

ALASKA LEGISLATURE COMMITTEES FILED 1905-1900 00/2

3306

HJUD

HB 184

182



# RECORDS CERTIFICATION



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*James O. Smith*  
Signature of Camera Operator

*7/25/89*  
Date

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184

# STATE OF ALASKA THE LEGISLATURE

## LEGISLATIVE AFFAIRS AGENCY

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POUCHY - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	3-7-85	1:30 pm
" "	5-7-85	7:00 pm

Edwards  
5/3/85 ✓

Original sponsor: Rules/Governor

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IN THE HOUSE

BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 184 (Judiciary)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to illegally controlled enterprises;  
and providing for an effective date."

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

\* Section 1. AS 11 is amended by adding a new chapter to read:

CHAPTER 59. ILLEGALLY CONTROLLED ENTERPRISES.

ARTICLE 1. PROHIBITED ACTIVITIES.

Sec. 11.59.010. UNLAWFUL ACTS. A person may not

- (1) acquire or maintain, directly or indirectly, an interest in or control of an enterprise through racketeering;
- (2) participate in or conduct, directly or indirectly, the affairs of an enterprise through racketeering; or
- (3) use or invest property derived, directly or indirectly, from racketeering, or the proceeds of that property, to acquire or maintain an interest in or control of an enterprise or to participate in or conduct the affairs of an enterprise.

Sec. 11.59.020. PROOF OF RACKETEERING. (a) The instances of illegal activity used to establish racketeering must include

- (1) one instance of illegal activity that is in violation of state law;
- (2) one instance of illegal activity that occurred after the effective date of this Act; and
- (3) one instance of illegal activity that was committed within three years before or after the alleged acquisition or maintenance of an interest in or control of the enterprise, or the alleged

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has elements similar to a current class A felony or unclassified felony in this state.

(b) Illegal control of an enterprise in the first degree is a class A felony.

Sec. 11.59.040. ILLEGAL CONTROL OF AN ENTERPRISE IN THE SECOND DEGREE. (a) A person commits the crime of illegal control of an enterprise in the second degree if the person violates AS 11.59.010 or attempts or solicits a violation of AS 11.59.010.

(b) Illegal control of an enterprise in the second degree is a class B felony.

Sec. 11.59.050. CHARGING UNDERLYING ACT. In a criminal prosecution under AS 11.59.030 or 11.59.040, a violation of a criminal law that is used to prove racketeering may be charged as a separate count in the same indictment or information as the violation of AS 11.59.030 or 11.59.040.

ARTICLE 3. CIVIL REMEDIES.

Sec. 11.59.060. INJUNCTIVE RELIEF. (a) In addition to any other action authorized by law, the attorney general may bring a separate action in the superior court to enjoin a violation of AS 11.59.010. The superior court may prevent or restrain violations of AS 11.59.010 by issuing appropriate temporary or permanent orders that provide for the rights of innocent persons and that may include

- (1) divestiture of an interest in an enterprise;
- (2) performance bonds;
- (3) reasonable restrictions on future activities or investments;
- (4) the attachment and freezing of assets;
- (5) prohibitions against engaging in the same type of activities as the enterprise engaged in; and

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(6) dissolution or reorganization of an enterprise.

(b) At any time after a civil or criminal proceeding arising out of a violation of AS 11.59.010 has been instituted, the superior court may issue appropriate orders and injunctive relief that may include the remedies listed in (a) of this section, or any other order to prevent disposal or diminution in value of property.

(c) Upon a criminal conviction or a civil judgment arising out of a violation of AS 11.59.010, the superior court may issue appropriate orders that may include the remedies listed in (a) of this section.

(d) In this section, the term "violation of AS 11.59.010" includes an attempt or solicitation under AS 11.31 to violate AS 11.59.010.

#### ARTICLE 4. GENERAL PROVISIONS.

Sec. 11.59.900. DEFINITIONS. In this chapter, unless the context requires otherwise,

(1) "enterprise" includes an individual, partnership, corporation, association, or other legal entity, and a union or group of persons associated in fact although not a legal entity;

(2) "illegal activity" means

(A) a felony against the person under AS 11.41, other than custodial interference in the first degree under AS 11.41.320;

(B) a crime against property under AS 11.46, that is punishable as a class B felony;

(C) a felony against public administration under AS 11.56, a felony against public order under AS 11.61, or a felony involving alcoholic beverages under AS 04;

(D) a crime involving controlled substances under

1 AS 11.71, that is punishable as an unclassified or class A or  
2 class B felony;

3 (E) promoting prostitution in the first degree under  
4 AS 11.66.110, promoting gambling in the first degree under  
5 AS 11.66.210; and possession of gambling records in the first  
6 degree under AS 11.66.230;

7 (F) felony conduct that is defined as "racketeering  
8 activity" under 18 U.S.C. 1961(1)(B) and (C);

9 (3) "property" means anything of value, including real or  
10 personal property, claims against or interests in business or proper-  
11 ty, contractual rights, securities, income, profits, an interest in an  
12 enterprise, or any other business or financial interest;

13 (4) "racketeering" means two or more instances of illegal  
14 activity that have the same or similar purposes, results, victims,  
15 participants, or methods of commission, or are interrelated by distin-  
16 guishing characteristics.

17 \* Sec. 2. This Act takes effect immediately in accordance with AS 01.-  
18 10.070(c).  
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Edwards  
4/29/85

Original sponsors: Rules/Governor

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*G. M. ...*

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IN THE HOUSE

BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 184 (Judiciary)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
FOURTEENTH LEGISLATURE - FIRST SESSION  
A BILL

For an Act entitled: "An Act relating to illegally controlled enterprises;  
and providing for an effective date."

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

\* Section 1. AS 11 is amended by adding a new chapter to read:

CHAPTER 59. ILLEGALLY CONTROLLED ENTERPRISES.

ARTICLE 1. PROHIBITED ACTIVITIES.

Sec. 11.59.010. UNLAWFUL ACTS. A person may not

- (1) acquire or maintain, directly or indirectly, an interest in or control of an enterprise through racketeering;
- (2) participate in or conduct, directly or indirectly, the affairs of an enterprise through racketeering; or
- (3) use or invest property derived, directly or indirectly, from racketeering, or the proceeds of that property, to acquire or maintain an interest in or control of an enterprise or to participate in or conduct the affairs of an enterprise.

Sec. 11.59.020. PROOF OF RACKETEERING. (a) The instances of illegal activity used to establish racketeering must include

- (1) one instance of illegal activity that is in violation of state law;
- (2) one instance of illegal activity that occurred after the effective date of this Act; and
- (3) one instance of illegal activity that was committed within three years before or after the alleged acquisition or maintenance of an interest in or control of the enterprise, or the alleged

1 participation in or conducting of the affairs of the enterprise as  
2 described in AS 11.59.010.

3 (b) The requirements of (a) of this section may be satisfied by  
4 a single instance of illegal activity.

5 (c) Past illegal activity may be used to establish racketeering  
6 if less than five years have elapsed between the date of the most  
7 recent instance of illegal activity and the immediately preceding  
8 instance of illegal activity.

9 (d) Illegal activity that is used to establish racketeering may  
10 be proved by

11 (1) a certified copy of a judgment of conviction;

12 (2) proof beyond a reasonable doubt in a criminal prose-  
13 cution under AS 11.59.030 or 11.59.040; or

14 (3) proof by a preponderance of the evidence in any other  
15 proceeding.

16 (e) For purposes of calculating the three-year period specified  
17 in (a)(3) of this section and the five-year period specified in (c) of  
18 this section, a period of imprisonment, probation, parole, conditional  
19 executive clemency, suspended imposition of sentence, formal deferred  
20 prosecution or formal pretrial diversion shall be excluded.

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22 ARTICLE 2. CRIMES INVOLVING ILLEGALLY  
23 CONTROLLED ENTERPRISES.

24 Sec. 11.59.030. ILLEGAL CONTROL OF AN ENTERPRISE IN THE FIRST  
25 DEGREE. (a) A person commits the crime of illegal control of an  
26 enterprise in the first degree if the person violates AS 11.59.040,  
27 and if one of the instances of illegal activity used to establish  
28 racketeering is

29 (1) an unclassified or class A felony in this state; or

(2) a crime in this state or in another jurisdiction that

1 has elements similar to a current class A felony or unclassified  
2 felony in this state.

3 (b) Illegal control of an enterprise in the first degree is a  
4 class A felony.

5 Sec. 11.59.040. ILLEGAL CONTROL OF AN ENTERPRISE IN THE SECOND  
6 DEGREE. (a) A person commits the crime of illegal control of an  
7 enterprise in the second degree if the person violates AS 11.59.010 or  
8 attempts or solicits a violation of AS 11.59.010.

9 (b) Illegal control of an enterprise in the second degree is a  
10 class B felony.

11 Sec. 11.59.050. CHARGING UNDERLYING ACT. In a criminal prose-  
12 cution under AS 11.59.030 or 11.59.040, a violation of a criminal law  
13 that is used to prove racketeering may be charged as a separate count  
14 in the same indictment or information as the violation of AS 11.59.030  
15 or 11.59.040.

16 ARTICLE 3. CIVIL REMEDIES.

17 Sec. 11.59.060. INJUNCTIVE RELIEF. (a) In addition to any  
18 other action authorized by law, the attorney general may bring a  
19 separate action in the superior court to enjoin a violation of AS 11.-  
20 59.010. The superior court may prevent or restrain violations of  
21 AS 11.59.010 by issuing appropriate temporary or permanent orders that  
22 provide for the rights of innocent persons and that may include

- 23 (1) divestiture of an interest in an enterprise;  
24 (2) performance bonds;  
25 (3) reasonable restrictions on future activities or in-  
26 vestments;  
27 (4) the attachment and freezing of assets;  
28 (5) prohibitions against engaging in the same type of  
29 activities as the enterprise engaged in; and

1 (6) dissolution or reorganization of an enterprise.

2 (b) At any time after a civil or criminal proceeding arising out  
3 of a violation of AS 11.59.010 has been instituted, the superior court  
4 may issue appropriate orders and injunctive relief that may include  
5 the remedies listed in (a) of this section, or any other order to  
6 prevent disposal or diminution in value of property.

7 (c) Upon a criminal conviction or a civil judgment arising out  
8 of a violation of AS 11.59.010, the superior court may issue appropri-  
9 ate orders that may include the remedies listed in (a) of this sec-  
10 tion.

11 (d) In this section, the term "violation of AS 11.59.010" in-  
12 cludes an attempt or solicitation under AS 11.31 to violate AS 11.59.-  
13 010.

14 ARTICLE 4. GENERAL PROVISIONS.

15 Sec. 11.59.000. DEFINITIONS. In this chapter, unless the con-  
16 text requires otherwise,

17 (1) "enterprise" includes an individual, partnership,  
18 corporation, association, or other legal entity, and a union or group  
19 of persons associated in fact although not a legal entity;

20 (2) "illegal activity" means

21 (A) a felony against the person under AS 11.41, other  
22 than custodial interference in the first degree under AS 11.41.-  
23 320;

24 (B) a crime against property under AS 11.46, that is  
25 punishable as a class B felony;

26 (C) a felony against public administration under  
27 AS 11.56, a felony against public order under AS 11.61, or a  
28 felony involving alcoholic beverages under AS 04;

29 (D) a crime involving controlled substances under

1 AS 11.71, that is punishable as an unclassified or class A or  
2 class B felony;

3 (E) promoting prostitution in the first degree under  
4 AS 11.66.110, promoting gambling in the first degree under  
5 AS 11.66.210; and possession of gambling records in the first  
6 degree under AS 11.66.230;

7 (F) felony conduct that is defined as "racketeering  
8 activity" under 18 U.S.C. 1961(1);

9 (3) "property" means anything of value, including real or  
10 personal property, claims against or interests in business or proper-  
11 ty, contractual rights, securities, income, profits, an interest in an  
12 enterprise, or any other business or financial interest;

13 (4) "racketeering" means two or more instances of illegal  
14 activity that have the same or similar purposes, results, victims,  
15 participants, or methods of commission, or are interrelated by distin-  
16 guishing characteristics.

17 \* Sec. 2. This Act takes effect immediately in accordance with AS 01.-  
18 10.070(c).  
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STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: HR 184  
 Title: "An Act relating to illegal-ly controlled enterorises..."  
 Sponsor: Governor  
 Requestor: House Judiciary  
 Date of Request: 3/8/85

FISCAL DETAIL

Agency Affected: Public Safety  
 Program Category Affected: \_\_\_\_\_  
Administration of Justice  
 BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Paul Conger  
 Division: Administrative Services

Phone: 465-4338  
 Date: 3/8/85

Approved by Commissioner: *Paul Ben*  
 Agency: Public Safety

Date: 3/8/85

Distribution (by Agency preparing fiscal note):

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

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: 2/28/86

**REQUEST**

Bill/Resolution No.: HB 134  
Title: "An act relating to illegally controlled enterprises..."

Sponsor: Governor Sherfield  
Requestor: Judiciary and Finance  
Date of Request: \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected: Department of Administration  
BRU: Public Defender Agency

Components: Third Judicial District

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		99.3	103.8	108.0	112.3	116.8
TRAVEL		5.0	5.2	5.4	5.6	5.8
CONTRACTUAL		10.0	10.4	5.4	5.6	5.3
SUPPLIES		2.5	2.6	2.7	2.8	2.9
EQUIPMENT		6.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>123.3</b>	<b>122.0</b>	<b>121.5</b>	<b>126.3</b>	<b>131.3</b>

CAPITAL						
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REVENUE						
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**FUNDING : (Thousands of Dollars)**

GENERAL FUND	-0-	123.3	122.0	121.5	126.3	131.3
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS :**

FULL-TIME	-0-	2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

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

(See Attached)

Prepared by: Dana Fabe, Public Defender  
Division: Public Defender Agency

Phone: 279-7541  
Date: 2/28/86

Approved by Commissioner: Eleanor Andrews  
Agency: Department of Administration

Date: 3/6/86

Distribution (by Agency preparing fiscal note):

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

Fiscal Note Analysis  
Prepared by Division of Public Defender Agency  
Department of Administration  
February 28, 1986

This bill is patterned after the federal racketeering statute. Although at first glance a statute relating to racketeering and organized crime would not appear to impact an agency providing public counsel to the indigent, a more detailed analysis of this bill reveals that both the Public Defender Agency and the Office of Public Advocacy will undoubtedly be appointed to represent defendants charged under this statute.

