

ALASKA LEGISLATIVE COUNCIL FILED 1900 1900

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HB 184 - HB 188

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ARTICLE 3. CIVIL REMEDIES

Sec. 11.59.070. EFFECT OF CONVICTION ON OTHER PROCEEDINGS

This section, which is based on 18 U.S.C. sec. 1964, precludes a defendant who has been convicted under AS 11.59.040 or 11.59.050 from denying the essential elements of the crime in subsequent litigation. Unlike the federal statute which only estops the defendant in subsequent litigation with the government, this section estops the defendant in all subsequent litigation with any party. Since the defendant's violation of AS 11.59.010 has already been established beyond a reasonable doubt in the earlier criminal prosecution, there is no reason to require the plaintiff in a civil proceeding brought against the same defendant to relitigate the basis of the criminal conviction. This is particularly the case since the burden of the civil litigant to establish a violation of AS 11.59.010 is by a preponderance of the evidence, while the government has already established a violation beyond a reasonable doubt.

Sec. 11.59.080. CIVIL ACTION FOR TREBLE DAMAGES

This section creates a civil action for treble damages available to any person, including the state, who is injured in business or property as a result of a violation

of 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 on persons who violate AS 11.59.010 that are over and above any criminal penalty that may be imposed and any forfeiture that is ordered. The civil remedies authorized by this section provide another powerful deterrent against persons who may engage in conduct prohibited by AS 11.59.010. The plaintiff is only required to establish an injury "to business or property". "An allegation of commercial or competitive injury is not required...." Bennett v. Berg, 685 F.2d 1053 (8th Cir. 1982), cert. denied, 104 S.Ct. 527 (1983).

Assuming that a violation of AS 11.59.010 can be established, there is no requirement that the plaintiff additionally show that the injury to his business or property was caused by the defendant's racketeering, as opposed to the illegal activity that was used to establish racketeering under AS 11.59.020. This nebulous and artificial distinction has been recognized in a few recent cases interpreting the federal law, but it is specifically rejected here as being contrary to the intent of this legislation. See Bankers Trust Co. v. Rhoades, 53 U.S.L.W. 2063 (2d. Cir. July 26, 1984); Moss v. Morgan Stanley Inc., 553 F.Supp. 1347 (S.D. N.Y. 1983), cert. denied, 104 S.Ct. 1280 (1984).

Unlike a criminal prosecution under this legislation where the proof required to establish a violation must be beyond a reasonable doubt, the elements of a civil action brought under this section need only be established by a preponderance of the evidence. See United States v. Capetto, 502 F.2d 1351, 1357 (7th Cir. 1974), cert. denied, 420 U.S. 925 (1975); Herman & MacLean v. Huddleston, 51 U.S.L.W. 4099 (Jan. 24, 1983). As previously discussed, there is no requirement that the defendant be shown to be a part of "organized crime."

AS 11.59.080 does not require that a criminal prosecution against the defendant be instituted or successfully completed as a prerequisite for a person to bring a private cause of action. Consequently, it is the intent of this legislation to specifically reject a recent contrary interpretation of the similar federal law. See Sedima, S.P.R.L. v. Imrey Co., 53 U.S.L.W. 2063 (2d Cir. Aug. 7, 1984). However, if a criminal prosecution is first successfully brought, AS 11.59.070 prevents the defendant from denying the essential allegations of the crime in a subsequent civil action.

In addition to allowing a civil cause of action for treble damages, this legislation authorizes a court to grant a wide variety of equitable relief in connection with an action brought under this section. The person may obtain

a restraining order to prevent future violations of AS 11.59.010, as well as restrictions on the conduct of the enterprise, including its dissolution or reorganization. See AS 11.59.100.

Sec. 11.59.090. PROPERTY SUBJECT TO FORFEITURE

One of the principal 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 in violation of AS 11.59.010 is subject to forfeiture. The procedures specifying how the property is forfeited appear in section 3 of this legislation discussed infra. The term "property" is defined in AS 11.59.900(2) to mean "any thing of value, including real or personal property, claims against or interests in business or property, contractual rights, securities, income, profits, or any other business or financial interest." The key to the definition is that the item, claim, interest or right must be a thing of value.

Also covered by this forfeiture provision are the proceeds of property, including profits acquired from a violation

of AS 11.59.010. In Russello v. United States, 104 S.Ct. 296, 301 (1983), the Supreme Court stressed the importance of covering profits derived from racketeering under a forfeiture statutes.

Forfeiture of an interest in an illegitimate association-in-fact ordinarily would be of little use because an association of that kind rarely has identifiable assets; instead, proceeds or profits usually are distributed immediately. Thus construing [the federal forfeiture statute] to reach only interests in an enterprise would blunt the effectiveness of the provision in combatting illegitimate enterprises, and would mean that "[w]hole areas of organized criminal activity would be placed beyond" the reach of the statute. United States v. Turkette, 452 U.S. at 589. |

Under AS 11.59.090(1), property is subject to forfeiture if it was acquired or maintained in violation of, or in the course of violating, AS 11.59.010. Thus the defendant's interest in the enterprise itself is subject to forfeiture if it was acquired in violation of AS 11.59.010. For example, if the defendant acquired a business through racketeering, that business will be forfeited to the state. Moreover, property such as firearms and automobiles is subject to forfeiture if acquired in the course of violating AS 11.59.010. Even if such property is never actually used as part of the illegal activity, it is subject to forfeiture if it was intended to be used to conduct or facilitate illegal activity, or to further the goals of the enterprise.

AS 11.59.090(2) subjects to forfeiture any property used or invested in violation of, or in the course of violating, AS 11.59.010. This paragraph in part permits the forfeiture of property obtained through racketeering to obtain an interest in an enterprise or to run an enterprise. This paragraph also covers property that may not have been originally derived from racketeering, but is nonetheless actually used in the course of violating AS 11.59.010. Property such as firearms, automobiles, cash receipts obtained while running the enterprise, or other business equipment or supplies are thus subject to forfeiture.

Finally, AS 11.59.090(3) covers property, or its proceeds, that is derived from racketeering (i.e., from a pattern of illegal activity) without the requirement that some enterprise actually be taken over. Thus if the scheme is stopped before it can infiltrate a legitimate business, the illegitimate gains from the racketeering are nonetheless subject to forfeiture, even though the defendants are not subject to the severe criminal penalties provided under AS 11.59.040 and 11.59.050. Because it is important to take away the profit motive existing in repeated criminal activity, AS 11.59.090 has been included in this 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 the context of civil recovery, a criminal fine, or a forfeiture. The type of equitable relief authorized by this section depends on the stage of the litigation in which it is sought and who is requesting the relief. Subsection (a) applies to relief that is sought before an action under this legislation is actually filed and may only be sought by the attorney general. Subsection (b) applies to relief that may be granted once an action is filed. This relief may be sought by either the attorney general or a civil plaintiff. Subsection (c) applies to equitable relief that may be granted once an action is successfully concluded. The relief may be sought in connection with either a civil or criminal proceeding authorized by this legislation.

In reference to equitable relief that may be sought in conjunction with a civil proceeding, this section is subject to due process requirements governing equitable relief. United States v. Cappetto, 502 F.2d 1351, 1358 (7th Cir. 1974), cert. denied, 420 U.S. 925 (1975). The person seeking the injunction must show some potential injury, but need not show "irreparable injury other than the

injury to the public which [is] inherent in the conduct made unlawful...." Cappetto, 502 F.2d at 1358-59. The breadth of the equitable relief authorized by this action evidences the concern of this legislation that the plaintiff's right to recovery could be seriously impaired by the concealment, disposal, or removal from the jurisdiction of the property at issue.

In reference to equitable relief sought in conjunction with a criminal prosecution, no preseizure hearing is required if the injunction is necessary to achieve important governmental purposes. Preseizure notice might defeat the purposes of this section. Moreover, the injunction is initiated by government officials rather than private parties. United States v. Spilotro, 680 F.2d 612, 617 (9th Cir. 1982). Due process requirements are satisfied by a prompt postseizure hearing once the injunction has been entered. Spilotro 680 F.2d at 617. It is within the discretion of the superior court to continue the injunction if it is satisfied that there is probable cause to believe that the defendant is guilty of violating AS 11.59.040 or 11.59.050 and that the property at issue in the injunction is subject to forfeiture under AS 11.59.090. United States v. Spilotro, 680 F.2d 612, 618 (9th Cir. 1982); United States v. Long, 654 F.2d 911, 915 (3rd Cir. 1981). "It is not necessary that the hearing duplicate the criminal trial." The prosecution is required

only to establish the probability that the defendant will be convicted and properties will be subject to forfeiture. Spilotro, 680 F.2d at 618. The likelihood of conviction may be established by such evidence as testimony of law enforcement officials concerning the sources of defendant's income and the legality of that income. See Long, 654 F.2d at 915.

Sec. 11.59.110. CIVIL INVESTIGATIVE DEMAND

This section, which is based on 18 U.S.C. sec. 1968 provides the state with the necessary mechanism to insure that investigations into suspected criminal or civil violations of this legislation 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 14 years since enactment, the provisions of this section will apparently present no problems in administration.

Sec. 11.59.120. ATTEMPT OR SOLICITATION TO VIOLATE AS 11.59.010

This section is included solely for drafting convenience to insure that the quoted phrase does not have to be repeated in the numerous references in AS 11.59.070 -- 11.59.120 that depend on establishing a violation of

AS 11.59.010.

ARTICLE 4. GENERAL PROVISIONS

Sec. 11.59.900. DEFINITIONS

This section defines two key terms that are used throughout this chapter, "enterprise" and "property."

(1) Enterprise: To commit any of the three prohibited acts described in AS 11.59.010 an "enterprise" must be involved. This section defines that term. The definition is not limited to those examples specifically listed, but is merely illustrative. See United States v. Huber, 603 F.2d 387, 394 (2d Cir. 1979), cert. denied, 444 U.S. 1085 (1980). "There 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 (1980).

The definition specifically includes legal as well as illegal entities. See United States v. Turkette, 452 U.S. 576 (1980); see also United States v. Griffin, 660 F.2d 996 (4th Cir. 1981), cert. denied 102 S.Ct. 1029 (1982). There is no requirement that the membership of the enterprise remain static throughout its existence. See United States v. Clemones, 577 F.2d 1247, 1253, modified, 582

F.2d 1373 (5th Cir. 1978), cert. denied, 445 U.S. 927 (1980). Further, the definition of enterprise is broad enough to include a single-person enterprise. See United States v. Hartley, 678 F.2d 961, 989 (11th Cir. 1982), cert. denied, 103 S.Ct. 834 (1983); United States v. Benny, 559 F.Supp. 264, 266-71 (N.D. Cal. 1983).

