

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672  
7310 HOUSE STATE AFFAIRS

1 IS A LEGISLATOR. (a) If the person found to have violated this chapter is or was a member  
2 of the legislature, the committee's recommendations shall be forwarded by the chair of the  
3 committee to the presiding officer of the appropriate house of the legislature.

4 (b) If the legislature is in session, the appropriate house shall determine the sanctions,  
5 if any, that are to be imposed. The vote shall be taken within 10 legislative days of receipt of  
6 the committee's recommendations.

7 (c) If the legislature is not in session, the presiding officer of the appropriate house may  
8 request the legislature to consider convening itself into special session under AS 24.05.100(a)(2)  
9 to consider the committee's recommendations. If expulsion is recommended, the presiding  
10 officer shall so request. If the legislature does not convene itself into special session, the  
11 appropriate house shall consider the recommendations during the first 10 days of the next regular  
12 session.

13 (d) Except in the case of expulsion, which requires a two-thirds vote, all other sanctions  
14 shall be determined by a majority vote of the full house of which the legislator is a member.

15 Sec. 24.61.570. RECOMMENDATIONS WHERE VIOLATOR IS A LEGISLATIVE  
16 EMPLOYEE. If the person found to have violated this chapter is or was a legislative employee,  
17 the committee's recommendations shall be forwarded to the appropriate appointing authority  
18 which shall, as soon as is reasonably possible, determine the sanctions, if any, to be imposed.  
19 The appointing authority may not question the committee's findings of fact. The appointing  
20 authority shall assume the validity of the committee's findings, and determine and impose the  
21 appropriate sanctions.

22 Sec. 24.61.575. ACTIONS BY THE ATTORNEY GENERAL. The attorney general may  
23 independently bring civil actions relating to violations under this chapter regardless of the  
24 outcome or settlement of a charge before the committee, provided that the cumulative civil  
25 penalties imposed for a violation may not exceed the amount that could be imposed in an action  
26 before the committee. This subsection does not prohibit the attorney general from bringing an  
27 action under another civil or criminal law.

28 Sec. 24.61.580. WAIVER OF CONFIDENTIALITY. (a) The subject of a complaint  
29 may waive any provision of AS 24.61.540 relating to the confidentiality of the proceedings.

30 (b) The committee may publicly respond to a statement or interpretation made concerning  
31 the contents of an advisory opinion or decision it has issued or is purported to have issued. A

1 person who requests an advisory opinion and makes that fact public is considered to have waived  
2 the confidentiality of the person's identity.

3 ARTICLE 5. GENERAL PROVISIONS.

4 Sec. 24.61.900. RELATIONSHIP TO COMMON LAW AND OTHER LAWS. (a) The  
5 provisions of this chapter specifically replace, supersede, and where necessary repeal provisions  
6 of the common law relating to legislative conflict of interest.

7 (b) This chapter does not exempt a person from applicable provisions of another law  
8 unless the law is expressly superseded or incompatibly inconsistent with specific provisions of  
9 this chapter.

10 Sec. 24.61.910. APPLICABILITY. Unless otherwise specifically stated, the provisions  
11 of this chapter apply to legislators and legislative employees.

12 Sec. 24.61.920. MAINTENANCE OF DOCUMENTS. Documents filed with or produced  
13 by the committee as public records shall be retained for at least six years.

14 Sec. 24.61.930. COOPERATION OF OTHERS. If the committee requests their  
15 cooperation, a state agency, official, employee, or a person whose conduct is regulated by this  
16 chapter shall cooperate with the committee. An individual shall make information reasonably  
17 related to an investigation available to the committee on written request. The committee may  
18 request and shall receive from every officer, department, division, board, agency, commission,  
19 house of the legislature, or other agency of the state, cooperation and assistance in the  
20 performance of its duties.

21 Sec. 24.61.940. UNAUTHORIZED DISCLOSURES. A person subject to the provisions  
22 of this chapter may not knowingly make an unauthorized disclosure of confidential information  
23 acquired in the course of official duties. A person who violates this section is subject to civil  
24 sanctions under AS 24.61.560(a) and may be subject to prosecution under AS 11.56.860 or  
25 another law.

26 Sec. 24.61.950. ACCESS TO CLOSED FILES. A member or an employee or contractor  
27 of the committee may obtain access to closed committee files containing information that is  
28 confidential only if the committee determines that the person has a need to obtain access to the  
29 closed files that relates to the official duties of the committee and the person seeking access.

30 Sec. 24.61.990. DEFINITIONS. (a) In this chapter,

31 (1) "administrative action" means conduct related to the development, drafting,

1 consideration, enactment, defeat, application, or interpretation of a rule, regulation, policy, or  
2 other action in a regulatory proceeding or a proceeding involving a license, permit, franchise, or  
3 entitlement for use;

4 (2) "anything of value," "benefit," or "thing of value" includes all matters, whether  
5 tangible or intangible, that could reasonably be considered to be a material advantage, of material  
6 worth, use, or service to the person to whom it is conferred; the terms are intended to be  
7 interpreted broadly and encompass all matters that the recipient might find sufficiently desirable  
8 to do something in exchange for;

9 (A) "anything of value," "benefit," or "thing of value" includes

- 10 (i) money;
- 11 (ii) products or merchandise;
- 12 (iii) works of art or collectibles;
- 13 (iv) stocks, bonds, notes, or options;
- 14 (v) an interest in real property;
- 15 (vi) contracts or a promise of a future interest in a contract;
- 16 (vii) an interest or a promise of a future interest in a business;
- 17 (viii) meals, beverages, or lodging;
- 18 (ix) transportation;
- 19 (x) services, including loaned employees;
- 20 (xi) loans, loan guarantees, co-signing;
- 21 (xii) forgiveness of a debt;
- 22 (xiii) discounts or rebates not extended to the public generally;
- 23 (xiv) tickets or admissions;
- 24 (xv) free or discounted use of office facilities;
- 25 (xvi) loan of office equipment;
- 26 (xvii) radio or television time;
- 27 (xviii) promise or offer of present or future employment;
- 28 (xix) use of autos, boats, apartments, or other recreational or  
29 lodging facilities;
- 30 (xx) intangible rights such as a cause of action;
- 31 (xxi) licenses, patents, copyrights, or an interest in them;

1 (xxii) any other item having economic value;

2 (B) "anything of value," "benefit," or "thing of value" does not include

3 (i) an item listed in AS 24.61.210(b);

4 (ii) campaign contributions, pledges, political endorsements,  
5 support in a political campaign, or a promise of endorsement or support;

6 (iii) contributions to a cause or organization, including a charity,  
7 made in response to a direct solicitation from a legislator or a person acting at the  
8 legislator's direction;

9 (iv) grants under AS 37.05.316 to named recipients;

10 (3) "charitable organization" means an organization that qualifies for a federal tax  
11 exemption under 26 U.S.C. 501(c)(3);

12 (4) "close economic association" means a financial relationship that exists between  
13 a person covered by this chapter and some other person or entity, including but not limited to  
14 relationships where the person covered by this chapter serves as a consultant or advisor to, is a  
15 member or representative of, or has a financial interest in, any association, partnership, business,  
16 or corporation;

17 (5) "committee" means the Select Committee on Legislative Ethics;

18 (6) "compensation" means remuneration for personal services rendered, including  
19 salary, fees, commissions, bonuses, and similar payments, but does not include reimbursement  
20 for actual expenses incurred by a person;

21 (7) "confidential information" means information that has been classified  
22 confidential by law;

23 (8) "honorarium" means anything of value, other than reimbursement of travel  
24 expenses, given to a person for making a speech, panel presentation, personal appearance, or  
25 similar activity;

26 (9) "immediate family" means the spouse, parents, children, including a stepchild  
27 and an adoptive child, and siblings of a person;

28 (10) "income" means assets that are received, regardless of whether they are  
29 earned or unearned; inheritances and other gifts are not income;

30 (11) "intent to influence legislative, administrative, or political action" means that  
31 an act, including the offering or conferring of a thing of value to a public official, is done with

1 the intent to induce the official to do or refrain from doing an act;

2 (12) "knowingly" has the meaning given in AS 11.81.900;

3 (13) "legislative action" means conduct relating to the development, drafting,  
4 consideration, sponsorship, enactment or defeat, support or opposition to or of a law, amendment,  
5 resolution, report, nomination, or other matter affected by legislative action or inaction;

6 (14) "legislative assistant" means a legislative employee compensated at a rate  
7 equivalent to step A of Range 15 of the state salary schedule under AS 39.27.011(a) or higher;

8 (15) "legislative director" means the director of the legislative finance division,  
9 the legislative auditor, the director of the legislative research agency, the ombudsman, the  
10 executive director of the Legislative Affairs Agency, and the directors of the divisions within the  
11 Legislative Affairs Agency;

12 (16) "legislative employee" means a person, other than a legislator, who is  
13 compensated by the legislative branch in return for regular or substantial personal services,  
14 regardless of the person's pay level or technical status as a full-time or part-time employee,  
15 independent contractor, or consultant; it includes public members and staff of the committee;

16 (17) "lobbyist" means a person who is required to register under AS 24.45.041  
17 and is described under AS 24.45.171(8)(A), but does not include a volunteer lobbyist described  
18 in AS 24.45.161(a)(1) or a representational lobbyist as defined under regulations of the Alaska  
19 Public Offices Commission;

20 (18) "local government" means a municipality, a municipal school district, or a  
21 regional educational attendance area;

22 (19) "political action" means conduct in which public officials, including  
23 legislators or legislative employees, use their official position or political contacts to exercise  
24 influence on state and local government employees or entities; it includes but is not limited to  
25 endorsing and pledging support or actively supporting a legislative matter, a nominee, or a  
26 candidate for public office;

27 (20) "registered lobbyist" means a person who is required to register under  
28 AS 24.45.041;

29 (21) "representation" means action taken on behalf of another, whether for  
30 compensation or not, including but not limited to telephone calls and meetings and appearances  
31 at proceedings or meetings.

1 (b) A person has a substantial interest in legislative, administrative, or political action if  
2 the person (1) is not a natural person and will be directly and substantially affected financially  
3 by a legislative, administrative, or political action; (2) is a natural person and will be directly and  
4 substantially affected financially by a legislative, administrative, or political action in a way that  
5 is greater than the effect on a substantial class of persons to which the person belongs as a  
6 member of a profession, occupation, industry, or region; (3) has or seeks contracts in excess of  
7 \$10,000 annually for goods or services with the legislature or with an agency of the state; or (4)  
8 is a lobbyist. For the purpose of this subsection, the state, the federal government, and an  
9 agency, corporation, or other entity of or owned by the state or federal government do not have  
10 a substantial interest in legislative, administrative, or political action.

11 \* Sec. 3. AS 11.56.805(a) is amended to read:

12 (a) A person commits the crime of false accusation if the person knowingly or  
13 intentionally initiates a false complaint with the Select Committee on Legislative Ethics  
14 established under AS 24.61 [IN AS 24.60].

15 \* Sec. 4. AS 15.25.030(b) is amended to read:

16 (b) A person filing a declaration of candidacy under this section, other than a person  
17 subject to AS 24.61 who is filing a declaration for a state legislative office, shall  
18 simultaneously file with the director a statement of income sources and business interests that  
19 complies with the requirements of AS 39.50. A person who is subject to AS 24.61 and is filing  
20 a declaration of candidacy for state legislative office shall simultaneously file with the  
21 director a disclosure statement that complies with the requirements of AS 24.61.400.

22 \* Sec. 5. AS 15.25.030(c) is amended to read:

23 (c) An incumbent public official, other than a legislator, who has a current statement  
24 of income sources and business interests under AS 39.50 on file with the Alaska Public Offices  
25 Commission, or an incumbent legislator who has a current disclosure statement under  
26 AS 24.61.400 on file with the Alaska Public Offices Commission, is not required to file a  
27 statement of income sources and business interests or a disclosure statement with the  
28 declaration of candidacy under (b) of this section.

29 \* Sec. 6. AS 15.25.180(b) is amended to read:

30 (b) A person filing a nominating petition under this section, other than a person subject  
31 to AS 24.61 who is filing a petition for a state legislative office, shall also file with the

1 director a statement of income sources and business interests that complies with the requirements  
 2 of AS 39.50 within 30 days of filing the petition. A person who is subject to AS 24.61 and  
 3 is filing a nominating petition for state legislative office shall file with the director a  
 4 disclosure statement that complies with the requirements of AS 24.61.400 within 30 days  
 5 of filing the petition.

6 \* Sec. 7. AS 15.25.180(c) is amended to read:

7 (c) An incumbent public official, other than a legislator, who has a current statement  
 8 of income sources and business interests under AS 39.50 on file with the Alaska Public Offices  
 9 Commission, or an incumbent legislator who has a current disclosure statement under  
 10 AS 24.61.400 on file with the Alaska Public Offices Commission, is not required to file a  
 11 statement of income sources and business interests or a disclosure statement with the  
 12 nominating petition under (b) of this section.

13 \* Sec. 8. AS 23.20.525(d)(8) is amended to read:

14 (8) in the employ of the state or a political subdivision of the state if the service  
 15 is performed by an individual in the exercise of duties

16 (A) as a "public official" as defined in AS 39.50.200(a), [OR] any other  
 17 elected official, the fiscal analyst of the legislative finance division, the legislative  
 18 auditor of the legislative audit division, the executive director of the Legislative  
 19 Affairs Agency, and the directors of the divisions within the Legislative Affairs  
 20 Agency;

21 (B) as a member of the Alaska Army National Guard or Alaska Air  
 22 National Guard or Alaska Naval Militia; or

23 (C) as an employee serving on only a temporary basis in case of fire,  
 24 storm, snow, earthquake, flood, or similar emergency;

25 \* Sec. 9. AS 24.40.010 is amended to read:

26 AS 24.40.010. IMMUNITIES. A legislator may not be held to answer before another  
 27 [ANY OTHER] tribunal for a [ANY] statement made at any time regarding the meaning of  
 28 or legislative intent behind a statute or resolution that was enacted by a legislature of which  
 29 the legislator was a member or made in the exercise of legislative duties while the legislature  
 30 is in session. A member attending, going to, or returning from legislative sessions is not subject  
 31 to civil process and is privileged from arrest except for felony or breach of the peace. The

1 immunities provided in this section extend to a legislator attending, going to, or returning from  
2 a meeting of an interim standing or special committee of the legislature of which the legislator  
3 is a member. For the purposes of going to and returning from a session or meeting, the  
4 immunities provided extend to a legislator for a period of five days immediately preceding and  
5 following the legislator's attendance at the session or meeting.

6 \* Sec. 10. AS 24.45.121(a) is amended to read:

7 (a) A lobbyist may not

8 (1) engage in any activity as a lobbyist before registering under AS 24.45.041;

9 (2) do anything with the intent of placing a public official under personal  
10 obligation to the lobbyist or to the lobbyist's employer;

11 (3) intentionally deceive or attempt to deceive any public official with regard to  
12 any material fact pertinent to pending or proposed legislative or administrative action;

13 (4) cause or influence the introduction of a legislative measure solely for the  
14 purpose of thereafter being employed to secure its passage or its defeat;

15 (5) cause a communication to be sent to a public official in the name of any  
16 fictitious person or in the name of any real person, except with the consent of that person;

17 (6) accept or agree to accept any payment in any way contingent upon the defeat,  
18 enactment or outcome of any proposed legislative or administrative action;

19 (7) serve as a member of a state board, or commission, if the lobbyist's employer  
20 may receive direct economic benefit from a decision of that board or commission;

21 (8) serve as a campaign manager or director, serve as a campaign treasurer  
22 or deputy campaign treasurer on a finance or fundraising committee, host a fundraising  
23 event, or otherwise actively engage in the fundraising activity of a legislative campaign if  
24 the lobbyist has registered during the calendar year; this paragraph does not apply to a  
25 representational lobbyist as defined in the regulations of the Alaska Public Offices  
26 Commission, and does not prohibit a lobbyist from making personal contributions to or  
27 personally advocating on behalf of a candidate;

28 (9) make or offer a gift or a campaign contribution whose acceptance by the  
29 person to whom it is offered would violate AS 24.61.