The definition of racketeering in this bill requires proof of a pattern of illegal activity involving two or more instances of that activity. Illegal activity is defined as almost any felony found under AS 11. The commentary to this legislation indicates specifically that the bill is not limited to "organized crime".

This bill is modeled on federal law, and the experience in federal cases is that the legislation has been applied to a wide variety of defendants, including members of the Hell's Angels motorcycle club, a factory worker at an automobile plant, and employees of a court system. Various states with similar bills have urged inclusion of a wide range of defendants within the statute, from members of prison gangs to members of narcotics trafficking operations. There appears to be a wide range of offenses which could be included within the purview of this statute, and while some persons involved in a criminal enterprise may be able to afford their own attorney, this by no means provides assurance that all members of an illegal enterprise under this statute could do so.

Of particular interest in analyzing whether persons charged under this statute may qualify for public counsel are the provisions in the statute which provide for forfeiture of illegal proceeds arising from the activity. The language of the bill is intended to permit seizure of assets and proceeds of the illegal enterprise, and the illegal profits will not become "legal" merely because they have been subsequently committed to a legal investment. Thus, even if a person charged with this offense has assets resulting from the illegal enterprise in which he is involved, those assets can be seized prior to his hiring a lawyer, making it necessary for the court to appoint the Public Defender Agency or Office of Public Advocacy to represent him.

Cases filed under racketeering bills routinely involve substantial attorney time, particularly for preparation of pre-trial motions. Due to the fact that the Department of Law's investigation activity will apparently focus on the Anchorage area, the Public Defender Agency is requesting one experienced attorney and one clerk typist to handle representation of clients charged under this bill.

Fiscal Analysis

<u>Personal Services:</u>	Attorney IV	72.4	
	Clerk-Typist III	27.4	
			99.8
<u>Travel:</u>	Expert witnesses and investigation		5.0
<u>Contractual:</u>	Expert witnesses, space, etc.		10.0
<u>Supplies:</u>	Office, law library, etc.		2.5
<u>Equipment:</u>	(one time) Furniture, office machines, etc.		<u>6.0</u>
	Total		123.3

Position Title <u>Attorney IV</u>		No. of Positions <u>1</u>	Range/Step <u>24/A</u>	Rate Unit <u>PX</u>	Gov.	Approv.	Disapp
Time Status <u>PFT</u>	Staff Months <u>12.0</u>	RP Number	Location <u>Anchorage</u>		Election District <u>8</u>	Leg.	
Justification							
Type of Expenditure				Amount			
1		2		3			
Salary	<u>4687 x 12</u>	<u>56,244</u>					
Benefits		<u>16,109</u>					
Premium Pay							
Other							
Total Personal Services				<u>72,353</u>			
Travel				<u>5,000</u>			
Contractual				<u>10,000</u>			
Commodities				<u>1,500</u>			
Equipment				<u>1,500</u>			
Other							
Total Cost				<u>90,353</u>			
Receipt Code		Funding Source					
		Federal Receipts 1002					
		G. F. Match 1003					
		General Funds 1004		<u>90,353</u>			
		I-A Receipts 1005					
		Program Receipts 1028					
		CIP Receipts 1061					
		Other					
For B&M Use Only Key Number _____							

This bill, which relates to illegally controlled enterprises is broad enough in scope that indigents may be included, thereby requiring the services of the Public Defender Agency. Since the felony caseload of the agency would be increased an experienced Attorney IV is requested for Anchorage. The travel and contractua monies would go for professional experts and investigators.

**Request For  
New Position**

Agency Department of Administration  
 DRU Public Defender Agency  
 Component Third Judicial District

Page 4 of 5  
 Revised Date \_\_\_\_\_

**FY 87**

Position Title <b>Clerk/Typist III</b>			No. of Positions <b>1</b>	Range/Step <b>8A</b>	Barg. Unit <b>CC</b>	Gov.	Approv.	Disapp	
Time Status <b>PFI</b>	Staff Months <b>12.0</b>	RP Number	Location <b>Anchorage</b>		Election District <b>8</b>	Leg.			
Type of Expenditure			Justification						
			<p>This bill, which relates to illegally controlled enterprises, is broad enough in scope that indigents may be included, thereby requiring the services of the Public Defender Agency. Since the felony caseload of the agency would be increased a Clerk Typist III is requested for Anchorage to provide necessary support services.</p>						
1		2							3
Salary	1631 x 12	19,572							
Benefits		7,804							
Premium Pay									
Other									
Total Personal Services									27,376
Travel									-0-
Contractual									-0-
Commodities									1,000
Equipment			4,500						
Other									
Total Cost			32,876						
Receipt Code			Funding Source						
			Federal Receipts 1002						
			G. F. Match 1003						
			General Funds 1004						
			I-A Receipts 1005						
			Program Receipts 1028						
			CIP Receipts 1061						
			Other						
			32,876						
For B&M Use Only									
Key Number									

**Request For  
New Position**

Agency Department of Administration  
 BRU Public Defender Agency  
 Component Third Judicial District

**FY 87**

Page 5 of 5  
 Revised Date

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

*DL*  
*S-119*

Page 1 of 5

Revision Date:

Page 1 of 5

REQUEST

Bill/Resolution No.: HB184 No.3  
Title: "An Act relating to illegally influenced and corrupt enterprisies"  
Sponsor: Governor Sheffield  
Requestor:  
Date of Request: February 4, 1985

FISCAL DETAIL

Agency Affected: Administration  
Program Category Affected: Due Process  
BRU, Program or Subprogram(s) Affected:  
Office of Public Advocacy

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES		100.6	106.6	112.9	119.6	126.7
200 TRAVEL		10.0	10.6	11.2	11.9	12.6
300 CONTRACTUAL		75.0	79.5	84.3	89.4	94.8
400 SUPPLIES		2.0	2.1	2.2	2.3	2.4
500 EQUIPMENT		14.0	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANECUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>201.6</b>	<b>198.8</b>	<b>210.6</b>	<b>223.2</b>	<b>236.5</b>
<b>CAPITAL</b>						
<b>REVENUE</b>						

FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>GENERAL FUNDS</b>						
FEDERAL FUNDS	-0-	201.6	198.8	210.6	223.2	236.5
OTHER						
<b>TOTAL</b>						

POSITIONS:

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>FULL-TIME</b>						
PART-TIME	-0-	2.0	2.0	2.0	2.0	2.0
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared By: *Sup for* Brant McGee, Public Advocate Phone: 274-1684  
Division: Office of Public Advocacy Date: February 4, 1985  
Approved by Commissioner: Lisa Rudd *A. B. Smith for* Date: 2-15-85  
Agency: Department of Administration

Distribution (by Agency preparing fiscal note):

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

Fiscal Note Analysis  
Prepared by Division of Office of Public Advocacy  
Department of Administration  
February 4, 1985

This bill is patterned after the federal racketeering statute. Although at first glance a statute relating to racketeering and organized crime would not appear to impact an agency providing public counsel to the indigent, a more detailed analysis of this bill reveals that both the Public Defender Agency and the Office of Public Advocacy will undoubtedly be appointed to represent defendants charged under this statute.

The definition of racketeering in this bill requires proof of a pattern of illegal activity involving two or more instances of that activity. Illegal activity is defined as almost any felony found under AS 11. The commentary to this legislation indicates specifically that the bill is not limited to "organized crime."

This bill is modeled on federal law, and the experience in federal cases is that the legislation has been applied to a wide variety of defendants, including members of the Hell's Angels motorcycle club, a factory worker at an automobile plant, and employees of a court system. Definitions of the persons included under such statutes have ranged from members of prison gangs to members of narcotics trafficking operations. There appears to be a wide range of offenses which could be included within the purview of this statute, and while some persons involved in a criminal enterprise may be able to afford their own attorney, this by no means provides assurance that all members of an illegal enterprise under this statute could do so.

Of particular interest in analyzing whether persons charged under this statute may qualify for public counsel are the provisions in the statute which provide for forfeiture of illegal proceeds arising from the activity. The language of the bill is intended to permit seizure of assets and proceeds of the illegal enterprise. The illegal profits will not become "legal" merely because they have been subsequently committed to a legal investment. Thus, even if a person charged with this offense has assets resulting from the illegal enterprise with which he is allegedly involved, those assets can be seized prior to his ability to hire a lawyer, making it necessary for the court to appoint the Public Defender Agency or Office of Public Advocacy.

Cases filed under racketeering bills routinely involve substantial attorney time, particularly preparation of pretrial motions. Due to the fact that its investigation activity will focus on the Anchorage area, the Office of Public Advocacy is requesting one experienced attorney and one secretary to handle representation of clients charged under this bill.

No.3  
page 2 of 5

Enactment of this statute is intended to allow the prosecution of multiple co-defendants. The Office of Public Advocacy is responsible by statute for providing legal representation to all indigent defendants with whom the Public Defender Agency has a conflict of interest. While staff attorneys can represent one co-defendant, in a given case the Office of Public Advocacy must contract with private counsel for the representation of all other co-defendants determined to be indigent by the court. It is anticipated that the complexity of this litigation will dictate high contract costs which are estimated at \$15,000 per defendant. The Department of Law has not estimated the number of prosecutions it will initiate during FY 86. The projected \$75,000 in contract costs is thus based on an assumption the Office of Public Advocacy will be responsible for only five defendants for which it cannot provide staff coverage.

1.	POSITION TITLE Legal Secretary I				RANGE/STEP 10/A	DEPT. UNIT GGU	PAGE/LINE	COV.	APPROV.	DISAP.	
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION EBA	ELECTION DISTRICT 8	LEG.			
3.	CONTINUATION LEVEL				JUSTIFICATION						
4.	TYPE OF EXPENDITURE			AMOUNT							
	1		2		3						
	PERSONAL SERVICES										
5.	Salary		22,020								
6.	Benefits		3,738								
7.	Supplemental Benefits		1,350								
8.	Fixed Benefits		2,732								
9.	TOTAL PERSONAL SERVICES		01		29,850						
10.	Travel		02								
11.	Contractual		03								
12.	Commodities		04								
13.	Equipment		05		11,600						
14.	Other										
15.	TOTAL COST				41,440						
	RECEIPT CODE				FUNDING SOURCE						
16.					Federal Receipts 1002						
17.					G.F. Match 1003						
18.					General Funds 1004						
19.					I-A Receipts 1005						
20.					Program Receipts 1028						
21.					Other						
FOR B2M USE ONLY											
KEY NUMBER _____											

This position is necessary to provide sufficient clerical support for an additional attorney. Presently, the Anchorage office has two Legal Secretary I positions who provide clerical support to six attorney positions, five deputy guardians, and one associate attorney position. An additional attorney handling racketeering cases throughout the state will increase the professional staff in Anchorage to thirteen positions. Given the complex litigation involved in these cases which may require specialized clerical support, the need for an additional Legal Secretary I position in Anchorage is evident.

2/4D1/0207-05

**REQUEST FOR  
NEW POSITION**

AGENCY Department of Administration

PROGRAM Due Process

BRU Office of Public Advocacy

COMPONENT \_\_\_\_\_

No. 3

Page 4 of 5  
Revised Date \_\_\_\_\_

**FY 86**

1.	POSITION TITLE <b>Attorney IV</b>				RANGE/STEP <b>24/A</b>	ORG. UNIT <b>PX</b>	PAGE/LINE	COV.	APPROV.	DISAP.		
2.	TYPE OF POSITION <b>PFT</b>	STAFF MONTHS <b>12</b>	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION <b>EBA</b>	ELECTION DISTRICT <b>8</b>	LEG.				
3.	CONTINUATION LEVEL				JUSTIFICATION							
4.	TYPE OF EXPENDITURE				<p>This position is necessary to assure representation of defendants charged under the racketeering statute. The defense of such cases involves not only review of the inevitably extension prosecution investigation, but litigation of complex legal issues in every case. While the position will be located in Anchorage, this attorney will be expected to provide representation statewide to those charged under the statute.</p>							
	1		2								3	
	PERSONAL SERVICES											
5.	Salary		55,956									
6.	Benefits		9,500									
7.	Supplemental Benefits		2,680									
8.	Fixed Benefits		2,630									
9.	TOTAL PERSONAL SERVICES		01								70,766	
10.	Travel		02								10,000	
11.	Contractual		03									
12.	Commodities		04									
13.	Equipment		05								2,400	
14.	Other											
15.	TOTAL COST										83,166	
	RECEIPT CODE										FUNDING SOURCE	
16.					Federal Receipts 1002							
17.					C.F. Match 1003							
18.					General Funds 1004							
19.					I-A Receipts 1005							
20.					Program Receipts 1028							
21.					Other							
FOR B211 USE ONLY												
KEY NUMBER _____												

2/4D1/0207-06

**REQUEST FOR  
NEW POSITION**

AGENCY Department of Administration

PROGRAM Due Process

BRU Office of Public Advocacy

COMPONENT \_\_\_\_\_

No. 3

Page 5 of 5

Revised Date \_\_\_\_\_

**FY 86**

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

Page 1 of 5

**REQUEST**

Bill/Resolution No.: HB184

Title: "An Act relating to illegally influenced and corrupt enterprises"

Sponsor: Governor Sheffield

Requestor: \_\_\_\_\_

Date of Request: February 4, 1985

**FISCAL DETAIL**

Agency Affected: Administration

Program Category Affected: Due Process

BRU, Program or Subprogram(s) Affected: \_\_\_\_\_

Public Defender Agency

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES		97.6	103.4	109.7	116.2	123.2
200 TRAVEL		5.0	5.3	5.6	5.9	6.3
300 CONTRACTUAL		10.0	10.6	11.2	11.9	12.6
400 SUPPLIES		3.0	2.1	2.2	2.4	2.5
500 EQUIPMENT		4.0	0	0	0	0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	119.6	121.4	128.7	136.4	144.6
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING: (Thousands of Dollars)**

GENERAL FUND		119.6	121.4	128.7	136.4	144.6
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	119.6	121.4	128.7	136.4	144.6

**POSITIONS:**

FULL-TIME	0	2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

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

See attached analysis.

Prepared by: *slip for*  
Dana Fabe, Public Defender

Division: Public Defender Agency

Phone: 279-7541

Date: February 4, 1985

Approved by Commissioner: Lisa Rudd  
Agency: Department of Administration

Date: 2-15-85

**Distribution (by Agency preparing fiscal note):**

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

Fiscal Note Analysis  
Prepared by Division of Public Defender Agency  
Department of Administration  
February 4, 1985

This bill is patterned after the federal racketeering statute. Although at first glance a statute relating to racketeering and organized crime would not appear to impact an agency providing public counsel to the indigent, a more detailed analysis of this bill reveals that both the Public Defender Agency and the Office of Public Advocacy will undoubtedly be appointed to represent defendants charged under this statute.