The federal definition of enterprise has been interpreted on numerous occasions to apply to commercial entities, benevolent organizations, and governmental entities. This legislation intends to adopt the federal approach of broadly interpreting the definition of enterprise, as illustrated by such cases as United States v. Weisman, 624 F.2d 1118, 1120 (2d Cir.) cert. denied, 449 U.S. 871 (1980); United States v. Provenzano, 688 F.2d 194, 199-200 (3rd Cir.), cert. denied, 459 U.S. 1071 (1982); United States v. Thompson, 635 F.2d 993, 994-95 (6th Cir.), cert. denied, 459 U.S. 1072 (1982); United States v. Long, 651 F.2d 239, 241 (4th Cir.), cert. denied, 454 U.S. 896 (1981); United States v. Stratton, 649 F.2d 1066, 1074-75 (5th Cir. 1980) and cases cited approvingly therein; United States v. Grzywacz, 603 F.2d 682, 685-87 (7th Cir. 1979), cert. denied, 446 U.S. 935 (1980); United States v. Dozier, 672 F.2d 531, 543 and n. 8 (5th Cir.) cert. denied, 459 U.S. 943 (1982); United States v. Bagaric, 706 F.2d 42 (2d Cir.), cert. denied, 104 S.Ct. 283 (1983).

Establishing a pattern of racketeering is not automatically sufficient by itself to establish the existence of an enterprise. "While the proof used to establish those separate elements may in a particular case coalesce, proof of one does not necessarily establish the other. The 'enterprise' is not the 'pattern of racketeering activity'; it is an entity separate and apart from the pattern of activity in which it engages." United States v. Turkette, 452 U.S. at 583-85. See generally United States v. Mazzei, 700 F.2d 85, 87-90 (2d Cir.), cert. denied, 103 S.Ct. 2124 (1983); United States v. Cagnina, 697 F.2d 915, 921 (11th Cir.), cert. denied, 104 S.Ct. 175 (1983).

(2) Property: This definition will be of primary importance in applying the forfeiture provisions in sec. 3 of the bill. Those forfeiture provisions apply to property and proceeds of property acquired, maintained, used, invested, or derived from violation of AS 11.59.010. Consistent with the recent decision of the Supreme Court in Russello v. United States, 104 S.Ct. 296, the definition of property specifically includes profits.

Section 3. Forfeitures

This section of the bill has two related purposes. First, it specifies the procedures applicable to the forfeiture of property authorized by this legislation in

AS 11.59.090. Secondly, it effectively consolidates many state forfeiture procedures in a single new article added to AS 9. This consolidation of state forfeiture procedures will minimize the possibilities of unintended inconsistencies in coverage and reduce the volume of laws that are required whenever forfeiture is authorized. Additionally, since many instances of racketeering may involve conduct that violates crimes defined outside this legislation, it is appropriate to include the general procedures pertaining to forfeiture in this legislation.

ARTICLE 7. FORFEITURE

Sec. 09.50.400. PROCEDURES APPLICABLE IN FORFEITURE PROCEEDINGS

This section accomplishes the consolidation of forfeiture procedures referred to above. For forfeiture procedures to be initiated, forfeiture must be authorized by state law. AS 11.59.090 specifically authorizes the forfeiture of property used in violation of AS 11.59.010, while other state statutes also authorize forfeiture in specified circumstances. See e.g., AS 11.66.270 and AS 17.30.110 as amended in secs. 5 and 9 of this bill.

If forfeiture is authorized by state law, the sections in this article will govern the procedures applicable to the

forfeiture procedure. There is, however, one important exception to the general rule that all forfeiture proceedings are governed by AS 09.50. In cases where the legislature wishes to make property subject to forfeiture procedures that are different from those included in this article, it can specifically do so. However, if different forfeiture procedures are not "otherwise specifically provided in the state law authorizing forfeiture," the property is subject to forfeiture under the procedure specified in this article.

Sec. 09.50.410. SEIZURE AND CUSTODY OF PROPERTY

Property subject to forfeiture may be seized with or without a court order under the provisions of AS 09.50.410(a). When property is seized without a court order under paragraph (a)(3), it may not be held for more than 48 hours unless an extension is obtained from the court.

Once property has been seized, the commissioner of public safety or a local law enforcement agency is responsible for assuming custody of the property under AS 09.50.410(b). Only the court with jurisdiction over the property can require a subsequent movement of the property.

AS 09.50.410(c) provides that the property must be inventoried within 10 days after it is seized, and that the

value of any items, other than controlled substances, must be estimated. The results of this estimate will be of importance in determining the required notices that must be sent under AS 09.50.420.

Sec. 09.50.420. NOTICE OF SEIZURE AND FORFEITURE ACTION;
ANSWERS

Once property has been seized under AS 09.50.420, the commissioner of public safety is required to comply with the notice provision outlined in this section.

AS 09.50.420(a) pertains to the notice required after seizure of the property but before the state institutes formal forfeiture proceedings. Notice must be sent to any person who has an interest in the property as described in this subsection. However, if a forfeiture proceeding has been instituted within 30 days after seizure of the property, the notice required by subsection (a) need not be given. This is because the notice required in AS 09.50.420(b) will provide sufficient notice to persons with interests in the property.

AS 09.50.420(b) describes a separate and additional notice that must be sent within 30 days after the state actually institutes the forfeiture proceeding. Since a defendant in a criminal case has already received notice of the

proceeding under AS 09.50.430(a), no additional notice need be sent to the defendant.

AS 09.50.420(c) provides a mechanism whereby parties with an interest in the property sought to be forfeited can file an answer in order to argue against forfeiture or for a remission of the property. Since controlled substances and imitation controlled substances are summarily forfeited to the state under AS 17.30.126, AS 09.50.420(d) provides that the notice requirements specified in this section do not apply to the forfeiture of controlled substances.

Sec. 09.50.430. PROCEEDINGS RESULTING IN FORFEITURE; BURDEN OF PROOF

This section lists the underlying proceedings in which forfeiture may be initiated, and specifies the burden of proof requirement in all forfeiture proceedings.

Under AS 09.50.430(a), a forfeiture proceeding may be initiated in one of three proceedings. In the event that the state has instituted a criminal prosecution or civil action relating to the conduct making the property subject to forfeiture, the filing of a motion to forfeit in that proceeding will initiate the forfeiture action. For example, if the defendant is charged under AS 11.59.040 or

11.59.050 for conduct involving the takeover of an enterprise through racketeering, the state may also file a motion seeking forfeiture of the enterprise and all profits obtained by the defendant as a result of the illegal conduct. See AS 11.59.090. Similarly, if the state has filed a civil action for an injunction or for treble damages, it may also include a motion to forfeit property.

Alternatively, the state may institute a forfeiture proceeding simply by filing a complaint seeking forfeiture in an in rem proceeding involving the property subject to forfeiture. In this instance, there is no requirement that any additional civil or criminal action be instituted that relates to the property which is the subject of the forfeiture.

AS 11.50.430(b) provides that forfeiture proceedings are tried before a judge sitting without a jury. At the hearing, the state must establish by a preponderance of the evidence that the property is subject to forfeiture. The same burden of proof applies regardless of whether the forfeiture is sought by motion in a criminal or civil proceeding relating to the property or in an in rem proceeding.

Sec. 09.50.440. DEFENSES EXEMPTED

This section emphasizes that a forfeiture proceeding is distinct from any criminal proceeding involving the property sought to be forfeited. It is therefore irrelevant in the forfeiture proceeding that an earlier criminal prosecution involving the same property that the state seeks to forfeit resulted in an acquittal or a conviction of a lesser included offense. This is because the burden of proof applicable in the civil proceeding is less than required for a criminal conviction. See United States v. One (1) 1969 Buick Riviera, 493 F.2d 553 (5th Cir. 1974); One Lot Emerald Cut Stones and One Ring v. United States, 409 U.S. 232 (1972); United States v. Kismetoglu, 476 F.2d 269 (9th Cir.) cert. dismissed, 410 U.S. 976 (1973).

In the civil proceeding the state must only prove by a preponderance of the evidence that the property is subject to forfeiture. AS 09.50.430(b). In a criminal prosecution, the violation of the underlying crime must be established beyond a reasonable doubt. Therefore, a jury determination in a criminal case that the defendant is not guilty of the charged offense does not mean that it has also determined that the state has failed to establish the violation of state law under the preponderance of the evidence standard applicable in civil forfeiture proceedings.

Secs. 09.50.450, 09.50.460. PETITION FOR RELEASE AND DISPOSITION OF SEIZED PROPERTY

Under certain circumstances, property may be released or disposed of under AS 09.50.450 and 09.50.460 before the court's decision on forfeiture. AS 09.50.450(b) provides that property that is not likely to be used in a court proceeding can be released if release is found to be in the best interests of the state and the claimant posts adequate security for the property. Additionally, the claimant or state can request disposition of the property before the decision on forfeiture. This may occur, for example, when the property is perishable or when its value may otherwise decrease during the proceedings. The proceeds of the sale are then treated as the property which is subject to forfeiture.

Sec. 09.50.470. FORFEITURE AND REMISSION

Subject only to the right of an innocent party to protect his interest in the property, this section makes forfeiture mandatory once it is established that the property is subject to forfeiture, regardless of the proceeding in which forfeiture is sought. The court does not retain discretion on the issue of forfeiture once it is shown that the property is subject to forfeiture.

The introductory clause of AS 09.50.470(a) refers to "the law authorizing forfeiture." To resolve any possible ambiguity on this point, the law authorizing the forfeiture

of property obtained in violation of AS 11.59.010 is AS 11.59.090. Other laws, besides AS 11.59.090, authorize the forfeiture of property, and once it is shown that the property was subject to forfeiture under those laws, that property must also be forfeited to the state under AS 09.50. For example, AS 17.30.110, as repealed and re-enacted by sec. 9 of this bill, authorizes the forfeiture of property used in violation of the laws involving controlled substances. Once it is shown that the property met the requirements of forfeiture specified in AS 17.30.110, that property must be forfeited to the state in accordance with the procedures specified in this chapter.