30 \* Sec. 11. AS 24.45.121 is amended by adding a new subsection to read:

31 (c) A former member of the legislature may not engage in activity as a lobbyist before

1 the legislature for a period of one year after the former member has left the legislature. This  
2 subsection does not prohibit a former member from acting as a volunteer lobbyist described in  
3 AS 24.45.161(a)(1) or a representational lobbyist as defined under regulations of the commission.

4 \* Sec. 12. AS 24.45.171(12) is amended to read:

5 (12) "public official" or "public officer" means a public official as defined in  
6 AS 39.50.200(a), a member of the legislature, or a legislative director as defined in  
7 AS 24.61.990(a); however, it does not include a judicial officer or an elected or appointed  
8 municipal officer.

9 \* Sec. 13. AS 39.50.020 is amended to read:

10 Sec. 39.50.020. REPORT OF FINANCIAL AND BUSINESS INTERESTS. (a) A  
11 judicial officer, commissioner, chair [CHAIRMAN] or member of a state commission or board  
12 specified in AS 39.50.200(b), a person hired or appointed as head or deputy head of, or director  
13 of a division within, a department in the executive branch, a person appointed as assistant to the  
14 governor, and a municipal officer, shall file a statement giving income sources and business  
15 interests, under oath and on penalty of perjury, within 30 days after taking office as a public  
16 official. Candidates for state elective office other than a candidate who is subject to AS 24.61  
17 shall file such a statement with the director of elections at the time of filing a declaration of  
18 candidacy or within 30 days of the filing of any nominating petition, or within 30 days of  
19 becoming a candidate by any other means. Candidates for elective municipal office shall file  
20 such a statement at the time of filing a nominating petition, declaration of candidacy, or other  
21 required filing for the elective municipal office. Refusal or failure to file within the time  
22 prescribed shall require that the candidate's filing fees, if any, and filing for office be refused or  
23 that a previously accepted filing fee be returned and the candidate's name removed from the  
24 filing records. A statement shall also be filed by public officials no later than April 15 or 15  
25 days after the person files a federal income tax return in each following year, whichever comes  
26 first. Persons who, on or after December 11, 1974, were members of boards or commissions not  
27 named in AS 39.50.200(b) are not required to file financial statements.

28 (b) The governor, lieutenant governor, [MEMBERS OF THE LEGISLATURE,] judicial  
29 officers, each commissioner, head or deputy head of, or director of a division within, a  
30 department in the executive branch, assistant to the governor or chair [CHAIRMAN] or member  
31 of a commission or board required to report under this chapter, shall file the statement with the

1 Alaska Public Offices Commission. Candidates for the office of governor and [,] lieutenant  
2 governor [,] and, if the candidate is not subject to AS 24.61, the legislature, shall file the  
3 statement under AS 15.25.030 or 15.25.180. Municipal officers, and candidates for elective  
4 municipal office, shall file with the municipal clerk or other municipal official designated to  
5 receive their filing for office. All statements required to be filed under this chapter are public  
6 records.

7 \* Sec. 14. AS 39.50.200(a)(8) is amended to read:

8 (8) "public official" means a judicial officer, [A MEMBER OF THE  
9 LEGISLATURE, THE FISCAL ANALYST OF THE LEGISLATIVE FINANCE DIVISION,  
10 THE LEGISLATIVE AUDITOR OF THE LEGISLATIVE AUDIT DIVISION, THE  
11 EXECUTIVE DIRECTOR OF THE LEGISLATIVE AFFAIRS AGENCY AND THE  
12 DIRECTORS OF THE DIVISIONS WITHIN THE LEGISLATIVE AFFAIRS AGENCY,] the  
13 governor, the lieutenant governor, a person hired or appointed as the head or deputy head of, or  
14 director of a division, a department in the executive branch, an assistant to the governor, chair  
15 [CHAIRMAN] or member of a state commission or board, the executive director of the Alaska  
16 Tourism Marketing Council, and each appointed or elected municipal officer;

17 \* Sec. 15. AS 39.52.910(a) is amended to read:

18 (a) Except as specifically provided, this chapter applies to all public officers within  
19 executive-branch agencies, including members of boards or commissions. This chapter does not  
20 apply to a former public officer of an executive-branch agency unless a provision specifically  
21 states that it so applies. This chapter does not apply to legislators covered by AS 24.61  
22 [AS 24.60].

23 \* Sec. 16. AS 24.55.310, AS 24.60, AS 39.50.025, and 39.50.120 are repealed.

24 \* Sec. 17. INITIAL COMMITTEE APPOINTMENTS. (a) Notwithstanding AS 24.61.500(d), as  
25 added by sec. 2 of this Act, the terms of the members initially appointed to the Select Committee on  
26 Legislative Ethics are as follows:

27 (1) two of the members appointed by the supreme court, determined by lot, serve terms  
28 of four years;

29 (2) two of the members appointed by the supreme court, determined by lot, serve terms  
30 of three years;

31 (3) the fifth member appointed by the supreme court serves a term of two years.

1 (b) The member serving a two-year term under this section is eligible for reappointment to two  
2 consecutive four-year terms. A member serving a three-year term under this section may not be  
3 reappointed to two consecutive four-year terms.

4 (c) A public member serving on the Select Committee on Legislative Ethics under AS 24.60 is  
5 eligible for appointment to the Select Committee on Legislative Ethics under AS 24.61 and this section.

6 \* Sec. 18. TRANSITIONAL PROVISIONS RELATING TO VIOLATIONS OF FORMER AS 24.60.  
7 Notwithstanding the repeal of AS 24.60 by sec. 16 of this Act, in addition to the provisions of AS 24.61,  
8 as added by sec. 2 of this Act, the Select Committee on Legislative Ethics may consider complaints  
9 alleging violations of AS 24.60 that occurred before January 1, 1993, and for which proceedings have  
10 not been commenced or concluded before January 1, 1993. For the purpose of this section, the Select  
11 Committee on Legislative Ethics shall follow the procedures established under AS 24.61, but may not  
12 recommend a sanction or penalty not authorized under former AS 24.60.

13 \* Sec. 19. AS 24.61.420, 24.61.500 - 24.61.580, and 24.61.990, as added by sec. 2 of this Act, and  
14 sec. 17 of this Act take effect July 1, 1992.

15 \* Sec. 20. Except as provided in sec. 19 of this Act, this Act takes effect January 1, 1993.

2d HOUSE CS FOR CS FOR SENATE BILL NO. 185 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): SENATE SPECIAL COMMITTEE ON ETHICS REFORM

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to conduct of legislators, legislative employees, former legislators, former  
2 legislative employees, and lobbyists, and to the Select Committee on Legislative Ethics."

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

4 \* Section 1. AS 24.45.121(a) is amended to read:

5 (a) A lobbyist may not

6 (1) engage in any activity as a lobbyist before registering under AS 24.45.041;

7 (2) do anything with the intent of placing a public official under personal  
8 obligation to the lobbyist or to the lobbyist's employer;

9 (3) intentionally deceive or attempt to deceive any public official with regard to  
10 any material fact pertinent to pending or proposed legislative or administrative action;

11 (4) cause or influence the introduction of a legislative measure solely for the  
12 purpose of thereafter being employed to secure its passage or its defeat;

13 (5) cause a communication to be sent to a public official in the name of any  
14 fictitious person or in the name of any real person, except with the consent of that person;

1 (6) accept or agree to accept any payment in any way contingent upon the defeat,  
2 enactment or outcome of any proposed legislative or administrative action;

3 (7) serve as a member of a state board, or commission, if the lobbyist's employer  
4 may receive direct economic benefit from a decision of that board or commission;

5 (8) serve as a campaign manager or director, serve as a campaign treasurer  
6 or deputy campaign treasurer on a finance or fundraising committee. host a fundraising  
7 event, or otherwise actively engage in the fundraising activity of a legislative campaign if  
8 the lobbyist has registered during the calendar year; this paragraph does not apply to a  
9 representational lobbyist as defined in the regulations of the Alaska Public Offices  
10 Commission, and does not prohibit a lobbyist from making personal contributions to or  
11 personally advocating on behalf of a candidate;

12 (9) offer, solicit, initiate, facilitate, or provide to or on behalf of a person  
13 covered by AS 24.60. during a legislative session,

14 (A) a gift, other than food or beverage for immediate consumption;

15 (B) a loan, other than a loan made in the ordinary course of business  
16 by a person authorized to transact business in this state at terms and interest rates  
17 generally available to a member of the public; or

18 (C) a campaign contribution;

19 (10) make or offer a gift or a campaign contribution whose acceptance by the  
20 person to whom it is offered would violate AS 24.60.

21 \* Sec. 2. AS 24.45.121 is amended by adding a new subsection to read:

22 (c) A former member of the legislature may not engage in activity as a lobbyist before  
23 the legislature for a period of one year after the former member has left the legislature if that  
24 activity would require the former member to register under this chapter.

25 \* Sec. 3. AS 24.60.010 is repealed and reenacted to read:

26 Sec. 24.60.010. LEGISLATIVE FINDINGS AND PURPOSE. The legislature finds that

27 (1) high moral and ethical standards among public servants in the legislative  
28 branch of government are essential to assure the trust, respect, and confidence of the people of  
29 this state;

30 (2) a fair and open government requires that legislators and legislative employees  
31 conduct the public's business in a manner that preserves the integrity of the legislative process

1 and avoids conflicts of interest or even appearances of conflicts of interest;

2 (3) the public's commitment to a part-time citizen legislature requires that  
3 legislators be drawn from all parts of society and the best way to attract competent people is to  
4 acknowledge that they provide their time and energy to the state, often at substantial personal and  
5 financial sacrifice;

6 (4) a part-time citizen legislature implies that legislators are expected and  
7 permitted to earn outside income and that the rules governing legislators' conduct during and  
8 after leaving public service must be clear, fair, and as complete as possible; the rules, however,  
9 should not impose unreasonable or unnecessary burdens that will discourage citizens from  
10 entering or staying in government service;

11 (5) in order for the rules governing conduct to be respected both during and after  
12 leaving public service, the code must be administered fairly without bias or favoritism;

13 (6) no code of conduct, however comprehensive, can anticipate all situations in  
14 which violations may occur nor can it prescribe behaviors that are appropriate to every situation;  
15 in addition, laws and regulations regarding ethical responsibilities cannot legislate morality,  
16 eradicate corruption, or eliminate bad judgment;

17 (7) compliance with a code of ethics is an individual responsibility; thus all who  
18 serve the legislature have a solemn responsibility to avoid improper conduct and prevent  
19 improper behavior by colleagues and subordinates;

20 (8) the purpose of this chapter is to establish standards of conduct for state  
21 legislators and legislative employees and to establish the Select Committee on Legislative Ethics  
22 to consider alleged violations of this chapter and to render advisory opinions to persons affected  
23 by this chapter.

24 \* Sec. 4. AS 24.60.020(a) is amended to read:

25 (a) Except as otherwise provided in this chapter [SUBSECTION], this chapter applies  
26 to a member of the legislature, [AND] to a person employed by the legislative branch of  
27 government, and to public members of the Select Committee on Legislative Ethics. This  
28 chapter does not apply to

29 (1) a former member of the legislature or to a person formerly employed by the  
30 legislative branch of government unless the provision specifically states that it [SO] applies;

31 (2) a person elected to the legislature who at the time of election is not a member

1 or employee of the legislature [;

2 (3) A PERSON EMPLOYED BY THE LEGISLATIVE BRANCH OF  
3 GOVERNMENT WHOSE POSITION IS ESTABLISHED BELOW RANGE 18 OF THE STATE  
4 SALARY SCHEDULE ESTABLISHED IN AS 39.27.011(a)].

5 \* Sec. 5. AS 24.60.030 is repealed and reenacted to read:

6 Sec. 24.60.030. CONFLICTS OF INTEREST. (a) A person to whom this chapter  
7 applies may not have a conflict of interest. A person has a conflict of interest when the person

8 (1) uses public office for private advancement or gain;

9 (2) takes or withholds official action or exerts official influence that could  
10 substantially benefit or harm a financial or political matter in which the person has a direct or  
11 indirect private interest;

12 (3) solicits or accepts a benefit beyond that which may accrue uniformly to  
13 members of the profession, occupation, or group to which the person belongs, or to the public  
14 at large;

15 (4) wilfully discloses, or knowingly uses, for personal gain or the gain of another,  
16 information that by law is not available to the public and that the person acquired in the course  
17 of official duties; a person who violates this paragraph may be subject to prosecution under  
18 AS 11.56.860;

19 (5) uses state funds or state property, except property under lease from the state,  
20 for private advancement or gain;

21 (6) knowingly uses or authorizes the use of the facilities of a public office,  
22 including office space, stationery, postage, office machines and equipment, vehicles, and official  
23 publications, or knowingly uses or authorizes the use of state-paid employees, with the intent to  
24 affect a candidate or campaign for elective office; or

25 (7) takes or withholds official action or exerts official influence that could  
26 substantially benefit or harm the financial interest of another person with whom the person to  
27 whom this chapter applies is negotiating for employment.

28 (b) Notwithstanding (a) of this section, a person to whom this chapter applies does not  
29 have a conflict of interest if, as to a specific matter, there is no substantial impropriety or  
30 appearance of impropriety because

31 (1) the person's interest is relatively insignificant; or

1 (2) the person's authority is relatively far removed from an official action that  
2 could reasonably be affected by the potential conflict of interest, provided that no attempt has  
3 been made to remove the appearance of impropriety by delegating responsibility for official  
4 action.

5 (c) This section does not prohibit customary constituent contacts by a legislator, including  
6 newsletters and other constituent correspondence that express the legislator's opinions or views  
7 on issues before the legislature, or that describe the legislator's votes, legislative proposals, or  
8 other legislative actions.

9 \* Sec. 6. AS 24.60 is amended by adding new sections to read:

10 Sec. 24.60.032. PROHIBITED FUND RAISING. (a) A legislator may not

11 (1) solicit or accept a contribution during a legislative session; or

12 (2) accept money from an event held during a legislative session if a substantial  
13 purpose of the event is either to raise money on behalf of the legislator for campaign purposes  
14 or to raise money for state legislative political purposes.

15 (b) In this section, "contribution" has the meaning given in AS 15.13.130.

16 Sec. 24.60.034. LIMITATIONS ON COMPENSATION. (a) A legislator or legislative  
17 employee may not accept a payment of money or anything of value for an appearance or speech  
18 by the person, except that the person may accept payment of actual and necessary travel expenses  
19 incurred by the person in making the appearance or speech.

20 (b) Notwithstanding (a) of this section, a legislator or legislative employee may accept  
21 a payment for an appearance or speech if the appearance or speech is not connected with the  
22 person's legislative status, and for teaching at a state-funded school or university, provided that  
23 influence was not used to obtain the position.