The definition of racketeering in this bill requires proof of a pattern of illegal activity involving two or more instances of that activity. Illegal activity is defined as almost any felony found under AS 11. The commentary to this legislation indicates specifically that the bill is not limited to "organized crime."

This bill is modeled on federal law, and the experience in federal cases is that the legislation has been applied to a wide variety of defendants, including members of the Hell's Angels motorcycle club, a factory worker at an automobile plant, and employees of a court system. Various states with similar bills have urged inclusion of a wide range of defendants within the statute, from members of prison gangs to members of narcotics trafficking operations. There appears to be a wide range of offenses which could be included within the purview of this statute, and while some persons involved in a criminal enterprise may be able to afford their own attorney, this by no means provides assurance that all members of an illegal enterprise under this statute could do so.

Of particular interest in analyzing whether persons charged under this statute may qualify for public counsel are the provisions in the statute which provide for forfeiture of illegal proceeds arising from the activity. The language of the bill is intended to permit seizure of assets and proceeds of the illegal enterprise, and the illegal profits will not become "legal" merely because they have been subsequently committed to a legal investment. Thus, even if a person charged with this offense has assets resulting from the illegal enterprise in which he is involved, those assets can be seized prior to his hiring a lawyer, making it necessary for the court to appoint the Public Defender Agency or Office of Public Advocacy to represent him.

Fiscal Note Analysis  
 Prepared by Division of Public Defender Agency  
 Department of Administration  
 February 4, 1985

Cases filed under racketeering bills routinely involve substantial attorney time, particularly for preparation of pre-trial motions. Due to the fact that the Department of Law's investigation activity will apparently focus on the Anchorage area, the Public Defender Agency is requesting one experienced attorney and one clerk typist to handle representation of clients charged under this bill.

Fiscal Analysis

<u>Personal Services:</u>	Attorney IV	70.8	
	Clerk-Typist III	26.8	
			97.6
<u>Travel:</u>	Expert witnesses and investigation		5.0
<u>Contractual:</u>	Expert witnesses, space, etc.		10.0
<u>Supplies:</u>	Office, law library, etc.		3.0
<u>Equipment:</u>	(one time) furniture, office machines, etc.		4.0
	Total		119.6

1.	POSITION TITLE Attorney IV			RANGE/STEP 24A	BARG. UNIT PX	PAGE/LINE	COV.	APPROV.	DISBY.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12.0	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.	
3.	CONTINUATION LEVEL	ADDITION		JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT					
	1	2		3					
	PERSONAL SERVICES								
5.	Salary	\$4663/mo.	55,956						
6.	Benefits		9,499						
7.	Supplemental Benefits		2,680						
8.	Fixed Benefits		2,630						
9.	TOTAL PERSONAL SERVICES		01	70,765					
10.	Travel		02	5,000					
11.	Contractual		03	10,000					
12.	Commodities		04	1,500					
13.	Equipment		05	2,000					
14.	Other								
15.	TOTAL COST			89,265					
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts 1002							
17.		G.F. Mtch 1003							
18.		General Funds 1004		89,265					
19.		I-A Receipts 1005							
20.		Program Receipts 1028							
21.		Other							
FOR BSM USE ONLY KEY NUMBER _____									

This bill, which relates to illegally controlled enterprises or criminal conspiracy and will be focused in the Third District, is broad enough in scope that indigents may be included, thereby requiring the services of the Public Defender Agency. Since the felony caseload of the agency would be increased, an experienced Attorney IV is requested for Anchorage. The travel and contractual monies would go for professional experts and investigations.

5/1D2/0207-08

**REQUEST FOR  
NEW POSITION**

AGENCY Department of Administration  
 PROGRAM Due Process  
 BRU Public Defender Agency  
 COMPONENT Third Judicial District

Page 4 of 5  
 Revised Date \_\_\_\_\_

**FY 86**

1.	POSITION TITLE <b>Clerk Typist III</b>				RANGE/STEP <b>8A</b>	BARG. UNIT <b>CG</b>	PAGE/LINE	COY.	APPROV.	DISAPP.		
2.	TYPE OF POSITION <b>PFT</b>	STAFF MONTHS <b>12.0</b>	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION <b>Anchorage</b>	ELECTION DISTRICT <b>8</b>	LEG:				
3.	CONTINUATION LEVEL				JUSTIFICATION							
4.	TYPE OF EXPENDITURE				<p>This bill, which relates to illegally controlled enterprises or criminal conspiracy and will be focused in the Third District, is broad enough in scope that indigents may be included, thereby requiring the services of the Public Defender Agency. Since the felony caseload of the agency would be increased, a Clerk Typist III is requested for Anchorage to provide necessary support services.</p>							
	1		2								3	
	PERSONAL SERVICES											
5.	Salary	\$1631/mo.	19,572									
6.	Benefits		3,322									
7.	Supplemental Benefits		1,199									
8.	Fixed Benefits		2,732									
9.	TOTAL PERSONAL SERVICES		01	26,825								
10.	Travel		02	0								
11.	Contractual		03	0								
12.	Commodities		04	1,500								
13.	Equipment		05	2,000								
14.	Other											
15.	TOTAL COST			30,325								
	RECEIPT CODE	FUNDING SOURCE										
16.		Federal Receipts 1002										
17.		G.F. Match 1003										
18.		General Funds 1004		30,325								
19.		I-A Receipts 1005										
20.		Program Receipts 1028										
21.		Other										
FOR BSM USE ONLY												
KEY NUMBER _____												

5/1D2/0207-07

**REQUEST FOR  
NEW POSITION**

AGENCY Department of Administration  
 PROGRAM Due Process  
 BRU Public Defender Agency  
 COMPONENT Third Judicial District

**FY 86**

Page 5 of 5  
 Revised Date \_\_\_\_\_

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST: HB 184, No. 2  
 Bill/Resolution No.: \_\_\_\_\_  
 Title: "An Act relating to illegally controlled enterprises..."  
 Sponsor: Rules/Governor  
 Requestor: Governor  
 Date of Request: January 23, 1985

FISCAL DETAIL:  
 Agency Affected: DEPARTMENT OF CORRECTIONS  
 Program Category Affected: \_\_\_\_\_  
 Administration of Justice  
 BRU, Program or Subprogram(s) Affected: Offender Confinement, Reformation and Supervision

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

This legislation will enhance Alaska's ability to investigate organized crime and to coordinate these investigations with the Federal Government. It is assumed that most cases would be prosecuted at the Federal level, creating negligible fiscal impact on the Department of Corrections.

Prepared By: William W. Ladwig  
 Division: Deputy Commissioner - Administration

Phone: 465-3376  
 Date: February 4, 1985

Approved by Commissioner: [Signature]  
 Agency: DEPARTMENT OF CORRECTIONS

Date: February 4, 1985

Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency (ies)

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

**REQUEST**

Bill/Resolution No.: 12-145  
 Title: "...relating to illegal control of an enterprise..."  
 Sponsor: Req. of the Governor  
 Requestor: \_\_\_\_\_  
 Date of Request: 10/30/84

**FISCAL DETAIL**

Agency Affected: Department of Law  
 Program Category Affected: Admin. of Justice - Due Process  
 BRU, Program or Subprogram(s) Affected: Prosecution

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES		77.5	85.3	90.4	95.8	101.5
200 TRAVEL		10.0	10.6	11.2	11.9	12.6
300 CONTRACTUAL		51.2	54.3	57.6	61.1	64.2
400 SUPPLIES		7.0	7.4	7.8	8.3	8.8
500 EQUIPMENT		3.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>148.7</b>	<b>157.6</b>	<b>167.0</b>	<b>177.1</b>	<b>187.1</b>

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

<b>REVENUE</b>						
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**FUNDING: (Thousands of Dollars)**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND	-0-	148.7	157.6	167.0	177.1	187.1
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
FULL-TIME	-0-	2	2	2	2	2
PART-TIME						
TEMPORARY						

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

See attached.

Prepared By: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Date: 10/30/84  
 Approved by Richard I. Pegues / WSR Date: 10/30/84  
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

October 29, 1984

This bill would provide both criminal and civil sanctions to combat organized racketeering activities through the illegal control of enterprises in Alaska. The bill provides both stiff penalties and severe financial disincentives to the infiltration into legitimate business through criminal activity. The bill is also designed to address the operation of an enterprise through a pattern of illegal activity. This level of criminal activity involves the use of highly sophisticated economic structures. Enactment of the bill will provide the state with the legal tools necessary to respond to the increasingly sophisticated criminal activity being experienced in Alaska.

The Department of Law estimates that four to six investigations/prosecutions of this nature will be undertaken annually. Each investigation will require painstaking examination and evaluation of large numbers of financial documents and business transactions to track and identify the funds that originate from criminal activities and the individuals who control those funds. The bill can be implemented with existing prosecutor resources because of the power granted to the Attorney General to conduct investigations into suspected organized criminal activity. The department believes, however, that the addition of some case preparation resources will enable it to do a far more effective job under the bill. The department therefore recommends the addition of an Associate Attorney II and a Paralegal Assistant II to conduct primary research of financial records of suspected criminal activities. These two positions would be assigned to the Office of Special Prosecutions and Appeals to assist existing attorneys "make" these types of cases. The department also recommends setting aside sufficient funds to contract for the services of document analysis experts and accountants for use as expert witnesses during the preparation for and conduct of trials.

Fiscal Analysis RICO Bill  
Cost Schedule

FY 86

	<u>Assoc. Atty. II</u>	<u>Paralegal Asst. II</u>	<u>Expert Witness Contractors</u>	<u>Total</u>
100	42.4	35.1		77.5
200	5.0	5.0		10.0
300	5.6	5.6	40.0	51.2
400	3.5	3.5		7.0
500 (one-time expense)	1.5	1.5		3.0
	<hr/>	<hr/>	<hr/>	<hr/>
	58.0	50.7	40.0	148.7

Contractor's time, including the costs for travel and the preparation of court room visual displays, is estimated at \$100 per hour for 400 hours of services.

Costs beyond FY 86 include a 6% annual inflation factor.

1.	POSITION TITLE Associate Attorney II				RANGE/STEP 19A	ORG. UNIT PX	FORM 12 PAGE/LINE	GOV.	APPROV.	DIS.
2.	TYPE OF POSITION PFT	STAFF MONTHS 10	HP NUMBER	PCN NUMBER	DRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	REC.		

3.	CONTINUATION LEVEL	ADDITION		
4.	TYPE OF EXPENDITURE			AMOUNT
	1	2		3
	PERSONAL SERVICES			
5.	Salary 3,303 X 10		33,030	
6.	Benefits 15.61 %		5,156	
7.	Supplemental Benefits 6.13%		2,025	
8.	Fixed Benefits 219.20 X 10		2,192	
9.	TOTAL PERSONAL SERVICES	01		42,403
10.	Travel	02		5,000
11.	Contractual	03		5,600
12.	Commodities	04		3,500
13.	Equipment	05		1,500
14.	Other			
15.	TOTAL COST			58,003

JUSTIFICATION

This is one of two positions needed to implement the RICO bill. The position will serve as case legal researcher and collect, organize and analyze the substantial amounts of evidence required to prove the infiltration of criminal activity into legitimate enterprises. Because of the complex nature of the evidence used in these types of cases, allocation to the senior para-professional classification of Associate Attorney II is recommended.

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	58,003
19.		I-A Receipts 1005	
20.		Program Receipts 1020	
21.		Other	

FOR U&H USE ONLY  
4A KEY NUMBER \_\_\_\_\_

13. REQUEST FOR  
NEW POSITION

AGENCY DEPARTMENT OF LAW  
PROGRAM DUE PROCESS  
DRU PROSECUTION  
CRIM. APPRS. & SPEC. PROS.

FY 8

Page 1 of 1  
Revised Date

1.	POSITION TITLE Paralegal Assistant II				RANGE/STEP 16A	ORG. UNIT G	FORM 12 PAGE/LINE	GOV	APPROV.	DIS
2.	TYPE OF POSITION PFT	STAFF MONTHS 10	IRP NUMBER	PCN NUMBER	DRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.		

3.	CONTINUATION LEVEL	ADDITION	
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary 2,702 X 10	27,020	
6.	Benefits 15.61%	4,218	
7.	Supplemental Benefits 6.13%	1,656	
8.	Fixed Benefits 219.20 X 10	2,192	
9.	TOTAL PERSONAL SERVICES	01	35,086
10.	Travel	02	5,000
11.	Contractual	03	5,600
12.	Commodities	04	3,500
13.	Equipment	05	1,500
14.	Other		
15.	TOTAL COST		50,686

JUSTIFICATION

This is the second of two positions needed to implement the RICO bill. The position will serve as case legal researcher and assist the Associate Attorney collect, organize and analyze the substantial amounts of evidence required to prove the infiltration of criminal activity into legitimate enterprises. Because the position will assist a senior researcher/case preparer, classification of Paralegal Assistant II is recommended.

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	50,686
19.		I-A Receipts 1005	
20.		Program Receipts 1020	
21.		Other	

FOR O&H USE ONLY  
4A KEY NUMBER \_\_\_\_\_

13. REQUEST FOR  
NEW POSITION

AGENCY DEPARTMENT OF LAW  
PROGRAM DUE PROCESS  
DRU PROSECUTION  
CUMM APPS & SPEC. PROC.

FY 8

Page 1 of 1  
Revised Date



# KENAI POLICE DEPT.

P.O. BOX 3173, KENAI, ALASKA 99611

TELEPHONE 283-7879

April 2, 1985

Representative Mike Miller  
Chairman, House Judiciary Committee  
Pouch V  
Juneau, AK. 99811

Dear Representative Miller,

The Alaska Association of Chief's of Police at its annual meeting in March of 1985 endorsed the passage of House Bill ~~184~~. While this legislation would be somewhat limited in its application, it would be effective in dealing with major criminal enterprises.

We believe that the passage of this piece of legislation, in combination with passage of general conspiracy statute, would greatly enhance the enforcement and prosecutorial resources available to address criminal enterprises.

We request your support, and that of your committee, to accomplish this goal.