The right of an innocent person to obtain the return of his interest in property is sometimes referred to a "remission." Remission is a form of "pardon" of the forfeited property. The Laura, 114 U.S. 411 (1885). Under AS 09.50.470(a)(1) -- (3), a totally innocent person with an interest in property subject to forfeiture may protect his or her interest in the property. In allowing an innocent person to protect his or her interest, this section recognizes that the failure to provide such an opportunity would violate the Alaska Constitution. State v. Rice, 626 P.2d 104, 111-15 (Alaska 1981). Assuming that the claimant can satisfy the requirements of paragraphs (a)(1) -- (3), the court is provided with several options in

AS 09.50.470(b) for protecting the claimant's interest depending on the extent of that interest.

Federal statutory and case law has established that only parties who are ignorant of the illegal use or intended use of property sought to be forfeited, and who are non-negligent in lending or leasing their property, can qualify as claimants entitled to "remission" or "remittance." See, e.g., 18 U.S.C. sec. 3617(b), which codifies case law from the prohibition era. The burden is placed upon the claimant to prove by a preponderance of the evidence that he or she deserves relief under the remission standards. See, e.g., Wilson Motor Co. v. United States, 96 F.2d 29, 30 (9th Cir. 1938); United States v. C.I.T. Corp., 93 F.2d 469, 470 (2d Cir. 1937); United States v. One 1933 Ford V-8 Coach, 14 F.Supp. 243 (E.D. Ill. 1936).

The claimant must establish under AS 09.50.470(a)(1) that he or she had a good faith property interest in the item at the time of the illegal use. Florida Dealers and Growers Bank v. United States, 279 F.2d 673 (5th Cir. 1960); United States v. One 1936 Model Ford Coach, 58 F.Supp. 802 (M.D. Ga. 1944). Additionally, AS 09.50.470(a)(2) and (3) require the claimant to establish that he was ignorant of the illegal use or intended use and was not negligent in lending or leasing the property. This provision is based on 18 U.S.C. sec. 3617(b)(2). See One 1941 Ford 1/2 Ton

Pickup Truck v. United States, 140 F.2d 255 (6th Cir. 1944); Federal Credit Co. v. United States, 109 F.2d 121 (5th Cir. 1940). Compare Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663 (1974).

Sec. 09.50.480. STATE DISPOSAL OF FORFEITED PROPERTY

Once the property is forfeited, the commissioner of administration is responsible for determining the eventual disposition of the property. Various options are listed in this section.

Sections 4-12. MISCELLANEOUS SECTIONS

The remaining sections of the bill make several miscellaneous complementary amendments to existing laws.

Section 4. This section amends the existing extortion statute to specifically provide that extortion is committed when the defendant makes one of the threats described in AS 11.41.520(a)(1) -- (7) to assist in the collection of a debt. This provision will insure coverage of conduct commonly associated with loan sharking under this legislation.

Sections 5, 6, 9, and 10. These sections make several conforming amendments to insure that gambling, controlled

substances, and imitation controlled substances are subject to the forfeiture proceedings specified in AS 09.50.

Section 7. This 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 8. This amendment is necessary to authorize a term of imprisonment for a violation of 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, in sec. 3 of the bill, of the new article in AS 09. Note that existing AS 17.30.126, which pertains to the summary forfeiture of certain controlled substances, is not repealed.

Section 12. EFFECTIVE DATE. This section specifies a January 1, 1986, effective date.

APPENDIX A

States that have adopted legislation similar to the federal Racketeering Influenced and Corrupt Organizations title:

1. Ariz. Rev. Stat. Ann. § 13-2312 (1978).
2. Cal. Penal Code § 186 (West Supp. 1983).
3. Colo. Rev. Stat. § 18-17-101 (1981).
4. 1982 Conn. Pub. Acts. 343.
5. Fla. Stat. Ann. § 895.01 (West Supp. 1982).
6. Ga. Code Ann. § 16-14-1 (Sup. 1982).
7. Hawaii Rev. Stat. § 842-1 (1976).
8. Idaho Code § 18-7801 (Supp. 1982).
9. The Illinois Narcotics Profit Forfeiture Act, H.R. 2450 (1982).
10. Ind. Code Ann., § 34-45-6-1 (Burns Sup. 1982).
11. Nevada Rev. Stat., chapter 207 (1983).
12. N.J. Stat. Ann. § 2C:41 (West 1982).
13. N.M. Stat. Ann. § 30-42-1 (Supp. 1978).
14. N.D. Cent. Code § 12.1-106.1 (C.Cupp. 1983).
15. Or. Rev. Stat. § 166-715 (1981).
16. 18 Pa. Cons. Stat. § 911 (1978).
17. R.I. Gen. Laws § 7-15-1 (Supp. 1982).
18. Utah Code Ann. § 76.10-1601 (Supp. 1981).
19. Wis. Stat. Ann. § 946.80 (Supp. 1982).

HB 184

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - RICO

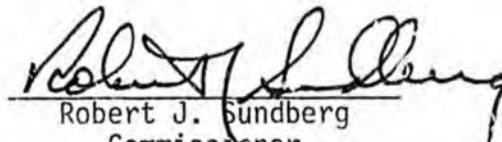
Support

February 8, 1985

RICO - "An Act relating to illegally controlled enterprises and the forfeiture of property that is used in violation of state law; and providing for an effective date."

This legislation addresses both criminal penalties and civil remedies to combat organized Racketeer Influenced and Corrupt Organizations (RICO). Additionally, forfeiture provisions are included that provide for the seizure of property illegally obtained.

Passage of this bill will provide the law enforcement community with a tool that is presently not available. It will simplify and further define forfeiture requirements and thus streamline any seizures that take place as a result of investigations into the activities of organized crime operations.


Robert J. Sundberg
Commissioner

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
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LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 13, 1985

SUBJECT: Comparison of HB 184 to federal RICO
legislation

TO: Representative Max Gruenberg

FROM: George W. Edwards *GWE*
Legislative Counsel

This is in response to your request for a comparison of HB 184, which concerns illegally controlled enterprises, with federal racketeer influenced organizations (RICO) laws. Copies of all RICO laws are attached.

Section 1 of HB 184 is a statement of purpose not found in RICO.

Section 2 amends existing law by adding a new chapter 59 that concerns illegally controlled enterprises.

Section 11.59.010 identifies the unlawful acts under this chapter as acquisition or control of an enterprise through racketeering and acquisition of an enterprise in exchange for property obtained through racketeering. RICO section 1962 prohibits similar activities but only within interstate commerce.

Section 11.59.020(a) defines racketeering as a pattern of illegal activity involving at least two acts. It is similar to RICO section 1961(5).

Subsection (b) defines "illegal activity" as offenses generally similar to those specified in RICO section 1961(1) and specifically incorporates the RICO section by reference. A significant difference is that illegal activity under the bill must be felonious while misdemeanor or felony conduct will satisfy the requirements of RICO.

Representative Max Gruenberg
March 13, 1985
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Subsection (c) provides a definition of "pattern" of illegal activity that does not appear in RICO.

Section 11.59.030(a) applies to intrastate crime and requires that at least one instance of illegal conduct be within Alaska to bring the racketeering conduct under this chapter. RICO concerns only interstate activity. The other qualifications are unique to the bill.

Subsection (c) requires that relevant past criminal activity be less than five years old. RICO section 1961(b) sets the limit at 10 years.

Subsection (d) concerns methods of proof and appears to be unique to the bill.

Subsection (e) excludes for purposes of time computations periods in which a person was under criminal jurisdiction. RICO section 1961(5) addresses this but to a much more limited extent.

Sections 11.59.040 and 11.59.050 designate crimes under this chapter. Penalties range from 20 years and \$50,000 as an A felony to 30 years and \$75,000 as an unclassified felony pursuant to changes in sections 7 and 8 of the bill. RICO section 1963 provides for a maximum penalty of 20 years and \$25,000.

Section 11.59.060 appears to be unique to the bill.

Section 11.59.070 is similar to RICO section 1964(d).

Section 11.59.080 is similar to RICO section 1964(c)

Section 11.59.090 is a forfeiture provision similar to RICO section 1963(c) but more specific as to property.

Section 11.59.100 is conceptually similar to RICO section 1964(a) and (b).

Section 11.59.110 (a) is similar to RICO section 1968(a).

Subsection (b) is similar to RICO section 1968(b).

Subsection (c) is similar to RICO section 1968(d).

Subsection (d) is similar to RICO section 1968(g).

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Subsection (e) is similar to RICO section 1968(f)(3).

Subsection (f) is similar to RICO section 1968 (f)(5).

Section 11.59.120 appears to be unique to the bill.

Section 11.59.900 adopted the definition for "enterprise" from RICO section 1961(4). The definition of "property" is not found in RICO.

No additional sections of the bill appear within RICO.

GWE:csh
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Enclosure

CHAPTER 96—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

Sec.

- 1961. Definitions.
- 1962. Prohibited racketeering activities.¹
- 1963. Criminal penalties.
- 1964. Civil remedies.
- 1965. Venue and process.
- 1966. Expedition of actions.
- 1967. Evidence.
- 1968. Civil investigative demand.

¹ So in original. Does not conform to section catchline.

Historical Note

1970 Amendment. Pub.L. 91-452, Title IX, § 901(a), Oct. 15, 1970, 84 Stat. 941, added chapter 96 and items 1961 to 1968.

Cross References

Registration revoked for violation of this chapter by commodity dealer, see section 12a of Title 7, Agriculture.

§ 1961. Definitions

As used in this chapter—

(1) "racketeering activity" means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), sections 2314 and 2315 (relating to interstate transportation

of stolen property), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), or (D) any offense involving fraud connected with a case under title 11, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States;

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

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

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to

of this chapter, and that all the members of the conspiracy knowingly agreed to participate in or conduct the enterprise through a pattern of racketeering. *U.S. v. Riccobene*, C.A.Pa.1983, 709 F.2d 214, certiorari denied 104 S.Ct. 157.

As entity providing numerous legitimate services, and as incorporated body under state laws, corporation which owned and operated retirement community had ascertainable structure apart from any predicate acts of mail fraud and was thus appropriately named as "enterprise" in complaints for purposes of stating claim under this chapter. *Bennett v. Berg*, C.A.Mo.1982, 685 F.2d 1053, on rehearing 710 F.2d 1361, certiorari denied 104 S.Ct. 527.