24 (c) A legislator or legislative employee may not receive anything of value to procure or  
25 advocate for a contract with the state or a local government in the state.

26 (d) A legislator or legislative employee may not solicit, agree to accept, or accept for the  
27 performance of public duties a benefit other than official compensation.

28 \* Sec. 7. AS 24.60.070 is amended by adding a new subsection to read:

29 (b) A disclosure under this section must be sufficiently detailed that a reader of the  
30 disclosure can ascertain the nature of the association.

31 \* Sec. 8. AS 24.60 is amended by adding a new section to read:

1           Sec. 24.60.075. BOARD MEMBERSHIPS AND OTHER PUBLIC OFFICES. A  
2 legislative employee may not serve in a position that requires confirmation by the legislature.  
3 A legislator or legislative employee may serve on a board of an organization, including a  
4 governmental entity, that regularly has a substantial interest in the legislative activities of the  
5 legislator or employee, if the legislator or employee discloses the board membership to the  
6 committee.

7 \* Sec. 9. AS 24.60.080(a) is amended to read:

8           (a) A person to whom this chapter applies may not solicit, accept, or receive, directly or  
9 indirectly, a gift worth \$100 or more [IN ANY AMOUNT], whether in the form of money,  
10 services, a loan, travel, entertainment, hospitality, promise, or other form, or gifts from the same  
11 person worth less than \$100 that in a calendar year aggregate to \$100 or more in value, and  
12 may not solicit, accept, or receive a gift with any monetary value from a lobbyist, the client  
13 of a lobbyist, or a person acting on behalf of a lobbyist or the client of a lobbyist during a  
14 legislative session [UNDER CIRCUMSTANCES IN WHICH IT COULD REASONABLY BE  
15 INFERRED THAT THE GIFT IS INTENDED TO INFLUENCE THE PERFORMANCE OF  
16 OFFICIAL DUTIES, ACTIONS, OR JUDGMENT].

17 \* Sec. 10. AS 24.60.080(c) is amended to read:

18           (c) Notwithstanding (a) [(b)] of this section, it is not a violation of this section for a  
19 person to whom this chapter applies to accept

20                   (1) hospitality, other than hospitality described in (4) of this subsection

21                           (A) with incidental transportation at the residence of a person; or

22                           (B) at a social event or meal;

23                   (2) discounts that are available generally to the public or to a large class of  
24 persons to which the person belongs;

25                   (3) food or foodstuffs indigenous to the state that are shared generally as a  
26 cultural or social norm;

27                   (4) travel and hospitality primarily for the purpose of obtaining information on  
28 matters of legislative concern;

29                   (5) gifts from the family of the person; or

30                   (6) gifts that are not connected with the recipient's legislative status.

31 \* Sec. 11. AS 24.60.080(d) is amended to read:

1 (d) A person to whom this chapter applies who accepts a gift under (c)(4) or (6) of this  
2 section [OF TRAVEL AND HOSPITALITY PRIMARILY FOR THE PURPOSE OF  
3 OBTAINING INFORMATION ON MATTERS OF LEGISLATIVE CONCERN] shall disclose  
4 the gift if it has a value of \$100 or more. The disclosure must include the name and occupation  
5 of the person making the gift and the approximate value of the gift. Each gift required to be  
6 disclosed under this subsection shall be disclosed within 30 days of the receipt of the gift in the  
7 journal of the appropriate body or, if the legislature is not in session, to the committee. The  
8 committee shall maintain a public record of the disclosure it receives and shall forward the  
9 disclosure to the appropriate house for inclusion in the journal by the fifth day of the next regular  
10 session.

11 \* Sec. 12. AS 24.60.080 is amended by adding a new subsection to read:

12 (f) Notwithstanding (a) of this section, a person to whom this chapter applies may accept  
13 a gift of property worth \$100 or more, other than money, from a foreign government or from an  
14 official of a foreign government if the person accepts the gift on behalf of the legislature. The  
15 person shall, within 60 days of receiving the gift, deliver the gift to the legislative council, which  
16 shall determine the appropriate disposition of the gift.

17 \* Sec. 13. AS 24.60 is amended by adding new sections to read:

18 Sec. 24.60.084. PROTECTION OF WHISTLE BLOWERS. A legislator or legislative  
19 employee may not, directly or indirectly, subject a person who reports to the committee or  
20 another government entity conduct the person reasonably believes is a violation of this chapter  
21 or another state law, to reprisal, harassment, or discrimination. A legislative employee who is  
22 discharged, disciplined, involuntarily transferred, or otherwise penalized by a legislator or another  
23 legislative employee in violation of this subsection may

24 (1) bring a complaint before the committee; and

25 (2) bring a separate civil action in the courts seeking damages, payment of back  
26 wages, reinstatement, or other relief.

27 Sec. 24.60.086. DISCRIMINATION PROHIBITED. A legislator or legislative employee  
28 may not engage in acts of discrimination in violation of AS 18.80.220. A person who violates  
29 this section is subject to an action under AS 24.60.175 in addition to an action that may be  
30 brought under another law.

31 \* Sec. 14. AS 24.60.090(a) is amended to read:

1 (a) An [A SPOUSE OR AN] individual [OTHER THAN A SPOUSE] who is related to  
 2 a member of the legislature may not be employed in the house in which the legislator is a  
 3 member, by an agency of the legislature established under AS 24.20, or in either house during  
 4 the interim between sessions. An individual who is related to an employee of the legislature may  
 5 not be employed in a position over which the employee has supervisory authority. In this  
 6 subsection,

7 (1) "an individual who is related to" means a child, stepchild, husband, wife,  
 8 mother, father, sister, brother, or spousal equivalent living together in a conjugal relationship  
 9 not as a legal marriage; and

10 (2) "interim between sessions" means the period beginning on the eighth day  
 11 after the legislature adjourns from a regular session, and ending eight days before the date  
 12 that the legislature shall convene under AS 24.05.090.

13 \* Sec. 15. AS 24.60 is amended by adding a new section to read:

14 Sec. 24.60.105. VIOLATIONS OF THE OPEN MEETING LAW. A violation by a  
 15 legislator of a provision of AS 44.62.310 - 44.62.312 (open meetings law) in the conduct of  
 16 legislative business is a violation of this chapter for the purpose of a proceeding under  
 17 AS 24.60.170.

18 \* Sec. 16. AS 24.60.130(a) is amended to read:

19 (a) There is established as a permanent interim committee within the legislative branch  
 20 of state government the Select Committee on Legislative Ethics.

21 \* Sec. 17. AS 24.60.130(b) is amended to read:

22 (b) The committee consists of seven [NINE] members, in two subcommittees, as follows:

23 (1) the senate subcommittee consists of two [THREE] members of the  
 24 senate, one member shall be a member of the majority organizational caucus and one  
 25 member shall be a member of the minority organizational caucus, appointed by the president  
 26 of the senate with the concurrence by roll call vote of two-thirds of the full membership of the  
 27 senate; and

28 (2) the house subcommittee consists of two [THREE] members of the house, one  
 29 member shall be a member of the majority organizational caucus and one member shall be  
 30 a member of the minority organizational caucus, appointed by the speaker of the house with  
 31 the concurrence by roll call vote of two-thirds of the full membership of the house; and

1 (3) three public members who are selected by the Chief Justice of the Alaska  
2 Supreme Court and who are ratified by two-thirds of the full membership of the senate and  
3 two-thirds of the full membership of the house, shall serve on both the full committee and each  
4 subcommittee.

5 \* Sec. 18. AS 24.60.130(c) is amended to read:

6 (c) No more than one [TWO] legislative member [MEMBERS] of each subcommittee  
7 may be a member [MEMBERS] of the same political party or the same organizational caucus  
8 unless compliance with this subsection and (b)(1) or (2) of this section is impossible because  
9 all members of the house or senate are members of the same political party or there is no  
10 minority organizational caucus.

11 \* Sec. 19. AS 24.60.130(g) is amended to read:

12 (g) Each legislative member serves for the duration of the legislature during which the  
13 member is appointed. Each public member serves for a three-year term.

14 \* Sec. 20. AS 24.60.130(i) is amended to read:

15 (i) A quorum of the [A] committee established under this section consists of a majority  
16 of the members of the committee and must include at least two legislative members and two  
17 public members. A quorum of a subcommittee established under this section consists of a  
18 majority of the members of the subcommittee and must include at least one legislative member  
19 and two public members. [NOTWITHSTANDING THE PROVISIONS OF THIS  
20 SUBSECTION, A COMMITTEE DOES NOT HAVE A QUORUM UNLESS THREE  
21 LEGISLATIVE MEMBERS ARE PRESENT AND A SUBCOMMITTEE DOES NOT HAVE  
22 A QUORUM UNLESS TWO LEGISLATIVE MEMBERS ARE PRESENT.]

23 \* Sec. 21. AS 24.60.130 is amended by adding new subsections to read:

24 (j) The committee is not subject to AS 44.62.310 - 44.62.312, to the procurement  
25 provisions adopted by the legislative council under AS 36.30.020, or to the Uniform Rules of the  
26 Alaska State Legislature to the extent that those provisions would prevent the committee from  
27 complying with the confidentiality provisions of this chapter. The committee may adopt rules  
28 to implement this subsection.

29 (k) A member of the committee or of the committee staff may obtain access to closed  
30 committee files containing information that is confidential under AS 24.60.160 or 24.60.170 only  
31 if the full committee determines, by a majority vote, that the member has a need to obtain access

1 to the closed files that relates to the official duties of the committee and the person seeking  
2 access.

3 \* Sec. 22. AS 24.60.160 is amended to read:

4 Sec. 24.60.160. ADVISORY OPINIONS. The committee shall issue an advisory opinion  
5 within 30 days on the request of a person to whom the chapter applies or a person elected to the  
6 legislature who at the time of election is not a member of the legislature as to whether the facts  
7 and circumstances of a particular case constitute a violation of ethical standards. The 30-day  
8 period for issuing an opinion may be extended by the committee [FOR NOT MORE THAN AN  
9 ADDITIONAL 10 DAYS] if the person requesting the opinion consents. The opinion issued is  
10 binding on the committee in any subsequent proceedings concerning the facts and circumstances  
11 of the particular case unless material facts were omitted or misstated in the request for the  
12 advisory opinion. Except as provided in this chapter an advisory opinion is confidential but shall  
13 [MAY] be made public if a written request by the person who requested the opinion is filed with  
14 the committee.

15 \* Sec. 23. AS 24.60.170 is repealed and reenacted to read:

16 Sec. 24.60.170. PROCEEDINGS BEFORE THE COMMITTEE. (a) The committee  
17 shall consider a complaint alleging a violation of this chapter if the alleged violation occurred  
18 within five years of the date that the complaint is filed with the committee and, when the subject  
19 of the complaint is a former member of the legislature, the complaint is filed within one year of  
20 the subject's departure from the legislature. The committee may not consider a complaint filed  
21 against a person employed by the legislative branch of government after the person has  
22 terminated legislative service. The committee may also initiate complaints on its own motion,  
23 subject to the same time limitations. The time limitations of this subsection do not bar  
24 proceedings against a person who intentionally prevents discovery of a violation of this chapter.

25 (b) A complaint may be initiated by any person. The complaint must be in writing and  
26 signed under oath by the person making the complaint. The committee shall upon request  
27 provide a form for a complaint to a person wishing to file a complaint. The committee shall  
28 immediately provide a copy of the complaint to the person who is the subject of the complaint.

29 (c) When the committee receives a complaint under (a) of this section, it shall determine  
30 whether the allegations of the complaint, if true, constitute a violation of this chapter. If the  
31 committee determines that the allegations, if proven, would not give rise to a violation, or if the

1 committee's lack of jurisdiction is apparent on the face of the complaint, the committee shall  
2 dismiss the complaint, and shall notify the complainant and the subject of the complaint of the  
3 dismissal.

4 (d) If the committee determines that some or all of the allegations of a complaint, if  
5 proven, would constitute a violation of this chapter, or if the committee has initiated a complaint,  
6 the committee shall investigate the complaint, on a confidential basis. Before beginning an  
7 investigation of a complaint, the committee shall adopt a resolution defining the scope of the  
8 investigation. A copy of this resolution shall be provided to the complainant and to the subject  
9 of the complaint. As part of its investigation, the committee shall afford the subject of the  
10 complaint an opportunity to explain the conduct alleged to be a violation of this chapter.

11 (e) If during the investigation under (d) of this section, the committee discovers facts that  
12 justify an expansion of the investigation and the possibility of additional charges beyond those  
13 contained in the complaint, the resolution described in (d) of this section shall be amended  
14 accordingly and a copy of the amended resolution shall be provided to the subject of the  
15 complaint.

16 (f) If the committee determines after investigation that there is not probable cause to  
17 believe that the subject of the complaint has violated this chapter, the committee shall dismiss  
18 the complaint. The committee may also dismiss portions of a complaint if it finds no probable  
19 cause to believe that the subject of the complaint has violated this chapter as alleged in those  
20 portions. The committee shall issue a decision explaining its dismissal. A copy of the dismissal  
21 order and decision shall be sent to the complainant and to the subject of the complaint.  
22 Notwithstanding (n) of this section, a dismissal order and decision is open to inspection and  
23 copying by the public.

24 (g) If the committee investigation determines that a probable violation of this chapter  
25 exists that may be corrected by action of the subject of the complaint and that does not warrant  
26 sanctions other than correction, the committee may issue an opinion recommending corrective  
27 action. This opinion shall be provided to the complainant and to the subject of the complaint,  
28 and is open to inspection by the public. The subject of the complaint may comply with the  
29 opinion or may request a hearing before the committee under (j) of this section. After the  
30 hearing the committee may amend or affirm the opinion.

31 (h) If the subject of a complaint fails to comply with an opinion issued under (g) of this

1 section, or if the committee determines after investigation that there is probable cause to believe  
2 that the subject of the complaint has committed a violation of this chapter that may require  
3 sanctions instead of or in addition to corrective action, the committee shall formally charge the  
4 person. The charge shall be served on the person charged, in a manner consistent with the  
5 service of summons under the rules of civil procedure, and a copy of the charge shall be sent to  
6 the complainant. The person charged may file a responsive pleading to the committee admitting  
7 or denying some or all of the allegations of the charge.

8 (i) A person charged under (b) of this section may engage in discovery in a manner  
9 consistent with the Alaska Rules of Civil Procedure. The committee may impose reasonable  
10 restrictions on the time for this discovery and on the materials that may be discovered.

11 (j) If the committee has issued a formal charge under (h) of this section, and if the person  
12 charged has not admitted the allegations of the charge, the committee shall schedule a hearing  
13 on the charge. The hearing shall be scheduled for a date more than 20 days after service of the  
14 charge on the person charged, unless the person agrees to an earlier hearing date. At the hearing,  
15 the person charged shall have the right to appear personally before the committee, to subpoena  
16 witnesses and require the production of books or papers relating to the proceedings, to be  
17 represented by counsel, and to cross-examine witnesses. A witness shall testify under oath. The  
18 committee is not bound by the rules of evidence but the committee's findings must be based  
19 upon clear and convincing evidence. Testimony taken at the hearing shall be recorded and  
20 evidence shall be maintained.