Sincerely,

Chief Richard A. Ross  
Kenai Police Dept.  
President Alaska Chief's of Police

RAR/mp

# FUNK, BAXTER & COMPANY

A PROFESSIONAL CORPORATION

CERTIFIED PUBLIC ACCOUNTANTS

9309 GLACIER HIGHWAY, SUITE B-101  
JUNEAU, ALASKA 99801  
(907) 789-3178

LEROY T. FUNK, C.P.A.

FRANK SEXSMITH BAXTER, C.P.A.

CATHERINE R. BARRETT, C.P.A.

SHERRY L. YOUNG, C.P.A.

December 19, 1985

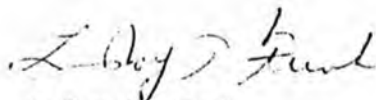
Mr. Jim Ayers  
Director of Legislation  
Office of the Governor  
Pouch A  
Juneau, Alaska 99811

Dear Mr. Ayers:

Thank you for taking the time to discuss HB 184 with me today. After talking to you, I found a copy of a letter from Mr. William M. Crane, Technical Manager, State Legislation Department, American Institute of Certified Public Accountants (AICPA) setting forth guidelines for RICO Legislation. I have enclosed a copy of the article from the Journal of Accountancy.

As you will discern from reading the article, the AICPA has been working closely with Congressman Boucher. If I may be of any further assistance on this issue, please do not hesitate to call me.

Sincerely,



LeRoy T. Funk  
Enclosure

cc: Senator Bill Ray  
Mike Miller  
Jim Duncan  
Ashley Reed

March 21, 1985

Le Roy T. Funk, CPA  
Funk, Baxter & Co.  
9309 Glacier Highway, Suite B- 101  
Juneau, AK 99803

Dear LeRoy,

Thank you for filling out and returning our Legislative Survey form. Thanks, too, for the copy of House Bill 184, the Alaska RICO bill.

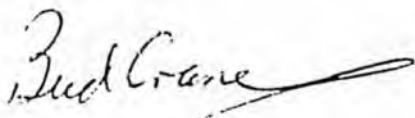
As I believe you are aware, LeRoy, the AICPA State Legislation Committee has established a high priority on handling of state RICO legislation. A committee task force on RICO has established general guidelines for responses to such legislation. In descending order of priority, the guidelines are:

1. Eliminate private (civil) suit provisions
2. Require a RICO criminal conviction before private suits may be filed
3. Require a RICO criminal indictment before private suits may be filed
4. Eliminate treble damage awards

With the above guidelines in mind, a review of House Bill 184 may be done. We find that the bill does permit private (civil) suits and does provide for treble damage awards. Therefore, to meet the guidelines of the RICO task force, the bill, if it is going to be enacted, should be amended.

I would appreciate it if you could provide an update of the present status of the bill and information on other RICO bills that may have been introduced or which are in the planning stages.

Sincerely,



William M. Crane  
Technical Manager  
State Legislation Department

# WHY CIVIL RICO MUST BE REFORMED

## RICO hits hard: treble damages and destroyed reputations.

by Congressman Rick Boucher

A new form of extortion is sweeping the country, and business people of all types—especially such professionals as CPAs, as well as bankers, insurance agents and securities brokers—are among its primary victims. They are being threatened with a weapon that can be more effective than brass knuckles, arson or vandalism, one that can inflict huge damages and can rain unjustified shame and ruin on them.

Ironically, it was Congress that inadvertently created this new method of extortion as part of a bill designed to help legitimate businesses defend themselves against organized crime. Instead, this weapon—the Racketeer Influenced and Corrupt Organizations Act (RICO)—has been turned against the very people Congress intended to protect.

### Origin of RICO

RICO was originally passed by Congress in 1970 as part of the Organized Crime Control Act. The bill's laudable goal was the eradication of organized crime in the United States. It aimed to accomplish this goal through a variety of reforms in law enforcement designed to strengthen the hand of the federal government in its battle against the pernicious influence of organized crime. As Senator John McClellan (D-Ark.), the bill's chief sponsor, put it at the time, Congress created the RICO title of the act to attack the growing problem of orga-

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FREDERIC C. (RICK) BOUCHER, JD, represents the ninth district of Virginia and is a Democratic member of the House Judiciary Committee and Criminal Justice Subcommittee. He is a member of the American and Virginia bar associations.

nized crime moving into legitimate businesses and then using "all the techniques of violence and intimidation which it used in its illegal businesses to injure legitimate competitors."

Congress, however, did not believe it could define *organized crime* in a criminal statute in a way that would fairly, accurately and precisely identify the targets of its concern or, indeed, in a way that would avoid the constitutional prohibition against creating so-called status offenses (such as saying "members of the Mafia"). Therefore, Congress chose instead to focus on the types of activities in which organized crime typically engages. The core of RICO, then, is an extensive list of criminal statutes that are defined to constitute "racketeering activities."

This list includes a variety of crimes normally associated with organized criminals: murder, kidnapping, hijacking, extortion and arson. Yet, in addition, because of some indications in 1970 that organized crime figures were beginning to traffic in stolen or counterfeit securities, the Securities and Exchange Commission asked the Senate to expand the list of criminal acts to include mail fraud, wire fraud and fraud in the sale of securities.

The statute makes it a separate federal crime to engage in a "pattern of racketeering activity" in certain relationships to an "enterprise." (And the definition of *enterprise* is broad.) The "pattern of racketeering activity" defined in the statute may require nothing more than an accusation—not a conviction—that the defendant twice within a 10-year span committed any of the acts listed as "racketeering activities."

Owing to the insidious nature of organized crime, Congress purposely wrote the provisions of RICO to cast a wide net. Congress realized that, if the list of criminal activities defining organized crime was too narrow, the hard-core criminal could simply get around the statute by moving his activities into a new arena not reached by the statute. As Senator McClellan explained, Congress could not "anticipate everything" and needed to write a broad, general statute.

At the time these provisions were being

given careful consideration by Congress, it seemed reasonable to write a broad statute because experienced federal prosecutors were to be responsible for enforcing it. Congress was counting on the Department of Justice to take this potent weapon and to use it—not against every conceivable person who could be swept within its terms but only against the type of hard-core organized crime figures who framed the purview of congressional concern.

Such reliance by Congress on the exercise of prosecutorial discretion is not at all unusual. The difficulty of writing laws to fit precisely the problem being attacked and the difficulty in “anticipating everything” mean that Congress often must give the executive branch of government broad authority to address a problem and also must rely on the executive branch to apply the law reasonably and responsibly. This was precisely the intent of Congress when it enacted the RICO statute.

Indeed, the Department of Justice responded by promulgating guidelines for all federal prosecutors and instructed them not to use RICO in “imaginative prosecutions” that would take advantage of the full theoretical reach of RICO. These guidelines delineate various principles designed to confine the use of RICO by the federal government to “the activity which Congress most directly addressed—the infiltration of organized crime in the nation’s economy.” Guided by these sensible restraints, RICO has in fact become a valuable tool for federal prosecutors, who have employed it both responsibly and effectively in the war against organized crime.

### **The Problem with RICO**

Unfortunately, with little consideration of the full impact of what it was doing, Congress, at virtually the last minute and with minimal debate, added a provision to RICO that permits

private parties to bring civil suits under its provisions and to collect treble damages as well as attorneys’ fees. Private parties and private attorneys, of course, are not restrained in their use of RICO by any of the public-policy considerations that restrain the actions of federal prosecutors; nor are they under any obligation to use the statute only for the purposes that Congress intended. On the contrary, many believe that a private attorney is



obligated to make any claim that he can reasonably assert under the letter of the law on behalf of his client.

Thus, the result of combining this broadly worded statute with the unfettered use made of it by private parties has been an explosion of RICO treble-damage claims in cases against people Congress never intended to be victimized by this powerful weapon.

Because of the breadth of the criminal fraud

statutes and the breadth of the RICO statute, in almost any instance in which a venture has lost money or a stock has fallen in value a disappointed investor can allege that the business person's behavior fell within the legal standard for "fraud" and can accuse the person of being a "racketeer."

In fact, nearly every type of commercial dispute can be and has been converted into a RICO action because such controversies often involve allegations of fraud. Civil RICO accusations have turned up in a wide variety of such disputes, including the churning of stock, representations about a broker's expertise, projections used in a real estate syndication, disputes between a landlord and a tenant, the disallowance of an insurance claim, alleged overcharges by a printer, and the failure to publish a medical journal according to a contractual agreement.

In one recent case, for example, the U.S. Court of Appeals for the Fourth Circuit, which includes my home state of Virginia, ordered reinstatement of a RICO case brought by a condominium developer who alleged that the purchasers of an office condominium unit were trying to "extort" an unreasonably high price from him in connection with the developer's effort to repurchase the condo unit in order to include it in a block of units the developer wanted to sell to IBM. The trial judge had aptly characterized this dispute as "at best a garden-variety commercial breach of contract" case.

Nevertheless, the appeals court said that the developer's allegations against his purchasers—two husband-and-wife couples—might make out a claim of "extortion" under state law and, therefore, that the developer could press a "racketeering" case against them under RICO. The two businessmen who originally bought the condominium unit and their wives thus now stand accused of being racketeers.

Although the most pernicious use of civil RICO is the converting of such commercial disputes into treble-damage racketeering claims, the broad sweep of RICO's language has meant that RICO claims have turned up in a variety of other situations in which its use can only be described as bizarre. In one recent case a district court said that a plaintiff could press a RICO claim in a dispute between the Church of Scientology and some of its ex-members over the "theft" and "perversion" of the "church's scriptures." RICO claims have surfaced in other religious disputes, as

well as in disputes between spouses and heirs. In yet another recent case RICO was used to sue former Vice-President Walter Mondale and members of the Democratic National Committee for allegedly offering political contributions to other Democratic candidates in exchange for promises not to oppose Reagan administration policies. This use of RICO was thrown out of court, not because of any fundamental problem with calling on RICO in such a case but merely because the specific form of bribery alleged did not fall within the specific bribery acts listed in RICO.

In what may be the most perverse use of civil RICO to date, a federal trial court held that a RICO claim could go forward against FBI agents who had orchestrated an undercover "sting" operation. It is hard to imagine a use of RICO further afield from the intent of Congress, but the courts have found themselves powerless to cope with misuses of this poorly drafted statute. As a result, the courts have repeatedly called on Congress to correct its mistake.

Not only has civil RICO been used in types of cases unintended by Congress; in fact, it has been used principally against the legitimate businesses it was designed to protect. The sad fact is that only a handful of civil cases in which gangsterlike conduct is alleged have been brought under RICO—and in each of these cases the defendants had first been prosecuted and convicted under criminal statutes.

Not surprisingly, business people injured by organized crime have been reluctant to take the risk of bringing such lawsuits for damages unless the government has first successfully gone after the criminals. When the federal government needs the aid of the Witness Protection Program, administered by the U.S. Marshals Service, in order to prosecute members of organized crime, it is unrealistic to expect a private business person to take on the mob alone in a civil suit.

Although most organized crime figures have not felt the effects of civil RICO, the list of leading U.S. businesses that have found themselves targets of civil RICO accusations runs for pages. It includes virtually all of the eight largest CPA firms; such major brokerage houses as Merrill Lynch and Dean Witter; such banks as Citibank, Crocker National Bank and First American Bankshares; such



Congressman Boucher (left), at a House Criminal Justice Subcommittee hearing, discusses his proposed RICO legislation with Congressman John Conyers, Jr. (D-Mich.), chairman of the subcommittee.

manufacturers as General Motors, Miller Brewing and Rockwell International; insurance companies, including State Farm, Travelers and Lloyd's of London; and even law firms.

Not by any stretch of the imagination is any of these businesses the type of organized criminal enterprise that Congress meant to be subject to attack under the RICO statute. Despite the legitimacy of these businesses, they—not organized crime figures—have been the principal defendants in civil RICO cases.

### RICO and the Supreme Court

This picture of misuse of civil RICO is not just derived from the complaints of business people who have been caught on the wrong side of expensive litigation. A special task force of the American Bar Association recently completed an extensive study of civil RICO. It found that only about 9 percent of all civil RICO cases involve offenses commonly associated with professional criminal activity. The task force accordingly called for substantial reform of civil RICO to eliminate its misuse.

Even more recently, in *Sedima v. Imrex Company* (decided in July 1985), the Supreme Court had occasion to look at civil RICO. The Court was unanimous in recognizing that civil

RICO has strayed far from the target that Congress had in mind when it wrote and passed the act. The Court's majority opinion stated that, "in its private civil version, RICO is evolving into something quite different from the original conception of its enactors" and that "private civil actions under the statute are being brought almost solely against" what the Court called "respected and legitimate enterprises" rather than against "the archetypal, intimidating mobster."

Justice Thurgood Marshall, writing for the four dissenting justices, including Justices Harry Blackmun, William Brennan and Lewis Powell, was even more explicit in detailing the ways in which civil RICO has unintentionally revolutionized federal litigation. This revolution is occurring because civil RICO allows plain-

tiffs both to federalize claims that have traditionally been litigated in state courts under state law and also to avoid carefully structured civil remedies in such areas of federal law as securities and commodities regulation.

Justice Marshall, a person who could never be accused of being a front man for business interests, worried openly about the impact of these suits: "These cases take their toll; their results distort the market by saddling legitimate businesses with uncalled-for punitive bills and undeserved labels. To allow punitive actions and significant damages for injury beyond that which the statute was intended to target is to achieve nothing the statute sought to achieve, and ironically to injure many of those lawful businesses that the statute sought to protect."

The pervasive impact of legislation run amok goes far beyond the simple measurement of the excessive damages awards that may be won under its provisions or the distortion of state and federal law it causes. Indeed, civil RICO may be described quite accurately,

as I did at the beginning of this article, as a new form of extortion. The threat of filing a civil RICO action carries with it not just the risk of being hit with treble damages at the end of the suit and the additional threat of an award of attorneys' fees; it also entails an almost certain enormous expense associated with the liberal and wide-ranging discovery that has been allowed by the federal courts.

In addition, a threatened RICO suit carries with it the opprobrium associated with being branded in public as a "racketeer." Nothing is more important to professionals or business people than their reputations. Nothing can be more devastating to a professional or personal reputation than the publicity that usually is associated with the filing of a "racketeering" charge. Thus, merely by threatening to bring and publicize a RICO claim, a business rival or other person can "extort" money almost as easily as the gangster with brass knuckles.