Lengthy association between two defendants, who on number of occasions sought to introduce agent and informant to sources of narcotics located in various parts of country so that they could obtain percentage of any resulting narcotics transactions, defendants' demand of payments from agent for introductions to narcotics sources, and attempt to provide informant with "crew" to facilitate narcotics distribution, standing apart from predicate acts of charged narcotics distribution, established existence of criminal "enterprise" required for charge under this chapter. *U.S. v. DeRosa*, C.A.Cal.1982, 670 F.2d 889, certiorari denied 103 S.Ct. 353, 372, 459 U.S. 993, 1014, 74 L.Ed.2d 391, 507.

This chapter's definition of "enterprise" covered the enterprise alleged in the instant case, viz., a "group of individuals associated in fact with various corporations." *U.S. v. Thevis*, C.A.Ga.1982, 665 F.2d 616, rehearing denied 671 F.2d 1379, certiorari denied 102 S.Ct. 2300, 456 U.S. 1008, 73 L.Ed.2d 1303, certiorari denied 102 S.Ct. 3489, 458 U.S. 1109, 73 L.Ed.2d 1303, certiorari denied 103 S.Ct. 57, 459 U.S. 825, 74 L.Ed.2d 61.

Enterprise charged in indictment under this chapter, a group of individuals associated in

§ 1962. Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of

fact for purpose of establishing a pattern of racketeering activity in the New York and New Jersey waterfront businesses, was outside scope of term "enterprise" as employed in this chapter. *U.S. v. Clemente*, C.A.N.Y.1981, 640 F.2d 1069, certiorari denied 102 S.Ct. 102, 454 U.S. 820, 70 L.Ed.2d 91.

Defendant's circle of bribed racehorse jockeys who were joined through defendant with a circle of informed bettors who profited from the illegal fixing of races constituted an enterprise that was unlawful under this chapter. *U.S. v. Errico*, C.A.N.Y.1980, 635 F.2d 152, certiorari denied 101 S.Ct. 3142, 453 U.S. 911, 69 L.Ed.2d 994.

Evidence that defendant conducted affairs of local union by serving as chief steward when he appointed himself as a union steward and accepted payment as union steward from contractors for services which were not rendered was sufficient to show that his illegal activities were in the conduct of the union's affairs and that he was thus engaged in an "enterprise" for purposes of this chapter. *U.S. v. Kaye*, C.A.Ill.1977, 556 F.2d 855, certiorari denied 98 S.Ct. 395, 434 U.S. 921, 54 L.Ed.2d 277.

This chapter could properly be applied to the conduct of the affairs of an enterprise whose only business was the loaning of money at usurious interest rates, through the collection of unlawful debts and conspiracy to accomplish the same. *U.S. v. Castellano*, D.C.N.Y.1975, 416 F.Supp. 125.

102. Miscellaneous entities not considered enterprises

Securities accounts in which defendant broker allegedly gained an interest as result of violations of securities laws were not "enterprises" within meaning of this chapter. *In re Cantanella and E.F. Hutton and Co., Inc. Securities Litigation*, D.C.Pa.1984, 583 F.Supp. 1388.

controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections ¹ (a), (b), or (c) of this section.

(Added Pub.L. 91-452, Title IX, § 901(a), Oct. 15, 1970, 84 Stat. 942.)

¹ So in original. Probably should be "subsection".

Historical Note

References in Text. Section 2, title 18, United States Code, referred to in subsec. (a), is section 2 of this title. Legislative History. For legislative history and purpose of Pub.L. 91-452, see 1970 J.S. Code Cong. and Adm. News, p. 4007.

Cross References

Civil action for threefold damages, see section 1964 of this title.
Court orders to restrain violations of this section, see section 1964 of this title.

Federal Practice and Procedure

Rendering of verdicts, see Wright: Criminal 2d § 511 et seq.

West's Federal Forms

Indictment—conspiracy, see § 7165.30.
Mandatory nature of forfeiture, see Comment preceding § 7101.

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LEGISLATIVE SERVICES AGENCY

Wharton's rule did not bar maintenance of counts charging conspiracy under this section and substantive violation of this section. *U.S. v. Boffa*, D.C.Del.1980, 513 F.Supp. 444.

103. Single or multiple conspiracies

Even if jury in acquitting defendants on conspiracy count concluded that they were not members of the enterprise, same did not preclude subsequent conspiracy conviction, if two conspiracies were distinct criminal schemes. *U.S. v. Russotti*, C.A.N.Y.1983, 717 F.2d 27, certiorari denied 104 S.Ct. 1273.

Brief cessation of arson activity did not divide arson-insurance fraud enterprise into two conspiracies so long as there was an overlap in method and personnel between the two stages of the group's operations. *U.S. v. Lemm*, C.A.Neb.1982, 680 F.2d 1193, certiorari denied 103 S.Ct. 739, 459 U.S. 1110, 74 L.Ed.2d 960.

Because indictment charging defendants with violating this section properly defined the enterprise as Florida's Third Judicial Circuit, and properly alleged a single pattern of racketeering activity, the indictment properly charged a single conspiracy. *U.S. v. Stratton*, C.A.La.1981, 649 F.2d 1066.

§ 1963. Criminal penalties

(a) Whoever violates any provision of section 1962 of this chapter shall be fined not more than \$25,000 or imprisoned not more than twenty years, or both, and shall forfeit to the United States (1) any interest he has acquired or maintained in violation of section 1962, and (2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which he has established, operated, controlled, conducted, or participated in the conduct of, in violation of this section 1962.

(b) In any action brought by the United States under this section, the district courts of the United States shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as it shall deem proper.

(c) Upon conviction of a person under this section, the court shall authorize the Attorney General to seize all property or other interest declared forfeited under this section upon such terms and conditions as the court shall deem proper. If a property right or other interest is not exercisable or transferable for value by the United States, it shall expire, and shall not revert to the convicted person. All provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in

Indictment charging conspiracy under this section did not allege multiple conspiracies but, rather, only single conspiracy to participate in activities of enterprise through pattern of racketeering encompassing 62 predicate acts of mail fraud; however, if evidence offered at trial presented variance in proof demonstrating multiple conspiracies, which affected substantial rights of defendants, they would be entitled to acquittal on conspiracy charge. *U.S. v. Boffa*, D.C.Del.1980, 513 F.Supp. 444.

Evidence demonstrated single conspiracy making proper joinder of defendants in indictment charging violation of this section and conspiracy to commit that offense. *U.S. v. Clemente*, D.C.N.Y.1980, 494 F.Supp. 1310, certiorari denied 640 F.2d 1069, certiorari denied 102 S.Ct. 102, 454 U.S. 820, 76 L.Ed.2d 91.

104. Termination of conspiracy

Fact that some conspirators withdraw or that methods used to perpetuate the scheme change slightly does not indicate that one conspiracy has ended and that another has begun or that a fatal variance exists when the indictment alleges a single conspiracy. *U.S. v. Lynch*, C.A.Ill.1983, 699 F.2d 839.

respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the collector of customs or any other person with respect to the disposition of property under the customs laws shall be performed under this chapter by the Attorney General. The United States shall dispose of all such property as soon as commercially feasible, making due provision for the rights of innocent persons.

(Added Pub.L. 91-452, Title IX, § 901(a), Oct. 15, 1970, 84 Stat. 943.)

Historical Note

Transfer of Functions. All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in the Bureau of Customs of the Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate were ordered abolished, with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out

in the Appendix to Title 5, Government Organization and Employees. All functions of the offices eliminated were already vested in the Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

Legislative History. For legislative history and purpose of Pub.L. 91-452, see 1970 U.S. Code Cong. and Adm. News, p. 4007.

Cross References

Wire or oral communications, authorization for interception, to provide evidence of offenses under this section, see section 2516 of this title.

West's Federal Forms

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167. — Immunity of witnesses

There was no violation of use immunity conferred on Alcoholic Beverage Control Commissioner regarding use in his prosecution for violations of this section, Hobbs Act, section 1951 of this title, and mail fraud statute, section 1341 of this title, of grand jury transcript of his earlier testimony in investigation of gubernatorial campaign financing or of his statements made to Federal Bureau of Investigation during such investigation where government was unaware of transcript until late in its investigation of defendant and had not used transcript for investigation purposes or for preparation for trial of defendant and where government satisfactorily established that immunized statements included in Federal Bureau of Investigation interview forms had not been used in connection with prosecution of defendant. U.S. v. Barber, C.A.W.Va.1982, 668 F.2d 778, certiorari denied 103 S.Ct. 66.

§ 1964. Civil remedies

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. In any action brought by the United States under this section, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

(Added Pub.L. 91-452, Title IX, § 901(a), Oct. 15, 1970, 84 Stat. 943.)

In prosecution for, among other things, participation in affairs of police department through a pattern of racketeering activity, court did not err in denying motion to immunize defense witnesses inasmuch as defendant made no showing that there was any exculpatory evidence he wished to present. U.S. v. Nacrelli, D.C.Pa.1979, 468 F.Supp. 241.

168. Credibility of witnesses

In prosecution involving alleged violations of this chapter, it was not an abuse of discretion to exclude defense evidence seeking to attack principal witness' credibility at trial by showing he was biased against defendant because they had repelled his homosexual advances. U.S. v. Diecidue, C.A.Fla.1979, 603 F.2d 535, certiorari denied 100 S.Ct. 1345, 445 U.S. 946, 63 L.Ed.2d 781, certiorari denied 100 S.Ct. 1842, 446 U.S. 912, 64 L.Ed.2d 266.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 91-452, see 1970 U.S. Code Cong. and Adm. News, p. 4007.

Cross References

Service of process, see section 1965 of this title.

Federal Practice and Procedure

Provision that criminal conviction shall estop defendant in subsequent civil litigation in Federal States, see Wright, Miller & Cooper: Jurisdiction § 44.