21 (k) Following the hearing, the committee shall issue a decision stating whether or not the  
22 subject of the complaint violated this chapter, and explaining the reasons for the determination.  
23 The committee's decision may also indicate whether the subject cooperated with the committee  
24 in its proceedings. If the committee finds a violation, or lack of cooperation by the subject, the  
25 decision shall recommend what sanctions, if any, the committee believes are appropriate. If there  
26 has not been a hearing because the person charged admitted to the allegations of the charge, the  
27 committee shall issue a decision outlining the facts of the violation and containing a sanctions  
28 recommendation.

29 (l) If the committee issues a decision finding that a member of the legislature has  
30 violated a provision of this chapter or that the member has failed to cooperate with the  
31 committee, it shall refer the decision to the presiding officer of the house of the legislature to

1 which the member belongs. The legislature shall act on the decision as it considers appropriate.

2 (m) If the committee issues a decision finding that an employee of the legislative branch  
3 of government has violated a provision of this chapter, or that the employee has failed to  
4 cooperate with the committee, it shall refer the decision to the chair of the legislative council.  
5 The legislative council shall act on the decision as it considers appropriate.

6 (n) Proceedings of the committee relating to complaints before it are confidential until  
7 the committee determines that there is probable cause to believe that a violation of this chapter  
8 has occurred. The complaint and all documents produced or disclosed as a result of the  
9 committee investigation are confidential and not subject to inspection by the public. If in the  
10 course of an investigation or probable cause determination the committee finds evidence of  
11 probable criminal activity, the committee shall transmit a statement and factual findings limited  
12 to that activity to the appropriate law enforcement agency. If the committee finds evidence of  
13 a probable violation of AS 15.13, the committee shall transmit a statement to that effect and  
14 factual findings limited to the probable violation to the Alaska Public Offices Commission. All  
15 meetings of the committee before the determination of probable cause are closed to the public.  
16 The confidentiality provisions of this subsection may be waived by the subject of the complaint.

17 (o) All documents issued by the committee after a determination of probable cause to  
18 believe that the subject of a complaint has violated this chapter, including an opinion  
19 recommending corrective action under (g) of this section and a formal charge under (h) of this  
20 section, are subject to public inspection. All hearings of the committee under (j) of this section  
21 are open to the public, and all documents presented at a hearing, and all motions filed in  
22 connection with the hearing, are subject to inspection by the public. Deliberations of the  
23 committee following a hearing, deliberations on motions filed by the subject of a charge under  
24 (h) of this section, and deliberations concerning appropriate sanctions are confidential.

25 (p) The committee shall dismiss a complaint against a person employed by the legislative  
26 branch of government if the person terminates legislative service. The committee may in its  
27 discretion dismiss a complaint against a former member of the legislature whether the complaint  
28 was filed before or after the former member departed from the legislature.

29 (q) A committee member or member of the committee staff who divulges information  
30 concerning a proceeding, except as permitted by this chapter, is guilty of a class A misdemeanor.

31 \* Sec. 24. AS 24.60 is amended by adding a new section to read:

1           Sec. 24.60.175. EMPLOYMENT DISCRIMINATION GRIEVANCES. (a) A person  
2 employed or formerly employed by the legislative branch of government may file a grievance  
3 with the committee alleging a violation of AS 24.60.086 by the person's employer or former  
4 employer. The committee shall adopt procedures concerning the filing, the investigation, the  
5 mediation, and the hearing of grievances under this subsection. In adopting procedures, the  
6 committee shall consider guidelines of the office of equal employment opportunity adopted under  
7 AS 44.21.501 and shall protect the confidentiality of grievances.

8           (b) In accordance with the procedures established under (a) of this section the committee  
9 may

10                   (1) provide for mediation of a grievance;

11                   (2) dismiss a grievance without prejudice; or

12                   (3) after a hearing, make appropriate recommendations concerning a grievance  
13 to the president of the senate, the speaker of the house, or the head of the legislative agency  
14 where the grievant is or was employed.

15           (c) This section does not diminish rights under other state or federal law relating to  
16 employment discrimination.

17           (d) In this section, "committee" means the legislative members of the house  
18 subcommittee when the grievant is or was employed by a member or a committee of the house,  
19 the legislative members of the senate subcommittee when the grievant is or was employed by a  
20 member or a committee of the senate, and the legislative members of the full committee when  
21 the grievant is or was an employee of an agency of the legislature.

22 \* Sec. 25. AS 24.60.190(2) is amended to read:

23                   (2) "legislative employee" or "person employed by the legislative branch of  
24 government" means a person who is employed by

25                           (A) an individual legislator;

26                           (B) a legislative body, including a legislative committee; or

27                           (C) an agency of the legislature established under AS 24.20 and AS 24.55.

28 \* Sec. 26. AS 39.50.090(c) is amended to read:

29           (c) A public official may not represent a client before a state agency for a fee. However,  
30 this prohibition does not apply to a person to whom AS 24.60 applies, to a municipal officer,  
31 or to the chair [CHAIRMAN] or a member of a state commission or board except with regard

1 to representation before that commission or board; this exception from the general prohibition  
2 does not apply to one whose service on the commission or board constitutes the person as a full-  
3 time state employee under this title.

4 \* Sec. 27. AS 24.60.060, 24.60.080(b), and 24.60.120 are repealed.

5 \* Sec. 28. TRANSITIONAL PROVISIONS RELATING TO PUBLIC MEMBERS OF SELECT  
6 COMMITTEE ON LEGISLATIVE ETHICS. Notwithstanding AS 24.61.130(g), as amended by sec. 19  
7 of this Act, one of the public members of the Select Committee on Legislative Ethics shall serve until  
8 the commencement of the 1993 regular session of the Alaska State Legislature; one of the public  
9 members shall serve until the commencement of the 1994 regular session; and the remaining public  
10 member shall serve until the commencement of the 1995 regular session. The length of each public  
11 member's term under this section shall be determined by lot.

7-LS0799E  
Dierdorff  
3/30/92

HOUSE CS FOR CS FOR SENATE BILL NO. 185 ( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATE SPECIAL COMMITTEE ON ETHICS REFORM

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to current and former legislators and legislative employees; establishing  
2 a legislative ethics commission; and providing for an effective date."

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

4 \* Section 1. SHORT TITLE. This Act may be known as the Legislative Ethics Act of 1991.

5 \* Sec. 2. AS 24 is amended by adding a new chapter to read:

6 CHAPTER 61. LEGISLATIVE ETHICS.

7 ARTICLE 1. PURPOSE.

8 Sec. 24.61.010. PURPOSE. This chapter is enacted to

9 (1) assure the integrity of representative government and sustain the confidence  
10 and trust of the people of this state in their representatives, the legislature as a whole, and the  
11 legislative process;

12 (2) provide a comprehensive and unified statement of the ethical principles,  
13 considerations, and obligations inherent in the public trust theory of government service and  
14 establish specific standards of conduct to ensure that those entrusted with public authority avoid

1 conduct that might undermine the people's respect for the legislature; and

2 (3) establish a positive, effective, and comprehensive ethics program that is clear,  
3 practical, and fair.

#### 4 ARTICLE 2. STANDARDS OF CONDUCT.

##### 5 Sec. 24.61.100. IMPROPER BENEFIT FROM PERFORMANCE OF PUBLIC DUTIES.

6 A legislator or legislative employee may not solicit, agree to accept, or accept a benefit other  
7 than official compensation for the performance of public duties. This subsection may not be  
8 construed to prohibit lawful solicitation for and acceptance of campaign contributions or the  
9 acceptance of a lawful gratuity under AS 24.61.210.

##### 10 Sec. 24.61.110. MISUSE OF STATE PROPERTY AND RESOURCES FOR PRIVATE

11 BENEFIT. (a) A legislator or legislative employee may not use public funds, facilities,  
12 equipment, services, or another government asset or resource for a nongovernmental purpose or  
13 for the private benefit of either the legislator, legislative employee, or another person. This  
14 subsection does not prohibit use of the telephone that does not carry a special charge.

15 (b) A legislator or legislative employee may not knowingly seek, accept, use, allocate,  
16 grant, or award public funds for a purpose other than that approved by law, or make a false  
17 statement in connection with a claim, request, or application for compensation, reimbursement,  
18 or travel allowances from public funds.

19 (c) A legislator or legislative employee may not require at any time, or authorize on  
20 government time, a legislative employee to perform personal services at any time or to assist in  
21 a private activity on government time.

##### 22 Sec. 24.61.120. MISUSE OF STATE PROPERTY AND RESOURCES FOR POLITICAL

23 PURPOSES. (a) A legislator or legislative employee may not use or authorize the use of state  
24 funds, facilities, equipment, services, or another government asset or resource for the purpose of  
25 political fund raising, campaigning, or other political purposes.

26 (b) A legislative employee may not on government time assist in political party or  
27 candidate activities, campaigning, or fund raising. A legislator may not require an employee to  
28 perform an act in violation of this subsection.

29 (c) A legislator, or another person on behalf of the legislator, or a campaign committee  
30 of the legislator, may not distribute or post literature, placards, posters, or other communications  
31 intended to influence the election of a candidate in an election in public areas in a facility

1 ordinarily used to conduct state government business.

2 Sec. 24.61.140. COERCION. (a) A legislator may not, directly or by authorizing  
3 another to act on the legislator's behalf, state or imply that the legislator's consideration of an  
4 issue, cause, or piece of legislation, or the legislator's willingness to meet with a person, is  
5 dependent on the person making a campaign contribution, donating to a cause favored by the  
6 legislator, or providing a thing of value to the legislator.

7 (b) A legislator may not directly, or by authorizing another to act on the legislator's  
8 behalf,

9 (1) agree to, or threaten to take or withhold a legislative, administrative, or  
10 political action, including but not limited to support or opposition to a bill, employment,  
11 nominations, and appointments, as a result of a person's decision to provide or not provide a  
12 political contribution;

13 (2) state or imply that the legislator will perform or refrain from performing a  
14 lawful constituent service as a result of a person's decision to provide or not provide a political  
15 contribution;

16 (3) take or withhold official action or exert official influence that could  
17 substantially benefit or harm the financial interest of another person with whom the legislator is  
18 negotiating for employment.

19 Sec. 24.61.150. NEPOTISM. (a) A relative of a legislator may not be employed for  
20 compensation

21 (1) in the house of which the legislator is a member during the legislative session;

22 (2) in either house in the interim between legislative sessions;

23 (3) by an agency of the legislature established under AS 24.20; or

24 (4) by the commission, whether for compensation or not.

25 (b) A relative of a legislative employee may not be employed for compensation in a  
26 position over which the employee has supervisory authority.

27 (c) A person who employs or causes the employment of another person in violation of  
28 this section is subject to civil sanctions under AS 24.61.560(a).

29 (d) In this section, "interim between legislative sessions" means the period beginning on  
30 the eighth day after the legislature adjourns from a regular session and ending eight days before  
31 the date that the legislature shall convene under AS 24.05.090; and "relative" means a member

1 of the legislator's or legislative employee's immediate family or a person who is a legislator's  
2 or legislative employee's spousal equivalent living together in a conjugal relationship not a legal  
3 marriage with the legislator or legislative employee.

4 Sec. 24.61.170. BOARD MEMBERSHIPS AND OTHER PUBLIC OFFICES. A  
5 legislative assistant may not serve in a position that requires confirmation by the legislature. A  
6 legislator or legislative assistant may serve on a board of an organization, including a  
7 governmental entity, that regularly has a substantial interest in the legislative activities of the  
8 assistant, if the legislator or assistant discloses the board membership to the commission.

9 Sec. 24.61.180. RESTRICTIONS ON ACTIONS. Unless required by the Uniform Rules  
10 of the Alaska State Legislature, a legislator or legislative employee may not participate in  
11 legislative, administrative, or political action if the legislator or legislative employee has an equity  
12 or ownership interest in a business, investment, real property, lease, or other enterprise if the  
13 interest is substantial and the effect of the action on that interest is greater than the effect on a  
14 substantial class of persons to which the legislator or legislative employee belongs as a member  
15 of a profession, occupation, industry, or region.

16 Sec. 24.61.190. RESTRICTED ACTIVITIES AS AN ATTORNEY OR  
17 REPRESENTATIVE. (a) A legislator or legislative assistant may not for compensation  
18 represent, as an advocate, advisor, or consultant, a person before an agency, board, or  
19 commission of the state unless

20 (1) the agency, board, or commission is acting quasi-judicially; or

21 (2) the legislator or legislative assistant discloses to the commission the name of  
22 the person represented, the subject matter of the representation, and the agency, board, or  
23 commission before which the representation is to take place.

24 This provision does not prohibit an attorney from representing a client in a judicial action or  
25 prevent a legislator or legislative assistant from representing personal interests.

26 (b) This section may not be construed to prohibit a legislator or legislative assistant from  
27 advising a person about the procedures or appropriateness of bringing an action against the state  
28 or a local government.

29 Sec. 24.61.200. RESTRICTED TRANSACTIONS; INTEREST IN STATE CONTRACTS  
30 OR LEASES. (a) A legislator, a legislative assistant, or a member of the immediate family of  
31 a legislator may not be a party to or have an interest in a state contract or lease unless the

1 contract or lease is let through competitive sealed bidding under AS 36.30 (State Procurement  
2 Code) or the total annual amount of the state contract or lease is \$1,000 or less, or is a  
3 standardized contract or lease that was developed under publicly established guidelines and is  
4 generally available to the public at large, members of a profession, occupation, or group. A  
5 person has an interest in a state contract or lease under this section if the person receives direct  
6 or indirect financial benefits.

7 (b) In this section, "direct or indirect financial benefits" means income, profits, or other  
8 financial benefits under a state contract, without regard to whether the income, profits, or other  
9 financial benefits ensue to the person as a partner, shareholder, investor, agent, employee,  
10 consultant, or joint venturer of the contractor.

11 Sec. 24.61.210. GIFTS. (a) A legislator or legislative employee may not solicit, accept,  
12 or receive, directly or indirectly, a gift worth \$100 or more, whether in the form of money,  
13 services, a loan, travel, entertainment, hospitality, promise, or other form, or gifts from the same  
14 person worth less than \$100 that in a calendar year aggregate to \$100 or more in value, and may  
15 not solicit, accept, or receive a gift with any monetary value from a lobbyist, the client of a  
16 lobbyist, or a person acting on behalf of a lobbyist or the client of a lobbyist during a legislative  
17 session.

18 (b) Notwithstanding (a) of this section, it is not a violation of this section for a legislator  
19 or legislative employee to accept

20 (1) hospitality, other than hospitality described in (4) of this subsection

21 (A) with incidental transportation at the residence of a person; or

22 (B) at a social event or meal;

23 (2) discounts that are available generally to the public or to a large class of  
24 persons to which the person belongs;

25 (3) food or foodstuffs indigenous to the state that are shared generally as a  
26 cultural or social norm;

27 (4) travel and hospitality primarily for the purpose of obtaining information on  
28 matters of legislative concern;

29 (5) gifts from the family of the person; or

30 (6) gifts that are not connected with the recipient's legislative status.

31 (c) A legislator or legislative employee who accepts a gift shall disclose the gift if it has

1 a value of \$100 or more. The disclosure must include the name and occupation of the person  
2 making the gift and the approximate value of the gift. Each gift required to be disclosed under  
3 this subsection shall be disclosed within 30 days of the receipt of the gift in the journal of the  
4 appropriate body or, if the legislature is not in session, to the committee. The committee shall  
5 maintain a public record of the disclosure it receives and shall forward the disclosure to the  
6 appropriate house for inclusion in the journal by the fifth day of the next regular session.

