with the problem of sexual abuse of minors in a concise way. I am particularly bothered by the words "aids" and "encourages", which encompass a whole lot of behavior the legislature may not really want to punish by a term of imprisonment of up to five (5) years.


I would also urge deletion of the modifications to AS 11.51.130(b)(4) and (5). I think the reasons are obvious -- these statutory modifications are overbroad and really reach beyond the limits of reasonable criminal statutes.

The same type of criticism as has been made above in regard to other statutes may be applied to the proposed modifications in AS 11.81.620(b). The definition of factual mistake, I submit, does not need the language of reasonableness attached to it. Of course, this modification would give prosecutors more room to argue, but that does not necessarily make desirable.

My final comment is directed at the proposed change to AS 11.81.900(b)(12). It does seem to be overkill to define the term "deadly force" as encompassing the pointing of a firearm and intentionally placing another person in fear of imminent serious physical injury. I would urge that the definition not be expanded.

I hope you will not take these comments as an exhaustive analysis of the proposed modifications to the criminal code. However, I hope you and the Judiciary Committee will take them into consideration when you decide whether or not SB 511 should pass in its current form.

Very truly yours,


Brian Shortell
Public Defender

BS:mb

to find Chair
major

HOUSE UNIT TAKES UP CRIMINAL CODE BILL

Heavy Lobbying Is Anticipated As
14-year Effort to Rewrite Law
Enters Yet Another Phase

By ROBERT PEAR
Special to The New York Times

WASHINGTON, April 20 — A 14-year effort to rewrite Federal criminal laws will enter a new phase this week as the House Judiciary Committee begins to debate and amend the legislation.

When the panel meets Wednesday, members will have before them a 461-page bill known as the Criminal Code Revision Act of 1980, which was approved last month by the subcommittee on criminal justice. Business and labor groups, prosecutors, defense attorneys and civil libertarians will all be lobbying for or against particular features of the bill, which attempts to rearrange the present hodgepodge of criminal laws into a coherent format.

Parallel legislation, sponsored by Senator Edward M. Kennedy, was approved in December by the Senate Judiciary Committee, of which Mr. Kennedy is chairman.

The Justice Department, having closely followed the evolution of the Senate bill, strongly prefers it over the House version. The American Civil Liberties Union, on the other hand, opposes the Senate bill and prefers the proposal developed by the House subcommittee, whose chairman is Representative Robert F. Drinan, like Mr. Kennedy a Massachusetts Democrat.

Commission Created in 1966

Congress created a commission to propose changes in the criminal laws in 1966, and legislators say that the code appears to have a better chance of passage this year than at any time since then. Other recent efforts to revise the code have failed, in part because of concern about the effect on civil liberties.

The Senate, having approved one version of the criminal code by a vote of 72 to 15 in January 1978, would probably endorse a similar bill this year, according to Senate aides.

Mr. Kennedy has an agreement with Senator Strom Thurmond, the ranking Republican on the Judiciary Committee, to keep the bill free of controversial amendments when it comes up for debate by the full Senate. So lobbyists intend to focus their efforts on the House bill, which differs from the Senate version in several important respects.

The House bill, in a departure from longstanding Federal practice, would permit lawyers to accompany witnesses appearing before a Federal grand jury. The American Bar Association and the Civil Liberties Union favor such a change; the Justice Department vehemently opposes it, saying that lawyers could transform the grand jury sessions into adversary proceedings.

The Senate bill would continue current practice. At present, witnesses appearing before a grand jury may consult their attorneys, but counsel must remain outside the grand jury room.

The House bill would permit a defendant to appeal a sentence on the ground that it is too severe or "clearly unreasonable." The Justice Department wants to have a similar right of appeal when it considers a sentence too lenient. The Senate bill would give both the Government and defendants the right of appeal. Under present law, neither side can appeal except in rare cases.

The Senate bill would abolish parole. The House bill would retain parole for study and evaluation for five years, after which Congress would decide on changes in the sentencing system. The Justice Department favors the Senate approach, believing that parole adds to inequities and disparities in sentencing.

Supporters of the Senate bill maintain that it would be tougher on white-collar crime than the House version. The Senate measure would create a new crime known as "endangerment" and increase the penalties for violations of health, safety and environmental laws committed in a particularly egregious way — when someone knowingly places another person in "imminent danger of death or serious bodily injury." The Justice Department would like to see this feature of the Senate bill accepted in the House.

Business Objects

Business representatives view this section as the most objectionable in the code. James P. Carty, vice president of the National Association of Manufacturers, said the "endangerment" section "goes way beyond anything we think is necessary." He said that the language was so broad and ambiguous that a corporate officer often would not know whether he was violating it.

A major unresolved question facing the House Judiciary Committee is the extent to which the Federal extortion law should apply to conduct arising from a labor dispute. Unions strongly favor the current situation: As interpreted by the Supreme Court, the law does not apply to the conduct of persons engaged in bona fide strikes that lead to property damage or personal injury.

The Senate bill would allow unions, employees and employers to be prosecuted for extortion in limited circumstances, when, for example, there is "clear proof" that certain acts were intended to cause death or "severe bodily injury."

Massachusetts Townspeople Use
A Human Chain to Move Library

Show
west
black
light 1
or ye
sale 2
Cotto
white.
sizes 2
sale 2

OK

AMENDMENTS MADE BY SENATE JUDICIARY COMMITTEE TO SB 511

(All page references are to CSSB 511)

Criminal Mischief in the Second Degree

Page 4, line 10: Words "or any other property of another" added. Damage to any property of another (not only the vehicle) in an amount of \$500 or more as a result of the taking of the vehicle raises the offense to a class C felony.

Contributing to the Delinquency of a Minor

Page 5, lines 10-11: Paragraph (2) deleted since conduct described is already included in paragraph (1).

Page 5, line 18: Words "a parent" replaces "his parents" to make the statute sex-neutral.

Misconduct Involving Weapons in the Second Degree

Page 6, lines 19-24: Definition of "under the influence" added to statute prohibiting possession of firearm while under the influence of intoxicating liquor or drug.

Definition of "Dangerous Instrument"

Page 8, line 5: Word "or" substituted for word "and" in definition of dangerous instrument to correct drafting error.

Release Before Trial in Cases Involving Domestic Violence

Page 9, line 23 - page 10, line 8: New section added to provide court guidance in imposing conditions for release on bail in cases involving domestic violence.

Aggravating Factors

Page 11, lines 10-13: Fact that offense was a crime involving domestic violence added to list of aggravating factors.

S. Judiciary
SB 511

SENATE
JOURNAL SUPPLEMENT

| | | |
|---------|----------|--------|
| 5/29/80 | Thursday | No. 44 |
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COMMENTARY AND SECTIONAL ANALYSIS
FOR THE 1980 AMENDMENTS TO
ALASKA'S REVISED CRIMINAL CODE

House Committee Substitute for
Committee Substitute for Senate Bill 511

SENATE JUDICIARY COMMITTEE

- Senator Robert H. Ziegler, Sr., Chairman
- Senator M. E. Dankworth, Vice Chairman
- Senator Don Bennett
- Senator H. D. Meland
- Senator Bill Ray

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CHAPTER 16. PARTIES TO CRIME

No amendment proposed.

CHAPTER 31. ATTEMPT AND SOLICITATION

Section 1. AS 11.31.100. Attempt.

Section 2. AS 11.31.110. Solicitation.

Section 1 and section 2 of the bill contain identical amendments which provide that the Code's general attempt and solicitation statutes are to apply to unclassified crimes defined outside Title 11. Through an oversight, the Code's present attempt and solicitation statutes now only apply to crimes defined in Title 11 and classified crimes defined outside Title 11.

The amendments provide that the maximum penalty for an attempt or solicitation to commit a crime outside Title 11 will ordinarily be one-half the maximum punishment for the crime that is attempted or solicited. This penalty structure is identical to the punishment provided for attempts under the repealed attempt statute, AS 11.05.020.

CHAPTER 41. OFFENSES AGAINST THE PERSON

ARTICLE 1. HOMICIDE

Section 1. AS 11.41.115. Defenses to Murder.

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This section constitutes a conforming amendment to subsection (e) of AS 11.41.115 and is discussed in conjunction with Section 44 of the bill which repeals AS 11.41.115(d).

ARTICLE 2. ASSAULT AND RECKLESS ENDANGERMENT.

Section 4. AS 11.41.210. Assault in the Second Degree.

This amendment makes two changes to the Assault in the Second Degree statute to conform the sections pertaining to assaults with a dangerous instrument to conduct included under the former law.

Amended paragraph (1) covers the situation when a person intentionally causes physical injury by means of a dangerous instrument. Under the old law this conduct was the felony crime of Assault with a Dangerous Weapon, a felony. Under the new code, however, this conduct would only be included under Assault in the Fourth Degree, a misdemeanor, absent the presence of an intent to cause serious physical injury. The amendment closes this obvious gap in coverage by requiring that the defendant only intend to cause physical injury.

The second change made by the amendment is to eliminate former paragraph (2) which covered intentionally placing another person in fear of imminent serious physical

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injury by means of a dangerous instrument. This conduct is now included within the new crime of Assault in the Third Degree, discussed below.

Section 5. AS 11.41.220. Assault in the Third Degree.

This amendment adds a new degree of assault to the criminal code. The conduct is classified as a C felony, and covers recklessly placing another person in fear of imminent serious physical injury by means of a dangerous instrument. By using the culpable mental state of "recklessly" the statute allows proof of the crime if the state can establish that the conduct was committed either "recklessly", "knowingly" or "intentionally". (See AS 11.81.610(c) proof of a higher form of culpability than required in the statute establishes the crime). The effect of this amendment is to restore what is commonly referred to as "ADW" (Assault with a Dangerous Weapon) to a general intent crime from a specific intent crime.

Providing specifically that an assault with a dangerous instrument is a general intent crime is consistent with Menard v. State, 578 P.2d 996 (Alaska 1978), a decision published by the Supreme Court during the final days of the legislature's consideration of the Code. In Menard, the court held that a "jury did not have to find any specific intent to do any particular kind or degree of harm to the victim in order to find [the defendant] guilty of assault

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with a dangerous weapon." Id. at 970. With the addition of the word "recklessly" the Code provision is consistent with the court's prior interpretation of the repealed "ADW" statute in Menard and would restore "ADW" to a general intent crime.

Section 6. AS 11.41.230. Assault in the Fourth Degree.

Because of the general rule regarding proof of higher forms of culpable mental states in AS 11.81.610(c) (proof of a higher form of culpability establishes a lower form) this amendment deleting the unnecessary words "intentionally or" from paragraph (1) has been made. The name of the crime has been changed to Assault in the Fourth Degree to reflect the addition of the new crime of Assault in the Third Degree discussed in section 5.

ARTICLE 3. KIDNAPPING AND RELATED OFFENSES.

Section 7. AS 11.41.300(a)(i). Kidnapping

This amendment clarifies that "restraint" (defined in AS 11.41.370(3)) of a victim with intent to commit a sexual assault is kidnapping. While such conduct is already generally covered under AS 11.41.300(a)(1)(E), it is preferable to specifically prohibit this particularly serious form of conduct in the kidnapping statute.