West's Federal Forms

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defendants operated as gang and conspired to rents as ostensible carpet they could steal jewelry. *ibis*, D.C.N.Y.1983, 564

similar to bill of particulars seeking civil treble chapter. *Bache Halsey v. Tracy Collins Bank & Co.*, 1983, 558 F.Supp. 1042.

complaints sufficient

alleged that defendants acted and participated in which engaged in a pattern of activity and affected interstate cause of action sufficient to withstand motion. *Ramo Corp. v. United Inc.*, C.A.III.1983, 713

ate Director of Insurance, Director of insurer, sufficiently under this chapter by officer-parent corporation, who not only continued insurer in event of insolvency and loot-most profitable and least aggravating the insolvency. *ibis*, C.A.III.1983, 711 F.2d

missions and misrepresentations sufficient to state claims of Title 15 were sufficient to this chapter. In re *Cantaton and Co., Inc. Securities*, 1984, 583 F.Supp. 1387.

ing that former vice-president bankruptcy, while employed later, by a newly formed which one of debtor's contracts almost immediately for bankruptcy, conducted in conduct of debtor's affairs formed corporation's affairs in of racketeering activity of action under this chapter. *IDT Corp.*, D.C.Del.1984, 1

stated claim for several sale of securities, and third not incorporated all prior alleged to allege a pattern of on the earlier accounts, a pattern of racketeering of this chapter. *Yancoski v. Co., Inc.*, D.C.Pa.1983, 581

Allegations by New York Commissioner of Agriculture and Markets that slaughterhouse and principals thereof, through repeated instances of underweighting and misgrading slaughtered cattle and through use of the mails and wire communications, defrauded both the farmers whose cattle were slaughtered and the New York State Brucellosis Indemnity Program and that operation of the slaughterhouse affected interstate commerce were sufficient to plead claim for relief under this chapter. *Gerace v. Utica Veal Co., Inc.*, D.C.N.Y.1984, 580 F.Supp. 1465.

Complaint alleging that plaintiffs were defrauded out of substantial sums of money thereby suffering injury in "their business or property" within meaning of this section and that plaintiffs were defrauded by defendants acting jointly as "enterprise" and that defendants conducted affairs of that enterprise "through a pattern of racketeering activity" was sufficient to state claim under this section. *Windsor Associates, Inc. v. Greenfeld*, D.C.Md.1983, 564 F.Supp. 273.

Complaints which alleged that certain individual defendants were "persons" who conducted affairs of two interstate "enterprises," i.e., two banks, through "patterns of racketeering activity" consisting of several acts of mail fraud adequately described violation of this chapter to state claim for relief. *Lode v. Leonardo*, D.C.III.1982, 557 F.Supp. 675.

In civil suit under this chapter and federal securities laws, allegations that appraiser destroyed accurate appraisals of property in decedent's estate and substituted fraudulent appraisals for purpose of justifying transfer of estate property at deflated prices and allegations that appraiser fraudulently converted assets of the estate for his own benefit were sufficient to state claim for relief against appraiser. *Gunther v. Dinger*, D.C.N.Y.1982, 547 F.Supp. 25.

Action brought by buyer of low pressure, high speed, flexible couplings installed in main propulsion units of lighter-boardship vessel owned by buyers for damages involving alleged failures of couplings did not state claim on which relief could be granted under this section. *Waterman S.S. Corp. v. Avondale Shipyards, Inc.*, D.C.La.1981, 617 F.Supp. 256.

Alleged breach by defendant assignee of agreement for assignment of lease of premises and activities of defendant attorneys in returning sum held in escrow to assignee pursuant to agreement after landlord executed lease of premises to another corporation, which in fact was allegedly assignee's alter ego, fell within broad scope of this chapter and stated

cause of action for violation of this chapter. *Greenview Trading Co., Inc. v. Hershman & Lecher, P.C.*, 1984, 473 N.Y.S.2d 722, 123 M.S.2d 152.

10. Miscellaneous complaints insufficient

Complaint which simply asserted that defendant used the mails or wires "in connection with his business enterprise" was insufficient to show how the defendant used the mails or wire communications in furtherance of a scheme to defraud and thus insufficient to state a claim under this section. *Caliber Partners, Ltd. v. Affeld*, D.C.III.1984, 583 F.Supp. 1308.

Wire fraud as predicate offense under this chapter was inadequately pled by insurance company against its former employee, where accusation of wire fraud was premised on telephone calls to company's policyholders in which false representations about company were allegedly made, but there was no allegation that former employee was one of representatives of rival insurance company making calls or that he was responsible for acts of those representatives. *Saine v. A.I.A., Inc.*, D.C.Colo.1984, 582 F.Supp. 1299.

Allegations of churning by brokerage firm did not state a claim under this section. *Divco Const. & Realty Corp., Inc. v. Merrill Lynch Pierce Fenner & Smith, Inc.*, D.C.Fla. 1983, 575 F.Supp. 712.

Complaint which did not allege any garden variety fraud as the predicate for a claim under this chapter but which alleged a failure to produce money for a business venture as agreed, which alleged that the failure to produce the money was the result of fraud, and which alleged that four letters were mailed as part of the scheme did not adequately allege the mail fraud which was assertedly the predicate for the claim under this chapter. *Serig v. South Cook County Service Corp.*, D.C.III. 1984, 581 F.Supp. 575.

Complaint grounded solely in securities fraud actions did not state cause of action under this chapter, alleged fraudulent conduct being merely predicate act of racketeering activity prohibited by this chapter. *Richardson v. Shearson/American Express Co., Inc.*, D.C.N.Y.1983, 573 F.Supp. 133.

Complaint, in which investor alleged that there had been churning, trading in unsuitable programs, violation of exchange rules, misrepresentations and omissions, controlling person liability as aiders and abettors and for failure to supervise, all in violation of federal securities laws, did not state cause of action under subsec. (c) of this section, in view of fact that purposes and intent of this chapter were not directed towards such alleged activities and that sufficient remedies were available to investor under federal and state securities laws and the common law. *Noland v. Gurley*, D.C.Colo.1983, 566 F.Supp. 210.

Where complaint under this chapter against broker did not allege that he ever had any ownership interest in brokerage partnership alleged as the "enterprise," nor was it alleged that he used 5 percent commission he earned on plaintiffs' transactions to invest in partnership, plaintiffs failed to adequately allege, on part of broker, violation of section 1962 of this title prohibiting an individual from using money received through a pattern of racketeering to invest in the enterprise. *Kimmel v. Peterson*, D.C.Pa.1983, 565 F.Supp. 476.

Complaint alleging that attorneys violated this chapter by assisting pro se defendants in state court action failed to state claim for relief; limited assistance attorneys provided in preparing pleadings for pro se defendants did not constitute any form of fraud but was wholly proper, especially where law firm had to appear for one of the defendants in the state court action. *Martin-Trigona v. D'Amato & Lynch*, D.C.N.Y.1983, 559 F.Supp. 533.

Claim of civil violation of this chapter by stockbroker, who advised certain of his customers to buy target corporation's stock and purchased target corporation's stock for his own account based upon nonpublic information regarding planned tender offer obtained through unauthorized disclosure of investment banker's employee, failed to state cause of action where claim rested on mere fact that stockbroker had been convicted of violating some of provisions listed by this chapter as underlying felonies. *Moss v. Morgan Stanley Inc.*, D.C.N.Y.1983, 553 F.Supp. 1347, affirmed 719 F.2d 5, certiorari denied 104 S.Ct. 1280.

§ 1965. Venue and process

(a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.

LEGISLATIVE AFFAIRS AGENCY

(b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

(c) In any civil or criminal action or proceeding instituted by the United States under this chapter in the district court of the United States for any judicial district, subpoenas issued by such court to compel the attendance of witnesses may be served in any other judicial district, except that in any civil action or proceeding no such subpoena shall be issued for service upon any individual who resides in another district at a place more than one hundred miles from the place at which such court is held without approval given by a judge of such court upon a showing of good cause.

(d) All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs.

(Added Pub.L. 91-452, Title IX, § 901(a), Oct. 11, 1970, 84 Stat. 944.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 91-452, see 1970 U.S. Code Cong. and Adm. News, p. 4007.

West's Federal Forms

Jurisdiction and venue in district courts, matters pertaining to, see § 1003 et seq.
Service of process, see § 1201 et seq.
Subpoenas, see § 3981 et seq.

Notes of Decisions

Agents 3
Complaint 9
Construction with other laws 1
Found 4
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Purpose 2
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Transacts affairs 5
Transfer 8
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I. Construction with other laws

If venue in district court for the Northern District of Georgia was proper under broad jurisdictional provisions of section 78aa of Title 15, it was also proper for other related violations of law that were alleged, but claims under this chapter were required to satisfy independent venue requirements of this section. *Clement v. Pehar*, D.C.Ga.1983, 575 F.Supp. 436.

Where venue is improper under special venue provision of this section, it is appropriate

to inquire whether action can be maintained under section 1391 of Title 28. *Van Schaick v. Church of Scientology of California, Inc.*, D.C.Mass.1982, 535 F.Supp. 1125.

Term "transacts his affairs" in this section is synonymous with term "transacts business" in section 22 of Title 15. *King v. Vesco*, D.C.Cal.1972, 342 F.Supp. 120.

2. Purpose

This section is not intended to be exclusive, but is intended to liberalize existing venue provisions. *Van Schaick v. Church of Scientology of California, Inc.*, D.C.Mass.1982, 535 F.Supp. 1125. See, also *Farmers Bank of State of Del. v. Bell Mortg. Corp.*, D.C.Del. 1978, 452 F.Supp. 1278.

3. Agents

Under this section relating to venue in private actions, term "has an agent" was restricted to individual defendants and did not apply as against corporate defendants.

King v. Vesco, D.C.Cal.1972, 342 F.Supp. 120.

4. Found

For corporate defendant, in private action under this section, providing that venue is proper where defendant "resides, is found, has an agent, or transacts his affairs," to be "found" in district within meaning of this section, it must be present in district by its officers and agents carrying on business of corporation. *Van Schaick v. Church of Scientology of California, Inc.*, D.C.Mass. 1982, 535 F.Supp. 1125.

Where corporate defendant in private action under this chapter maintained no office in district, had no officers or employees carrying on its business there, and did not perform any services, sell any services or sell any products within district, and did not pay any corporate or franchise taxes in district, defendant was not "found" within district within this section. *King v. Vesco*, D.C.Cal. 1972, 342 F.Supp. 120.

5. Transacts affairs

Venue in the Southern District of New York over civil claim brought under this chapter against certain individual defendants was improper, where none of those defendants resided in that district or maintained offices in New York and oil trading company on whose behalf the defendants acted transacted all of its business from offices in Pennsylvania; "transacts his affairs" language in this section refers to personal affairs of the defendant, not affairs he may have transacted on behalf of his employer. *Bulk Oil (USA) Inc. v. Sun Oil Trading Co.*, D.C.N.Y.1983, 684 F.Supp. 36.