7 (d) A political contribution that is reported under AS 15.13.040 is not a gift under this  
8 section.

9 (e) Notwithstanding (a) of this section, a legislator or legislative employee may accept  
10 a gift of property worth \$100 or more, other than money, from a foreign government or from an  
11 official of a foreign government if the person accepts the gift on behalf of the legislature. The  
12 person shall, within 60 days of receiving the gift, deliver the gift to the legislative council, which  
13 shall determine the appropriate disposition of the gift.

14 Sec. 24.61.220. RESTRICTIONS ON EARNED INCOME: OUTSIDE EMPLOYMENT  
15 AND HONORARIA. (a) A legislator or legislative assistant may not

16 (1) seek or accept compensation for personal services that involves payments that  
17 are not commensurate with the services rendered taking into account the higher rates generally  
18 charged by specialists in a profession; or

19 (2) accept a payment of anything of value, except for actual and necessarily  
20 incurred travel expenses, for an appearance or speech by the legislator or legislative assistant; this  
21 paragraph does not apply to the salary paid to a legislator or legislative assistant for making an  
22 appearance or speech as part of the legislator's or legislative assistant's normal course of  
23 employment.

24 (b) Notwithstanding (a) of this section, a legislator or legislative assistant may accept a  
25 payment for an appearance or speech if the appearance or speech is not connected with the  
26 person's legislative status, and for teaching at a state-funded school or university, provided that  
27 influence was not used to obtain the position.

28 Sec. 24.61.235. RESTRICTIONS ON FUND RAISING. (a) A legislator running for the  
29 legislature may not solicit or accept a campaign contribution or a promise or pledge to make a  
30 campaign contribution while the legislature is in regular session.

31 (b) This section does not apply to a special election ordered by a court.

1 (c) In this section, "campaign contribution" has the meaning given for "contribution" in  
2 AS 15.13.130.

3 Sec. 24.61.240. ACCOUNTABILITY: WHISTLE BLOWING, AND PROTECTION OF  
4 WHISTLE BLOWERS. A legislator or legislative employee may not, directly or indirectly,  
5 subject a person who reports to the commission or another government entity conduct the person  
6 reasonably believes is a violation of this chapter or another state law, to reprisal, harassment, or  
7 discrimination. A legislative employee who is discharged, disciplined, involuntarily transferred,  
8 or otherwise penalized by a legislator or another legislative employee in violation of this  
9 subsection may

10 (1) bring a complaint before the commission; and

11 (2) bring a separate civil action in the courts seeking damages, payment of back  
12 wages, reinstatement, or other relief.

13 Sec. 24.61.250. ACCOUNTABILITY: OPENNESS AND OVERSIGHT. Legislators  
14 shall abide by AS 44.62.310 - 44.62.312 (open meetings law).

15 Sec. 24.61.260. DISCRIMINATION PROHIBITED. A legislator or legislative employee  
16 may not engage in acts of discrimination in violation of AS 18.80.220.

17 Sec. 24.61.270. PENALTIES. (a) A person who violates a provision of AS 24.61.100 -  
18 24.61.260, or a regulation adopted under AS 24.61.100 - 24.61.260, is subject to civil sanctions  
19 under AS 24.61.560(a).

20 (b) A person covered by this chapter who violates another law of the state with criminal  
21 penalties is subject to prosecution under that law in addition to civil or criminal penalties  
22 provided in this chapter.

### 23 ARTICLE 3. REQUIRED DISCLOSURE.

24 Sec. 24.61.400. FINANCIAL DISCLOSURE BY LEGISLATORS AND LEGISLATIVE  
25 DIRECTORS. A legislator and a legislative director shall file a disclosure statement, under oath  
26 and on penalty of perjury, with the Alaska Public Offices Commission giving the following  
27 information about the income received by them, their spouses, their dependent children, and their  
28 nondependent children who are living with them:

29 (1) the information that a public official is required to report under AS 39.50.030,  
30 except that sources of income other than gifts of \$1,000 or less and loans of \$1,000 or less need  
31 not be reported;

1 (2) as to income in excess of \$1,000 received as compensation for personal  
2 services, the name and address of the source of the income, and a statement describing the nature  
3 of the services performed; if the source of income is known or reasonably should be known to  
4 have a substantial interest in legislative, administrative, or political action and the recipient of  
5 the income is a legislator, a candidate for the legislature, or a legislative director, the amount of  
6 income received from the source shall be disclosed;

7 (3) as to each loan or loan guarantee over \$1,000 from a source with a substantial  
8 interest in legislative, administrative, or political action, the name and address of the person  
9 making the loan or guarantee, the amount of the loan, the terms and conditions under which the  
10 loan or guarantee was given, the amount outstanding at the time of filing, and whether or not a  
11 written loan agreement exists;

12 (4) gifts with a value of \$100 or more.

13 Sec. 24.61.410. DEADLINES FOR FILING OF DISCLOSURE STATEMENTS. A  
14 legislator and a legislative director shall file an annual report with the Alaska Public Offices  
15 Commission, covering the previous calendar year, containing the disclosures required by  
16 AS 24.61.400, on or before April 15 of each year.

17 Sec. 24.61.420. ADMINISTRATION OF AS 24.61.400 - 24.61.426. The Alaska Public  
18 Offices Commission shall

19 (1) adopt regulations to implement and interpret the provisions of AS 24.61.400 -  
20 24.61.426 and 24.61.450;

21 (2) prepare standardized forms on which the statements required by AS 24.61.400  
22 shall be filed; and

23 (3) examine, investigate, and compare all reports and statements required under  
24 AS 24.61.400, and report all possible violations of this chapter it discovers to the commission.

25 Sec. 24.61.422. STATEMENTS AS PUBLIC RECORDS. A statement filed with the  
26 Alaska Public Offices Commission under AS 24.61.400 is a public record. A person is not  
27 required to comply with AS 24.61.400 to the extent that a court of competent jurisdiction of the  
28 state determines that legally privileged professional relationships or constitutional privacy  
29 considerations would be violated by compliance.

30 Sec. 24.61.424. CIVIL PENALTY FOR LATE FILING. A legislator or a legislative  
31 director who fails to file a properly completed report under AS 24.61.400 is subject to a civil

1 penalty of not more than \$10 a day for each day the delinquency continues as the Alaska Public  
2 Offices Commission determines, subject to appeal to the superior court. An affidavit stating facts  
3 in mitigation may be submitted to the Alaska Public Offices Commission by the person against  
4 whom the civil penalty is assessed. However, the imposition of the penalties prescribed in this  
5 section does not excuse the person from filing reports required by AS 24.61.400.

6 Sec. 24.61.426. REMOVAL FROM BALLOT. In addition to the sanctions described in  
7 AS 24.61.450, if the Alaska Public Offices Commission finds that a candidate for the legislature  
8 who is an incumbent legislator or a legislative director, has failed to file a report under  
9 AS 24.61.400 by a deadline established in AS 24.61.410, or has filed a report that is substantially  
10 incomplete or misleading, it shall notify the lieutenant governor. The lieutenant governor shall  
11 return the candidate's filing fee, shall remove the candidate's name from the filing records, and  
12 may not place the candidate's name on the ballot.

13 Sec. 24.61.430. DISCLOSURE OF CLOSE ECONOMIC ASSOCIATIONS. (a) A  
14 legislator or a legislative employee shall disclose in the journal of the appropriate body or if the  
15 legislature is not in session to the commission, which shall maintain a public record of the  
16 disclosure and forward the disclosure to the respective house for inclusion in the journal by the  
17 fifth day of the session, the formation or maintenance of a close economic association involving  
18 a substantial financial matter with

19 (1) a supervisor who is not a member of the legislature who has responsibility or  
20 authority, either directly or indirectly, over the person's employment, including preparing or  
21 reviewing performance evaluations, or granting or approving pay raises or promotions;

22 (2) legislators;

23 (3) a public official who is required to file a financial disclosure statement under  
24 AS 39.50 and is not an appointed municipal officer; or

25 (4) a registered lobbyist.

26 (b) A disclosure under (a) of this section must be sufficiently detailed that a reader of  
27 the disclosure can ascertain the nature of the association.

28 Sec. 24.61.440. PARTICIPATION IN STATE PROGRAMS; REQUIRED  
29 DISCLOSURES. (a) A legislator or legislative employee may, without disclosure to the  
30 commission, participate in a statewide benefit program or receive a loan from the state if the  
31 program or loan is generally available to members of the public, is subject to fixed, objective

1 eligibility standards, and requires minimal discretion in determining qualification.

2 (b) The commission shall review annually state programs and state loans and publish a  
3 list of programs and loans, designating which ones meet the standards of (a) of this section.

4 (c) A legislator or legislative employee who participates in a program or receives a loan  
5 that is not exempt from disclosure under (a) of this section shall file a written report with the  
6 commission by February 15 of each year stating the amounts of the loans outstanding or benefits  
7 received during the preceding calendar year from nonqualifying programs. If the commission  
8 requests additional information necessary to determine the propriety of participating in the  
9 program or receiving the loan, it shall be promptly provided. The commission shall promptly  
10 compile a list of the statements indicating the loans and programs and amounts and send it to the  
11 presiding officer of each house who shall have it published in the supplemental journals within  
12 three weeks of the filing date.

13 (d) If loan proceeds or other program benefits are received from nonqualifying programs  
14 or loans after the end of a calendar year, the legislator or legislative employee shall file a  
15 statement with the commission within 30 days after the beginning of participation in the state  
16 program or receipt of proceeds from the state loan or by February 15, whichever is later. If the  
17 commission receives the statement while the legislature is in session, it shall promptly forward  
18 the statement to the chief clerk of the house or the secretary of the senate, as appropriate, who  
19 shall cause it to be published in the supplemental journal. If the commission receives a statement  
20 while the legislature is not in session, it shall forward the statement to the chief clerk of the  
21 house or the secretary of the senate for publication when the legislature next convenes.

22 (e) If the commission determines that a legislator or legislative employee received a state  
23 benefit or loan as a result of unfair or improper influence, the commission may initiate a  
24 complaint or take other appropriate action. In addition, the commission shall refer the matter to  
25 the attorney general for action under other civil or criminal laws.

26 (f) The commission shall annually recommend to the Legislative Budget and Audit  
27 Committee the programs and loans to be audited by the division of legislative audit during the  
28 following year, including the scope of the audit. The records of the relevant state agencies shall  
29 be made available to the division of legislative audit. The division of legislative audit shall  
30 prepare a report to the Legislative Budget and Audit Committee on its findings. The report is  
31 confidential until it is released by the committee.

1 (g) In extraordinary situations where the criteria for an exemption exists, a legislator or  
2 legislative employee may seek a waiver of the disclosure requirements of this section under  
3 AS 24.61.530.

4 Sec. 24.61.450. ~~PROHIBITED CONDUCT RELATING TO DISCLOSURES.~~ (a) A  
5 person required to make a disclosure under this chapter may not knowingly make a false or  
6 deliberately misleading or incomplete disclosure to the commission or to the Alaska Public  
7 Offices Commission, or file a disclosure after a deadline set by this chapter or by a regulation  
8 adopted by the commission or by the Alaska Public Offices Commission.

9 (b) A person who violates this section is subject to civil sanctions under AS 24.61.560(a),  
10 in addition to penalties that may be imposed by the Alaska Public Offices Commission under  
11 AS 24.61.424 and to removal from the ballot under AS 24.61.426.

12 ARTICLE 4. LEGISLATIVE ETHICS COMMISSION.

13 Sec. 24.61.500. LEGISLATIVE ETHICS COMMISSION ESTABLISHED. (a) The  
14 Legislative Ethics Commission is established in the legislative branch of government. The  
15 commission consists of seven members, selected as follows:

16 (1) one member of the senate appointed jointly by the president of the senate and  
17 the senate minority leader, if any;

18 (2) one member of the house of representatives appointed jointly by the speaker  
19 of the house and the house minority leader, if any; and

20 (3) five members appointed by the supreme court.

21 (b) No more than one member appointed under (a)(3) of this section may be a former  
22 legislator. No more than three members of the commission may be members of the same  
23 political party.

24 (c) Commissioners described in (a)(1) and (2) of this section shall be appointed within  
25 15 days of the commencement of the first regular session of each legislature and shall serve until  
26 the commencement of the next legislature.

27 (d) Commissioners who are not legislators serve staggered terms of four years. A  
28 nonlegislator commissioner is eligible for reappointment; however, a nonlegislator commissioner  
29 may not serve more than two consecutive four-year terms. A nonlegislator commissioner whose  
30 term has expired continues in office until a successor has been appointed and certified.

31 (e) A vacancy on the commission is filled in the same manner as the original

1 appointment to that seat on the commission. A vacancy shall be filled within 30 days after the  
2 vacancy occurs.

3 (f) The commission shall elect a chair and a vice-chair, who serve a term of three years.  
4 Neither the chair nor the vice-chair may be a legislator. An officer may not hold the same office  
5 for more than two consecutive terms. The vice-chair shall act as chair in the absence of the  
6 chair.

7 (g) Except as provided in (a)(1) or (2) of this section, a commissioner may not be a  
8 legislator, a legislative employee, an elected or appointed official required to make conflict-of-  
9 interest disclosures under AS 39.50, an officer of a political party, a candidate for public office,  
10 or a registered lobbyist.

11 Sec. 24.61.502. LEGISLATIVE REMOVAL OF COMMISSIONER. (a) A  
12 commissioner may be removed from office by a vote of two-thirds of each house of the  
13 legislature, by concurrent resolution, for cause. A commissioner being removed for cause shall  
14 be given a copy of the charges and afforded an opportunity to publicly present a defense in  
15 person or by counsel upon not less than 10 days' notice.

16 (b) In this section, "cause" means:

17 (1) incompetency, which is the inability or the unintentional or intentional failure  
18 to perform the duties of the commissioner;

19 (2) immorality, which is the commission of an act that constitutes a crime  
20 involving moral turpitude; or

21 (3) malfeasance or misfeasance in office, which includes the unexcused failure  
22 of the commissioner to attend meetings or to comply with this chapter or regulations adopted by  
23 the commission under this chapter.

24 Sec. 24.61.504. MEETINGS; COMPENSATION. (a) The commission shall meet at the  
25 call of the chair or a majority of the commissioners.

26 (b) Five commissioners constitute a quorum. A vote of the majority of the  
27 commissioners appointed is required for official action of the commission.

28 (c) The commission may meet by teleconference.

29 (d) Commissioners shall serve without compensation but are entitled to per diem and  
30 travel expenses authorized for boards and commissions under AS 39.20.180.

31 (e) The commission shall comply with AS 44.62.310 - 44.62.312 (open meetings law).

1           Sec. 24.61.506. EXECUTIVE DIRECTOR AND STAFF. (a) The commission shall hire  
2 an executive director and determine the director's salary. The executive director serves at the  
3 pleasure of the commission.

4           (b) The executive director may employ and determine the compensation of necessary  
5 employees, subject to the budget approved by the commission. The executive director may,  
6 subject to the approval of the commission, contract for services when those services are  
7 temporary or specialized in nature, or it is in the best interest of the state.

8           (c) Subject to the approval of the commission, the executive director may employ or  
9 contract with legal counsel to manage, direct, and prosecute cases under this chapter.