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It should be noted that this amendment would not turn a restraint that was merely incidental to a sexual assault into kidnapping. For example, a defendant who forces a victim who is jogging along a bike path into woods a few feet from the bike path in order to commit a sexual assault has not committed kidnapping. The "restraint" of the victim was too closely related to the sexual assault, both in time and the degree of movement, to qualify as a separate crime. However, if the victim was forced into the defendant's car and then driven a block to a nearby deserted house and sexually assaulted, or sexually assaulted while his accomplice was driving the car, kidnapping has occurred. In this situation the restraint was specifically done to facilitate the commission of the felony and there was significant confinement or movement of the victim beyond that necessary to commit the sexual assault. (See generally Levshakoff v. State, 565 P.2d 504 (Alaska 1977)).

Section 8. AS 11.41.410. Sexual Assault in the First Degree.

Section 9. AS 11.41.440. Sexual Abuse of a Minor.

Section 8 amends the Sexual Assault in the First Degree statute to provide that causing, aiding, inducing or encouraging a child under 13 to engage in sexual penetration with another person (regardless of age) is prohibited in the same manner as actually engaging in sexual penetration with the child.

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Similarly, section 9 amends the statute on Sexual Abuse of a Minor to cover causing, encouraging or inducing children under 16 and 13 to engage in acts of sexual penetration and contact, respectively. Also prohibited is aiding, causing, encouraging or inducing a child to engage in conduct described in paragraphs (2)-(6) of the Unlawful Exploitation of a Minor statute (AS 11.41.455(a)), even though no commercial purpose can be established. Paragraph (1) of AS 11.41.455(a), covering sexual penetration, is not included since this conduct has already been covered either in section 8 if the child is under 13, or under paragraphs (1) and (2) of section 9.

In describing the acts sufficient to sustain a conviction under these sections (aids, induces, causes, or encourages) the section parallels identical language used in the contributing statute. Though broadly described, the prohibited conduct is not intended to cover speech or conduct protected by the First Amendment.

ARTICLE 5. ROBBERY

No amendment proposed.

CHAPTER 46. OFFENSES AGAINST PROPERTY

ARTICLE 1. THEFT AND RELATED OFFENSES

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Section 10. AS 11.46.210. Theft By Failure to Make Required
Disposition of Funds Received or Held.

This amendment makes no substantive change in this statute but conforms language in subsection (b) to the Code's consolidated theft statute. The amendment clarifies that a person who engages in conduct described in AS 11.46.210 is prosecuted for "Theft" under AS 11.46.120-150 and not for "Theft by Failure to Make Required Disposition of Funds Received or Held" (See AS 11.46.110).

Section 11. AS 11.46.220. Concealment of Merchandise.

This amendment makes two changes to the Concealment of Merchandise statute. The first is a technical one and clarifies the intent element in language that more closely parallels the general theft provisions. See AS 11.46.100(1). While the definition of "intent to deprive" (AS 11.46.990(2)) is broad enough to include conduct included within the definition of "intent to appropriate" (AS 11.46.990(1)), it is preferable to closely parallel the general language of the theft statutes in the Concealment of Merchandise statute.

The second change is to provide that the concealment of any firearm, regardless of value, is a class C felony. This amendment is intended to conform the Concealment of Merchandise statute with the general theft statutes which provide that the theft of any firearm is a class C felony. See, AS 11.46.110(a)(2).

ARTICLE 2. BURGLARY AND CRIMINAL TRESPASSSection 12. AS 11.46.320. Criminal Trespass in the First Degree.

This amendment clarifies that a trespass on land with intent to commit a crime is covered specifically as a class A misdemeanor. While this section of the trespass statute was intended by the legislature to only apply to trespasses on land, the term "real property" has traditionally included both land and buildings. (However, note the definition of "premises" in AS 11.81.900(b)(42) which treats "building" and "real property" as distinct categories). To avoid potential overlapping coverage with the Burglary in the Second Degree statute, which specifically covers an unlawful entry into a building with intent to commit a crime, this technical amendment is required.

ARTICLE 3. ARSON, CRIMINAL
MISCHIEF, AND RELATED OFFENSESSection 13. AS 11.46.482. Criminal Mischief in the Second
Degree.

The legislature adopted an approach to "joyriding" that aggravates the misdemeanor crime to a felony when the vehicle taken was damaged or the owner incurred expenses in an amount of \$500 or more. As drafted, the statute seems to require that either \$500 in damage or \$500 in expenses

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result. The situation, for example, where the vehicle is damaged in an amount of \$300 and the owner incurs \$300 in rental expense would not appear to be a felony since even though the total loss was in excess of \$500, neither the damages or the expenses exceeded \$500. Although this particular question was not specifically considered by the legislature in 1978, it would seem consistent with the overall statutory scheme to impose felony penalties under these circumstances. Additionally, this amendment clarifies that strict liability is imposed on the defendant as to the element of causing damage to the car or expenses for the owner and allows the element of damage to be satisfied by any damage to property of another and not only damage to the propelled vehicle. Thus, the defendant who takes a propelled vehicle of another and damages property of another in an amount exceeding \$500 with the vehicle commits a class C felony.

ARTICLE 4. FORGERY AND RELATED OFFENSES

No amendment proposed.

ARTICLE 5. BUSINESS AND COMMERCIAL OFFENSES

Section 14. AS 11.46.600. Scheme to Defraud.

Because of a drafting error, a scheme to obtain \$10,000 from one or more persons was made a class B felony regardless of whether criminal intent was present. This

amendment corrects this problem by specifying the applicable intent requirement.

Section 15. AS 11.46.620. Misapplication of Property.

This amendment allows for the possibility of felony prosecution when the value of the property misapplied is \$500 or more. Currently, all cases involving the misapplication of property (usually by a fiduciary) are classified as class A misdemeanors regardless of whether the value of the property misapplied was \$25 or \$25,000. Because of the possibility of significant pecuniary losses caused by misapplication of property, higher penalties should be authorized. In providing for felony penalties when the property involved is \$500 or more, the statutory scheme is consistent with the penalty structure applicable to theft offenses.

CHAPTER 51. OFFENSES AGAINST THE FAMILY

Section 16. AS 11.51.130. Contributing to the Delinquency of a Minor.

The Alaska Bar Association Criminal Law Committee has noted that the code's contributing statute is overbroad because of the inclusion of the word "permits". This amendment strikes the word "permits" from paragraphs (1)-(4) of the statute and uses the uniform language "aids, induces, causes or encourages" in describing the acts sufficient to constitute

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the crime. Former paragraph (2) has been deleted since the conduct described is already covered under paragraph (1). Paragraph (3) has been amended to require that the minor be in the same room in a building where a drug sale occurs. This amendment eliminates the possibility that a person could be charged under the statute when he has no knowledge that the sale is occurring. Additionally, a new paragraph (4) has been added which covers aiding, inducing, causing or encouraging a child under 16 to absent himself from the lawful custody of a parent or to be persistently absent from school. This conduct was included under the former contributing statute. See, AS 11.40.130 and AS 11.40.150(4). It should be noted, however, that the offense does not occur when the child has "just cause" to be absent from custody. In requiring that the child be "repeatedly absent" from school the statute eliminates the possibility that a person could be charged when he encourages a minor to be absent from school on a single occasion, or on several occasions over an extended period of time.

CHAPTER 56. OFFENSES AGAINST PUBLIC ADMINISTRATION

ARTICLE 1. BRIBERY AND RELATED OFFENSES

No amendment proposed.

ARTICLE 2. PERJURY AND RELATED OFFENSES

No amendment proposed.

ARTICLE 3. ESCAPE AND RELATED OFFENSES

Section 17. AS 11.56.310. Escape in the Second Degree.

Section 18. AS 11.56.320. Escape in the Third Degree.

Section 19. AS 11.56.330. Escape in the Fourth Degree.

Section 20. AS 11.56.370. Permitting an Escape.

Sections 18 and 19 provide that if a person commits an Unlawful Evasion (failure to return to a correctional facility following temporary leave) and leaves or attempts to leave the state the crime is Escape in the Third Degree, a class C felony and not Escape in the Fourth Degree, a class A misdemeanor. The penalties for escape under the new code were intended to closely parallel the penalties for escape provided in former AS 11.30.095, the escape statute enacted in 1976. Because of an oversight in drafting, the penalty for the conduct described in AS 11.56.320(a)(2) was reduced from a felony to a misdemeanor. This change is inconsistent with the remainder of the statutory scheme on escape which provides that an unlawful evasion without leaving the state is itself a class A misdemeanor.

Additionally, sections 17-20 replace the words on "a charge of" with the word "for". This amendment is required to make clear that escape and permitting an escape can occur when a person has been arrested for a crime, though not necessarily formally charged with a crime by way of complaint, indictment or information.

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ARTICLE 4. OFFENSES RELATING
TO JUDICIAL AND OTHER PROCEEDINGS

No amendment proposed.

ARTICLE 5. OBSTRUCTION OF PUBLIC ADMINISTRATION

No amendment proposed.

CHAPTER 61. OFFENSES AGAINST PUBLIC ORDER

ARTICLE 1. RIOT, DISORDERLY
CONDUCT, AND RELATED OFFENSES

No amendment proposed.

ARTICLE 2. WEAPONS AND EXPLOSIVES

Sections 21 and 22. AS 11.01.210. Misconduct Involving
Weapons in the Second Degree.

Section 21 amendment provides that the standard for determining whether a person's possession of a firearm while intoxicated is unlawful is whether the defendant was "under the influence" and not whether he was "substantially impaired". Section 22 defines the term "substantially impaired" consistent with existing jury instructions. The "substantially impaired" language was included in the Commission's draft of the code

because the statute applied to all deadly weapons (such as knives and explosives) and not only to firearms. Because of the expanded range of instruments covered by the statute, it was felt that the test for determining impairment should be made more restrictive. In the legislature the statute was amended to apply only to firearms. However, the standard for determining impairment was not specifically addressed.

Section 23. AS 11.61.220(b)(1). Misconduct Involving Weapons
in the Third Degree.

This amendment clarifies that a defendant has an affirmative defense to the carrying a concealed weapon prohibition of the weapons statute if he is in his dwelling or on land owned or leased by him which is appurtenant to his dwelling. As drafted, the defense applied when the defendant was in his dwelling or on "property" appurtenant to his dwelling. This amendment clarifies the provision consistent with the legislative intent expressed at the time the Code was enacted.

The proposed amendment makes it clear that the defense should only apply to situations where the person is in his back yard or on any other land owned or leased by him directly attached to his dwelling. Additionally, it avoids the possibility that a bar owner or other merchant will claim that possession of a concealed weapon while on business

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premises attached to his dwelling was authorized by this provision.

Section 24. AS 11.66.230(a). Possession of Gambling Records in the First Degree.

By requiring that the gambling record actually be used or intended for use in an unlawful gambling enterprise, this amendment eliminates the possibility of a prosecution when a document is not used or intended for use in prohibited activity.

CHAPTER 66. OFFENSES AGAINST PUBLIC HEALTH AND DECENCY

No amendment proposed.

CHAPTER 76. MISCELLANEOUS OFFENSES

No amendments proposed.

CHAPTER 81. GENERAL PROVISIONS

ARTICLE 1. GENERAL PURPOSES

No amendments proposed.

ARTICLE 2. APPLICABILITY OF CRIMINAL STATUTES

No amendments proposed.

ARTICLE 3. CLASSIFICATION OF OFFENSES

No amendments proposed.

ARTICLE 4. GENERAL PRINCIPLES OF JUSTIFICATIONSection 25. AS 11.81.300. Justification: Defense.