6. Weight of contacts test

To meet "weight of the contacts" test for venue in a civil action brought under this chapter, it must be shown that there is venue over defendant due to his own contacts with district. *Farmers Bank of State of Del. v. Bell Mortg. Corp.*, D.C.Del.1978, 452 F.Supp. 1278.

7. Summoning parties

Where there was no district in which venue was proper as to all defendants on the basis of residency or the transacting of business and where venue lay in Delaware with respect to a majority of defendants, and where interests of justice and judicial economy dictated that the whole action be tried in one court if possible, ends of justice required that nonresident defendant be brought before court under this section. *Farmers Bank of State of Del.*

v. Bell Mortg. Corp., D.C.Del.1978, 577 F.Supp. 34.

8. Transfer

There was no substantial prejudice in refusal to transfer to another district prosecution for violations of this chapter where defendants pointed only to newspaper articles dealing with apprehension of several allegedly notorious subversives about the time of trial and failed to show any connection between those articles and the indictment. *U.S. v. Dickens*, C.A.N.J.1982, 695 F.2d 765, certiorari denied 103 S.Ct. 1792.

In prosecution for interstate transportation of stolen property, engaging in a pattern of racketeering activity, and conspiring to participate in racketeering activity, trial judge did not abuse his discretion in denying defendant's motion for change of venue from the District of Utah to the District of Nevada on the grounds that he, another defendant, and witnesses they intended to call resided in Nevada, and that character witnesses enjoyed reputations for integrity in Nevada, in that Utah was the location of events likely to be in issue as well as the location of documents and records likely to be involved, and thus while factors cited by defendant would have supported granting of the motion, when weighed in context they did not compel that result. *U.S. v. Calabrese*, C.A. Utah 1981, 645 F.2d 1379, certiorari denied 101 S.Ct. 3008, 451 U.S. 1018, 69 L.Ed.2d 350, certiorari denied 102 S.Ct. 127, 454 U.S. 831, 70 L.Ed.2d 108.

Inasmuch as none of the defendants in action seeking damages for violations of this chapter resided in Northern District of New York and that there were absolutely no contacts with Northern District of New York except that plaintiffs alleged that the impact of the conspiracy was felt in that district, venue in the Northern District of New York was inappropriate; however, in interest of justice, court would transfer action to the Southern District of New York where, for venue purposes, the weight of the contacts lay and where venue was proper as to all parties. *Soper v. Simmons Intern. Ltd.*, D.C.N.Y. 1983, 582 F.Supp. 987.

Action seeking to enjoin order of North Carolina Utilities Commission setting retail rates for utility was transferred from Eastern District of Tennessee to Eastern District of North Carolina, as venue was proper only in judicial district where all defendants resided or in which claim arose, no defendants resided in Eastern District of Tennessee, rates were set in North Carolina, direct object of challenged rates was North Carolina public utility and majority of relevant evidence and

witnesses was located in North Carolina. *Aluminum Co. of America v. Utilities Com'n of North Carolina*, D.C.Tenn.1982, 548 F.Supp. 18.

Pretrial publicity surrounding charges of mail fraud under section 1341 of this title and racketeering under this chapter against six defendants, including governor of the state, was not of such a quality that it could be considered inherently prejudicial so as to warrant grant of change of venue prior to voir dire of potential jurors. *U.S. v. Mandel*, D.C.Md.1976, 415 F.Supp. 1033.

9. Complaint

Even though complaint brought under this chapter alleged facts indicating that the claim against some of the coconspirators arose in the district, where defendant was not alleged to have had any substantial or significant contacts with the district in connection with the conspiracy, venue as to defendant was

improper in that it was not alleged that a claim against him arose in district. *Farmers Bank of State of Del. v. Bell Mortg. Co.*, D.C.Del.1978, 452 F.Supp. 1278.

10. Miscellaneous actions venue improper

Venue was not proper in Georgia as to claim that defendants violated this chapter a transaction involving sale of interests in Nevada gold and silver mining venture where a defendant resided, was found or had agent in Georgia and minimal contacts of defendant with Northern District of Georgia in connection with purchase of interests were not sufficient to constitute transaction of their affairs within Georgia. *Clement v. Pehar*, D.C.Ga.1983, 575 F.Supp. 436.

Evidence in private treble damage action brought under this chapter was insufficient to establish venue with respect to either individual defendant or corporate defendant. *King v. Vesco*, D.C.Cal.1972, 342 F.Supp. 120.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 91-452, see 1970 U.S. Code Cong. and Adm. News, p. 4007.

§ 1968. Civil investigative demand

(a) Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody, or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

(b) Each such demand shall—

(1) state the nature of the conduct constituting the alleged racketeering violation which is under investigation and the provision of law applicable thereto;

(2) describe the class or classes of documentary material produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(3) state that the demand is returnable forthwith or prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(4) identify the custodian to whom such material shall be made available.

(c) No such demand shall—

(1) contain any requirement which would be held to be unreasonable if contained in a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation; or

(2) require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation.

(d) Service of any such demand or any petition filed under this section may be made upon a person by—

(1) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such person, or upon any individual person;

(2) delivering a duly executed copy thereof to the principal office or place of business of the person to be served; or

(3) depositing such copy in the United States mail, by registered or certified mail duly addressed to such person at its principal office or place of business.

§ 1966. Expedition of actions

In any civil action instituted under this chapter by the United States in any district court of the United States, the Attorney General may file with the clerk of such court a certificate stating that in his opinion the case is of general public importance. A copy of that certificate shall be furnished immediately by such clerk to the chief judge or in his absence to the presiding district judge of the district in which such action is pending. Upon receipt of such copy, such judge shall designate immediately a judge of that district to hear and determine action. The judge so designated shall assign such action for hearing as soon as practicable, participate in the hearings and determination thereof, and cause such action to be expedited in every way.

(Added Pub.L. 91-452, Title IX, § 901(a), Oct. 15, 1970, 84 Stat. 944.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 91-452, see 1970 U.S. Code Cong. and Adm. News, p. 4007.

§ 1967. Evidence

In any proceeding ancillary to or in any civil action instituted by the United States under this chapter the proceedings may be open or closed to the public at the discretion of the court after consideration of the rights of affected persons.

(Added Pub.L. 91-452, Title IX, § 901(a), Oct. 15, 1970, 84 Stat. 944.)

LEGISLATIVE SERVICES AGENCY

(e) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be prima facie proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f) (1) The Attorney General shall designate a racketeering investigator to serve as racketeer document custodian, and such additional racketeering investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

(2) Any person upon whom any demand issued under this section has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person, or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to this section on the return date specified in such demand, or on such later date as such custodian may prescribe in writing. Such person may upon written agreement between such person and the custodian substitute for copies of all or any part of such material originals thereof.

(3) The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this chapter. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the Attorney General. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than the Attorney General. Under such reasonable terms and conditions as the Attorney General shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representatives of such person.

(4) Whenever any attorney has been designated to appear on behalf of the United States before any court or grand jury in any case or proceeding involving any alleged violation of this chapter, the custodian may deliver to such attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the United States. Upon the conclusion of any such case or proceeding, such attorney shall return to the custodian any documentary material so withdrawn which has not passed into the control of such court or grand jury through the introduction thereof into the record of such case or proceeding.

(5) Upon the completion of—

(i) the racketeering investigation for which any documentary material was produced under this chapter, and

(ii) any case or proceeding arising from such investigation, the custodian shall return to the person who produced such material all such material other than copies thereof made by the Attorney General

pursuant to this subsection which has not passed into the control of any court or grand jury through the introduction thereof into the record of such case or proceeding.

(6) When any documentary material has been produced by any person under this section for use in any racketeering investigation, and no such case or proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Attorney General, to the return of all documentary material other than copies thereof made pursuant to this subsection so produced by such person.

(7) In the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under this section or the official relief of such custodian from responsibility for the custody and control of such material, the Attorney General shall promptly—

(i) designate another racketeering investigator to serve as custodian thereof, and

(ii) transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated.

Any successor so designated shall have with regard to such materials all duties and responsibilities imposed by this section upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

(g) Whenever any person fails to comply with any civil investigative demand duly served upon him under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one such district such petition shall be filed in the district in which such person maintains his principal place of business, or in such other district in which such person transacts business as may be agreed upon by the parties to such petition.

(h) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

(i) At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with any such demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.

(j) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.

(Added Pub.L. 91-452, Title IX, § 901(a), Oct. 15, 1970, 84 Stat. 944.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 91-452, see 1970 U.S. Code Cong. and Adm. News, p. 4007.

West's Federal Forms

Jurisdiction and venue in district courts, matters pertaining to, see § 1003 et seq.
Proceedings to compel discovery and enforcement of penalties for refusal to make discovery, see § 3681 et seq.

CHAPTER 97-

Sec.

1901. Entering train to commit crime.
1902. Wrecking trains.

Historical and

Reviser's Note. This chapter does not include motor busses, interstate trucking facilities or airplanes within the protection of existing law. Motor busses and trucks already carry a huge amount of interstate commerce. It is reasonable to presume that much inter-

Cross F

Departing or conveying false information concerning section 35 of this title.
Wire or oral communications, authorization for robbery, see section 2516 of this title.

§ 1991. Entering train to commit

Whoever, in any Territory or District, trespasses upon or enters upon any locomotive, with the intent to commit more than \$5,000 or imprisoned

Whoever, within such jurisdiction, upon or enters upon any railroad train with intent to commit any unlawful act on said train, or car, or upon or against any brakeman, or any officer or employe or car, or upon or against any express or in any car thereof, or to commit or property thereon, shall be fined more than one year, or both.

Upon the trial of any person under this section, it shall not be necessary to prove against whom it was intended to commit such offense against a person (June 25, 1948, c. 645, 62 Stat. 794.)

Historical

Reviser's Note. Based on Title 18, U.S. Code, 1940 ed., § 522 (Mar. 4, 1909, c. 321, § 35 Stat. 1150).