10          (d) If the commission determines that an investigation is necessary and that the  
11 investigation cannot be efficiently, promptly, or adequately handled by commission staff, the  
12 executive director shall nominate a special investigator to be appointed upon approval by the  
13 commission. The executive director shall maintain a list of individuals qualified to serve as a  
14 special investigator by virtue of their experience, reputation, likely availability, willingness to  
15 serve, and freedom from conflicts of interest.

16          (e) The executive director and employees of the commission are in the exempt service  
17 under AS 39.25.110.

18          Sec. 24.61.508.    APPLICABILITY OF CHAPTER TO COMMISSIONERS,  
19 EMPLOYEES, AND CONTRACTORS; OTHER RESTRICTIONS. (a) Commissioners who are  
20 not legislators, and employees of the commission, including persons employed or under contract  
21 as legal counsel or special investigators, are subject to this chapter and shall be held accountable  
22 to the same standards and requirements, including disclosure.

23          (b) A commission employee, including a person who provides personal services under  
24 a contract with the commission, may not be a legislator, a legislative employee, an elected or  
25 appointed official of a state or local governmental entity, an officer of a political party, a  
26 candidate for public office, or a registered lobbyist.

27          (c) In addition to the requirements of this chapter, a commissioner who is not a legislator,  
28 an employee of the commission, or a person under contract to provide personal services to the  
29 commission may not

30                 (1) participate in political management or in a political campaign during the  
31 person's term of office, employment, or contract;

1 (2) participate in the campaign of, attend campaign fund raising events for, or  
2 make a financial contribution to

3 (A) a candidate for the legislature;

4 (B) an incumbent legislator or legislative employee who is a candidate for  
5 another public office; or

6 (C) a person running for another office against an incumbent legislator or  
7 legislative employee;

8 (3) participate in lobbying activities that would require the person to register as  
9 a lobbyist except as required to inform the legislature concerning legislation requested by the  
10 commission or other matters related to the commission; or

11 (4) take an action or make a statement that is likely to cause a reasonable person  
12 to believe that the commissioner, employee, or other person is not impartial or independent or  
13 is otherwise unable to properly perform public duties.

14 (d) A violation or alleged violation of (b) or (c) of this section shall be treated as any  
15 other violation of this chapter and shall be dealt with by the commission accordingly. During  
16 the pendency of a complaint against a commissioner, commission employee, or commission  
17 contractor, the person complained against may not participate in official action of the  
18 commission.

19 (e) Commissioners and the executive director are subject to the disclosure requirements  
20 of this chapter.

21 Sec. 24.61.510. GENERAL POWERS AND DUTIES OF THE COMMISSION. (a) The  
22 commission shall

23 (1) administer the provisions of this chapter, including the adoption of regulations  
24 that the commission is required to adopt;

25 (2) authorize and train its staff to give informal or written advice regarding the  
26 spirit and requirements of this chapter;

27 (3) issue formal written advisory opinions on specific situations or clarify a  
28 provision of this chapter;

29 (4) investigate and adjudicate complaints and recommend disciplinary actions to  
30 the legislature;

31 (5) carry out the educational programs that are required by this chapter and

1 additional programs it considers necessary to effectuate the policy and purposes of this chapter,

2 (6) prepare and distribute an ethics education manual for legislators, legislative  
3 employees, and registered lobbyists;

4 (7) design and implement voluntary ethics education courses for legislators,  
5 legislative employees, and registered lobbyists;

6 (8) mail by certified mail a copy of this chapter to a candidate for the legislature  
7 upon the receipt of notice of the candidate's declaration of candidacy under AS 15.25.030 or  
8 petition under AS 15.25.180;

9 (9) prepare a biennial report to the legislature summarizing its activities over the  
10 previous two years, evaluating the effectiveness of this chapter in accomplishing its stated  
11 purposes, and recommending legislative reforms it thinks necessary to improve the administration  
12 of this chapter and to better advance its goals.

13 (b) The commission may

14 (1) adopt additional regulations to interpret and implement this chapter,

15 (2) perform the other acts, duties, and functions necessary to properly administer  
16 this chapter, consistent with law and the purpose of this chapter.

17 (c) In adopting regulations under (a) and (b) of this section, the commission shall follow  
18 procedures that are, to the extent practicable, consistent with AS 44.62 (Administrative Procedure  
19 Act). Regulations adopted by the commission do not take effect until 60 days after adoption.

20 Sec. 24.61.515. OFFICES; BUDGET. The legislative council shall provide office space  
21 and equipment for the commission. The commission shall submit a budget for each fiscal year  
22 to the finance committees of the legislature and shall annually submit an estimated budget to the  
23 governor for information purposes in preparation of the state operating budget.

24 Sec. 24.61.520. INFORMAL ADVICE. The commission shall authorize and train its  
25 staff to give oral advice and provide a written informal nonbinding advice letter to persons  
26 seeking guidance as to the spirit or legal requirements of this chapter, provided that the advice  
27 is given with the express stipulations that

28 (1) the opinions given are not necessarily those of the commission;

29 (2) although the advice is given in good faith, the person seeking the advice relies  
30 on it at the person's own risk; and

31 (3) the advice is not binding upon the commission.

1           Sec. 24.61.525. FORMAL BINDING ADVISORY OPINIONS. (a) The commission  
2           may issue a formal written advisory opinion on its own initiative, on the request of a person to  
3           whom this chapter applies, or on the request of a person elected to the legislature who at the time  
4           of election is not a member of the legislature.

5           (b) Requests for written advisory opinions must be in writing and set out with reasonable  
6           specificity the facts and circumstances of a real or hypothetical case.

7           (c) The commission shall issue its opinion within 30 days of receiving the request. The  
8           period for issuing an opinion may be extended by the commission if the person requesting the  
9           opinion consents.

10          (d) An opinion shall be issued by official action of the commission. The vote of each  
11          commissioner participating in the opinion shall be indicated on the opinion, which shall be  
12          forwarded to the person requesting it.

13          (e) Written formal advisory opinions issued by the commission are binding on the  
14          commission in a subsequent proceeding concerning the facts and circumstances of the particular  
15          case unless material facts were omitted or misstated in the request.

16          (f) The commission may review or elaborate on a previously issued advisory opinion.

17          (g) The commission and all commission employees shall keep confidential the identity  
18          of the requester and all information conveyed orally or in writing relating to the request, unless  
19          the requester authorizes the commission to make public the requester's identity or the information  
20          conveyed.

21          (h) Advisory opinions issued by the commission are confidential, but shall be made  
22          public if a written request by the person who requested the opinion is filed with the commission.

23          (i) Notwithstanding (h) of this section, the commission may issue a public summary of  
24          advisory opinions written so that the identity of the requester cannot be ascertained.

25          Sec. 24.61.527. USE OF INFORMATION SUBMITTED WITH REQUEST FOR  
26          ADVICE. The commission may not bring a complaint against a person based upon information  
27          voluntarily given to the commission by the person in connection with a good faith request for  
28          advice under AS 24.61.520 or 24.61.525, and may not use that information against the person  
29          in a proceeding under AS 24.61.535 - 24.61.555. This subsection does not preclude the  
30          commission from acting on a complaint concerning the subject of a person's request for advice  
31          if the complaint is brought by another person, or if the complaint arises out of conduct taking

1 place after the advice is requested, and does not preclude a commission from using information  
2 or evidence obtained from an independent source, even if that information or evidence was also  
3 submitted with a request for advice.

4 Sec. 24.61.535. INITIATING INVESTIGATORY AND ADJUDICATORY PROCESSES.

5 (a) A complaint alleging a violation of this chapter may be initiated by any person or by the  
6 commission on its own motion. The commission shall provide a simple form for complaints.

7 A complaint must include

8 (1) the name and address of the complainant;

9 (2) a statement of the facts known or believed to be true that form the basis of  
10 the complaint and the sources of the information, including the approximate dates of the acts  
11 alleged and names and addresses of persons with personal knowledge of the facts alleged; and

12 (3) a certification that the complainant verifies under penalty of unsworn  
13 falsification that the facts stated are true to the best of the complainant's knowledge and that the  
14 complainant knows that it is a crime under AS 11.56.805 to intentionally initiate a false  
15 complaint.

16 (b) Unless the chair of the commission concludes that immediate notification would  
17 prejudice a preliminary investigation or subject the complainant to an unreasonable risk, a copy  
18 of the complaint shall be sent to the person charged with misconduct within two working days.  
19 If the matter is to be kept from the respondent for more than 10 days, a majority of the  
20 commission must approve the delay in notification and establish the conditions under which the  
21 respondent will be informed of the complaint.

22 (c) Until a preliminary finding on the validity of a complaint has been properly made,  
23 the existence and substance of a complaint shall be kept confidential except that all members of  
24 the commission and necessary staff may be informed about it.

25 (d) Upon receiving a complaint, commission staff shall review it for formal sufficiency  
26 within five days of filing. If the complaint is unsigned or otherwise deficient on its face it shall  
27 be returned to the complainant with a statement of the nature of the deficiency.

28 (e) Once a complaint has been determined to be formally sufficient, commission staff  
29 shall evaluate the complaint and advise the chair as to its opinion as to whether it states a valid  
30 complaint that should be investigated. If the executive director is a member of the bar, the  
31 executive director may provide the advice. Otherwise, the executive director shall appoint a duly

1 qualified legal counsel to assist in making the determinations required under this subsection. To  
2 be valid, the complaint must allege

3 (1) facts that, if true, establish a violation of a provision of this chapter for which  
4 civil or administrative sanctions are authorized;

5 (2) that the conduct providing the basis of the complaint has occurred

6 (A) within five years of the complaint; or

7 (B) if the person charged with misconduct intentionally concealed or  
8 otherwise sought to prevent discovery of the relevant facts, within one year of the  
9 discovery of the relevant facts and within eight years of the complaint; and

10 (3) that the person charged with misconduct is a legislator or legislative employee  
11 at the time of filing of the complaint or was a legislator within one year of the time of filing of  
12 the complaint.

13 (f) Within 20 days after the filing of the complaint, or within 45 days if a majority of  
14 the commission certifies additional time is required, a determination shall be made on the facial  
15 validity of the complaint. If the commission concludes that there is no substantial reason to  
16 question the opinion of staff as to the facial validity of a complaint, the complaint shall either  
17 be dismissed or certified for further consideration in accordance with the opinion. A  
18 commissioner, however, may request a hearing on the facial validity of the complaint at a  
19 meeting of the commission.

20 (g) If a complaint is dismissed because of facial invalidity, it shall be returned to the  
21 complainant with a notice of dismissal stating in detail the reason for dismissal. If the  
22 commission finds that the complaint was frivolous, malicious, or was filed in bad faith, it shall  
23 so state in the notice of dismissal. If the commission finds that the complaint alleges violations  
24 outside the scope of this chapter, it shall so state and may forward the complaint to the  
25 appropriate enforcement body for disposition. A copy of the notice of dismissal shall be sent to  
26 the respondent. The notice of dismissal is a public record.

27 (h) If the commission concludes that some or all of the allegations of the complaint, if  
28 proven, would constitute a violation of this chapter, or if the commission has initiated the  
29 complaint, the complaint shall be certified and a factual investigation shall commence. The  
30 record of certification for further consideration is confidential subject to subsequent actions that  
31 may make it part of the public record.

1           Sec. 24.61.540. INVESTIGATIONS. (a) Investigation into ethics charges shall be  
2 undertaken in a manner that assures the public of an impartial and comprehensive review, is fair  
3 to the respondent, and that elicits the information the commission needs to make a decision.

4           (b) Before commencing an investigation, the commission shall adopt a written resolution  
5 defining the scope of the investigation, a copy of which shall be supplied to both the complainant  
6 and respondent. If, during the investigation, additional facts are discovered that justify an  
7 expansion of the investigation and the possibility of additional charges beyond those alleged in  
8 the complaint, the resolution shall be amended accordingly with copies sent to respondent. The  
9 resolution, and the fact that an investigation has been undertaken, shall be kept confidential by  
10 the commission except that, upon inquiry, the commission may verify that it is investigating a  
11 complaint along with a statement that no finding of probable cause has been made and that no  
12 adverse inference of impropriety or guilt should be drawn from the decision to investigate.  
13 Additional facts concerning the nature or results of the investigation may not be revealed except  
14 as provided in AS 24.61.545 after a determination of probable cause has been made.

15           (c) A legislator or a legislative employee may request in writing that the commission  
16 investigate charges of impropriety made against the legislator or legislative employee. The  
17 request must state with specificity the nature of the investigation requested. If the commission  
18 agrees to undertake an investigation, the investigation is not necessarily limited in scope by the  
19 request and, once begun, it shall be handled as any other investigation, with the person requesting  
20 the investigation formally treated as a respondent.

21           (d) An investigation is conducted by the commission staff, and if the commission  
22 determines it is necessary, by outside counsel and investigators. The purpose of the investigation  
23 is to determine whether there is probable cause to proceed with a full adjudicatory hearing.

24           (e) The person conducting the investigation may order a hearing and subpoena witnesses  
25 and documents, conduct depositions under oath, require the participation of the respondent, and  
26 issue interrogatories to be answered under oath. An oral or written statement, whether  
27 incriminatory or exculpatory, may not be considered in the investigator's report unless made  
28 under oath. The respondent shall be given an adequate opportunity to provide testimonial and  
29 documentary evidence.

30           (f) Upon completion of the investigation, a confidential report summarizing the evidence,  
31 evaluating its credibility, and detailing findings on each of the allegations investigated shall be

1 submitted to the commission, along with recommendations as to whether the complaint, or a  
2 portion of it, should be dismissed or whether the matter should proceed to the full hearing stage.  
3 The report shall be prepared so as to exclude unreliable information and uncorroborated and  
4 irresponsible allegations. The investigator's notes, records of interviews, and other investigatory  
5 matter considered unreliable or unduly prejudicial by the commission shall remain confidential.

6 Sec. 24.61.545. PROBABLE CAUSE DETERMINATION. (a) The commission shall  
7 consider the investigator's report in closed session. It shall determine whether there is credible  
8 evidence that would give a reasonable person probable cause to believe that a violation of a  
9 provision of this chapter for which civil or administrative sanctions are authorized has occurred.

10 (b) If the commission does not find probable cause under (a) of this section, it shall  
11 dismiss the complaint and so notify the complainant and respondent with a notice of dismissal,  
12 stating in detail the reason for dismissal. If the commission finds that the charges were frivolous,  
13 malicious, made in bad faith, or that, in its opinion the respondent should be exonerated of the  
14 charges, it shall so state in the notice of dismissal. If the commission finds that the credible  
15 evidence, though not giving rise to probable cause, does suggest the violation of other provisions  
16 of law, it shall so state and may forward the complaint and its report to the appropriate  
17 enforcement body for disposition.

18 (c) The notice of dismissal under (b) of this section and the investigator's report under  
19 AS 24.61.540(f), but not the underlying investigatory materials, shall be made public unless the  
20 commission determines that this would unfairly prejudice either the respondent or complainant.  
21 This subsection may not be construed to prevent either the complainant or respondent from  
22 making the notice of dismissal and the report public.

23 (d) If the commission finds probable cause under (a) of this section, it shall serve on the  
24 respondent, in a manner consistent with the service of summons under the rules of civil  
25 procedure, a formal charge stating the specific allegations and containing a proposed date for an  
26 adjudicatory hearing under AS 24.61.550.

27 (e) The hearing may not be scheduled to commence sooner than 20 days after service  
28 of the formal charge on the respondent. If the respondent requests an earlier hearing date, the  
29 commission may, but is not required to, consent. The commission shall, upon request, grant the  
30 respondent reasonable additional time to prepare a defense. The respondent may file a responsive  
31 pleading admitting or denying the various allegations.