Because of the specification of AS 11.81.400(a)(2) as an affirmative defense (discussed in conjunction with sec. 26, infra) this conforming amendment is required.

Section 26. AS 11.81.400. Justification: Use of Force in Resisting Arrest.

This amendment makes two changes to the statute describing when a person may resist an unlawful arrest. Subsection (c) makes the defense an affirmative one which the defendant must prove by a preponderance of the evidence. The defense provided for is one that should be appropriately made an affirmative defense consistent with other provisions of the code because it exists only as a matter of legislative policy and involves a matter that is subjectively in the possession of the defendant. Additionally, because this defense expands the current rule of law with respect to the circumstances when resistance is allowed, shifting the burden of proof on the issue is clearly permissible.

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Subsection (d) provides that the issue of whether there was probable cause to arrest is a question of law that is to be determined by the court. While the current provision would undoubtedly be interpreted to include this provision consistent with other similar provisions in the criminal law, it is preferable to specifically set out this procedure.

ARTICLE 5. GENERAL PRINCIPLES OF CRIMINAL LIABILITY

Section 27. AS 11.81.600. General Requirements of Culpability.

This amendment makes two changes regarding the code's general rules on culpability. The first is to clarify the general rule concerning culpability and to make clear that, with certain specified exceptions, a culpable mental state must be proven for every crime. For example, to commit Burglary in the Second Degree the state must establish that the defendant entered or remained unlawfully in a building with intent to commit a crime. The culpable mental state in this case is the intent to commit a crime. If the state establishes a voluntary act by the defendant in entering or remaining in a building, and in addition shows he acted with the intent to commit a crime, the crime of Burglary in the Second Degree has been established.

The second change provides that culpability need not be established if a legislative intent to dispense with the culpability requirement appears. While the decision to

eliminate the culpable mental state requirement must comport with constitutional due process guarantees, the courts should be specifically authorized to consider the legislature's intent (and most importantly, the commentary accompanying passage of the code) in determining whether the legislature intended to dispense with the culpability requirement in a particular statute.

Section 28. AS 11.81.620. Effect of Ignorance or Mistake
Upon Liability.

This amendment emphasizes that in order for a defendant's mistake of fact to constitute a defense to a crime the mistake must be a reasonable one. While the reasonableness requirement is probably already included in this statute, this amendment is desirable to avoid potential litigation in the area.

ARTICLE 6. DEFINITIONS

Section 29. AS 1. 81.900(b)(11). Definition of "dangerous
instrument.

This amendment is required in order to make it specifically clear that all "deadly weapons" (including unloaded firearms) are "dangerous instruments" consistent with the legislative intent expressed with enactment of the code.

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511Section 30. AS 11.81.900(b)(12), Definition of "deadly force".

During the legislature's consideration of the justifiable use of force, the issue whether deadly force could be threatened in situations when its actual use would be improper was frequently discussed. Because of the possibility that such threats could tragically escalate a conflict, the legislature concluded that only peace officers making an arrest should have the authority to threaten deadly force in situations where the actual use of deadly force was not justified. See AS 11.81.370.

While making this specific change in AS 11.81.370 no corresponding change was made in the definition of "deadly force". While it can be argued that because of the express inclusion in AS 11.81.370 of the phrase "a peace officer may use nondeadly force and may threaten to use deadly force" nondeadly force does not include a threat of deadly force, the definition of deadly force appears to provide otherwise. This amendment provides that pointing a firearm in the direction of another person as well as intentionally placing another person in fear of imminent serious physical injury by means of a dangerous instrument constitutes deadly force.

Section 31. AS 11.81.900(b)(21). Definition of "firearm".

This amendment is included to correct a potential

drafting oversight and clarifies that an inoperable firearm is included within the definition of firearm. While it would seem to be the case that inoperable firearms are already included within paragraph (B) of the current definition of firearm ("any weapon, whether loaded or unloaded, designed for discharging a shot capable of causing death or serious physical injury"), it is preferable to specifically state that inoperable firearms are included in order to avoid unnecessary issues being raised during trials.

Section 32. AS 11.81.900(b)(49). Definition of "Serious Physical Injury".

This amendment provides that serious injury to a body member as well as a body organ will specifically qualify as serious physical injury. This amendment is identical to the definition of "great bodily injury" appearing in the former aggravated assault statute, AS 11.15.225, which was enacted in 1976 and which the legislature intended to parallel in the definition of "serious physical injury". However, because of a drafting oversight, the word body member did not appear in the definition of "serious physical injury".

Section 33. AS 12.25.030(b). Arrest Authority.

This technical amendment is necessary in light of the amendment made in section 6.

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Section 34. AS 12.25.180. When Peace Officer has Option To Take
Person Before Judge or Magistrate.

Though the criminal code provided for noncriminal offenses called violations (e.g., littering) it did not provide a specific enforcement mechanism for dealing with a suspect who has committed a violation. This amendment authorizes the use of citations and provides that a peace officer will ordinarily issue a suspect a citation for a violation consistent with the provisions in existing AS 12.25.190 -- AS 12.25.220. However, if the suspect refuses to identify himself or refuses to accept the citation, authority is given to the officer to bring the suspect directly before a judge or magistrate.

Section 35. AS 12. 30.025. Release in Cases Involving Domestic
Violence.

This section of the bill adds a new provision to the bail statutes applicable to cases involving domestic violence. It is intended to emphasize to the court that in cases involving domestic violence certain conditions for release on a person's own recognizance, or conditions for release on bail, should be considered and applied as the court considers appropriate.

Section 36. AS 12.30.040. Release After Conviction.

This amendment makes conforming amendments in the statute prohibiting bail upon conviction for four specified crimes. The names of the four crimes have been changed to reflect the corresponding new names for the crimes under the Code.

Section 37. AS 12.55.015. Authorized Sentences.

AS 12.55.015(b) lists three circumstances when a judge is required to impose imprisonment in situations where a nonincarcerative alternative is not otherwise precluded. Because the presumptive sentencing scheme will usually require the imposition of some period of imprisonment for repeat felons, absent mitigating factors or extraordinary circumstances, this section is of particular importance in the sentencing of misdemeanants and first time felons.

The amendment changes paragraph (3) to more narrowly define the circumstances when imprisonment is required. The amendment addresses the specific concerns expressed by the Advisory Committee on Minority Judicial Sentencing Practices and eliminates the possibility that imprisonment will be required whenever a court on a single occasion in the past has imposed a sentence of lesser severity on the defendant. The amendment additionally conforms this provision to the underlying legislative intent that accompanied enactment of presumptive sentencing.

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511Section 38. AS 12.55.045. Restitution.

As presently drafted, the code requires that before a court may order restitution the victim of the crime must be notified. Several judges have criticized this provision as unduly burdensome since in many cases the location of the victim will not be known by the court. This amendment eliminates the necessity of notifying the victim every time restitution is ordered. While notification will occur as a matter of course in most cases, the failure to provide notification should not prevent the court from imposing a sentence of restitution.

Section 39. AS 12.55.155(c)(8). Modification of Aggravating
Factor.

In response to a further suggestion by the Advisory Committee on Minority Judicial Sentencing Practices, this amendment more narrowly describes the aggravating factor that the defendant has a prior criminal history of assaultive behavior, including misdemeanor convictions.

Section 40. AS 12.55.155(c). Aggravating Factors Added.

This amendment adds four aggravating factors that a judge may consider in imposing a presumptive sentence. The first treats the presence of three or more prior felony convictions as an aggravating factor. This amendment is required since the Code recognizes that two or more prior

felony convictions will place the defendant in the most serious category for purposes of presumptive sentencing. However, no provision specifically allows the judge to consider the fact that the defendant may have, for example, six prior felonies as opposed to only two. This amendment allows the judge to consider prior felonies beyond those necessary to place the defendant in the most serious category of presumptive sentencing as an aggravating factor.

The second and third additional factors are intended to be applicable in the sentencing of "white-collar" criminals. These include the fact that the defendant intended to obtain substantial gain under circumstances where the risk of prosecution and subsequent punishment were minimal and the fact that a defendant's crime was part of a continuing series of offenses in furtherance of an illegal business from which the defendant derives substantial income.

The fourth additional aggravating factor is applicable to crimes involving domestic violence. Its scope is restricted to crimes against the person (AS 11.41) directed against a spouse, a former spouse or a member of the social unit comprised of those living together in the same dwelling as the defendant. Its addition reflects a legislative determination that crimes against the person involving domestic violence represent one of the more serious criminal justice problems in Alaska.

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511Section 41. AS 12.55.155(d). Mitigating Factor Added.

This section adds an additional factor that can be used to reduce a presumptive sentence. This mitigating factor allows the judge to consider that the aggregate harm caused by the defendant's criminal conduct, including his prior offenses, was consistently minor and inconsistent with a substantial period or imprisonment. One situation where this factor might be applicable is when the defendant has committed a number of felony property offenses, such as check forgeries, but they all involve relatively small amounts of money. This amendment is also proposed in response to the suggestions and recommendations of the Advisory Committee on Minority Judicial Sentencing Practices.

Section 42. AS 12.80.040. Violations and Infractions.

This amendment should be considered in conjunction with section 34 of the bill discussed supra. It allows peace officers to arrest a person for a violation or an infraction if the person refuses to identify himself or to accept a citation.

Section 43. AS 28.35.135(a). Conforming Amendment to Motor Vehicle Law.

AS 28.35.135(a) deals with false statements on forms required under Title 28. The penalty for this conduct

has been classified as unsworn falsification, rather than perjury, since the statements referred to under AS 28.35.135(a) will include statements not made under oath.

Section 44. Repeal of AS 11.41.115(d), and 11.81.610(a).

This amendment repeals two provisions in the criminal code. The first is AS 11.41.115(d) which provides that an unreasonable but honest belief as to the circumstances giving rise to a defense of justification (e.g., self-defense) will mitigate what would otherwise be murder to manslaughter. This section was not recommended by the Criminal Code Revision Commission but was added by the legislature subsequent to a discussion during committee consideration that it correctly stated the applicable law in Alaska.

In a recent decision, Houston v. State, _____ P.2d _____, Op. No. 1970 (Nov. 16, 1979) the Alaska Supreme Court noted that the law in effect in Alaska at the time did not recognize the defense of unreasonable belief as to justification. The effect of the repeal of AS 11.41.115(d) is to make the Code consistent with the law that existed prior to January 1, 1980 and to provide that only reasonable beliefs as to the right of justification will excuse what would otherwise be a murder. Note also that a conforming amendment has also been made in sec. 3 of the bill reflecting the elimination of AS 11.41.115(d).

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The second amendment repeals AS 11.81.610 (a) which provides that the use of one culpable mental state in a statute rebutably presumes that the mental state applies to all elements of the crime. This rule is inappropriately broad and ignores the fact that, by definition, particular mental states only apply to particular elements of a crime. For example, "intentionally" only applies to elements of crimes that can be classified as "results" as opposed to "circumstances" or "conduct" to which the culpable mental "knowingly" applies. Because of the requirement set forth in AS 11.81.600(b) (Section 27) that ordinarily only one culpable mental state is required to be established for each crime, this section is superfluous and misleading.