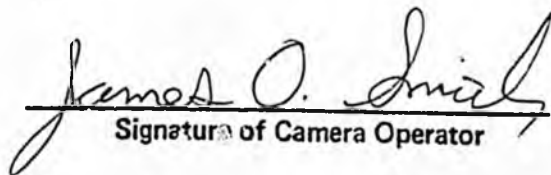
After the word "Whoever" the following was inserted: "in any Territory or District"

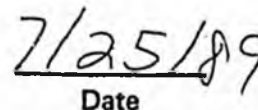


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Signature of Camera Operator


Date

H B

187

STATE OF ALASKA THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

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 standing Committee
Joint Meeting with HESS*

<i>" "</i>	<i>2-21-85</i>	<i>1:30 pm</i>
<i>" "</i>	<i>2-22-85</i>	<i>1:30 pm</i>
<i>" "</i>	<i>2-25-85</i>	<i>1:30 pm</i>
<i>" "</i>	<i>2-26-85</i>	<i>1:00 pm</i>
<i>" "</i>	<i>2-27-85</i>	<i>1:30 pm</i>
<i>" "</i>	<i>2-28-85</i>	<i>1:30 pm</i>
<i>" "</i>	<i>3-1-85</i>	<i>1:30 pm</i>
<i>House Judiciary</i>	<i>5-7-85</i>	<i>7:00 pm</i>

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST:

Bill/Resolution No.: SSHB 187
 Title: "An Act relating to the Inmate
 Education Advisory Council."
 Sponsor: Representative M. M. Miller
 Requestor: House HESS Committee
 Date of Request: February 19, 1985

FISCAL DETAIL:

Agency Affected: DEPARTMENT OF CORRECTIONS
 Program Category Affected: _____
 Administration of Justice _____
 BRU, Program or Subprogram(s) Affected: Statewide Programs

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		59.7	62.7	65.8	69.1	72.6
200 TRAVEL		9.9	10.4	10.9	11.5	12.1
300 CONTRACTUAL		8.5	8.9	9.4	9.8	10.3
400 SUPPLIES		1.6	1.7	1.8	1.9	2.0
500 EQUIPMENT		4.0	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	83.7	83.7	87.9	92.3	97.0

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

GENERAL FUND	-0-	83.7	83.7	87.9	92.3	97.0
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	83.7	83.7	87.9	92.3	97.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary.

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

Phone: 465-3376
 Date: February 26, 1985

Approved by Commissioner: Roger V. Endell
 Agency: DEPARTMENT OF CORRECTIONS

Date: February 26, 1985

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

ANALYSIS

I. Assumptions:

This fiscal note assumes that the Department of Education would continue to coordinate, monitor, and issue educational contracts.

Sponsor Substitute for House Bill No. 187 will create an Inmate Education Advisory Council made up of five members. The duties of the Council are to:

1. Research and make recommendations regarding inmate education in the State's prisons;
2. Coordinate a system of inmate education that is based on the individual inmate's education level;
3. Hire the staff necessary to carry out the provisions of the Act; and
4. Perform all acts necessary to carry out the purposes of the Act.

It is assumed that a ~~staff of a~~ full time Associate Coordinator and a half-time Clerk Typist III will be required by the Council to provide the research and support for the Council to receive adequate information to evaluate the existing education programs and then make recommendations regarding the future education programs in the State's prisons. It is also assumed that the Council will meet quarterly, with only four of the five members in attendance. As education is a statewide program, the cost estimates are based on the assumption that the Council will be appointed from the following areas of the State where prison facilities are located:

- 1 member - Ketchikan
- 1 member - Juneau
- 2 members - Anchorage/Vicinity
- 1 member - Fairbanks

A 5 % inflation factor was used for fiscal years subsequent to 1986.

II. Program Summary:

A. Positions:

	Associate Coordinator (12 months)	Clerk Typist III (6 months)
Annual Salary	\$35,580	\$ 9,588
Supplemental Benefits @ 6.13%	2,181	588
Retirement @ 12.47%	4,437	1,196
Variable Benefits @ 4.7408%	1,687	455
Fixed Benefits @ 219.20/mo.	<u>2,630</u>	<u>1,315</u>
Total Personal Services	\$46,515	\$13,142

Travel	\$ 3,000	\$ -0-
Contractual (communications, copying, rent)	4,500	3,000
Supplies (office)	600	600
Equipment	<u>1,500</u>	<u>2,500</u>
Total Position Cost	\$56,115	\$19,242

B. Other Expenditures:

The following identified expenditures are for Council members travel and per diem costs, long distance telephone charges and supplies specific to their quarterly meeting:

Travel	\$ 6,900
Contractual	1,000
Supplies	<u>400</u>
Total - Other Expenditures	\$ 8,300

III. Economic Impact:

Enactment of this bill will not have a significant impact on the State's economy.

IV. Impact on Local Government:

This bill has no apparent impact on local government units.

1.	POSITION TITLE Associate Coordinator				RANGE/STEP 18A	BARG. UNIT 3GU	PAGE/LINE	APPROV	DISAPP
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	GOV.	LEG.
3.	CONTINUATION LEVEL				JUSTIFICATION				
4.	TYPE OF EXPENDITURE								
	1		2		3				
	PERSONAL SERVICES								
5.	Salary	\$2,965/mo.	35,580						
6.	Benefits		6,124						
7.	Supplemental Benefits		2,181						
8.	Fixed Benefits		2,630						
9.	TOTAL PERSONAL SERVICES		01	46,515					
10.	Travel		02	3,000					
11.	Contractual		03	4,500					
12.	Commodities		04	600					
13.	Equipment		05	1,500					
14.	Other		06						
15.	TOTAL COST			56,115					
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts 1002							
17.		G.F. Match 1003							
18.		General Funds 1004		56,115					
19.		I-A Receipts 1005							
20.		Program Receipts 1006							
21.		Other							
For B&M USE ONLY									
KEY NUMBER _____									

The Associate Coordinator, at the direction of the Inmate Education Advisory Council, shall provide all necessary support services to the Council. This will include, but not be limited to, research into inmate education in the State prisons, coordination between the Director of Statewide Programs and the Council; make all necessary arrangements for quarterly meetings of the Council; receive and draft responses to correspondence relating to inmate education services; make recommendations regarding budget requests for inmate education programs; represent the Council on the Contract Review Committee for purchased education services; and general administrative tasks to carry out the purposes of Sponsor Substitute for House Bill No. 187.

REQUEST FOR
NEW POSITION

AGENCY Department of Corrections
PROGRAM Offender Confinement, Reformation
and Supervision
BRU Administration and Support
COMPONENT Statewide Programs

FY 86

Page 1 of 2

1.	POSITION TITLE Clerk-Typist III				RANGE/STEP 8B	BARG. UNIT GGU	PAGE/LINE	GOV.	APPROV	DISAPP						
2.	TYPE OF POSITION PFT	STAFF MONTHS 6	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.								
3.	CONTINUATION LEVEL				JUSTIFICATION											
4.	TYPE OF EXPENDITURE				AMOUNT											
	1		2		3											
	PERSONAL SERVICES															
5.	Salary	\$1,578/mo.	9,588		<p>To provide clerical support for the Inmate Education Advisory Council and the program administrator. The duties would include the full gamut of clerical functions such as typing, filing, answering the telephone, and providing receptionist services as well as arranging for travel of the Council, scheduling meeting rooms, arranging for recording equipment (as necessary), etc.</p>											
6.	Benefits		1,651													
7.	Supplemental Benefits		588													
8.	Fixed Benefits		1,315													
9.	TOTAL PERSONAL SERVICES		01	13,142												
10.	Travel		02	-0-												
11.	Contractual		03	3,000												
12.	Commodities		04	600												
13.	Equipment		05	2,500												
14.	Other		06													
15.	TOTAL COST			19,242												
	RECEIPT CODE	FUNDING SOURCE														
16.		Federal Receipts 1002														
17.		G.F. Match 1003														
18.		General Funds 1004		19,242												
19.		I-A Receipts 1005														
20.		Program Receipts 1006														
21.		Other														
For B&M USE ONLY																
KEY NUMBER _____																

REQUEST FOR
NEW POSITION

AGENCY Department of Corrections
PROGRAM Offender Confinement, Reformation
and Supervision
BRU Administration and Support
COMPONENT Statewide Programs

FY 86

Page 2 of 2

DEPARTMENT OF CORRECTIONS
Pouch T
Juneau, AK 99811

POSITION PAPER
SS House Bill No. 187

"An Act relating to the Inmate Education Advisory Council."

Sponsor Substitute for House Bill No. 187 would create an Inmate Education Advisory Council to coordinate inmate education services. The Council's duties would include, but not be limited to, conducting research and making recommendations regarding inmate education; coordination of an inmate education program based on individual inmate's education level; and hiring the staff necessary to carry out the provisions of the Act.

The Department of Corrections fully recognizes the value and need for input from both the community and Departmental staff regarding the development and administration of the inmate education program.

In keeping with this commitment, the Director of Statewide Programs, in conjunction with the Department of Education, established a Corrections Education Advisory Board in December of 1983. The Board consists of thirteen members, who represent the following agencies:

- University of Alaska - Anchorage, School of Justice
- Anchorage Community College - Eagle River Extension
- Adult Learning Programs of Alaska
- University of Alaska, Rural Education
- Department of Education
- Hiland Mountain Correctional Center
- Peninsula Learning Resources
- Southeast Regional Resource Center
- Fairbanks Correctional Center
- Cook Inlet Pre-Trial Facility
- Anchorage Community College, Adult Learning Center
- Kawerak, Inc.
- Human Resources Adult Education

The Corrections Education Advisory Board has been given the responsibility to make policy and procedure recommendations and has helped standardize and strengthen education programs within our institutions. However, it does not have as broad a scope of powers that Sponsor Substitute for House Bill No. 187 would give to the Inmate Education Advisory Council. It is felt that the Corrections Education Advisory Board meets the intent of the proposed legislation, while leaving the administrative responsibilities of the inmate education program to Corrections professionals.

Education is just one part of the complex incarceration/rehabilitation regimen experienced by the inmates. The Department of Corrections must retain control of programs administered in the State correctional facilities to ensure that the needs of both the institution and the inmates are met.

Therefore, the Department of Corrections agrees in concept with this proposed legislation, but does not support its passage.