1 (f) The commission may suspend further proceedings if the respondent acknowledges the  
2 violation and agrees to corrective actions and sanctions considered appropriate by the  
3 commission. If the commission suspends the proceedings or dismisses the charges as a result  
4 of a negotiated settlement, the terms and conditions of the settlement and the reasons for entering  
5 into the agreement shall be stated in a written report that shall be sent to the complainant and  
6 made part of the public record.

7 (g) Upon determining that probable cause exists under (a) of this section, the commission  
8 shall make public the investigator's report containing findings and recommendations, but not the  
9 underlying investigatory materials.

10 Sec. 24.61.550. ADJUDICATORY HEARING. (a) Notwithstanding AS 24.61.504(b),  
11 an adjudicatory hearing shall be before at least a majority of the commission. If the chair cannot  
12 attend all hearing sessions without undue inconvenience, the vice-chair shall serve in the chair's  
13 place. If neither the chair nor the vice-chair is available, the chair shall appoint another  
14 commissioner.

15 (b) The chair, vice-chair, or a commissioner designated by the chair, as appropriate, shall  
16 preside at the hearing. The executive director or other legal counsel designated by the  
17 commission may attend and advise and counsel the hearing board.

18 (c) An adjudicatory hearing shall be public under AS 44.62.310. A hearing may not be  
19 held by teleconference. Except as expressly provided in this chapter, procedures shall be  
20 consistent with hearing procedures under AS 44.62.330 - 44.62.630. Upon request, the presiding  
21 commissioner may issue reasonable discovery and protective orders in a manner consistent with  
22 Rule 26 of the Alaska Rules of Civil Procedure.

23 (d) The commission may

24 (1) administer oaths and affirmations and subpoena individuals, including the  
25 respondent, to testify or to submit to written interrogatories under oath;

26 (2) compel the production of documentary or tangible evidence;

27 (3) pay witnesses the same fees and mileage reimbursements paid in similar  
28 circumstances by the courts of the state;

29 (4) seek enforcement of subpoenas by written application of the commission to  
30 the superior court.

31 (e) The respondent may

- 1 (1) appear before the hearing board and submit testimony or other evidence;
- 2 (2) personally, or through counsel, request production of documentary or tangible
- 3 evidence, subpoena, examine, and cross-examine witnesses, raise objections, and make arguments;
- 4 (3) exercise the pretrial discovery procedures available in civil actions.

5 Sec. 24.61.555. FINDINGS AND RECOMMENDATIONS. (a) Within 10 days after  
6 the completion of a hearing, the commissioners who attended the hearing shall vote on each  
7 charge to determine whether it was established by clear and convincing evidence, and shall  
8 prepare a written opinion along with recommendations, if any. A vote of four commissioners  
9 is required to find a violation and approve an opinion.

10 (b) As to each charge on which the evidence was found to be insufficient to establish a  
11 violation, the commission shall include its findings in its written opinion. If the commission  
12 finds that the charges were frivolous, malicious, made in bad faith, or that, in its opinion the  
13 respondent should be exonerated of the charges, it shall so state in its opinion. The respondent's  
14 reasonable legal fees should be paid in full from public funds if the respondent is exonerated.

15 (c) As to each charge on which the evidence was found to be sufficient to establish a  
16 violation, the commission shall include its findings of fact and law in its written opinion, along  
17 with recommendations as to appropriate sanctions.

18 Sec. 24.61.560. CIVIL SANCTIONS. (a) When the commission considers the  
19 appropriate recommended sanctions to be included in its opinion, it shall give due consideration  
20 to the purposes of this chapter, the nature of the violation, and other circumstances that are  
21 included in the hearing record. The commission may recommend, either singly or in  
22 combination,

- 23 (1) a civil penalty of not more than \$5,000 for each offense, or twice the amount
- 24 improperly gained by the misconduct, whichever is greater;
- 25 (2) divestiture of specified assets or withdrawal from specified associations;
- 26 (3) detailed disclosure, with or without additional periodic reporting requirements;
- 27 (4) suspension from legislative employment, with or without pay;
- 28 (5) restitution or reimbursement;
- 29 (6) suspension of pay until orders are complied with;
- 30 (7) probationary status;
- 31 (8) a written reprimand;

1 (9) censure, including a recommendation that a legislator censured may not serve  
2 as a chair or co-chair on a legislative committee for the remainder of the legislator's current term  
3 in office;

4 (10) expulsion of a legislator or dismissal of a legislative employee;

5 (11) payment of costs related to the investigation and adjudication of the charge;

6 (12) another sanction fashioned to achieve the purposes of this chapter.

7 (b) If the commission finds that a violation of AS 24.61.100 - 24.61.450 contributed  
8 substantially to the enactment of legislation or to other legislative action, the commission may  
9 recommend to the presiding officer of each house that the legislation be repealed or amended or  
10 that the other legislative action be rescinded or modified.

11 Sec. 24.61.565. RECOMMENDATIONS TO THE LEGISLATURE WHERE VIOLATOR  
12 IS A LEGISLATOR. (a) If the person found to have violated this chapter is or was a member  
13 of the legislature, the commission's recommendations shall be forwarded by the chair of the  
14 commission to the presiding officer of the appropriate house of the legislature.

15 (b) If the legislature is in session, the appropriate house shall determine the sanctions,  
16 if any, that are to be imposed. The vote shall be taken within 10 legislative days of receipt of  
17 the commission's recommendations.

18 (c) If the legislature is not in session, the presiding officer of the appropriate house may  
19 request the legislature to consider convening itself into special session under AS 24.05.100(a)(2)  
20 to consider the commission's recommendations. If expulsion is recommended, the presiding  
21 officer shall so request. If the legislature does not convene itself into special session, the  
22 appropriate house shall consider the recommendations during the first 10 days of the next regular  
23 session.

24 (d) Except in the case of expulsion, which requires a two-thirds vote, all other sanctions  
25 shall be determined by a majority vote of the full house of which the legislator is a member.

26 Sec. 24.61.570. RECOMMENDATIONS WHERE VIOLATOR IS A LEGISLATIVE  
27 EMPLOYEE. If the person found to have violated this chapter is or was a legislative employee,  
28 the commission's recommendations shall be forwarded to the appropriate appointing authority  
29 which shall, as soon as is reasonably possible, determine the sanctions, if any, to be imposed.  
30 The appointing authority may not question the commission's findings of fact. The appointing  
31 authority shall assume the validity of the commission's findings, and determine and impose the

1 appropriate sanctions.

2 Sec. 24.61.575. ACTIONS BY THE ATTORNEY GENERAL. The attorney general may  
3 independently bring civil actions relating to violations under this chapter regardless of the  
4 outcome or settlement of a charge before the commission, provided that the cumulative civil  
5 penalties imposed for a violation may not exceed the amount that could be imposed in an action  
6 before the commission. This subsection does not prohibit the attorney general from bringing an  
7 action under another civil or criminal law.

8 Sec. 24.61.580. WAIVER OF CONFIDENTIALITY. (a) The subject of a complaint  
9 may waive any provision of AS 24.61.535 - 24.61.550 relating to the confidentiality of the  
10 proceedings.

11 (b) The commission may publicly respond to a statement or interpretation made  
12 concerning the contents of an advisory opinion or decision it has issued or is purported to have  
13 issued. A person who requests an advisory opinion and makes that fact public is considered to  
14 have waived the confidentiality of the person's identity.

#### 15 ARTICLE 5. GENERAL PROVISIONS.

16 Sec. 24.61.900. RELATIONSHIP TO COMMON LAW AND OTHER LAWS. (a) The  
17 provisions of this chapter specifically replace, supersede, and where necessary repeal provisions  
18 of the common law relating to legislative conflict of interest.

19 (b) This chapter does not exempt a person from applicable provisions of another law  
20 unless the law is expressly superseded or incompatibly inconsistent with specific provisions of  
21 this chapter.

22 Sec. 24.61.910. APPLICABILITY. Unless otherwise specifically stated, the provisions  
23 of this chapter apply to legislators and legislative employees.

24 Sec. 24.61.920. MAINTENANCE OF DOCUMENTS. Documents filed with or produced  
25 by the commission as public records shall be retained for at least six years.

26 Sec. 24.61.930. COOPERATION OF OTHERS. If the commission requests their  
27 cooperation, a state agency, official, employee, or a person whose conduct is regulated by this  
28 chapter shall cooperate with the commission. An individual shall make information reasonably  
29 related to an investigation available to the commission on written request. The commission may  
30 request and shall receive from every officer, department, division, board, agency, commission,  
31 house of the legislature, or other agency of the state, cooperation and assistance in the

1 performance of its duties.

2 Sec. 24.61.940. UNAUTHORIZED DISCLOSURES. A person subject to the provisions  
3 of this chapter may not knowingly make an unauthorized disclosure of confidential information  
4 acquired in the course of official duties. A person who violates this section is subject to civil  
5 sanctions under AS 24.61.560(a) and may be subject to prosecution under AS 11.56.860 or  
6 another law.

7 Sec. 24.61.950. ACCESS TO CLOSED FILES. A commissioner or an employee or  
8 contractor of the commission may obtain access to closed commission files containing  
9 information that is confidential only if the commission determines that the person has a need to  
10 obtain access to the closed files that relates to the official duties of the commission and the  
11 person seeking access.

12 Sec. 24.61.990. DEFINITIONS. (a) In this chapter,

13 (1) "administrative action" means conduct related to the development, drafting,  
14 consideration, enactment, defeat, application, or interpretation of a rule, regulation, policy, or  
15 other action in a regulatory proceeding or a proceeding involving a license, permit, franchise, or  
16 entitlement for use;

17 (2) "anything of value," "benefit," or "thing of value" includes all matters, whether  
18 tangible or intangible, that could reasonably be considered to be a material advantage, of material  
19 worth, use, or service to the person to whom it is conferred; the terms are intended to be  
20 interpreted broadly and encompass all matters that the recipient might find sufficiently desirable  
21 to do something in exchange for;

22 (A) "anything of value," "benefit," or "thing of value" includes but is not  
23 limited to

24 (i) money;

25 (ii) products or merchandise;

26 (iii) works of art or collectibles;

27 (iv) stocks, bonds, notes, or options;

28 (v) an interest in real property;

29 (vi) contracts or a promise of a future interest in a contract;

30 (vii) an interest or a promise of a future interest in a business;

31 (viii) meals, beverages, or lodging;

- 1 (ix) transportation;
- 2 (x) services, including loaned employees;
- 3 (xi) loans, loan guarantees, co-signing;
- 4 (xii) forgiveness of a debt;
- 5 (xiii) discounts or rebates not extended to the public generally;
- 6 (xiv) tickets or admissions;
- 7 (xv) free or discounted use of office facilities;
- 8 (xvi) loan of office equipment;
- 9 (xvii) radio or television time;
- 10 (xiii) promise or offer of present or future employment;
- 11 (xix) use of autos, boats, apartments, or other recreational or
- 12 lodging facilities;
- 13 (xx) intangible rights such as a cause of action;
- 14 (xxi) licenses, patents, copyrights, or an interest in them;
- 15 (xxii) any other item having economic value;
- 16 (B) "anything of value," "benefit," or "thing of value" does not include
- 17 (i) an item listed in AS 24.61.210(b);
- 18 (ii) campaign contributions, pledges, political endorsements,
- 19 support in a political campaign, or a promise of endorsement or support;
- 20 (iii) contributions to a cause or organization, including a charity,
- 21 made in response to a direct solicitation from a legislator or a person acting at the
- 22 legislator's direction;
- 23 (iv) grants under AS 37.05.316 to named recipients;
- 24 (3) "charitable organization" means an organization that qualifies for a federal tax
- 25 exemption under 26 U.S.C. 501(c)(3);
- 26 (4) "close economic association" means a financial relationship that exists between
- 27 a person covered by this chapter and some other person or entity, including but not limited to
- 28 relationships where the person covered by this chapter serves as a consultant or advisor to, is a
- 29 member or representative of, or has a financial interest in, any association, partnership, business,
- 30 or corporation;
- 31 (5) "commission" means the Legislative Ethics Commission;

- 1 (6) "compensation" means remuneration for personal services rendered, including  
2 salary, fees, commissions, bonuses, and similar payments, but does not include reimbursement  
3 for actual expenses incurred by a person;
- 4 (7) "confidential information" means information that has been classified  
5 confidential by law;
- 6 (8) "exonerate" means to free from a charge or the imputation of guilt, or to prove  
7 blameless;
- 8 (9) "honorarium" means anything of value, other than reimbursement of travel  
9 expenses, given to a person for making a speech, panel presentation, personal appearance, or  
10 similar activity;
- 11 (10) "immediate family" means the spouse, parents, children, including a stepchild  
12 and an adoptive child, and siblings of a person;
- 13 (11) "income" means gross income as defined in 26 U.S.C. 61 in effect on  
14 January 1, 1990, and all gifts, awards, and inheritances;
- 15 (12) "intent to influence legislative, administrative, or political action" means that  
16 an act, including the offering or conferring of a thing of value to a public official, is done with  
17 the intent to induce the official to do or refrain from doing an act;
- 18 (13) "knowingly" has the meaning given in AS 11.81.900;
- 19 (14) "legislative action" means conduct relating to the development, drafting,  
20 consideration, sponsorship, enactment or defeat, support or opposition to or of a law, amendment,  
21 resolution, report, nomination, or other matter affected by legislative action or inaction;
- 22 (15) "legislative assistant" means a legislative employee whose assigned duties  
23 involve the exercise of substantial discretion and judgment; it does not include employees who  
24 perform purely clerical or ministerial functions; the legislative council shall propose policies  
25 relating to the interpretation of this definition, and the commission shall consider the adoption  
26 of these guidelines as regulations;
- 27 (16) "legislative director" means the director of the legislative finance division,  
28 the legislative auditor, the director of the legislative research agency, the ombudsman, the  
29 executive director of the Legislative Affairs Agency, and the directors of the divisions within the  
30 Legislative Affairs Agency;
- 31 (17) "legislative employee" means a person, other than a legislator, who is

1 compensated by the legislative branch in return for regular or substantial personal services,  
2 regardless of the person's pay level or technical status as a full-time or part-time employee,  
3 independent contractor, or consultant; it includes members and staff of the commission; it does  
4 not include individuals who perform functions that are incidental to legislative functions, such  
5 as security, messengers, maintenance, and print shop employees; for purposes of this paragraph,  
6 "regular or substantial" means work that is expected to involve, or does involve, at least 400  
7 hours in a calendar year or 300 hours during a regular legislative session; the legislative council  
8 shall propose policies relating to the interpretation of this definition, and the commission shall  
9 consider the adoption of these guidelines as regulations;

10 (18) "lobbyist" means a person who is required to register under AS 24.45.041  
11 and is described under AS 24.45.171(8)(A), but does not include a volunteer lobbyist described  
12 in AS 24.45.161(a)(1) or a representational lobbyist as defined under regulations of the Alaska  
13 Public Offices Commission;

14 (19) "local government" means a municipality, a municipal school district, or a  
15 regional educational attendance area;

16 (20) "political action" means conduct in which public officials, including  
17 legislators or legislative employees, use their official position or political contacts to exercise  
18 influence on state and local government employees or entities; it includes but is not limited to  
19 endorsing and pledging support or actively supporting a legislative matter, a nominee, or a  
20 candidate for public office;

21 (21) "reasonably should know" means that, under the circumstances, a reasonable  
22 person would know a fact;

23 (22) "registered lobbyist" means a person who is required to register under  
24 AS 24.45.041;

25 (23) "representation" means action taken on behalf of another, whether for  
26 compensation or not, including but not limited to telephone calls and meetings and appearances  
27 at proceedings or meetings.