SB

514

BILL ANALYSIS

ASSIGNMENT DATE _____

UNASSIGNED _____

| | | |
|---|--|---|
| DEPARTMENT | SPONSOR (PRINCIPAL) | BILL NO. |
| Public Safety | Sen. Sumner | SB 514 |
| DEPARTMENT POSITION | | |
| Support | | |
| DIVISION DIRECTOR | DATE | COMMISSIONER |
| Col. Fred Woldstad | 3/11/80 | William R. Nix <i>by N</i> |
| | | DATE |
| | | 3/11/80 |
| GOVERNOR'S OFFICE USE | | |
| <input type="checkbox"/> POSITION NOTED | <input type="checkbox"/> POSITION APPROVED | <input type="checkbox"/> POSITION DISAPPROVED |
| BY: | | DATE: |
| SUMMARY | | |
| (1) RELATED BILLS (SIMILAR OR CONFLICTING) | | |
| (2) OTHER AGENCIES AFFECTED BY BILL | | |
| (2) a. ORGANIZATIONAL SUPPORT FOR BILL | | (2) b. ORGANIZATIONAL OPPOSITION TO BILL |
| (3) PROGRAM EFFECTS OF BILL | | |
| (4) FISCAL IMPACT: <input checked="" type="checkbox"/> NONE <input type="checkbox"/> FISCAL ANALYSIS ATTACHED | | |
| (5) AMENDMENTS PROPOSED: | | |

(6) COMMENTS:

In addition to the penalty provided, on conviction of an act defined in (a)(2) or (a)(3) of this section, there should be a forfeiture clause. "Upon conviction or upon judgement of the court having jurisdiction, dogs, equipment, vehicles, money, and paraphenalia used in or possessed for training, staging, or promoting cruelty to animals under (a)(2), (a)(3) of this section shall be forfeited to the State".

DEPARTMENT OF LAW

CRIMINAL DIVISION

POUCH KC - STATE CAPITOL
JUNEAU, ALASKA 99811

March 18, 1980

The Honorable Robert H. Ziegler, Sr.
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: SB 514

Dear Senator Ziegler:

At a recent hearing before the Senate Judiciary Committee you requested the Department of Law to draft a proposed committee substitute for SB 514, an act amending the penalty provisions for cruelty to animals.

To address the committee's concerns, it was necessary to separate the conduct of cruelty to animals from the conduct of promoting an exhibition of fighting animals. Two separate crimes therefore appear in the enclosed proposed committee substitute. The proposed committee substitute makes the following two changes regarding the penalty structure of the bill:

1. The penalty for Promoting an Exhibition of Fighting Animals is made a class C felony. This differs from the current classification of this conduct as a class A misdemeanor and the classification in the original version of the bill as a class B felony.
2. While a person who attends an exhibition of fighting animals is guilty of the offense of Promoting an Exhibition of Fighting Animals, the penalty for this conduct is a violation, punishable by a maximum \$300 fine for the first offense and a class B misdemeanor for second and subsequent offenses. This penalty structure differs from the current

The Honorable Robert H. Ziegler, Sr.
Page 2

classification of the conduct as a class
A misdemeanor and the original version of
the bill which classified the conduct as
a class B felony.

In addition to these two changes, a separate provision
has been added to AS 11.61.145 which authorizes forfeiture
of items that are used to facilitate the crime of Promoting
an Exhibition of Fighting Animals. This provision was added
pursuant to a requested by the Department of Public Safety
that was forwarded to your committee.

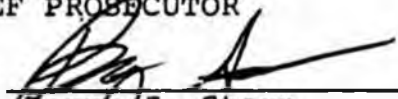
If we can be of further assistance to you on this
matter, please let us know at your earliest convenience.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By:


Barry J. Stern

Assistant Attorney General

BJS:gm

AS 11.61.140

CRUELTY TO ANIMALS

NEW CRIMINAL CODE

Sec. 11.61.140. CRUELTY TO ANIMALS. (a) A person commits the crime of cruelty to animals if, except as authorized by law, he

(1) intentionally inflicts severe and prolonged physical pain or suffering on an animal;

(2) owns, possesses, keeps, or trains an animal with intent that it be engaged in an exhibition of fighting animals; or

(3) instigates, promotes, attends or has a pecuniary interest in an exhibition of fighting animals.

(b) It is a defense to a prosecution under this section that the conduct of the defendant

(1) conformed to accepted veterinary practice;

(2) was part of scientific research governed by accepted standards; or

(3) was necessarily incident to lawful hunting or trapping activities.

(c) As used in this section, "animal" means a vertebrate living creature not a human being, but does not include fish.

(d) Cruelty to animals is a class A misdemeanor.

PRIOR CRIMINAL CODE

Sec. 11.40.480. CRUELTY TO ANIMALS. A person who cruelly beats or tortures or otherwise maltreats or neglects

an animal, whether it belongs to himself or to another, upon conviction, is punishable by imprisonment in a jail for not less than 10 days nor more than 30 days, or by a fine of not less than \$5 nor more than \$50.

See also former AS 11.40.490, Penalties for cruelty to domestic animals; AS 11.40.500, Abandoning disabled animals to die; AS 11.40.510, Use of live birds as targets; AS 11.40.520, Fighting or baiting animals or creatures and related offenses; AS 11.40.530, Maintaining kennel or pet shop in unsanitary or inhumane manner.

COMMENTARY

From Senate Journal, 98-99:

The Code classifies as an A misdemeanor the intentional infliction of "severe and prolonged physical pain or suffering on an animal." "Animal" is defined in subsection (c) to exclude human beings, fish and nonvertebrates. If the animal is simply killed without the consent of the owner and without the defendant inflicting severe pain, the conduct constitute criminal mischief under AS 11.46.482-486.

Subsection (b) provides that it is a defense that the conduct conformed to accepted veterinary practice or was part of scientific research governed by accepted standards. The additional granting of the defense when the conduct is necessarily incident to lawful hunting or trapping activities avoids unnecessary overlap and potential conflict with rules and regulations established by the Board of Fish and Game.

Subsections (a)(2) & (3) substantially restate existing AS 11.40.520. Under subsection (3), as under existing law, persons who attend exhibitions of fighting animals are held to be equally culpable as persons who organize such conduct.

See also TD V, 90-91.

CROSS REFERENCES

Definition of "law", "defense", "possess" -
AS 11.81.900(b)

Definition of "intentionally" - AS 11.81.900(a)



JUNEAU, ALASKA

Alaska State Legislature
House

FCC.

Pl. & Curtis

MESSAGE TO THE SENATE

DATE May 19, 1980

MR. PRESIDENT:

The House has passed CSSB 514 (amending the criminal provisions relating to cruelty to animals and establishing the crime of promoting an exhibition of fighting animals; eff date) with the following amendment:

HCS CSSB 514amH
(amending the criminal provisions relating to cruelty to animals and establishing the crimes of promoting an exhibition of fighting animals, and for the destruction of animals by the use of a decompression chamber; eff date)

and it is transmitted herewith for consideration.

Irene Carter

Chief Clerk of the House

Original sponsor: Resources Committee
by Request

Offered: 5/15/80
Referred: Rules

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 514 am H

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act amending the criminal provisions relating to
7 cruelty to animals and establishing the crimes of pro-
8 moting an exhibition of fighting animals, and for the
9 destruction of animals by the use of a decompression
10 chamber; and providing for an effective date."

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

12 * Section 1. AS 11.61.140 is repealed and re-enacted to read:

13 Sec. 11.61.140. CRUELTY TO ANIMALS. (a) A person commits the
14 crime of cruelty to animals if he

15 (1) intentionally inflicts severe and prolonged physical pain
16 or suffering on an animal;

17 (2) recklessly neglects an animal and, as a result of that
18 neglect, the person causes severe pain or suffering to the animal; or

19 *why into* (3) kills an animal by the use of a decompression chamber. ?
planes?

20 (b) It is a defense to a prosecution under this section that the
21 conduct of the defendant

22 (1) conformed to accepted veterinary practice;

23 (2) was part of scientific research governed by accepted
24 standards; or

25 (3) was necessarily incident to lawful hunting or trapping
26 activities.

27 (c) In this section, "animal" means a vertebrate living creature
28 not a human being, but does not include fish.

29 (d) Cruelty to animals is a class A misdemeanor.

1 * Sec. 2. AS 11.61 is amended by adding a new section to read:

2 Sec. 11.61.145. PROMOTING AN EXHIBITION OF FIGHTING ANIMALS. (a)

3 A person commits the crime of promoting an exhibition of fighting ani-
4 mals if he

5 (1) owns, possesses, keeps, or trains an animal with intent
6 that it be engaged in an exhibition of fighting animals;

7 (2) instigates, promotes or has a pecuniary interest in an
8 exhibition of fighting animals; or

9 (3) attends an exhibition of fighting animals.

10 (b) The animals, equipment, vehicles, money and other items used
11 by a person in a violation of (a)(1) or (2) of this section shall be
12 forfeited to the state if the person is convicted of an offense under
13 this section.

14 (c) In this section, "animal" means a vertebrate living creature
15 not a human being, but does not include fish.

16 (d) Promoting an exhibition of fighting animals

17 (1) under (a)(1) or (2) of this section is a class C felony;

18 (2) under (a)(3) of this section is a violation for the first
19 offense and a class B misdemeanor for the second and each subsequent
20 offense.

21 * Sec. 3. AS 03.60 is amended by adding a new section to read:

22 Sec. 03.60.005. USE OF DECOMPRESSION CHAMBER PROHIBITED.

23 It is unlawful for a veterinarian or other person to destroy an animal
24 by the use of a decompression chamber.

25 * Sec. 4. This Act takes effect immediately in accordance with AS 01.10.-
26 070(c).

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

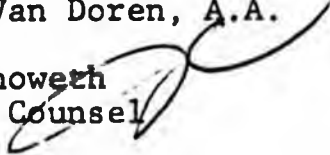
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 24, 1980

SUBJECT: CSSB 514, relating to cruelty to animals
and defining the crime of promoting fighting
animals

TO: Senator Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Attn: Guy Van Doren, A.A.

FROM: John B. Chenoweth
Legislative Counsel 

I would like to eliminate the two references to "except as authorized by law" at lines 12 and 27 of page 1. While the phrase appears in current law, the criminal code revision commentary does not indicate the exceptions the phrase was intended to cover, and I cannot think of any, either. If there are applicable exceptions, the bill would be better drafted if those could be specifically cited as references, if necessary, rather than providing indefinite exceptions as in the present statute and as proposed in this draft.

As our conversation concluded, Guy, the forfeiture of animals and property clause, AS 11.61.145(b) is limited to post-conviction situations.

JBC:ljb

Enclosure

Original sponsor: Resources Committee
by Request

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 514

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act amending the criminal provisions relating to
7 cruelty to animals and establishing the crime of
8 promoting an exhibition of fighting animals; and
9 providing for an effective date."

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

11 * Section 1. AS 11.61.140 is repealed and re-enacted to read:

12 Sec. 11.61.140. CRUELTY TO ANIMALS. (a) A person commits the
13 crime of cruelty to animals if he intentionally inflicts severe and
14 prolonged physical pain or suffering on an animal.

15 (b) It is a defense to a prosecution under this section that the
16 conduct of the defendant

17 (1) conformed to accepted veterinary practice;

18 (2) was part of scientific research governed by accepted

19 standards; or

20 (3) was necessarily incident to lawful hunting or trapping
21 activities.

22 (c) In this section, "animal" means a vertebrate living creature
23 not a human being, but does not include fish.