Again, this fear is not just voiced by interested defendants but is the conclusion of Justices Marshall, Blackmun, Brennan and Powell: "Many a prudent defendant, facing ruinous exposure, will decide to settle even a

case with no merit. It is thus not surprising that civil RICO has been used for extortive purposes, giving rise to the very evils that it was designed to combat."

The majority of the Supreme Court did not disagree with the observations of these four justices. The majority parted company from the dissenters in the civil RICO case only on the question of whether the courts may properly give the statute a narrow interpretation in order to eliminate some of these difficulties. The bare majority held that there is nothing that the courts can do, that the wording of the statute does not allow for a narrow judicial construction, and that any correction in the statute's defects "must lie with Congress."

Thus, without congressional action, the use of civil RICO in this unintended and disruptive manner is likely to grow. Despite the fact that the statute has been on the books since 1970, the plaintiff's bar has begun to recognize the power of civil RICO only in the last few years. The ABA RICO task force found that only 3 percent of all reported RICO decisions were decided before 1980 and that the number of such decisions has grown substantially each year since then. Moreover, it is only in the last few years that bar groups and publications aimed at lawyers have begun to focus attention on civil RICO.

In addition, only recently have the appellate courts confirmed the sweep of civil RICO by turning back various attempts to read the statute narrowly. With the Supreme Court decision in *Sedima*, which both confirmed the breadth of the statute and focused even more attention on its potential uses, the number and variety of disputes that will be turned into civil RICO claims can be expected to grow at an accelerated rate. Unless there is action by Congress, the shadow that civil RICO casts over business disputes will grow larger and darker.



Congressman Boucher (right) confers on RICO with Theodore C. Barreaux, vice-president in charge of the Washington, D.C., office of the AICPA.

### The Best Solution

With my introduction in Congress of HR 2943, I have tried to respond to the Supreme Court's and other courts' invitations to Congress to reform civil RICO. My bill would

limit the private civil treble-damage provision by allowing a private plaintiff to bring suit only when the claim arises from an injury caused by conduct that has first led to the defendant's conviction either of one of the criminal offenses listed in the statute or of a criminal violation of RICO itself.

This amendment would make it clear that the private civil provisions of RICO are to be used only against persons whom prosecutors have decided to charge and whom juries have decided to convict of criminal violations of RICO or the underlying criminal offenses. The statute would thus recognize the critical role that federal and local prosecutors and juries should play in determining whether a person has actually engaged in criminal activity and, as a consequence, whether this person is properly subject to the special treble-damage liabilities created by RICO.

I hope to obtain strong support to ensure the passage of this important legislation. One might think such legislation would sail through Congress easily, given the widespread unintended use to which civil RICO has been put. But reform will not come easily.

Lawyers who make a living bringing damage actions have a vested interest in preserving this unintended gift from Congress with which they can extort settlements. These lawyers have an effective lobby and could be successful in promoting merely cosmetic reforms

that would preserve the ability to misuse civil RICO.

The effort to reform civil RICO also suffers from a cacophony of proposals. Space does not permit an attempt to detail all these proposals and explain why they reach inappropriate, inadequate or unmanageable results. After studying the various alternatives, however, I am satisfied that amending civil RICO to require a prior criminal conviction is the simplest, most direct way to refocus RICO on its intended target—organized crime—without adversely affecting the use of criminal and civil RICO by the federal government, whose war on organized crime was always intended to be the act's primary beneficiary.

Under this approach, private parties who have truly been victims of organized crime will still have a civil action; their use of the statute will be unaffected, since, as noted earlier, history has shown that they use the statute now only after the government has successfully pressed criminal charges.

Congress must address this significant piece of anticrime legislation and set it back on the correct course. Criminal RICO has been an effective weapon in the hands of the federal government in attacking organized crime. Unfortunately, civil RICO has inadvertently become a potent and an inappropriate weapon in the hands of private plaintiffs and their attorneys in attacking ordinary and respected business people.

Congress must rid our courts of this new form of government-sponsored extortion and must return this statute to its intended use—as a remedy for legitimate businesses besieged by the scourge of organized crime. ■

# THE CHRISTIAN SCIENCE MONITOR

AN INTERNATIONAL DAILY NEWSPAPER MONDAY, SEPTEMBER 30, 1965

## Racketeering Act turns on corporations

by  
The Christian Science Monitor

Washington  
as a time when only mob-  
anything to fear from the  
government's anti-racketeer-  
those days are gone.

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not what Congress had in  
it passed RICO," says

Irvin B. Nathan, a Washington lob-  
byist for the insurance industry.

RICO has proved to be one of the  
government's most powerful weap-  
ons in striking back at organized  
crime nationwide. In recent years  
mafia bosses have been convicted or  
indicted on broad criminal RICO  
charges in New York, Cleveland, Los

**'RICO is likely to be a  
prominent feature of the  
commercial dispute land-  
scape in a wide range of  
cases,' says Stephen  
Glasser.**

Angeles, and many others cities. But  
now, private-sector lawyers are dis-  
covering that the same broad inter-  
pretation of RICO, so essential to  
gaining convictions against mob-  
sters, can also be useful in boosting  
the stakes in favor of their clients in  
common commercial legal disputes.

On July 1, the Supreme Court  
upheld this broad reading of RICO,

in effect giving lawyers nationwide a  
go-ahead to tack civil RICO counts  
on lawsuits ranging from routine con-  
tract disputes, to landlord-tenant and  
possibly even divorce suits. Not only  
are RICO suits relatively easy to file,  
but they offer a reward of triple dam-  
ages plus legal fees for anyone who  
can prove he or she was a victim of a  
"pattern of racketeering."

Under RICO, racketeering exists  
when an individual or an enterprise  
commits at least two offenses within  
a 10-year period. The long list of  
offenses includes murder, extortion,  
and kidnapping, as well as mail,  
wire, and securities fraud.

Because of extensive use of tele-  
phone and mail services by most  
businesses, mail and wire fraud  
charges are particularly easy to bring  
in the context of most business  
disputes.

Defending against such charges is  
another matter entirely.

For some firms just the threat of  
substantial legal fees while being  
tarred with federal racketeering  
charges — no matter how groundless  
the allegations — are enough to per-  
suade them to settle out of court.

For others, enduring such charges

Please see RICO next page

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## RICO from preceding page

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is becoming a regular part of doing business.

In 1983, Lloyd's of London and the Lincoln Insurance Company were sued in Michigan because they refused to pay a fire claim to the person they believed set the fire.

One of the charges was a racketeering charge, based on allegations that the insurance companies collected premiums with no intention of ever paying claims should they arise. Because policy documents and payments were sent by mail on more than two occasions, the actions constituted a "pattern of racketeering" under RICO.

The federal judge in the case refused to dismiss the RICO charge before the trial, but the charge was ultimately dropped by the filing attorneys because they did not think it would hold up under judicial scrutiny during the trial.

The attorney for the insurance company, Charles Tuffley, says including a RICO count in a business dispute case generally "makes the case more expensive to litigate. [And] most of those claims are brought to give the insured additional leverage to obtain a settlement." As a result of such cases, RICO has taken on a life of its own. Some legal experts suggest that it has already eclipsed state fraud laws.

"It really is revolutionizing commercial litigation," says Susan O'Connor of the American Law Institute in Philadelphia.

"RICO is likely to be a prominent feature of the commercial dispute landscape in a wide range of cases from corporate takeovers to loan defaults," says Stephen Glasser, president of Legal Times, a weekly law review.

In the meantime, several members of Congress are examining how to amend RICO to prevent what some consider abuses by private lawyers. The problem is that no one can agree on what constitutes "racketeering."

Business groups would like to see the racketeering statute apply only to illicit criminal enterprises, such as Mafia syndicates.

Others maintain that the RICO statute should stay as is, applying to both legal and illegal organizations. Some lawyers contend that the current RICO statute, if left alone, will help restore true ethics to the US business community and help reduce fraud in America.

Still others contend that the ultimate costs of maintaining civil RICO in its current form will be a growing case load in federal court and increasingly expensive commercial lawsuits.

## How RICO emphasis has changed

Washington

Congress passed RICO as part of the Organized Crime Control Act of 1970. In it, federal prosecutors are granted broad powers to charge alleged organized criminals with committing a series of crimes or what amounts to a "pattern of racketeering." Rather than stop there, Congress also wanted to encourage the private sector's

participation in the fight against organized crime. A civil section was included in the anti-racketeering law. It was aimed at encouraging businessmen and their lawyers to, in effect, become private-sector prosecutors.

Fifteen years ago, the congressional spotlight was on the archetypal godfather version of racketeering. Members of Congress were concerned that Mafia bosses using strong-arm tactics and stolen riches could make offers that honest but frightened businessmen couldn't refuse.

Today, only 9 percent of RICO civil suits relate to typical mobster activity such as embezzlement, extortion, political corruption, and bribery. And 81 percent of all RICO suits filed involve either alleged securities fraud, business disputes, or antitrust allegations, according to an American Bar Association study.

— W. R.

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April 26, 1985

Representative Mike M. Miller  
Pouch V  
Mail Stop 3100  
Juneau, Alaska 99811

Dear Representative Miller:

We would like to comment on H.B. 184, the proposed state RICO act. This firm represents Alaska Native corporations, other corporations and partnerships and does a considerable amount of security law work. We are concerned that H.B. 184, as proposed, will adversely impact the Alaska business community. Our comments are not directed to the necessity of providing Alaska prosecutors additional tools to combat organized crime. Rather, we here wish to express our concern that the proposed tool, H.B. 184, is overbroad because it does not distinguish between the activities of organized crime or big-time crime organizations in the state and what a number of federal courts have described as "garden-variety fraud" already adequately policed by a wide array of federal and state criminal and civil penalties.

Proposed H.B. 184 would provide civil business fraud plaintiffs a new and potentially powerful weapon. Yet it is our understanding that the Committee does not intend to add to the existing and adequate array of plaintiffs causes of action in the every day business fraud context. It is our understanding that the Committee instead intends a statute that will focus on the infiltration of legitimate businesses by criminal elements. As drafted H.B. 184 applies to far more than criminal infiltration. H.B. 184 significantly increases the exposure of entrepreneurs, officers and directors, and potentially may affect the risks legitimate business people are willing to assume.

The civil RICO provisions of H.B. 184 are essentially duplicative of other already extant anti-fraud statutes. As an example, in the securities law area, satisfactory federal and state causes of action already exist for plaintiffs damaged under

Representative Mike M. Miller  
April 26, 1985  
Page 2

the anti-fraud provisions of the securities acts. It is not at all clear why those causes of action need to be supplemented or supplanted by a RICO treble damage cause of action.

The intent of the drafters of both federal and state securities acts, who we may assume specifically focused upon problems in the securities law field, was to make whole a defrauded investor by providing for the return of his investment if he successfully litigated his claim. The drafters of those acts chose not to give defrauded investors what one court has called "a treble damage bonanza."

We have heard no argument that such additional penalties are necessary and until a persuasive argument can be made for treble damage penalties in the securities law area such penalties should not be adopted. Adequate remedies already exist, carefully tailored by the legislature when it specifically focused on securities law problems. It has not been suggested that current remedies are deficient. Further, a treble damage provision in the securities fraud area significantly increases the likelihood of increased litigation of marginal claims based upon plaintiffs' expectations that the specter of a treble damage recovery may coerce a monetary settlement out of a defendant who believes his actions did not constitute fraud and who believes he has solid defenses.

H.B. 184 was patterned after the Federal RICO statute, 18 USC § 1961 et. seq. The potential breadth of H.B. 184 is illuminated by a review of the types of civil cases filed under the federal act. The federal act has been applied by banks against their borrowers and borrowers against their banks; by investors against their brokers; by clients against their accountants and accountants against their clients; by minority shareholders against management; by shareholders against corporate insiders; in corporate proxy fights; by contractees against government entities; by partners against partners; by limited partners against general partners; between joint venturers; by real estate investors; between competitors. RICO defendants have included Shearson/American Express, Inc., Morgan Stanley, Inc., Merrill, Lynch, Pierce, Fenner & Smith, Inc. and E. F. Hutton and Co. These are not the kinds of entities most people expect to discover as defendants in racketeering actions. Alleged RICO enterprises have included the offices of a governor, a state legislator, a court, and a prosecutor's office. It is our understanding that the Committee does not intend a statute of this breadth.

Representative Mike M. Miller  
April 26, 1985  
Page 3

It is our belief that a state RICO act can be artfully drafted to avoid the overbreadth illustrated by the above cited examples. First, the civil cause of action might be eliminated. Second, treble damages might be eliminated. Third, as an element of a RICO claim a criminal conviction might be required. Fourth, proof of racketeering injury or infiltration of business might be required.

We also wish to apprise the Committee that because H.B. 184 is an extremely vague and ambiguous statute, considerable litigation over the meaning of its fundamental terms may be expected. This is not a desirable result when Alaska's courts are already overburdened.

Under H.B. 184, to plead successfully for treble damages a civil plaintiff must first allege a violation of the criminal provisions of the bill. This requirement is satisfied if the plaintiff alleges (1) that a person (the defendant), (2) through the commission of two or more predicate acts, (3) constituting a pattern, (4) of illegal activity or "racketeering", (5) directly or indirectly acquires or maintains an interest in, or participates in or conducts the affairs of, or invests proceeds derived from commission of the predicate offenses in, (6) an enterprise. A plaintiff must also allege that defendant's violation of AS 11.59.010 harms him in his business or property.

These elements are essentially identical to those which a federal plaintiff must prove under the federal RICO Act. In the federal case law each one of these elements has engendered disparate judicial interpretations. The federal RICO case law is characterized by deep divisions between the courts on the meaning of each of the elements a civil plaintiff must prove. It seems to us ill-advised for Alaska to adopt federal RICO language when the federal courts cannot agree upon the meaning of that language.

The following is a partial list of the issues surrounding the Federal RICO Act that have occupied and divided the federal judiciary. The Committee may expect similar interpretive demands to be placed upon the Alaska judiciary if H.B. 184 is passed.

1. What is the "person" and is it distinct from the enterprise? Compare Lopez v. Dean Witter, 1984 Fed. Sec. L. Rep. (CCH) ¶91,634 (N.D.CA. 1984) holding that a plaintiff must allege the existence of separate enterprise distinct from the person, with Mauriber v. Shearson, 1983-1984 Fed. Sec. L. Rep. (CCH)

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¶99,444 (S.D. N.Y. 1983) holding that RICO applies to intracorporation conspiracies in which corporations conspire with their agents.