Prepared By: *Susan Humphrey-Barnett* Date: February 26, 1985
Susan Humphrey-Barnett
Director - Statewide Programs
Department of Corrections

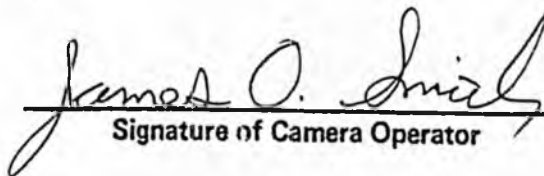
Approved By: *Roger V. Endell* Date: February 26, 1985
Roger V. Endell
Commissioner
Department of Corrections

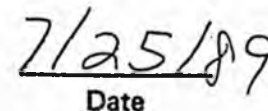


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STATE OF ALASKA THE LEGISLATURE

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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 standing committee
joint meeting with HESS

" " 2-21-85

1:30 pm

" " 2-22-85

1:30 pm

" " 2-25-85

1:30 pm

" " 2-26-85

1:00 pm

" " 2-27-85

1:30 pm

" " 2-28-85

1:30 pm

" " 3-1-85

1:30 pm

House Judiciary 4-25-85

1:30 pm

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST:

Bill/Resolution No.: HB 188
 Title: "An Act relating to correctional facilities for prisoners participating in community services or employment programs."
 Sponsor: Representative M. M. Miller
 Requestor: House HESS
 Date of Request: January 18, 1985

FISCAL DETAIL:

Agency Affected: DEPARTMENT OF CORRECTIONS
 Program Category Affected: _____
 Administration of Justice _____
 BRU, Program or Subprogram(s) Affected: Statewide Programs

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL	-0-	*3,358.0	3,525.9	3,702.2	3,887.3	4,081.7
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	*3,358.0	3,525.9	3,702.2	3,887.3	4,081.7

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	234.0	245.7	258.0	270.9	284.4
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	*3,358.0	3,525.9	3,702.2	3,887.3	4,081.7
FEDERAL FUNDS						
OTHER	-0-	*3,358.0	3,525.9	3,702.2	3,887.3	4,081.7
TOTAL	-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.

See attached.

Prepared By: Cynthia Nelson
 Division: Special Assistant

Phone: 465-3376
 Date: February 27, 1985

Approved by Commissioner: Roger V. Endell
 Agency: DEPARTMENT OF CORRECTIONS

Date: February 27, 1985

Distribution (by Agency preparing fiscal note):

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

ANALYSIS

I. Assumptions:

The Department of Corrections will contract with the private sector for the housing and operation of Correctional Restitution Centers.

The security level of a Correctional Restitution Center will be similar to that of a Community Residential Center (Halfway House).

The concept of a Correctional Restitution Center will have primary emphasis on community work programs and job development/work search skills and assistance obtaining employment.

Approximately 200 prisoners would be eligible to serve their time in a Correctional Restitution Center. (See Attachment.)

It is assumed that approximately 50% of the 200 inmates will be employed immediately while the remaining inmates are performing community work service and are developing resume's and other work search skills. The Department would retain 25% of a prisoners income to off-set the cost-of-care. Most of those employed will earn close to the minimum wage, although some may be expected to earn slightly more.

Therefore, we calculate 100 inmates working full-time (40 hours per week) at \$4.50 per hour (the minimum wage of \$4.35 per hour plus a \$.15 adjustment for the few that could earn more) would mean a total cost-of-care reimbursement to the state of \$234,000.

100 inmates X 40 hours X 52 weeks = 208,000 hours
208,000 hours X \$4.50 per hour = \$936,000
\$936,000 X .25 = \$234,000

A cost of living increase of 5% per year was assumed to increase revenues in subsequent years.

II. Program Summary:

The Department of Corrections estimates that contracts to operate Correctional Restitution Centers will be similar to costs for Community Residential Center beds (\$46 per day). Therefore, to place 200 Correctional Restitution Center beds throughout the Southcentral, Southeast and Northern Regions would cost \$3,358,000.

Institution	\$85.00 X 365 X 200 =	\$6,205,000
CRC	\$46.00 X 365 X 200 =	<u>- 3,358,000</u>
Cost Savings for Housing		\$2,847,000
Revenues		<u>+ 234,000</u>
Total Cost Savings		\$3,081,000

February 20, 1985

Prisoner Profile Summary

Prisoners Eligible to Serve Time at Correctional Reformation Centers

<u>Eligible for Centers</u>	<u>Northern Region</u>	<u>Southcentral Region</u>	<u>Southeast Region</u>	<u>Total</u>
DWI & Other Alcohol	15	124	13	152
Traffic Offenses	4	23	2	29
All Other Non-Violent	<u>41</u>	<u>168</u>	<u>20</u>	<u>229</u>
Total	60	315	35	410

Employment Skills of those Eligible

General Labor	20	59	6	85 (21%)
Mechanics	4	18	4	26 (6%)
Fisherman	1	20	4	25 (6%)
Construction	10	60	6	76 (18%)
Truckers/Other Skilled Laborers	12	48	6	66 (16%)
Office & Sales Services	4	64	5	74 (18%)
Professional Workers	1	10	-0-	11 (3%)
Other - Miscellaneous	4	17	2	23 (6%)
No Job Skills	<u>4</u>	<u>19</u>	<u>2</u>	<u>25 (6%)</u>
Total	60	315	35	410 (100%)

Assuming that the population of sentenced offenders who meet this criteria remain constant at 22%, the following projections can be made for eligibility in future years.

December	'84 = 385
December	'85 = 445
December	'86 = 505
December	'87 = 565
December	'88 = 625
December	'89 = 685



Alaska State Legislature
House of Representatives
COMMITTEE ON HEALTH, EDUCATION
AND SOCIAL SERVICES

OFFICIAL BUSINESS

POUCH V
JUNEAU, AK 99811
465-3759

MEMORANDUM

TO: REPRESENTATIVE MIKE MILLER, CHAIR
HOUSE JUDICIARY COMMITTEE

FROM: NANCY BENNETT, HESS COMMITTEE STAFF

DATE: MARCH 1, 1985

RE: TODAY'S MEETING

WE HAVE TWO "EXPERTS" ON RESTITUTION CENTERS WHO WILL BE TESTIFYING TODAY ON THE BILLS BEFORE THE JOINT MEETINGS. THEY ARE:

LYNDA FREEMAN WHO WORKS FOR THE MUNICIPALITY OF ANCHORAGE AS A MANAGER FOR THEIR ALTERNATIVE CORRECTIONS PROGRAMS. SHE HAS YEARS OF EXPERIENCE IN STATE AND OUT OF STATE IN THE FIELD AND HAS WRITTEN A LETTER, WHICH IS IN THE COMMITTEE MEMBERS' FILES, CONCERNING

RESTITUTION CENTERS AND OTHER TYPES OF ALTERNATIVES. LYNDA BELIEVES RESTITUTION CENTERS ARE A READILY ACCEPTABLE STANDARD IN THE COUNTRY, AND CERTAINLY TIMELY FOR ALASKA.

LARRY BOWLER, FROM SACRAMENTO, CALIFORNIA, IS ON CONTRACT WITH THE NATIONAL INSTITUTE FOR CORRECTIONS TO MAKE RECOMMENDATIONS IN THE AREA OF DESIGNING AND OPERATING RESTITUTION CENTERS.

NOTE: YOU MAY WANT TO APPRAISE THESE PEOPLE PRIOR TO THEIR TESTIMONY HOW MUCH TIME YOU WILL ALLOW FOR THEM SINCE YOU PLAN ON TAKING UP REPRESENTATIVE CLOCKSIN'S BILL TODAY.

364-4057
(916) 361-032

SECTIONAL ANALYSIS

HB 188, "An Act relating to alternative correctional facilities for prisoners participating in community service or employment programs."

* Sections 1 and 2. Amends the criminal law sections relating to first and second degree unlawful evasion to include failure to return to official detention while on leave from a restitution center under AS 33.30.288 (new section on p. 9 of this bill).

* Sec. 3. Adds a new subsection to the provision of the Code of Criminal Procedure which deals with the types of sentences a court is authorized to impose. Provides that the court may recommend service of sentence in correctional restitution center.

* Sec. 4. Amends the "community work" provisions which are now law to make it clear that the court may not offer substitution of community work for a mandatory or presumptive term of imprisonment only under the provisions of the community work section of the statutes. The court may, however, recommend service of certain types of presumptive and mandatory sentences in correctional restitution centers (D.W.I. and driving while license suspended, revoked, etc.) Persons sentenced under those provisions who serve in a restitution center must perform community service. See sec. 263 (b)(1), p. 7, and sec. 268 (b), p. 8.

* Sec. 5. Amends a provision of existing law to provide that a court may recommend that a person serve time in a restitution center when it imposes a term of imprisonment as a condition of the suspended imposition of sentence.

* Secs. 6, 7 and 8. Amends the existing statutes relating to driving while license cancelled, suspended, revoked or in violation of limitation (AS28.15.291), operating a vehicle, aircraft or watercraft while intoxicated (AS 28.35.030), and refusal to submit to chemical test (AS 28.35.032) to provide for a sentence under one of those sections to be served in a correctional restitution center.

* Sec. 9. Establishes correctional restitution centers.

Sec. 261. Requires the commissioner to establish and sets out the purpose. Provides for the adoption of regulations setting standards for the operation of the centers.

Sec. 262. Provides for contracting with public or private agencies for provision of facilities.

Sec. 263. Eligibility requirements for prisoner: (1) employable, obedient; persons sentenced to five days or less must perform community work service; (2) non-violent

offenders only; and (3) no sex offenders (this requirement may be overbroad because it includes class A and B misdemeanants).

Sec. 264. Provides for community advisory committees to act as community - center liaison.

Sec. 266. Provides for an administrator in each correctional restitution center and sets out duties.

Sec. 268. Sets out certain conditions which must be met by prisoner to maintain residence in a center.

* Sec. 10. Makes clear that a prisoner in a restitution center program is not an employee or agent of the state or correctional institution; and provides that a prisoner who is participating in a community service project is subject to the unlawful evasion provisions of AS 11.56. (This latter provision appears unnecessary in light of secs. 1 and 2 of the bill)

Sec. 284. Provides for state payment of medical expenses for person injured while performing community service.

Sec. 286. Distribution of prisoner's earnings by commissioner.

Sec. 288. Requires confinement in center at all times with enumerated exceptions, i.e., while working, involved in approved rehab or medical program, or emergency absence.

* Sec. 11. Definitions added to general definition section of Chapter 30 of Title 33.

SUGGESTED CHANGES:

In sec. 5 -- in the new underlined material, delete: "and may recommend" and insert: "including"

In secs. 6 and 7 -- in the new underlined material delete: "if recommended by the court under AS 12.55.015".