24 (d) Cruelty to animals is a class A misdemeanor.

*\$ 5,000 and
1 year*

25 * Sec. 2. AS 11.61 is amended by adding a new section to read:

26 Sec. 11.61.145. PROMOTING AN EXHIBITION OF FIGHTING ANIMALS. (a)
27 A person commits the crime of promoting an exhibition of fighting ani-
28 mals if he

29 (1) owns, possesses, keeps, or trains an animal with intent

1 that it be engaged in an exhibition of fighting animals;

2 (2) instigates, promotes or has a pecuniary interest in an
3 exhibition of fighting animals; or

4 (3) attends an exhibition of fighting animals.

5 (b) The animals, equipment, vehicles, money and other items used
6 by a person in a violation of (a)(1) or (2) of this section shall be
7 forfeited to the state if the person is convicted of an offense under
8 this section.

9 (c) In this section, "animal" means a vertebrate living creature
10 not a human being, but does not include fish.

11 (c) Promoting an exhibition of fighting animals

12 (1) under (a)(1) or (2) of this section is a class C felony;

13 (2) under (a)(3) of this section is a violation for the first
14 offense and a class B misdemeanor for the second and each subsequent
15 offense.

MAXIMUMS \$50,000
↑ * 5 YRS.

↓ \$1,000 ; 90 days

16 * Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-

17 070(c).



THE ALASKA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, INC.

ANIMAL CONTROL SHELTER
3600 E. TUDOR ROAD
ANCHORAGE, ALASKA 99507
PHONE: 279-0578

SPCA STATE HEADQUARTERS
P.O. BOX 776
ANCHORAGE, ALASKA 99510
PHONE: 279-9853

April 22, 1980

Sen. Robert H. Ziegler, Sr.
Pouch V
Juneau, Alaska 99811

Dear Sen. Ziegler,

Thank you for your support of the dog fighting bill and passage of SB 514.

We now urge you to please, please, help to get the bill out of the House Judiciary Committee and on to the House floor for a vote.

We have enclosed a brochure that may be of interest to you and as you may note in reading it, SB 514 is comparable to the effective California law.

Again thank you for your fine support.

Sincerely,

Jenine Brown
Alaska S.P.C.A.

April 30, 1980

I shot my bolt when I pushed the bill through the Senate. Charles Parr, Chairman of the House Judiciary Committee, and I don't always see eye to eye. I suggest you have members of your society who live in the Fairbanks area get in touch with Representative Parr; he probably wouldn't pay too much attention to my request.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-65-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 24, 1980

SUBJECT: CSSB 514, relating to cruelty to animals
and defining the crime of promoting fighting
animals

TO: Senator Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Attn: Guy Van Doren, A.A.

FROM: John B. Chenoweth
Legislative Counsel

I would like to eliminate the two references to "except as authorized by law" at lines 12 and 27 of page 1. While the phrase appears in current law, the criminal code revision commentary does not indicate the exceptions the phrase was intended to cover, and I cannot think of any, either. If there are applicable exceptions, the bill would be better drafted if those could be specifically cited as references, if necessary, rather than providing indefinite exceptions as in the present statute and as proposed in this draft.

As our conversation concluded, Guy, the forfeiture of animals and property clause, AS 11.61.145(b) is limited to post-conviction situations.

JBC:ljb

Enclosure

AS 11.61.140

CRUELTY TO ANIMALS

NEW CRIMINAL CODE

Sec. 11.61.140. CRUELTY TO ANIMALS. (a) A person commits the crime of cruelty to animals if, except as authorized by law, he

(1) intentionally inflicts severe and prolonged physical pain or suffering on an animal;

(2) owns, possesses, keeps, or trains an animal with intent that it be engaged in an exhibition of fighting animals; or

(3) instigates, promotes, attends or has a pecuniary interest in an exhibition of fighting animals.

(b) It is a defense to a prosecution under this section that the conduct of the defendant

(1) conformed to accepted veterinary practice;

(2) was part of scientific research governed by accepted standards; or

(3) was necessarily incident to lawful hunting or trapping activities.

(c) As used in this section, "animal" means a vertebrate living creature not a human being, but does not include fish.

(d) Cruelty to animals is a class A misdemeanor.

PRIOR CRIMINAL CODE

Sec. 11.40.480. CRUELTY TO ANIMALS. A person who cruelly beats or tortures or otherwise maltreats or neglects

an animal, whether it belongs to himself or to another, upon conviction, is punishable by imprisonment in a jail for not less than 10 days nor more than 30 days, or by a fine of not less than \$5 nor more than \$50.

See also former AS 11.40.490, Penalties for cruelty to domestic animals; AS 11.40.500, Abandoning disabled animals to die; AS 11.40.510, Use of live birds as targets; AS 11.40.520, Fighting or baiting animals or creatures and related offenses; AS 11.40.530, Maintaining kennel or pet shop in unsanitary or inhumane manner.

COMMENTARY

From Senate Journal, 98-99:

The Code classifies as an A misdemeanor the intentional infliction of "severe and prolonged physical pain or suffering on an animal." "Animal" is defined in subsection (c) to exclude human beings, fish and nonvertebrates. If the animal is simply killed without the consent of the owner and without the defendant inflicting severe pain, the conduct will constitute criminal mischief under AS 11.46.482-486.

Subsection (b) provides that it is a defense that the conduct conformed to accepted veterinary practice or was part of scientific research governed by accepted standards. The additional granting of the defense when the conduct is necessarily incident to lawful hunting or trapping activities avoids unnecessary overlap and potential conflict with rules and regulations established by the Board of Fish and Game.

Subsections (a)(2) & (3) substantially restate existing AS 11.40.520. Under subsection (3), as under existing law, persons who attend exhibitions of fighting animals are held to be equally culpable as persons who organize such conduct.

See also TD V, 90-91.

CROSS REFERENCES

Definition of "law", "defense", "possess" -
AS 11.81.900(b)

Definition of "intentionally" - AS 11.81.900(a)

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 24, 1980

SUBJECT: CSSB 514, relating to cruelty to animals
and defining the crime of promoting fighting
animals

TO: Senator Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Attn: Guy Van Doren, A.A.

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JBC:ljb

Enclosure

DEPARTMENT OF LAW

CRIMINAL DIVISION

POUCH KC - STATE CAPITOL
JUNEAU, ALASKA 99811

March 18, 1980

The Honorable Robert H. Ziegler, Sr.
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: SB 514

Dear Senator Ziegler:

At a recent hearing before the Senate Judiciary Committee you requested the Department of Law to draft a proposed committee substitute for SB 514, an act amending the penalty provisions for cruelty to animals.

To address the committee's concerns, it was necessary to separate the conduct of cruelty to animals from the conduct of promoting an exhibition of fighting animals. Two separate crimes therefore appear in the enclosed proposed committee substitute. The proposed committee substitute makes the following two changes regarding the penalty structure of the bill:

1. The penalty for Promoting an Exhibition of Fighting Animals is made a class C felony. This differs from the current classification of this conduct as a class A misdemeanor and the classification in the original version of the bill as a class B felony.
2. While a person who attends an exhibition of fighting animals is guilty of the offense of Promoting an Exhibition of Fighting Animals, the penalty for this conduct is a violation, punishable by a maximum \$300 fine for the first offense and a class B misdemeanor for second and subsequent offenses. This penalty structure differs from the current

The Honorable Robert H. Ziegler, Sr.

Page 2

classification of the conduct as a class
A misdemeanor and the original version of
the bill which classified the conduct as
a class B felony.

In addition to these two changes, a separate provision
has been added to AS 11.61.145 which authorizes forfeiture
of items that are used to facilitate the crime of Promoting
an Exhibition of Fighting Animals. This provision was added
pursuant to a requested by the Department of Public Safety
that was forwarded to your committee.

If we can be of further assistance to you on this
matter, please let us know at your earliest convenience.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By:


Barry J. Stern

Assistant Attorney General

BJS:gm

SB

519

Summary

Amends statutes concerning "Fish and Game, Regulation of Entry into Alaska Commercial Fisheries, Terms and conditions of entry permit; annual renewal" to provide for the use of entry permits as collateral for loans ^{as already provided} under existing statutes AS 44.54.230-44.54.250.

The section dealing with "Transfer of entry permits" under the same chapter is also amended to provide for the transfer of entry permits in the event of foreclosure of a loan ^{as already provided} under AS 44.54.230-44.54.250.

Background

This bill appears to be simply a house-cleaning measure to bring statutes under AS 16.43 into compliance with existing statutes under AS 44.54 ("State Government, Commercial Fishing and Agriculture Bank").

Statutes under AS 44.54.230-44.54.250 discuss state loans through the Commercial Fishing and Agriculture Bank for purchase of limited entry permits. They include provisions for using permits as collateral for such loans. This bill would make this use of permits as collateral consistent with statutes under AS 16.43.150 and AS 16.43.170.



Official Business

Alaska State Legislature

Senate

Committee on State Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

SB 519 - An Act relating to the use of limited entry permits as collateral for loans.

BY: State Affairs Committee

Existing statutes under the Commercial Fishing and Agriculture Bank (AS 44.54, attached) allow the use of entry permits as collateral for state loans. However, this is not presently allowed under AS 16.41 TERMS AND CONDITIONS OF ENTRY PERMIT. Therefore, a conflict exists between the statutes. Section 1 of this bill would amend AS 16.43 to allow the use of entry permits as collateral for loans from the Commercial Fishing and Agriculture Bank and would resolve the statutory conflict.

Similarly, existing statutes under the Commercial Fishing and Agriculture Bank allow the transfer of a permit by the bank, in the event of foreclosure of a loan. This is not allowed under AS 16.43. Section 2 would amend AS 16.43 to allow this, thus resolving the statutory conflict.

HOUSE

SB 519

An Act relating to the use of limited entry permits as collateral for loans

By State Affairs

Summary

Existing statutes under the Commercial Fishing and Agriculture Bank allow the use of entry permits as collateral for state loans.

However, this is not presently allowed under AS 16.43, "Terms and conditions of entry permit"--so a conflict exists between the statutes. ^{SECTION 2} This bill would amend AS 16.43 to allow the use of permits as collateral for loans from the Commercial Fishing and Agriculture Bank, so the statutes would not conflict.

To resolve this

Section 2 would allow the transfer of a permit by the Bank in the event of foreclosure of a loan, which would again resolve the conflict between the statutes under AS 16.43 and AS 44.50

44.54.250 In the event of foreclosure, the Bank shall offer the Entry Commission the right of first refusal. If the Commission doesn't exercise the right, the debtor may nominate a person qualified to assume the note. If the debtor is unable to nominate a qualified person, the Entry Commission shall provide the bank with a list of qualified applicants, and the bank shall allow the first applicant meeting the qualifications to assume the note.

March 13, 1980

SB 519 An Act relating to the use of limited entry permits
as collateral for loans.

SUMMARY:

Statutes under AS 16.43 state that an entry permit may not be pledged, mortgaged, leased, or in any way encumbered and may not be transferred with any right of repossession or foreclosure. Statutes under AS 44.54.230 - 44.54.250 allow the use of an entry permit as collateral for a state loan from the Commercial Fishing and Agriculture Bank, and provide for the transfer of the permit in the event of foreclosure. This bill would amend the statutes under AS 16.43 to comply with the existing statutes under AS 44.54

(16) provide technical services to shareholders; for the purposes of this paragraph, "technical services" includes services that will enhance the ability of the shareholder to obtain financial assistance from the bank;

(17) make loans, as provided in (1) of this section, secured by liens subordinate to valid first liens and security agreements granted to private lending institution;

(18) participate with state departments and agencies in formulating policy and in planning for the development of commercial fishing and agriculture in the state;

(19) do what is necessary or desirable to carry out the corporate purposes and powers expressed or implied in this chapter.