2. What is the meaning of fraud in the sale of securities? See Spencer Cos. v. Agency Rent-A-Car, Inc., 1981-82 Fed. Sec. L. Rep. (CCH) ¶98,351 (D. Mass. 1981) holding that false schedule 13D filings constitute fraud for purposes of RICO even though they would not for purposes of a 10b-5 cause of action. Compare Spencer, supra, holding that purchasers as well as sellers have standing under RICO with, Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723 (1975) holding that only sellers have standing under the 1934 Act, worded similarly to the RICO Act.

3. What constitutes a "pattern"? Compare Deavis Materials, Inc. v. Borneman, 1982 Trade Cases (CCH) ¶64,690 (N.D. Cal. 1981) holding that only two predicates act are necessary to establish a pattern with, Teleprompter of Erie, Inc. v. City of Erie, 437 F.Supp.6 (W.D. PA 1981) holding an additional showing of a continuing scheme necessary.

4. What is meant by "enterprise"? Enterprise is defined as including associations in fact. Courts have determined that this definition is unambiguously broad. But see Friedlander v. Nims, 1983 Fed. Sec. L. Rep. (CCH) ¶99,512 (N.D. Ga. 1983) holding that a camera system was not an enterprise.

5. Can the enterprise be coextensive with the culpable person? Compare Dakis v. Chapman, 1983-1984 Fed. Sec. L. Rep. (CCH) ¶99,498 (N.D. Cal. 1983) concluding that they can be with, Haroco v. American National Bank, 747 F.2d 384 (7th Cir. 1984) holding that they cannot be.

6. Must the enterprise have an independent existence from the pattern of racketeering activity? Compare Moss v. Morgan Stanley, 1983-1984 Fed. Sec. L. Rep. (CCH) ¶99,478 (2nd Cir. 1983) holding that such independent is not necessary with Kimmel v. Peterson, 1983-1984 Fed. Sec. L. Rep. (CCH) (D.C. Pa. 1983), finding an independent enterprise.

7. Must the enterprise benefit from the pattern of racketeering activity? Compare J.S. v. Nerone, 563 F.2d 836 (7th Cir. 1977), holding a benefit necessary with Spencer Cos. v. Agency Rent-A-Car, Inc., supra, holding only that the predicate acts must relate to the enterprise.

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8. Is there a requirements that the RICO plaintiff suffer injury "by reason of" a pattern of racketeering activity or, in other words, does a plaintiff have to suffer a special racketeering injury? Compare Dakis v. Chapman, supra, holding a racketeering injury necessary with, Haroco v. American National Bank, supra holding such an injury not necessary.

The federal RICO act is ambiguous in a number of other ways, however, we feel this list is sufficient to indicate the kinds of issues the Committee might expect to be litigated in the state courts if H.B. 184 passed.

While H.B. 184 suffers many of the deficiencies of the federal act discussed above, it in addition contains several provisions the federal act does not have which concern us. First, the predicate offense covered by A.S. 11.59.020(b)(3) involves a felony involving takeover bids under A.S. 45.57. AS 45.57 is patterned after the Illinois takeover bid disclosure law which was found unconstitutional by the U.S. Supreme Court in Edgar v. MITE Corp., 457 U.S. 624 (1982). Thus a violation of this presumptively unconstitutional act constitutes a predicate RICO act violation. If the mails were used in connection with the takeover bid a RICO crime might be provable--based on an unconstitutional act.

Second, H.B. 184 defines racketeering as a "pattern of illegal activity that involves two or more instances of illegal activity" AS 11.59.020(a). One illegal activity is a state felony involving securities or takeover bids, AS 11.59.020(b)(3). The use of the term felony suggests a conviction, however, AS 11.59.010(b)(6) encompassed the federal predicate acts which include "any offense involving fraud in the sales of securities". Is a conviction required? When incorporating the federal predicate offenses under A.S. 10.59.020(b)(6) is it the Committee's intent to incorporate as well the legislative history of the federal act? The issue of whether a conviction is required under the federal act is currently before the U.S. Supreme Court. Sedima, S.P.R.L. v. Imrex Co., Inc., 741 F.2d 482, 2d Cir., 1984 cert. granted. If the Supreme Court concludes that a conviction is required under the federal act and H.B. 184 is passed with the legislature not intending the standing requirement of a conviction, then a plaintiff may have to allege a conviction in a securities fraud case under A.S. 11.59.020(b)(6) (the federal law incorporation section) but may not have to allege a criminal conviction in the same securities fraud case under A.S. 11.59.020(b)(3).

COPELAND, LANDYE, BENNETT AND WOLF

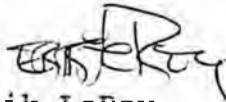
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Third, "enterprise" is not defined in the bill. Identifying the enterprise and distinguishing the enterprise from the culpable person are the two most difficult pleading tasks for the plaintiff's attorney under the federal act. Yet H.B. 184 gives counsel no interpretive assistance. We have additional concerns about H.B. 184, however, our comments here should indicate to you our difficulty with the bill.

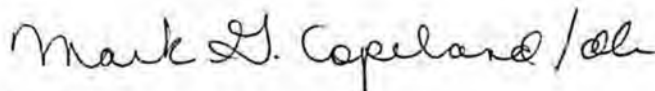
In summary, H.B. 184 is unacceptably overbroad and will have a deleterious impact upon the Alaska business community. H.B. 184 should be drafted to suppress the precise problem the Committee wishes to address. The operative terms of the bill should be defined with precision. In addition, we have suggested that the civil cause of action be eliminated from the bill, treble damages be eliminated from the bill or a standing requirement of a criminal conviction be added to the bill.

Sincerely,

COPELAND, LANDYE, BENNETT and WOLF



Erik LeRoy



Mark G. Copeland

EL:db3:1

BILL SHEFFIELD  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

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

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to illegally controlled enterprises and the forfeiture of property used in violation of state law.

Section 1 of the bill is a declaration of legislative purpose. The heart of the bill is contained in sec. 2, which creates a new chapter in AS 11, the Criminal Code. Section 3 of the bill adds a new article to AS 09.50, setting out general forfeiture provisions. Sections 4 -- 11 of the bill make various complementary amendments in AS 11, AS 12, and AS 17.

This bill authorizes a unified and comprehensive public and private response to one of the most invidious forms of criminal conduct: the acquisition and operation of businesses through a pattern of illegal activity. As Alaska's economy continues to grow, our state unfortunately has become an increasingly more tempting target for a more sophisticated, and therefore more dangerous, type of criminal. This bill will allow us to address that problem by authorizing civil and criminal penalties for three forms of conduct: (1) the use of a pattern of criminal activity to acquire an interest in a business; (2) the use of a pattern of criminal activity to conduct some or all of the affairs of a legitimate or completely illegitimate business; and (3) the use of the ill-gotten gains from a pattern of criminal activity to acquire an interest in a business or to conduct the affairs of a business.

Many provisions in this bill have been based on the federal Racketeer Influenced and Corrupt Organizations title of the Organized Crime Control Act of 1970 (18. U.S.C. secs. 1961 -- 1968). That legislation has served as a model for 19 states that have enacted legislation authorizing a state

response to some of the same concerns addressed by Congress in 1970. Although in most circumstances the coverage of the federal and state laws will be the same, the federal law is restricted to enterprises that affect interstate commerce, whereas this bill contains no such limitation and is therefore also applicable to solely in-state enterprises. This bill does, however, require that at least one of the acts forming the pattern of illegal activity be in violation of Alaska law.

In addition to its criminal provisions, this bill establishes significant civil remedies for the victim of illegal activity. It creates a private right of action for treble damages that is available to a person who is injured as a result of the prohibited acts described in the legislation. This section serves two purposes. First, it provides another powerful deterrent against those who desire to victimize Alaskans. Secondly, it authorizes compensation to the victim of the criminal activity and provides an incentive for that person to seek recovery by authorizing the award of treble damages. Finally, the forfeiture procedures included in the bill insure that a defendant will not be able to profit from illegal activity. The forfeiture provisions are made applicable to all instances where forfeiture is authorized by state law. This will insure consistency in coverage and reduce the volume of statutes that the legislature is required to pass each time it authorizes forfeiture.

The bill also provides for preliminary measures, such as injunctions and other court orders, to stop illegal activity before it actually succeeds in taking over a legitimate business. Additionally, the attorney general is authorized to conduct investigations into racketeering activity and is given the authority to obtain evidence necessary to successfully complete that investigation.

As previously mentioned, this bill is based on existing federal law. Many federal cases have interpreted the scope of that law, and it is expected that those cases will be of invaluable assistance to Alaska's courts in interpreting the scope of this legislation. An extensive commentary has been prepared to accompany the bill, which analyzes each section and cites those federal cases that reflect the intent behind a particular provision. This commentary will be of assistance to the legislature in reviewing the bill, and, after passage, to the courts in interpreting the intent behind individual provisions. I would urge that during committee consideration of the bill, the commentary also be carefully reviewed and revised in accordance with any revisions made

to the bill. The Department of Law will be available to assist in this effort as individual committees find appropriate. Ultimate adoption of the commentary as an expression of legislative intent and publication in the Journal will be extremely helpful in the implementation and interpretation of the bill.

Because of its length and complexity, I have not attached the commentary at this time. However, a condensed version of it in the form of a much briefer sectional analysis which summarizes the bill is attached. This sectional analysis will be of assistance in understanding both the purposes of the bill and how individual provisions achieve those purposes. Please publish it in the Journal Supplement so that it will be easily accessible to everyone interested.

In summary, this bill creates a comprehensive and unified public and private response to some of the most serious forms of criminal activity occurring in Alaska today. I therefore urge your prompt and favorable action on this measure.

Sincerely,

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

Bill Sheffield  
Governor

SECTIONAL ANALYSIS TO THE 1985 ACT  
RELATING TO ILLEGALLY CONTROLLED ENTERPRISES

Introduction. In 1970, Congress passed the Racketeer Influenced and Corrupt Organizations (RICO) title of the Organized Crime Control Act of 1970. The federal law, and this bill after which it is modelled, is based on the premise that a pattern of sophisticated and at times conspiratorial crime engaged in by a single person, or an organized group of persons, poses a much greater danger to society than individual unrelated criminal acts. Concerned that repeated and sometimes highly sophisticated crime was being used to finance the infiltration and takeover of legitimate businesses, and that crime itself had effectively become a business, Congress enacted new statutes to help respond to these serious problems. The federal legislation, however, only applies to conduct which affects interstate commerce. This proposed legislation covers situations where at least one crime is committed in Alaska and is also applicable to solely in-state enterprises.

Section 1. Declaration of Purpose

This section makes it clear that the overall purpose of the bill is to provide specific statutory provisions to combat the acquisition, establishment or operation of businesses through a pattern of criminal activity.

Section 2. Illegally Controlled Enterprises

Sec. 11.59.010. UNLAWFUL ACTS. Three types of prohibited conduct form the basis for both the criminal penalties and civil remedies that are authorized in this legislation. They are:

- (1) taking over an enterprise through racketeering;
- (2) running an enterprise through racketeering; and
- (3) using income from racketeering to take over or run an enterprise.

Each of these three types of prohibited conduct require that "racketeering" be involved. This means that at least two crimes be committed as a part of a pattern of illegal activity, and not simply two isolated unrelated acts. Each also requires that an "enterprise" be involved. The term enterprise is defined in the bill to include any "individual, partnership, corporation, association, or other legal entity, and any union or group of persons associated in fact although not a legal entity."

Paragraph (1) is aimed primarily at the use of crime to take over a legitimate business, although it is broad enough to

cover an attempt by one crime organization to take over another crime organization. Paragraph (1) would cover, for example, a person who assaults the owner of a business and sets fire to the owner's property with the intent of "persuading" the owner to sell the business or to give up some share in it. Alternatively, this paragraph will also apply where several persons join in an effort to acquire an interest in a legitimate business through racketeering. One defendant may bribe a municipal inspector to deny a needed permit to the business while the other commits a felony assault on the owner with the intent of persuading the owner to sell an interest in the business. Together, both defendants can be convicted since each defendant can be charged with the acts of the other under the general principals of criminal liability specified in AS 11.16, and both have therefore engaged in conduct prohibited by paragraph (1).

Paragraph (2) is aimed at the person who participates in or conducts the affairs of an enterprise through racketeering. There is no requirement in the definition of enterprise that the enterprise constitute a legal entity. Consequently, this paragraph would apply to an enterprise that has been established solely to further illegal purposes. One example of the type of conduct covered by paragraph (2) is summarized in a recent opinion by the United States Supreme Court:

Briefly, the evidence showed that a group of individuals associated for the purposes of committing arson with the intent to defraud insurance companies. This association in fact enterprise, composed of an insurance adjuster, homeowner, promoters, investors, and arsonists, operated to destroy properties in Tampa and Miami, Florida between July 1973 and April 1976. The panel summarized the ring's operations as follows: 'At first the arsonists only burned buildings already owned by those associated with the ring. Following a burning, the building owner filed an inflated proof of loss statement and collected the insurance proceeds from which his co-conspirators were paid. Later, ring members bought buildings suitable for burning, secured insurance in excess of value and, after a burning, made claims for the loss and divided the proceeds' (footnote omitted).

Russello v. United States, 104 S.Ct. 296, 298 (1983) (quoting United States v. Martino, 681 F.2d 952, 953 (5th Cir. 1982) (en banc)).

Paragraph (3) prohibits using money that has been derived from racketeering to finance an enterprise. This prohibition is designed to prevent a racketeer from "sheltering" illegal gains by investing in a legal enterprise. There is

no requirement that the investment in the enterprise be per se illegal; rather, the investment becomes illegal since it was made possible by using the fruits of racketeering. Paragraph (3) also prohibits using the "proceeds" of property derived from racketeering. This language is intended to permit tracing of assets derived from racketeering in order to prove that such assets were, in effect, used to take over a legitimate business. Thus illegal profits do not later become legal merely because they have been laundered, or augmented, by an intervening legal investment.

Sec. 11.59.020. DEFINITION OF "RACKETEERING". In order to establish racketeering, it must be shown that the defendant engaged in "a pattern of illegal activity that involves two or more instances of illegal activity." Unlike federal law, this legislation specifically defines the term "pattern" in subsection (c). The definition is based on a definition of "pattern" appearing in several state statutes and court cases.