(20) make loans to individual commercial fishermen for limited entry permits; a loan under this paragraph may be made only to an individual commercial fisherman who has been a state resident for a continuous period of five years immediately preceding the date of application for the loan and who has had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for any one of the past five years, and who has actively participated in the fishery during that period; loans made under this paragraph are subject to the provisions of AS 44.54.230. (§ 3 ch 159 SLA 1978, am § 4 ch 53 SLA 1979)

Effect of amendment. — The 1979 amendment added paragraph (20).

Sec. 44.54.220. Transition. Upon the repurchase of all the nonvoting, preferred shares initially issued by the bank and purchased by agencies of the state, the provisions of this chapter lapse and the bank may proceed to operate as a private cooperative corporation under the terms of its bylaws and subject to the provisions of AS 10.15.005 — 10.15.600. (§ 3 ch 159 SLA 1978)

Sec. 44.54.230. Loans for purchase of Alaska limited entry permits.
 (a) A loan under AS 44.54.210(20) for the purchase of a limited entry permit may be made only upon certification by the Alaska Commercial Fisheries Entry Commission (AS 16.43.020) that the fisherman is a person who qualifies as a transferee for the permit under AS 16.43 and the regulations adopted by the commission.

(b) Upon approval by the bank, the permit to be purchased may be pledged as security for a loan under (a) of this section, if

(1) the certificate for the pledged permit lists the executive director of the bank as the legal owner of the permit;

(2) the certificate for the pledged permit lists the debtor as the equitable owner of the permit;

(3) all annual permit cards issued under the pledged permit list the name of the debtor;

(4) all obligations and responsibilities of a permit owner are assumed by the debtor;

(5) co-signers or other sureties for performance under the note are not vested with any rights in the pledged permit and their obligation is limited to satisfaction of the note and payment of costs directly incurred by the bank in administering the loan.

(c) Upon satisfaction of the note by the debtor, the executive director shall certify to the commission that the note has been satisfied.

(d) Upon certification as provided in (c) of this section, the commission shall amend the permit certificate to list the debtor as the legal owner. (§ 5 ch 53 SLA 1979)

Sec. 44.54.240. Default and foreclosure of loans for limited entry permits. (a) If the debtor defaults upon a note for which a limited entry permit has been pledged as security under AS 44.54.230, the executive director of the bank shall provide the debtor, by registered or certified mail sent to his last known address on file with the bank, with a notice of default which includes

(1) a description of the security given for the note including the number assigned to the pledged permit by the Alaska Commercial Fisheries Entry Commission;

(2) the date upon which the default occurred;

(3) the amount of arrearages as of the date of the notice, the total amount remaining on the note less unearned interest, and the amount of daily interest;

(4) a statement that the debtor may, within 15 days of the postmark date of the notice, request a hearing at which he may submit evidence showing he has not defaulted;

(5) a statement that the note may be reinstated if brought current within 60 days from the postmark date of the notice;

(6) a statement that the note may be paid in full less unearned interest within 90 days from the postmark date of the notice;

(7) the place where reinstatement or payment in full may be made; and

(8) a notice in at least 10-point bold type stating: "IMPORTANT: YOUR FAILURE TO REINSTATE OR PAY THIS NOTE IN FULL BY THE DATE SPECIFIED WILL RESULT IN A FORFEITURE OF ALL RIGHTS TO THE PERMIT AND THE POSSIBILITY OF LEGAL ACTION BEING INSTITUTED AGAINST YOU."

(b) Upon the debtor's failure to reinstate or satisfy the note within the time specified in (a) of this section, his equitable interest is terminated by operation of law without further notice. Any entry permit cards issued to him under the permit shall be cancelled immediately upon receipt by the commission of a certificate of termination containing a copy of the notice required by (a) of this section issued by the executive director of the bank. (§ 5 ch 53 SLA 1979)

Sec. 44.54.250.

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Chapter 55. A

Section

10. Creation of auth

20. Membership

30. Officers and qu

40. Compensation

50. Staff

60. Legal counsel

70. Purpose of auth

80. General powers

90. Bonds of the aut

100. Submission of f

impact plan

110. Legislative appro

115. Nomination of a r

Sec. 44.54.250. Deficiencies and transfer of entry permits after foreclosure. (a) Upon a foreclosure on an entry permit as provided in AS 44.54.240, the executive director of the bank shall offer the Alaska Commercial Fisheries Entry Commission a right of first refusal if the permit is subject to a buy-back program under AS 16.43.290 — 16.43.330 at a price equal to the amount outstanding on the note plus any costs the bank directly incurred in administering the loan.

(b) If the commission does not exercise its right of first refusal within 30 days after it receives the offer, or if the permit is not subject to a buy-back program under AS 16.43.290 — 16.43.330, the bank shall promptly notify the debtor of this fact. The debtor has 30 days from the postmark date of the notice to nominate a person qualified to assume the note. The person nominated must qualify under the requirements of AS 44.54.230(a). If qualified, he may assume all rights and liabilities of the original debtor.

(c) If the debtor is unable to nominate a qualified person to assume the note under (b) of this section, the permit must be made available to a qualified person, chosen as provided in this section, who shall assume the note subject to all rights and liabilities of the original debtor. The Alaska Commercial Fisheries Entry Commission shall provide the bank with a list of persons chosen by lottery who qualify as transferees of entry permits under AS 16.43 and regulations adopted by the commission and who have met the residency and commercial fishing participation requirements of AS 44.54.210(20). The executive director of the bank shall then determine, in order of presentation, any remaining qualifications. The executive director shall allow the first applicant meeting all qualifications to assume the note.

(d) Nothing in this section affects the right of the executive director of the bank to institute legal action for a deficiency resulting from a default on a note given under AS 44.54.230. In addition to any deficiency, the debtor is liable for the costs of administering the note and for costs and attorney fees. (5 5 ch 53 SLA 1979)

Chapter 55. Alaska Gas Pipeline Financing Authority.

| Section | Section |
|---|--|
| 10. Creation of authority | 120. Trust indentures and trust agreements |
| 20. Membership | 130. Nonliability on bonds |
| 30. Officers and quorum | 140. Pledge of the state |
| 40. Compensation | 150. Exemption from taxation |
| 50. Staff | 160. Bonds legal investments for fiduciaries |
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| 70. Purpose of authority | 180. Annual audit |
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| 90. Bonds of the authority | 200. Definitions |
| 100. Submission of financial and Alaska impact plan | |
| 110. Legislative approval | |
| 115. Nomination of a member of the board | |

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 519
 Title "An Act relating to the use of limited entry permits as collateral
 Requested by The State Affairs Committee Date 3/20/80 for loans"

II. FISCAL DETAIL Office of the Governor

Agency Affected Alaska Commercial Fisheries Entry Commission
 Program Category Affected NRMEC
 BRU, Program, or Subprogram(s) Affected ACFEC

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

| | FY 79 | FY 80 | FY 81 | FY 82 | FY 83 | FY 84 |
|--------------------------|-------|-------|-------|-------|-------|-------|
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | | | | | |
| 400 COMMODITIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC. | | | | | | |
| TOTAL | -0- | -0- | -0- | -0- | -0- | -0- |

FUNDING (Thousands of Dollars)

| | FY 79 | FY 80 | FY 81 | FY 82 | FY 83 | FY 84 |
|-----------------------------|-------|-------|-------|-------|-------|-------|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify Fund Source) | | | | | | |

POSITIONS

| | FY 79 | FY 80 | FY 81 | FY 82 | FY 83 | FY 84 |
|-----------|-------|-------|-------|-------|-------|-------|
| FULL TIME | | | | | | |
| PART TIME | | | | | | |
| TEMPORARY | | | | | | |

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

SB 519 will not in itself require significant expense for the Commission. However, this bill and any increase in the State's permit loan program will likely increase the number of transfers processed by the Commission. At present the permanent transfer request rate is approximately 2,000 per year. We are presently one month behind in processing transfer requests. Any increase in transfer rates and loan application evaluations will necessitate the creation of a transfer officer position. ^{1/}

^{1/} Presently, the supervisor of the Commission's licensing section also handles transfer requests. Because of the financial worth of these permits, we must use qualified Commission personnel who are thoroughly familiar with the Commission's operations to evaluate, approve and effect transfers. The increases realized in licensing and transfer requests (both permanent and emergency) has created a backlog, even though this employee contributes an average of 15 hours per week of overtime during the heaviest licensing months.

Derrill L. Johnson *DJ*

IV. DATE March 20, 1980 PREPARED BY Director of Administration
 AGENCY Commercial Fisheries Entry Commission
 Original: Legislative Finance PHONE 465-4081
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

(16) provide technical services to shareholders; for the purposes of this paragraph, "technical services" includes services that will enhance the ability of the shareholder to obtain financial assistance from the bank;

(17) make loans, as provided in (1) of this section, secured by liens subordinate to valid first liens and security agreements granted to a private lending institution;

(18) participate with state departments and agencies in formulating policy and in planning for the development of commercial fishing and agriculture in the state;

(19) do what is necessary or desirable to carry out the corporate purposes and powers expressed or implied in this chapter.

(20) make loans to individual commercial fishermen for limited entry permits; a loan under this paragraph may be made only to an individual commercial fisherman who has been a state resident for a continuous period of five years immediately preceding the date of application for the loan and who has had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for any one of the past five years, and who has actively participated in the fishery during that period; loans made under this paragraph are subject to the provisions of AS 44.54.230. (§ 3 ch 159 SLA 1978; am § 4 ch 53 SLA 1979)

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(2) the certificate for the pledged permit lists the debtor as the equitable owner of the permit;

(3) all annual permit cards issued under the pledged permit list the name of the debtor;

(4) all obligations and responsibilities of a permit owner are assumed by the debtor;

(5) co-signers or other sureties for performance under the note are not vested with any rights in the pledged permit and their obligation is limited to satisfaction of the note and payment of costs directly incurred by the bank in administering the loan.

(c) Upon satisfaction of the note by the debtor, the executive director shall certify to the commission that the note has been satisfied.

(d) Upon certification as provided in (c) of this section, the commission shall amend the permit certificate to list the debtor as the legal owner. (§ 5 ch 53 SLA 1979)

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(2) the date upon which the default occurred;

(3) the amount of arrearages as of the date of the notice, the total amount remaining on the note less unearned interest, and the amount of daily interest;

(4) a statement that the debtor may, within 15 days of the postmark date of the notice, request a hearing at which he may submit evidence showing he has not defaulted;

(5) a statement that the note may be reinstated if brought current within 60 days from the postmark date of the notice;

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(b) Upon the debtor's failure to reinstate or satisfy the note within the time specified in (a) of this section, his equitable interest is terminated by operation of law without further notice. Any entry permit cards issued to him under the permit shall be cancelled immediately upon receipt by the commission of a certificate of termination containing a copy of the notice required by (a) of this section issued by the executive director of the bank. (§ 5 ch 53 SLA 1979)

Sec. 44.54.250 foreclosure. (a) Under AS 44.54.240, the entry permit is subject to foreclosure at a price equal to the value of the permit as determined by the bank directly.

(b) If the commission does not buy-back the permit within 30 days after it is offered, the bank may promptly notify the debtor of the buy-back program. The person who bought the permit under AS 44.54.230(a). If the bank is the original debtor.

(c) If the debtor does not buy-back the note under (b), the bank may sell the note to a qualified person. The bank shall provide the note subject to the terms of the Alaska Commercial Fisheries Entry Commission with a list of permitted entry permits to the commission and the bank shall participate in the program. The bank shall the qualifications. The bank shall meet all qualifications.

(d) Nothing in this section shall prevent the bank to insure the note against default on a note if the debtor is liable for the note and attorney fees.

Chapter 55. A

| Section | |
|---------|-------------------------------------|
| 10. | Creation of authority |
| 20. | Membership |
| 30. | Officers and quorum |
| 40. | Compensation |
| 50. | Staff |
| 60. | Legal counsel |
| 70. | Purpose of authority |
| 80. | General powers |
| 90. | Bonds of the authority |
| 100. | Submission of financial impact plan |
| 110. | Legislative approval |
| 115. | Nomination of a member |

Sec. 44.54.250. Deficiencies and transfer of entry permits after foreclosure. (a) Upon a foreclosure on an entry permit as provided in AS 44.54.240, the executive director of the bank shall offer the Alaska Commercial Fisheries Entry Commission a right of first refusal if the permit is subject to a buy-back program under AS 16.43.290 — 16.43.330 at a price equal to the amount outstanding on the note plus any costs the bank directly incurred in administering the loan.

(b) If the commission does not exercise its right of first refusal within 30 days after it receives the offer, or if the permit is not subject to a buy-back program under AS 16.43.290 — 16.43.330, the bank shall promptly notify the debtor of this fact. The debtor has 30 days from the postmark date of the notice to nominate a person qualified to assume the note. The person nominated must qualify under the requirements of AS 44.54.230(a). If qualified, he may assume all rights and liabilities of the original debtor.

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(d) Nothing in this section affects the right of the executive director of the bank to institute legal action for a deficiency resulting from a default on a note given under AS 44.54.230. In addition to any deficiency, the debtor is liable for the costs of administering the note and for cost and attorney fees. (§ 5 ch 53 SLA 1979)

Chapter 55. Alaska Gas Pipeline Financing Authority.

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| 110. Legislative approval | |
| 115. Nomination of a member of the board | |

(16) provide technical services to shareholders; for the purposes of this paragraph, "technical services" includes services that will enhance the ability of the shareholder to obtain financial assistance from the bank;

(17) make loans, as provided in (1) of this section, secured by liens subordinate to valid first liens and security agreements granted to a private lending institution;

(18) participate with state departments and agencies in formulating policy and in planning for the development of commercial fishing and aquaculture in the state;

(19) do what is necessary or desirable to carry out the corporate purposes and powers expressed or implied in this chapter.

(20) make loans to individual commercial fishermen for limited entry permits; a loan under this paragraph may be made only to an individual commercial fisherman who has been a state resident for a continuous period of five years immediately preceding the date of application for the loan and who has had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for any one of the past five years, and who has actively participated in the fishery during that period; loans made under this paragraph are subject to the provisions of AS 44.54.230. (§ 3 ch 159 SLA 1978; am § 4 ch 53 SLA 1979)

Effect of amendment. — The 1979 amendment added paragraph (20).

Sec. 44.54.220. Transition. Upon the repurchase of all the nonvoting, preferred shares initially issued by the bank and purchased by agencies of the state, the provisions of this chapter lapse and the bank may proceed to operate as a private cooperative corporation under the terms of its bylaws and subject to the provisions of AS 10.15.005 — 10.15.600. (§ 3 ch 159 SLA 1978)

Sec. 44.54.230. Loans for purchase of Alaska limited entry permits.
(a) A loan under AS 44.54.210(20) for the purchase of a limited entry permit may be made only upon certification by the Alaska Commercial Fisheries Entry Commission (AS 16.43.020) that the fisherman is a person who qualifies as a transferee for the permit under AS 16.43 and the regulations adopted by the commission.

(b) Upon approval by the bank, the permit to be purchased may be pledged as security for a loan under (a) of this section, if

(1) the certificate for the pledged permit lists the executive director of the bank as the legal owner of the permit;

(2) the certificate for the pledged permit lists the debtor as the equitable owner of the permit;

(3) all annual permit cards issued under the pledged permit list the name of the debtor;

(4) all obligations and responsibilities of a permit owner are assumed by the debtor;

(5) co-signers or other sureties for performance under the note are not vested with any rights in the pledged permit and their obligation is limited to satisfaction of the note and payment of costs directly incurred by the bank in administering the loan.

(c) Upon satisfaction of the note by the debtor, the executive director shall certify to the commission that the note has been satisfied.

(d) Upon certification as provided in (c) of this section, the commission shall amend the permit certificate to list the debtor as the legal owner. (§ 5 ch 53 SLA 1979)

Sec. 44.54.240. Default and foreclosure of loans for limited entry permits. (a) If the debtor defaults upon a note for which a limited entry permit has been pledged as security under AS 44.54.230, the executive director of the bank shall provide the debtor, by registered or certified mail sent to his last known address on file with the bank, with a notice of default which includes

(1) a description of the security given for the note including the number assigned to the pledged permit by the Alaska Commercial Fisheries Entry Commission;

(2) the date upon which the default occurred;

(3) the amount of arrearages as of the date of the notice, the total amount remaining on the note less unearned interest, and the amount of daily interest;

(4) a statement that the debtor may, within 15 days of the postmark date of the notice, request a hearing at which he may submit evidence showing he has not defaulted;

(5) a statement that the note may be reinstated if brought current within 60 days from the postmark date of the notice;

(6) a statement that the note may be paid in full less unearned interest within 90 days from the postmark date of the notice;

(7) the place where reinstatement or payment in full may be made; and

(8) a notice in at least 10-point bold type stating: "IMPORTANT: YOUR FAILURE TO REINSTATE OR PAY THIS NOTE IN FULL BY THE DATE SPECIFIED WILL RESULT IN A FORFEITURE OF ALL RIGHTS TO THE PERMIT AND THE POSSIBILITY OF LEGAL ACTION BEING INSTITUTED AGAINST YOU."

(b) Upon the debtor's failure to reinstate or satisfy the note within the time specified in (a) of this section, his equitable interest is terminated by operation of law without further notice. Any entry permit cards issued to him under the permit shall be cancelled immediately upon receipt by the commission of a certificate of termination containing a copy of the notice required by (a) of this section issued by the executive director of the bank. (§ 5 ch 53 SLA 1979)

Sec. 44.54.250
foreclosure. (a) 44.54.240, the Commercial Fisheries Entry permit is subject to foreclosure at a price equal to the value of the bank direct

(b) If the commission does not buy-back the permit within 30 days after it is notified, the bank shall promptly notify the permit owner by postmark date of the notice. The person named in 44.54.230(a). If the permit is not the original debtor.

(c) If the debtor fails to pay the note under the permit, the bank shall appoint a qualified person to manage the note subject to the approval of the Alaska Commercial Fisheries Entry Commission with a list of persons who are qualified to manage entry permits. The commission and the bank shall participate in the management of the note. The bank shall the qualifications. The person shall meet all qualifications.

(d) Nothing in this section shall prevent the bank to insure against default on a note. The bank shall be liable for the debt and attorney fees.

Chapter 55.

| Section | |
|---------|---------------------------|
| 10. | Creation of authority |
| 20. | Membership |
| 30. | Officers and quorum |
| 40. | Compensation |
| 50. | Staff |
| 60. | Legal counsel |
| 70. | Purpose of authority |
| 80. | General powers |
| 90. | Bonds of the authority |
| 100. | Submission of impact plan |
| 110. | Legislative approval |
| 115. | Nomination of authority |

Sec. 44.54.250. Deficiencies and transfer of entry permits after foreclosure. (a) Upon a foreclosure on an entry permit as provided in AS 44.54.240, the executive director of the bank shall offer the Alaska Commercial Fisheries Entry Commission a right of first refusal if the permit is subject to a buy-back program under AS 16.43.290 — 16.43.330 at a price equal to the amount outstanding on the note plus any costs the bank directly incurred in administering the loan.

(b) If the commission does not exercise its right of first refusal within 30 days after it receives the offer, or if the permit is not subject to a buy-back program under AS 16.43.290 — 16.43.330, the bank shall promptly notify the debtor of this fact. The debtor has 30 days from the postmark date of the notice to nominate a person qualified to assume the note. The person nominated must qualify under the requirements of AS 44.54.230(a). If qualified, he may assume all rights and liabilities of the original debtor.

(c) If the debtor is unable to nominate a qualified person to assume the note under (b) of this section, the permit must be made available to a qualified person, chosen as provided in this section, who shall assume the note subject to all rights and liabilities of the original debtor. The Alaska Commercial Fisheries Entry Commission shall provide the bank with a list of persons chosen by lottery who qualify as transferees of entry permits under AS 16.43 and regulations adopted by the commission and who have met the residency and commercial fishing participation requirements of AS 44.54.210(20). The executive director of the bank shall then determine, in order of presentation, any remaining qualifications. The executive director shall allow the first applicant meeting all qualifications to assume the note.

(d) Nothing in this section affects the right of the executive director of the bank to institute legal action for a deficiency resulting from a default on a note given under AS 44.54.230. In addition to any deficiency, the debtor is liable for the costs of administering the note and for costs and attorney fees. (§ 5 ch 53 SLA 1979)

Chapter 55. Alaska Gas Pipeline Financing Authority.

| Section | Section |
|---|--|
| 10. Creation of authority | 120. Trust indentures and trust agreements |
| 20. Membership | 130. Nonliability on bonds |
| 30. Officers and quorum | 140. Pledge of the state |
| 40. Compensation | 150. Exemption from taxation |
| 50. Staff | 160. Bonds legal investments for fiduciaries |
| 60. Legal counsel | 170. Regulations |
| 70. Purpose of authority | 180. Annual audit |
| 80. General powers | 190. Annual report |
| 90. Bonds of the authority | 200. Definitions |
| 100. Submission of financial and Alaska impact plan | |
| 110. Legislative approval | |
| 115. Nomination of a member of the board | |



Official Business

Alaska State Legislature

Senate

Committee on State Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

SB 519 - An Act relating to the use of limited entry permits as collateral for loans.

BY: State Affairs Committee

Existing statutes under the Commercial Fishing and Agriculture Bank (AS 44.54, attached) allow the use of entry permits as collateral for state loans. However, this is not presently allowed under AS 16.43 TERMS AND CONDITIONS OF ENTRY PERMIT. Therefore, a conflict exists between the statutes. Section 1 of this bill would amend AS 16.43 to allow the use of entry permits as collateral for loans from the Commercial Fishing and Agriculture Bank and would resolve the statutory conflict.

Similarly, existing statutes under the Commercial Fishing and Agriculture Bank allow the transfer of a permit by the bank, in the event of foreclosure of a loan. This is not allowed under AS 16.43. Section 2 would amend AS 16.43 to allow this, thus resolving the statutory conflict.