The crimes that are sufficient to constitute illegal activity for purposes of the definition are described in subsection (b). They are all classified as felonies. In this regard this legislation differs from federal law which allows prosecution based on underlying crimes that are misdemeanors. In view of the substantial penalties that will arise from a violation of this legislation, it seems appropriate to require that the underlying illegal activity be serious enough to be classified by the legislature as felonies. The felonies that are listed have been chosen either on the basis that they pose a danger to personal physical security, are crimes that may be used in an effort to obtain control over an enterprise, or are crimes that are typically committed by an enterprise that is in the business of crime.

Sec. 11.59.030. PROOF OF RACKETEERING. This section addresses several issues pertaining to the type of evidence that can be used to establish the element of racketeering.

Secs. 11.59.040 and 11.59.050. ILLEGAL CONTROL OF AN ENTERPRISE IN THE FIRST AND SECOND DEGREE. Sections 11.59.040 and 11.59.050 define the only two crimes created by this legislation. The first degree crime is an unclassified felony punishable by presumptive sentencing and a maximum sentence of 30 years. Additionally, the defendant will be subject to a maximum \$75,000 fine if the defendant is a natural person, or a higher fine if an organization is charged. The second degree crime is a class A felony punishable by up to 20 years imprisonment, as well as substantial fines.

In order to convict a person of the first degree crime, it is necessary to establish that one of the crimes used to prove racketeering is identical or substantially similar to an unclassified or class A felony under Alaska law.

Sec. 11.59.060. CHARGING UNDERLYING CRIME. This section deals with technical issues that may arise in charging a defendant under this legislation.

Sec. 11.59.070. EFFECT OF CONVICTION ON OTHER PROCEEDINGS. This section, which is based on federal law, precludes a defendant who has been convicted of illegal control of an enterprise from denying the essential elements of the crime in subsequent litigation. Since the defendant's violation has already been established beyond a reasonable doubt in the earlier criminal prosecution, there is no reason to require a private plaintiff in a civil proceeding brought against the same defendant to relitigate the basis of the criminal conviction.

Sec. 11.59.080. CIVIL ACTION FOR TREBLE DAMAGES. This section creates a civil action for triple damages available to any person, including the state, who is injured as a result of a violation of proposed AS 11.59.010.

This section serves two purposes. First, it compensates those who have been injured as a result of racketeering. Second, it imposes severe financial disincentives over and above any criminal penalty that may be imposed and any forfeiture that is ordered.

In addition to providing for a civil cause of action for treble damages, this legislation authorizes a wide variety of injunctive and similar relief in connection with an action brought under this section. An injured person may obtain a restraining order to prevent future violations, as well as restrictions on the future conduct of the enterprise, including its dissolution or reorganization. See proposed AS 11.59.100.

Sec. 11.59.090. PROPERTY SUBJECT TO FORFEITURE. One of the principle goals of the federal law upon which this legislation is based was to remove the profit from criminal activity "by separating the racketeer from the dishonest gain." Russello v. United States, 104 S.Ct. 296, 303 (1983). The mechanism used to accomplish that goal was the adoption of an effective forfeiture law. A similar approach is taken in this legislation, with this section providing that property used and assets acquired in violation of proposed AS 11.59.010 is subject to forfeiture. The procedures specifying how the property is forfeited appears in section 3 of the bill.

Sec. 11.59.100. INJUNCTIVE RELIEF. This section provides a mechanism to insure that equitable relief can be obtained to minimize the harm caused by racketeering as well as to preserve the assets of the defendant for future recovery in both civil and criminal proceedings.

Sec. 11.59.110. CIVIL INVESTIGATIVE DEMAND. This section, which is based on federal law, provides the state with the necessary mechanism to insure that investigations can be completed successfully. The provisions are largely self explanatory, and considering that no appellate cases have arisen under the similar federal statute in the fourteen years since enactment, the provisions of this section will apparently present no problems in administration.

### Section 3. Forfeitures

This section of the bill has two related purposes. First, it specifies the procedures applicable to the forfeiture of property authorized in proposed AS 11.59.090. Secondly, it effectively consolidates many state forfeiture procedures in a single new article added to Title 9 (Civil Procedure). The consolidation of state forfeiture procedures accomplished by this legislation will minimize the possibility of unintended inconsistencies in coverage.

### Sections 4-7

These sections make several conforming amendments to insure that gambling paraphernalia and records, controlled substances, and imitation controlled substances are subject to the forfeiture procedures specified in section 3 of the bill.

### Section 8

This section amends the existing extortion statute to specifically provide that extortion is committed when the defendant makes threats to assist in the collection of a debt. This provision will insure coverage under this legislation of conduct commonly associated with loan sharking.

### Section 9

This technical amendment insures that all unclassified felonies, including Illegal Control of an Enterprise in the First Degree, are subject to the fine authorized by this section.

### Section 10

This technical amendment is necessary to authorize a term of imprisonment for a violation of proposed AS 11.59.040.

Section 11. Repeals

This section repeals several statutes pertaining to procedures applicable in drug forfeiture cases which are unnecessary with the enactment of section 3 of the bill.

Section 12. Effective Date

This section specifies a January 1, 1986, effective date.

# STATE OF ALASKA

## DEPARTMENT OF LAW

### CRIMINAL DIVISION

BILL SHEFFIELD, GOVERNOR

REPLY TO:

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OFFICE OF SPECIAL PROSECUTIONS  
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1031 WEST 4TH AVENUE, SUITE 318  
ANCHORAGE, ALASKA 99501-5933  
PHONE: (907) 279-7424

March 6, 1985

Honorable Mike Miller  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Re: House Bill 184 Racketeering

Dear Representative Miller:

As mentioned in the Governor's transmittal letter on HB 184, an extensive commentary has been prepared which analyzes each section and cites those federal cases which reflect the intent behind a particular provision. Enclosed is a copy of that commentary. A copy has already been provided to Mr. Kaden, of your staff, so that copies could be made available for the members of the judiciary committee prior to the hearing scheduled for March 7.

I believe this commentary will be an invaluable aid for the judiciary committee in its consideration of this important legislation and, after passage, to the courts in interpreting the intent behind specific provisions. I would urge that the commentary be reviewed and revised in accordance with any revisions made to the bill. My staff will be available at your request to assist the committee in revising both the bill and the commentary. Ultimate adoption of this commentary as an expression of legislative intent and publication in the Journal Supplement will be extremely helpful in the implementation and interpretation of the bill.

Very truly yours,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By: *Daniel W. Hickey*

Daniel W. Hickey  
Chief Prosecutor

Enclosure

COMMENTARY AND SECTIONAL ANALYSIS TO THE 1985 ACT  
RELATING TO ILLEGALLY CONTROLLED ENTERPRISES

Introduction

In 1970, Congress passed the Racketeer Influenced and Corrupt Organizations title of the Organized Crime Control Act of 1970. The legislation was designed to provide adequate criminal penalties and civil remedies to combat large-scale and sometimes highly sophisticated criminal activity. The federal law was based on the premise that a pattern of crime that was engaged in by a single person, or an organized group of persons, posed a much greater danger to society than individual unrelated criminal acts. Concerned that repeated instances of criminal activity were being used to finance the infiltration and takeover of legitimate businesses, and that crime itself had effectively become a business, Congress enacted new statutes to help respond to these two serious problems.

The federal legislation only applies to conduct which affects interstate commerce. That showing might be possible in many cases. Nevertheless, individual states have recognized that the resources available to the federal government are generally inadequate to respond to criminal activity that primarily affects state interests. Additionally, the prosecution of criminal conduct that occurs

within a state and does not directly affect federal interests has traditionally been viewed primarily as a state, rather than a federal responsibility.

During the past 14 years, at least 19 states have adopted legislation which has authorized a state response to some of the concerns addressed by Congress in 1970. (A list of those states is included as Appendix "A".) Significantly, states such as Oregon and Arizona, which like Alaska had only recently revised their criminal codes, concluded that existing laws were inadequate to respond to the problems addressed by the federal legislation. While each of the 19 states has relied on the federal legislation as a model, none has simply enacted the federal law verbatim. Instead, each has selected the best features of the federal legislation.

A similar approach was followed by the Alaska legislature in 1978 when it revised the criminal code. While individual sections were based on provisions appearing in the Model Penal Code, the criminal code revision was tailored to respond to particular Alaskan problems and concerns. A similar approach has also been followed in this legislation. While this bill differs from federal law in a number of important respects, the basic goal remains the same: to assist public officials and individual citizens in their effort to combat the criminal infiltration of

legitimate businesses and to provide appropriate penalties against those who engage in the business of crime.

Section 1. Declaration of Legislative Purpose

This section states the purpose of this bill and requires that its provisions be interpreted liberally by the courts to effectuate that remedial purpose. The purpose of the bill has already been addressed in the introduction to this commentary. The direction that the Act be liberally construed by the courts extends to both the civil and criminal provisions included in this bill. See U.S. v. Forsythe, 560 F.2d 1127, 1135 (3rd Cir. 1975).

Section 2. Illegally Controlled Enterprises

ARTICLE 1. PROHIBITED ACTIVITIES

Sec. 11.59.010. UNLAWFUL ACTS

This section defines the three prohibited acts that form the basis for both the criminal penalties and civil remedies that are authorized in this bill. The section is based substantially on 18 U.S.C. sec. 1962, and it is expected that the numerous federal decisions interpreting the scope of that statute will be of assistance to Alaska courts in interpreting any ambiguities in the Alaska

statutory language. As a general matter, if a specific decision under the federal legislation is intended to be binding on the Alaska courts in interpreting this Act, it is expressly cited in this commentary.

Each of the three instances of prohibited conduct require that "racketeering" be involved. The term "racketeering" is defined in AS 11.59.020, and is discussed in the commentary accompanying that section. It should be noted that at least two instances of illegal activity will be required to establish racketeering. Additionally, the instances of illegal activity must be part of a pattern of illegal activity, and not simply two isolated unrelated crimes.

Each of the three unlawful acts also requires that an "enterprise" be involved. The term enterprise is defined in AS 11.59.900(1), as including any "individual, partnership, corporation, association, or other legal entity, and any union or group of persons associated in fact although not a legal entity." As noted by the United States Supreme Court "[t]here is no restriction upon the associations embraced by the definition: an enterprise includes any union or group of individuals associated in fact." United States v. Turkette, 452 U.S. 576, 580 (1981). The scope of this definition is discussed further in the commentary accompanying AS 11.59.900(1).

The three unlawful acts described in this section prohibit (1) acquiring or maintaining an interest in or control of an enterprise through racketeering (primarily, the use of a pattern of criminal activity to acquire an interest in a legitimate business); (2) conducting the affairs of an enterprise through racketeering (the use of a pattern of criminal activity to conduct some or all of the affairs of legitimate or completely illegitimate business); and (3) the use of the proceeds of racketeering to acquire or maintain an interest in an enterprise or to conduct the affairs of an enterprise (the use of the ill-gotten gains from a pattern of criminal activity in what would otherwise be a legal attempt to acquire an interest in or run an enterprise). The three prohibited acts can be committed by any person. The term "person" is defined in AS 11.81.900(b). Note that this section merely describes the type of conduct that can result in criminal or civil liability under this legislation. It does not specify the penalties for that conduct, which appear in other sections of this bill. See, e.g., AS 11.59.040.

AS 11.59.010(1) covers the conduct of acquiring or maintaining an interest in or control over an enterprise through racketeering. This prohibition is aimed primarily at the use of illegal activity to take over a legitimate business, although it is broad enough to cover an attempt

by one illegitimate enterprise to take over another illegitimate enterprise.

The conduct prohibited by paragraph (1) covers any attempt to take over an enterprise by the type of illegal activity defined as racketeering in AS 11.59.020. For example, a defendant may violate this paragraph by assaulting the owner of a business and setting fire to property belonging to the owner with the intent of "persuading" the owner to sell the business to the defendant or to take the defendant as a partner. Alternatively, several persons may violate this paragraph if together they engage in the prohibited conduct. For example, assume that two defendants join in an effort to acquire an interest in a legitimate business through racketeering. One defendant bribes a municipal inspector to deny a needed permit to the business while the other commits a felony assault on the owner with the intent of persuading the owner to sell an interest in the business. Together, both defendants have satisfied the definition of racketeering in AS 11.59.020 if the illegal activity of each defendant is chargeable to the other under the general principles of criminal liability specified in AS 11.16, and both have therefore engaged in conduct prohibited by paragraph (1).

As is the case with each of the three prohibited acts described by AS 11.59.010, there is no requirement that the

conduct of the defendants be part of "organized crime" or that the defendant is a member of "organized crime." See Bennett v. Berg, 685 F.2d 1053, 1063-64 (8th Cir. 1982) cert. denied, 104 S.Ct. 527 (1983), and cases cited therein. It is apparent, however, that some of the conduct prohibited by this legislation will indeed fall within a commonly accepted definition of "organized crime." See, e.g., United States v. Brooklier, 685 F.2d 1208, 1213 (9th Cir. 1982). Nevertheless, it is the intent of this legislation that no "organized crime" connection need be shown in any criminal prosecution or civil proceeding authorized by this chapter.

AS 11.59.010(2) is aimed at the person who participates in or conducts the affairs of an enterprise through racketeering. There is no requirement in the definition of enterprise that the enterprise constitute a legal entity. Consequently, this paragraph would apply to an enterprise that has been established solely to further illegal purposes. United States v. Turkette, 452 U.S. 576 (1980). See also commentary accompanying AS 11.59.900(1).

Paragraph (2) requires that the affairs of the enterprise be conducted "through" racketeering. There is no requirement that the racketeering benefit the enterprise or result in profits for the enterprise. It is sufficient that the defendant engaged in the racketeering activity as part

of the enterprise or that the illegal activity is related to the activities of the enterprise. See United States v. Webster, 669 F.2d 185 (4th Cir. 1982), cert. denied, 456 U.S. 935 (1982); United States v. Welch, 656 F.2d 1039, 1960-62 (5th Cir. 1981), cert. denied, 456 U.S. 915 (1982); United States v. Scotto, 641 F.2d 47 (2d Cir. 1980). There is no requirement that the illegal activity that is used to establish racketeering be part of the day-to-day business operation of the enterprise. Engl v. Berg, 511 F.Supp. 1146, 1156 (E.D. Pa. 1981) (quoting United States v. DePalma, 461 F.Supp. 778 (S.D.N.Y. 1978)). It is enough, for example, that the enterprise was used as a front for illegal activity. See United States v. Swiderski, 593 F.2d 1246 (D.C. Cir. 1978), cert. denied, 441 U.S. 993 (1979).