Summary

Amends statutes concerning "Fish and Game, Regulation of Entry into Alaska Commercial Fisheries, Terms and conditions of entry permit; annual renewal" to provide for the use of entry permits as collateral for loans ^{as already provided} under existing statutes AS 44.54.230-44.54.250.

The section dealing with "Transfer of entry permits" under the same chapter is also amended to provide for the transfer of entry permits in the event of foreclosure of a loan ^{as already provided} under AS 44.54.230-44.54.250.

Background

This bill appears to be simply a house-cleaning measure to bring statutes under AS 16.43 into compliance with existing statutes under AS 44.54 ("State Government, Commercial Fishing and Agriculture Bank").

Statutes under AS 44.54.230-44.54.250 discuss state loans through the Commercial Fishing and Agriculture Bank for purchase of limited entry permits. They include provisions for using permits as collateral for such loans. This bill would make this use of permits as collateral consistent with statutes under AS 16.43.150 and AS 16.43.170.

HOUSE

SB 519

An Act relating to the use of limited entry permits as collateral for loans

By State Affairs

Summary

Existing statutes under the Commercial Fishing and Agriculture Bank allow the use of entry permits as collateral for state loans.

However, this is not presently allowed under AS 16.43, "Terms and conditions of entry permit"--so a conflict exists between the statutes. ^{SELECTING AN EC} This bill would amend AS 16.43 to allow the use of permits as collateral for loans from the Commercial Fishing and Agriculture Bank, so the statutes would not conflict.

To resolve this

Section 2 would allow the transfer of a permit by the Bank in the event of foreclosure of a loan, which would again resolve the conflict between the statutes under AS 16.43 and AS 44.54.

44.51.250 In the event of foreclosure, the Bank shall offer the Entry Commission the right of first refusal. If the Commission doesn't exercise the right, the debtor may nominate a person qualified to assume the note. If the debtor is unable to nominate a qualified person, the Entry Commission shall provide the bank with a list of qualified applicants, and the bank shall allow the first applicant meeting the qualifications to assume the note.

March 13, 1980

SB 519 An Act relating to the use of limited entry permits
as collateral for loans.

SUMMARY:

Statutes under AS 16.43 state that an entry permit may not be pledged, mortgaged, leased, or in any way encumbered and may not be transferred with any right of repossession or foreclosure. Statutes under AS 44.54.230 - 44.54.250 allow the use of an entry permit as collateral for a state loan from the Commercial Fishing and Agriculture Bank, and provide for the transfer of the permit in the event of foreclosure. This bill would amend the statutes under AS 16.43 to comply with the existing statutes under AS 44.54

SB

524

COMMITTEE REPORT
SENATE

FURTHER: Finance

3/18/80

Date: 3/18/80

Mr. President:

The Committee on JUDICIARY has had SB 524
allowing credits against fisheries taxes

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH 3 - JUNEAU 99811

March 25, 1980

The Honorable Robert Ziegler, Sr.
Chairman
Senate Judiciary Committee
Room 107 - Capitol Building
Juneau, Alaska 99811

Dear Senator Ziegler:

Re: Senate Bill No. 524

Senate Bill No. 524, an Act allowing credits against fisheries taxes, was introduced in the Senate on March 18, 1980 and was referred to the Senate Judiciary and Finance Committees.

For the consideration of the Senate Judiciary Committee, I am enclosing copies of Fiscal Notes prepared by Gary Jenkins, Director, Audit Division and Vincent Wright, Research Section, Department of Revenue concerning the proposed legislation.

Sincerely,



R. D. Stevenson
Special Assistant

cc: The Honorable John Sackett
Chairman
Senate Finance Committee

Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Gary Jenkins, Director
Audit Division
Department of Revenue

Vincent Wright
Research Section
Department of Revenue

STATE
of ALASKA

MEMORANDUM

TO: R. D. Stevenson
Special Assistant
Department of Revenue

DATE: March 24, 1980

FILE NO.

TELEPHONE NO.

FROM: Gary L. Jenkins
Director
Audit Division

SUBJECT: Senate Bill No. 524

This bill provides for the establishment of fisheries industry trade associations which would be funded by the State of Alaska through the form of a special tax credit given to fish processors on their fish processing tax returns. Each processor would be allowed a credit on a dollar for dollar basis for contributions to the fishery association in an amount up to 15 percent of the fish processors' tax due.

There would appear to be a legitimate question regarding whether there is a clear need for the State of Alaska to directly fund trade associations for the fishing industry, an industry which, incidentally, is largely dominated by Japanese interests. The fishing industry is already provided income tax incentives to improve their processing facilities in the form of the investment credit, both at the federal and state levels. It should also be noted that any expenditures made by a processor which are in any way a business expense related to processing or marketing of fish products, are tax deductible under the corporate income tax. Further, it would seem logical that all processors would be putting forth maximum effort to produce a product which has the best possible appeal in the market place.

With regard to enhancing the quality of the product itself, the State of Alaska already has inspectors from the Department of Health and Social Services and the Department of Natural Resources working with processors in an effort to ensure proper quality of the product produced.

Inasmuch as every processor doing business in the State of Alaska could form a seafood association as defined in the proposed law, we are requesting one permanent full time Auditor position to handle the auditing functions provided for in the proposed Section 43.75.035(b)(8).

| | | | | | | | | | | | | | | |
|--------------------------------------|---------------------------------------|--------------------|------------------|--------------------|--|--------------------|-----|--------|--------|--|--|--|--|--|
| 1 | POSITION TITLE Revenue Auditor III | | | RANGE/STEP 18 A | BARG. UNIT. G | LOCATION Juneau | GOV | APPROV | DISAPP | | | | | |
| 2 | TYPE OF POSITION PFT | STAFF MONTHS 12 | RP No. | PCN No. | PRIORITY | FORM 12 PAGE/LINE | LEG | | | | | | | |
| 3 | TYPE OF EXPENDITURE | | | AMOUNT | | JUSTIFICATION: | | | | | | | | |
| | 1 | 2 | 3 | | | | | | | | | | | |
| 4 | PERSONAL SERVICES: SALARY | | 29,580 | | <p>Inasmuch as every fish processor doing business in the State of Alaska could form a seafood association as defined in the proposed law, we are requesting one permanent full time Auditor position to handle the auditing functions provided for in the proposed Section 43.75.035(b)(8).</p> | | | | | | | | | |
| 5 | BENEFITS | | 4,399 | | | | | | | | | | | |
| 6 | FICA | | 1,967 | | | | | | | | | | | |
| 7 | HEALTH INS. | | 1,524 | | | | | | | | | | | |
| 8 | TOTAL PERSONAL SERVICES | | 37,470 | | | | | | | | | | | |
| 9 | TRAVEL | | 5,500 | | | | | | | | | | | |
| 10 | CONTRACTUAL | | 3,160 | | | | | | | | | | | |
| 11 | COMMODITIES | | 450 | | | | | | | | | | | |
| 12 | EQUIPMENT | | 1,200 | | | | | | | | | | | |
| 13 | OTHER | | | | | | | | | | | | | |
| 14 | TOTAL COST | | 47,780 | | | | | | | | | | | |
| | CODE | FUNDING SOURCE | | | | | | | | | | | | |
| 15 | | FED RCPTS. | | | | | | | | | | | | |
| 16 | | GF MATCH. | | | | | | | | | | | | |
| 17 | | GEN. FUND | | 47,780 | | | | | | | | | | |
| 18 | | I-A RCPTS. | | | | | | | | | | | | |
| 19 | | PGM RCPTS | | | | | | | | | | | | |
| 20 | | OTHER | | | | | | | | | | | | |
| 21 | CONTINUATION | | | | | | | | | | | | | |
| 22 | ADDITION | X | FOR BEM USE ONLY | | | | | | | | | | | |
| 1A KEY NUMBER _____ COLUMN NO. _____ | | | | | | | | | | | | | | |

AGENCY Department of Revenue PROGRAM AREA Revenue Collection and Management

SPY Audit Division

FY 81

13 REQUEST FOR NEW POSITION.

COMPONENT _____

Page _____ of _____

REVISED DATE _____

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill No. 524
 Title An Act allowing credits against fisheries taxes.
 Requested by Senate Judiciary & Finance Co. mittees Date 3/24/80

II. FISCAL DETAIL

Agency Affected _____ Revenue _____
 Program Category Affected _____ Fiscal Services _____
 BRU, Program, or Subprogram(s) Affected _____ Audit Division _____
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)
EXPENDITURES (Thousands of Dollars)

| | FY 80 | FY 81 | FY 82 | FY 83 | FY 84 | FY 85 |
|--------------------------|-------|-------------|-------------|-------------|-------------|-------------|
| 100 PERSONAL SERVICES | | 37.5 | 37.5 | 37.5 | 37.5 | 37.5 |
| 200 TRAVEL | | 5.5 | 5.5 | 5.5 | 5.5 | 5.5 |
| 300 CONTRACTUAL | | 3.1 | 3.1 | 3.1 | 3.1 | 3.1 |
| 400 COMMODITIES | | .5 | .5 | .5 | .5 | .5 |
| 500 EQUIPMENT | | 1.2 | 1.2 | 1.2 | 1.2 | 1.2 |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC. | | | | | | |
| TOTAL | | 47.8 | 47.8 | 47.8 | 47.8 | 47.8 |

FUNDING (Thousands of Dollars)

| | | | | | | |
|-----------------------------|--|------|------|------|------|------|
| GENERAL FUND | | 47.8 | 47.8 | 47.8 | 47.8 | 47.8 |
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify Fund Source) | | | | | | |
| | | | | | | |


POSITIONS

| | | | | | | |
|-----------|--|---|---|---|---|---|
| FULL TIME | | 1 | 1 | 1 | 1 | 1 |
| PART TIME | | | | | | |
| TEMPORARY | | | | | | |

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

See attached memorandum to R. D. Stevenson dated 3/24/80.

IV. DATE March 24, 1980

PREPARED BY 
 AGENCY Department of Revenue, Audit Division
 PHONE 465-2320

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. S B 524
 Title An act lowering credits against Fisheries Taxes
 Requested by _____ Date 3-25-80

II. FISCAL DETAIL

Agency Affected _____
 Program Category Affected _____
 BRU, Program, or Subprogram(s) Affected _____
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

| | FY 80 | FY 81 | FY 82 | FY 83 | FY 84 | FY 85 |
|--------------------------|-------|-------|-------|-------|-------|-------|
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | | | | | |
| 400 COMMODITIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC. | | | | | | |
| TOTAL | | | | | | |

FUNDING (Millions of Dollars)

| | | | | | |
|-----------------------------|--|-------|--|--|---------|
| GENERAL FUND | | (1.2) | | | unknown |
| FEDERAL FUNDS | | | | | |
| OTHER (Specify Fund Source) | | | | | |

POSITIONS

| | | | | | |
|-----------|--|--|--|--|--|
| FULL TIME | | | | | |
| PART TIME | | | | | |
| TEMPORARY | | | | | |

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The above mentioned assumes that 25% of the taxpayer credits are actually taken. The basis for the FY 81 data is the forecast in the Revenue Source Book which incorporates catch and price projections.

The cost to the general fund in subsequent fiscal years is indeterminate but dependant on varying credits, harvests and prices. It is likely that there will be a slight increase over time in credits taken.

IV. DATE 3/25/80 PREPARED BY Vincent Wright
 AGENCY Revenue
 PHONE 2371
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

SB

548