One example of the type of conduct covered by paragraph (2) is summarized in a recent opinion by the United States Supreme Court:

Briefly, the evidence showed that a group of individuals associated for the purposes of committing arson with the intent to defraud insurance companies. This association in fact enterprise, composed of an insurance adjuster, homeowner, promoters, investors, and arsonists, operated to destroy properties in Tampa and Miami, Florida between July 1973 and April 1976. The panel summarized the ring's operations as follows: 'At first the arsonists only burned buildings already owned by those associated with the ring. Following a burning, the building owner filed an inflated proof of loss statement

and collected the insurance proceeds from which his co-conspirators were paid. Later, ring members bought buildings suitable for burning, secured insurance in excess of value and, after a burning, made claims for the loss and divided the proceeds' (footnote omitted).

Russello v. United States, 104 S.Ct. 296, 298 (1983) (quoting United States v. Martino, 681 F.2d 952, 953 (5th Cir. 1982) (en banc)). Other examples of conduct that is intended to be covered by paragraph (2) are provided in United States v. Sutton, 642 F.2d 1001 (6th Cir. 1980), cert. denied, 453 U.S. 912 (1981); United States v. Whitehead, 618 F.2d 523 (4th Cir. 1980); United States v. Swiderski, 593 F.2d 1246 (D.C. Cir. 1978), cert. denied, 441 U.S. 993 (1979).

AS 11.59.010(3) primarily prohibits the use of property derived from racketeering, or the proceeds of that property, to obtain an interest in an enterprise. See United States v. McNary, 620 F.2d 621 (7th Cir. 1980). The term "property" (defined in AS 11.59.900(2)) has been used rather than the undefined term "income" which appears in the federal statute.

At first glance the prohibition described in paragraph (3) appears similar to that contained in paragraph (1). However, unlike paragraph (1), which requires that otherwise illegal means be used to acquire an interest in an enterprise, this paragraph makes unlawful specified conduct

relating to an enterprise when the property used to finance that conduct has been derived from racketeering. Unlike federal law, there is no exception for investments that take the form of securities purchased in the open market amounting to less than one percent of the total securities available in the enterprise. Only four of the state statutes that are based on the federal provision contain a similar provision, and there seems to be little justification for exempting this particular class of investment from the coverage of this legislation.

Considered in conjunction with AS 11.59.100, the prohibition in paragraph (3) will be of significant importance in civil proceedings where a legitimate enterprise attempts to require that the defendant divest himself of any interest in the enterprise that was obtained through the use of property derived from racketeering. This prohibition may also be of assistance in cases where the state seeks forfeiture of the defendant's illegally obtained profits from racketeering since it effectively prevents the racketeer from "sheltering" those gains by investing in a legal enterprise. See AS 11.59.090. Note that there is no requirement that the investment in the enterprise be otherwise illegal. Rather, the investment becomes illegal since it was made possible by using the fruits of racketeering.

Paragraph (3) also prohibits using the "proceeds" of property derived from racketeering. This language is intended to permit tracing of assets derived from racketeering in order to prove that such assets were, in effect, used to take over a legitimate business. Thus illegal profits do not later become legal merely because they have been laundered, or augmented, by an intervening legal investment.

Another point should be noted regarding the applicability of paragraph (3) to cases where the defendant claims that it is impossible to establish that the particular investment in the enterprise was derived from racketeering. The "sufficient nexus" test adopted by the court in United States v. McNary, 620 F.2d 621 (7th Cir. 1980), is intended to apply to such cases. In McNary, the court emphasized that the federal prohibition similar to paragraph (3) is violated if the gains from racketeering "allowed or facilitated" a subsequent investment even though the money derived from racketeering was not directly invested. Id. at 628-29.

Also note that there is no requirement that the defendant himself participate in the racketeering under paragraph (3) -- it is enough that the circumstance exists that the property was derived from racketeering. There may be cases under paragraph (3) where the defendant claims that he or she had no knowledge that the property was derived

from racketeering. In such cases, it is intended that the burden of proof be placed on the state to establish that the defendant acted at least recklessly as to the circumstance that the property was derived from racketeering.

Sec. 11.59.020. DEFINITION OF "RACKETEERING"

In defining the prohibited acts that can form the basis of a criminal prosecution or civil action authorized by this chapter, each of the three paragraphs in AS 11.59.010 uses the term "racketeering." AS 11.59.020 defines that term.

In order to establish racketeering, it must be shown that the defendant engaged in "a pattern of illegal activity that involves two or more instances of illegal activity." Proof of two instances of illegal activity that are held to meet the pattern requirement are sufficient to constitute racketeering. There is no requirement that the two or more instances of illegal activity involve different crimes. See United States v. Davis, 576 F.2d 1065 (3d Cir. 1978), cert. denied, 439 U.S. 836 (1978).

Unlike federal law, this legislation specifically defines the term "pattern" in AS 11.59.020(c). The definition is based on a definition of "pattern" appearing in several state statutes. That definition in turn was derived from United States v. Stofsky, 409 F.Supp. 609, 613-14

(S.D.N.Y. 1973), aff'd, 527 F.2d 237 (2nd Cir. 1975), cert. denied, 429 U.S. 819 (1976), where the court held that the "pattern" requirement could not be satisfied by mere accidental or unrelated acts.

The fact that there was but one objective underlying separate acts of racketeering does not place the conduct outside the definition. United States v. Starnes, 644 F.2d 673, 678 (7th Cir. 1981), cert. denied, 454 U.S. 826 (1981). The issue is rather whether the illegal acts, undertaken to further a single objective or multiple objectives, constitute a pattern of illegal activity.

To establish a pattern of illegal activity, it must be shown that two or more instances of illegal activity were involved. The acts that are sufficient to constitute illegal activity for purposes of the definition are described in subsection (b).

One common characteristic of each crime listed in AS 11.-59.020(b)(1) -- (6) is that they are all classified as felonies. In this regard this legislation differs from federal law which allows prosecution based on underlying crimes that are misdemeanors. In view of the substantial penalties that will arise from a violation of this legislation, it seems appropriate to require that the underlying illegal activity be serious enough to be classified

by the legislature as a felony. The felonies that are listed have been chosen either on the basis that they pose a danger to personal physical security, are crimes that may be used in the effort to obtain control over an enterprise, or are crimes that may be committed by an enterprise that is in the business of crime.

AS 11.59.020(b)(6) refers to felony conduct that has been defined as "racketeering activity" under federal law. It should be noted that this paragraph does not have the effect of granting the state jurisdiction over conduct that exclusively involves federal interests. AS 11.59.030(a)(1) specifically requires that at least one instance of illegal activity that is used to establish a pattern of racketeering must violate Alaska law. A person, for example, is not covered by this legislation for acquiring an interest in an Alaskan business through a pattern of illegal activity that involved the out-of-state bribery of a federal official and the interstate transportation of stolen property between Washington and Oregon. However, if one of the instances of illegal activity involved conduct falling within AS 11.59.020(b)(1) -- (5), a federal crime listed in 18 U.S.C. sec. 1961(1) will be sufficient to sustain an action under this chapter.

Note finally that there is no requirement that the defendant was previously convicted of the illegal activity that

is used to establish racketeering. See USACO Coal v. Carbornin Energy, Inc., 689 F.2d 94, 95 n.1 (6th Cir. 1982) and cases cited therein. To the extent that a recent opinion by the Second Circuit Court of Appeals is inconsistent with this approach, it is expressly rejected as not reflecting the intent of this legislation. See Sedima, S.P.R.L. v. Imrex Co., 53 U.S.L.W. 2062 (2d Cir. July 15, 1984).

Sec. 11.59.030. PROOF OF RACKETEERING

While AS 11.59.020 defines racketeering, AS 11.59.030 addresses several issues pertaining to the type of evidence that can be used to establish the requirements of that definition.

Subsection (a) places three restrictions on the type of illegal activity that can be used to satisfy AS 11.59.020(b)(1) -- (6). AS 11.59.030(a)(1) requires that one of the instances of illegal activity used to establish racketeering must be in violation of Alaskan law. As discussed in the commentary accompanying AS 11.59.020, this limitation prevents the institution of a proceeding authorized by this Act based on conduct that exclusively involves federal interests.

AS 11.59.030(a)(2) requires that at least one instance of

illegal activity that is used to establish racketeering must occur after the effective date of this Act, thus eliminating any ex post facto concerns in criminal prosecutions. See United States v. Campanale, 518 F.2d 352 (9th Cir. 1975), cert. denied, 423 U.S. 1050 (1976).

AS 11.59.030(a)(3) requires that at least one instance of illegal activity used to establish racketeering must occur within a three-year period either before or after the defendant becomes involved with an enterprise under the circumstances prohibited by AS 11.59.010. This restriction effectively creates an automatic bar to a finding of racketeering if both instances of illegal activity occur outside the three-year period. While a similar provision does not apply in federal law, the restriction appears appropriate to add to this legislation.

AS 11.59.030(b) clarifies a point that is probably already implicit in the language of subsection (a): the same instance of illegal activity may be used to satisfy each of the requirements specified in (a)(1) -- (3). For example, if one of the instances of illegal activity used to obtain control over an enterprise on December 15, 1985, was an assault committed in Alaska on November 15, 1985, each of the three paragraphs of subsection (a) will be satisfied, assuming that this legislation took effect on January 1, 1985.

AS 11.59.030(c) places a limitation on how far back a prosecutor or civil litigant can go in using illegal activity to establish racketeering. If more than five years has elapsed between the most recent instance of illegal activity and the immediately preceding incident of illegal activity, the past instances of illegal activity cannot be considered. For example, assume that this Act takes effect January 1, 1986. On January 1, 1987, the defendant commits one instance of illegal activity. If the prior instance of illegal activity used to establish racketeering occurred on or after January 1, 1982, it and other past acts may be considered in establishing racketeering under AS 11.59.030. However, if the prior instance of illegal activity took place before January 1, 1982, it may not be considered.

Note that AS 11.59.030(e) qualifies the five-year period specified in subsection (c) by providing that the five-year period does not begin to run until the defendant has satisfied all conditions of a sentence, or conditions of an alternative to a prosecution, for the prior instance of illegal activity. Similarly, subsection (e) also qualifies the three-year period specified in paragraph (a)(3).

An example of the relationship between subsection (e) and (c) is provided by considering the case of a defendant who in 1986 is convicted of felony assault and is sentenced to

two years' imprisonment followed by a two-year probationary period. Assume further that the probationary period is successfully completed in 1990 and that the defendant commits another felony assault in 1993. If the other requirements necessary to establish a violation of this legislation can be established, it may be alleged that the 1986 and 1993 assaults were part of a pattern of illegal activity. In this case, subsection (e) provides that the prior conviction may be considered under subsection (c) since the five-year period did not begin until 1990, the year the defendant completed the probationary period on the earlier assault. A provision similar to subsection (e) appears in AS 12.55.145(a)(1). It is intended that the decision in Griffith v. State, 653 P.2d 1057 (Alaska Ct. App. 1982), interpreting the scope of AS 12.55.145(a)(1) also apply in interpreting the application of subsection (e).

AS 11.59.030(d) specifies how illegal activity that is used to prove racketeering is established in a proceeding brought under this legislation. In any proceeding a certified judgment of conviction for the illegal activity will always be sufficient to establish that the illegal activity occurred. If a conviction has not been obtained, the illegal activity may be established by proof beyond a reasonable doubt in a criminal prosecution and by a preponderance of the evidence in all other proceedings.

ARTICLE 2. CRIMES INVOLVING ILLEGALLY  
CONTROLLED ENTERPRISES

Secs. 11.59.040 and 11.59.050. ILLEGAL CONTROL OF AN EN-  
TERPRISE IN THE FIRST AND SECOND DEGREE

AS 11.59.040 and 11.59.050 define the only two crimes created by this legislation. The first degree crime is an unclassified felony punishable by presumptive sentencing and a maximum sentence of 30 years. Additionally, the defendant will be subject to a maximum \$75,000 fine under AS 12.55.035(b)(1) if the defendant is a natural person. If an organization is charged under this section, a higher fine may be imposed under AS 12.55.035(c).

Key to both crimes is the requirement that the defendant commit an act prohibited by AS 11.59.010 or attempt or solicit such an act. The coverage of AS 11.59.010 has been discussed in the commentary accompanying that section. If the state can only prove a violation of AS 11.59.010, the crime will be Illegal Control of an Enterprise in the Second Degree, a class A felony.

The second degree crime can be aggravated to the more serious first degree offense depending on the seriousness of the illegal activity used to establish racketeering. If one of the instances of illegal activity was an

unclassified or class A felony in Alaska, AS 11.59.040(a)(1) provides that the first degree crime has been established. Additionally, the crime will be first degree under AS 11.59.040(a)(2) if one of the instances of illegal activity used to establish racketeering is a crime in Alaska or in another jurisdiction having elements similar to a class A or unclassified felony. This provision will cover crimes repealed when the revised criminal code became effective in 1980, current crimes in Alaska defined outside the criminal code, and crimes committed in other jurisdictions. For example, if in 1979 the defendant committed conduct that would have constituted Murder in the First Degree under the Alaska statute repealed in 1980, the defendant can be convicted of Illegal Control of an Enterprise in the First Degree provided that the other elements of that crime can be established. Similarly, if the defendant committed conduct in Oregon that would be the equivalent of a class A or unclassified felony in Alaska, the first degree crime may also be established.

Under AS 11.59.040(a)(2), the elements of the offense need only be similar to a current unclassified or class A felony offense in Alaska. An identical standard is followed in calculating prior convictions for purposes of presumptive sentencing. AS 12.55.145(a)(2).

Note finally that no culpable mental state requirement is

specified in either of the two crimes. Consequently, the criminal code's general rules on culpability will be applicable and it will be necessary to establish that conduct was engaged in knowingly and that the defendant acted recklessly as to circumstance and result elements. AS 11.81.610(b).

Sec. 11.59.060. CHARGING UNDERLYING CRIME

This section clarifies an issue that may arise in charging a defendant under this legislation. If the prosecutor decides to proceed against the defendant for both a violation of AS 11.59.040 or 11.59.050, and the underlying illegal activity, he or she may do so in the same charging instrument. In the event that consecutive or concurrent sentences are not otherwise prohibited, they may be appropriate in cases where the underlying criminal activity is charged in addition to a violation of AS 11.59.040 or 11.59.050. See United States v. Boylan, 620 F.2d 359, 361 (2nd Cir. 1980) cert. denied, 449 U.S. 833 (1980).