28 (b) A person, including a governmental entity, has a substantial interest in legislative,  
29 administrative, or political action if the person

30 (1) is not a natural person and will be directly and substantially affected  
31 financially by a legislative, administrative, or political action;

1 (2) is a natural person and will be directly and substantially affected financially  
2 by a legislative, administrative, or political action in a way that is greater than the effect on a  
3 substantial class of persons to which the person belongs as a member of a profession, occupation,  
4 industry, or region;

5 (3) has or seeks contracts in excess of \$10,000 annually for goods or services with  
6 the legislature or with an agency of state government;

7 (4) is a lobbyist;

8 (5) represents, with or without compensation, a person or organization described  
9 in (1) - (4) of this section; or

10 (6) is not the state or federal government or an agency of the state or federal  
11 government.

12 \* Sec. 3. AS 11.56.805(a) is amended to read:

13 (a) A person commits the crime of false accusation if the person knowingly or  
14 intentionally initiates a false complaint with the [SELECT COMMITTEE ON] Legislative Ethics  
15 Commission established under AS 24.61 [IN A.S 24.60].

16 \* Sec. 4. AS 15.25.030(b) is amended to read:

17 (b) A person filing a declaration of candidacy under this section, other than a person  
18 subject to AS 24.61 who is filing a declaration for a state legislative office, shall  
19 simultaneously file with the director a statement of income sources and business interests that  
20 complies with the requirements of AS 39.50. A person who is subject to AS 24.61 and is filing  
21 a declaration of candidacy for state legislative office shall simultaneously file with the  
22 director a disclosure statement that complies with the requirements of AS 24.61.400.

23 \* Sec. 5. AS 15.25.030(c) is amended to read:

24 (c) An incumbent public official, other than a legislator, who has a current statement  
25 of income sources and business interests under AS 39.50 on file with the Alaska Public Offices  
26 Commission, or an incumbent legislator who has a current disclosure statement under  
27 AS 24.61.400 on file with the Alaska Public Offices Commission, is not required to file a  
28 statement of income sources and business interests or a disclosure statement with the  
29 declaration of candidacy under (b) of this section.

30 \* Sec. 6. AS 15.25.180(b) is amended to read:

31 (b) A person filing a nominating petition under this section, other than a person subject

1 to AS 24.61 who is filing a petition for a state legislative office, shall also file with the  
2 director a statement of income sources and business interests that complies with the requirements  
3 of AS 39.50 within 30 days of filing the petition. A person who is subject to AS 24.61 and  
4 is filing a nominating petition for state legislative office shall file with the director a  
5 disclosure statement that complies with the requirements of AS 24.61.400 within 30 days  
6 of filing the petition.

7 \* Sec. 7. AS 15.25.180(c) is amended to read:

8 (c) An incumbent public official, other than a legislator, who has a current statement  
9 of income sources and business interests under AS 39.50 on file with the Alaska Public Offices  
10 Commission, or an incumbent legislator who has a current disclosure statement under  
11 AS 24.61.400 on file with the Alaska Public Offices Commission, is not required to file a  
12 statement of income sources and business interests or a disclosure statement with the  
13 nominating petition under (b) of this section.

14 \* Sec. 8. AS 23.20.526(d)(8) is amended to read:

15 (8) in the employ of the state or a political subdivision of the state if the service  
16 is performed by an individual in the exercise of duties

17 (A) as a "public official" as defined in AS 39.50.200(a), [OR] any other  
18 elected official, the fiscal analyst of the legislative finance division, the legislative  
19 auditor of the legislative audit division, the executive director of the Legislative  
20 Affairs Agency, and the directors of the divisions within the Legislative Affairs  
21 Agency;

22 (B) as a member of the Alaska Army National Guard or Alaska Air  
23 National Guard or Alaska Naval Militia; or

24 (C) as an employee serving on only a temporary basis in case of fire,  
25 storm, snow, earthquake, flood, or similar emergency;

26 \* Sec. 9. AS 24.45.121 is amended by adding a new subsection to read:

27 (c) A former legislator may not act as a lobbyist for a period of 12 months following the  
28 legislator's departure from office.

29 \* Sec. 10. AS 24.45.171(12) is amended to read:

30 (12) "public official" or "public officer" means a public official as defined in  
31 AS 39.50.200(a), a member of the legislature, or a legislative director as defined in

1 AS 24.61.990(a); however, it does not include a judicial officer or an elected or appointed  
2 municipal officer.

3 \* Sec. 11. AS 39.25.110 is amended by adding a new paragraph to read:

4 (30) executive director and staff of the Legislative Ethics Commission.

5 \* Sec. 12. AS 39.50.020 is amended to read:

6 Sec. 39.50.020. REPORT OF FINANCIAL AND BUSINESS INTERESTS. (a) A  
7 judicial officer, commissioner, chair [CHAIRMAN] or member of a state commission or board  
8 specified in AS 39.50.200(b), a person hired or appointed as head or deputy head of, or director  
9 of a division within, a department in the executive branch, a person appointed as assistant to the  
10 governor, and a municipal officer, shall file a statement giving income sources and business  
11 interests, under oath and on penalty of perjury, within 30 days after taking office as a public  
12 official. Candidates for state elective office other than a candidate who is subject to AS 24.61  
13 shall file such a statement with the director of elections at the time of filing a declaration of  
14 candidacy or within 30 days of the filing of any nominating petition, or within 30 days of  
15 becoming a candidate by any other means. Candidates for elective municipal office shall file  
16 such a statement at the time of filing a nominating petition, declaration of candidacy, or other  
17 required filing for the elective municipal office. Refusal or failure to file within the time  
18 prescribed shall require that the candidate's filing fees, if any, and filing for office be refused or  
19 that a previously accepted filing fee be returned and the candidate's name removed from the  
20 filing records. A statement shall also be filed by public officials no later than April 15 or 15  
21 days after the person files a federal income tax return in each following year, whichever comes  
22 first. Persons who, on or after December 11, 1974, were members of boards or commissions not  
23 named in AS 39.50.200(b) are not required to file financial statements.

24 (b) The governor, lieutenant governor, [MEMBERS OF THE LEGISLATURE,] judicial  
25 officers, each commissioner, head or deputy head of, or director of a division within, a  
26 department in the executive branch, assistant to the governor or chair [CHAIRMAN] or member  
27 of a commission or board required to report under this chapter, shall file the statement with the  
28 Alaska Public Offices Commission. Candidates for the office of governor and [,] lieutenant  
29 governor [,] and, if the candidate is not subject to AS 24.61, the legislature, shall file the  
30 statement under AS 15.25.030 or 15.25.180. Municipal officers, and candidates for elective  
31 municipal office, shall file with the municipal clerk or other municipal official designated to

1 receive their filing for office. All statements required to be filed under this chapter are public  
2 records.

3 \* Sec. 13. AS 39.50.200(a)(8) is amended to read:

4 (8) "public official" means a judicial officer, [A MEMBER OF THE  
5 LEGISLATURE, THE FISCAL ANALYST OF THE LEGISLATIVE FINANCE DIVISION,  
6 THE LEGISLATIVE AUDITOR OF THE LEGISLATIVE AUDIT DIVISION, THE  
7 EXECUTIVE DIRECTOR OF THE LEGISLATIVE AFFAIRS AGENCY AND THE  
8 DIRECTORS OF THE DIVISIONS WITHIN THE LEGISLATIVE AFFAIRS AGENCY,] the  
9 governor, the lieutenant governor, a person hired or appointed as the head or deputy head of, or  
10 director of a division, a department in the executive branch, an assistant to the governor, chair  
11 [CHAIRMAN] or member of a state commission or board, the executive director of the Alaska  
12 Tourism Marketing Council, and each appointed or elected municipal officer;

13 \* Sec. 14. AS 39.52.910(a) is amended to read:

14 (a) Except as specifically provided, this chapter applies to all public officers within  
15 executive-branch agencies, including members of boards or commissions. This chapter does not  
16 apply to a former public officer of an executive-branch agency unless a provision specifically  
17 states that it so applies. This chapter does not apply to legislators covered by AS 24.61  
18 [AS 24.60].

19 \* Sec. 15. AS 24.55.310, AS 24.60, AS 39.50.025, and 39.50.120 are repealed.

20 \* Sec. 16. INITIAL COMMISSION APPOINTMENTS. (a) Notwithstanding AS 24.61.500(d), as  
21 added by sec. 2 of this Act, the terms of the members initially appointed to the Legislative Ethics  
22 Commission are as follows:

23 (1) two of the members appointed by the supreme court, determined by lot, serve terms  
24 of four years;

25 (2) two of the members appointed by the supreme court, determined by lot, serve terms  
26 of three years;

27 (3) the fifth member appointed by the supreme court serves a term of two years.

28 (b) The member serving a two-year term under this section is eligible for reappointment to two  
29 consecutive four-year terms. A member serving a three-year term under this section may not be  
30 reappointed to two consecutive four-year terms.

31 \* Sec. 17. TRANSITIONAL PROVISIONS RELATING TO VIOLATIONS OF FORMER AS 24.60.

1 Notwithstanding the repeal of AS 24.60 by sec. 15 of this Act, in addition to the provisions of AS 24.61,  
2 as added by sec. 2 of this Act, the Legislative Ethics Commission may consider complaints alleging  
3 violations of AS 24.60 that occurred prior to January 1, 1993, and for which proceedings have not been  
4 commenced or concluded prior to January 1, 1993. For the purpose of this section, the Legislative  
5 Ethics Commission shall follow the procedures established under AS 24.61, but may not recommend a  
6 sanction or penalty not authorized under former AS 24.60.

7 \* Sec. 18. TRANSITIONAL PROVISIONS RELATING TO REPRESENTATION OF OTHERS.

8 Notwithstanding AS 24.61.190, as added by sec. 2 of this Act, a legislator or legislative assistant who  
9 is subject to AS 24.61.190 may, until July 1, 1993, represent a person in a manner that would otherwise  
10 be prohibited under AS 24.61.190 if the legislator or legislative assistant promptly files a statement with  
11 the Legislative Ethics Commission that includes the name of the client, an identifying name or number  
12 of the action, a brief description of the nature of the action, and the amount of compensation received  
13 or anticipated relating to the representation. The statement shall be published in the journal of the  
14 appropriate house. If information contained in the statement changes, a supplemental statement shall be  
15 filed every 90 days until the matter is completed or July 1, 1993, at which time the representation must  
16 be terminated. The representation may continue beyond July 1, 1993, if the legislator or legislative  
17 assistant applies for, and the Legislative Ethics Commission grants, an exemption to the termination date  
18 under AS 24.61.530, as added by sec. 2 of this Act. In this section, "legislative assistant" has the  
19 meaning given in AS 24.61.990, as added by sec. 2 of this Act.

20 \* Sec. 19. AS 24.61.420, 24.61.500 - 24.61.580, and 24.61.990, as added by sec. 2 of this Act, and  
21 sec. 16 of this Act take effect July 1, 1992.

22 \* Sec. 20. Except as provided in sec. 19 of this Act, this Act takes effect January 1, 1993.

S B

192

FISCAL NOTE

C. 4

Bill Version: SB 192

(S) Publish Date: 3-19-92

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Department Affected: Alaska Court System  
 Title: An Act relating to seizure and for- BRU: Trial Courts  
feiture of property in cases... controlled substances Components: \_\_\_\_\_  
 Sponsor: Sturgulewski  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 

000   000	000   768
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

**ANALYSIS:** (Attach a separate page if necessary)  
 Information provided by the U.S. Dept. of Justice, the Dept. of Public Safety and the Dept. of Law indicates that this legislation might have resulted in two contested forfeiture proceedings in state court had it been law in 1991. Because the potential caseload is small and speculative, the exact impact cannot be predicted at this time. Should SB 192 result in many judicial forfeiture proceedings, the court system may need to request additional funding.

Prepared by: C. S. Christensen III, Staff Counsel *[Signature]* Phone: 264-8228  
 Division: Alaska Court System Date: 02/11/92

Approved by: Arthur H. Snowden, II, Administrative Director *[Signature]*  
 Agency: Alaska Court System Date: 02/11/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

Bill No. 3  
 Bill Version: SB 192  
 (S) Publish Date: 1-31-92

STATE OF ALASKA  
 1992 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Department Affected: Department of Law  
 Title: "...seizure and forfeiture of BRU: Prosecution  
property...alcoholic beverages... Component: All  
controlled substances...  
 Sponsor: Senator Sturgulowski  
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 

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 85 through 91

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

*Richard I. Pegues*

Prepared By: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Date: January 30, 1992  
 Approved by Commissioner: Charles E. Cole, Attorney General  
 Agency: Department of Law Date: January 30, 1992

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 192

This bill sets out a comprehensive statutory scheme for the seizure and forfeiture of property involved in the illegal manufacture, distribution and sale of alcoholic beverages, controlled substances, and imitation controlled substances.

Property subject to seizure and forfeiture includes the illicit products, as well as most other property related to illegal conduct such as weapons, money, securities, raw materials used in the manufacture of illicit products, and books, tapes and other written records, including data processing equipment and electronic surveillance equipment. Aircraft, vehicles and vessels, and real property interests would also be subject to forfeiture if the offense making the property subject to forfeiture is a felony offense.

Under the bill, forfeiture proceedings may be either judicial or administrative, except that an administrative proceeding could only be used if the value of the seized property is less than \$100,000. Administrative proceedings would be conducted by the Department of Public Safety. The bill provides procedures for persons claiming an interest in seized property to file claims.

The Department of Law would represent the state at all judicial proceedings, and in some administrative when an attorney is needed to represent the state. We are not able to predict how often this will occur. However, the bill also provides that proceeds from the sale of property may be used to pay the cost of proceedings, among several other public safety purposes. These also include: sharing the proceeds with political subdivisions of the state, when they are involved in the investigation of conduct resulting in forfeiture; transferring equipment to other agencies for administration of justice purposes, and; depositing net proceeds in a general fund account that may be used by the legislature to make appropriations to the Department of Public Safety for use in the administration of justice. To the extent that the Department of Law might incur additional expense for providing forfeiture legal services, the department will seek reimbursement from the Department of Public Safety.

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

No. 2

Bill Version: SB 192

Revision Date: \_\_\_\_\_ Department Affected: (S) Publish Date: 1-31-92  
 Title: An Act relating to forfeitures BRU: Alaska State Troopers - Public Safety  
for violations of state drug laws Component: Narcotics Task Force  
 Sponsor: Senator Sturgulewski  
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 

7	9	8
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EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

By improving the procedures under which property used to commit drug offenses can be forfeited, this bill could result in an increase of funds and property forfeited to the State. It is impossible to estimate the amount of this increase, however, especially as some of the forfeited assets may be passed on to municipalities that assist in these investigations.

Prepared By: Gayle A. Horetski Phone: 465-4322  
 Division: Commissioner's Office Date: 1/29/92  
 Approved by Commissioner: *Richard L. Burton* Richard L. Burton  
 Agency: Department of Public Safety Date: 1/30/92

# Alaska State Legislature



SENATOR  
ARLISS STURGULEWSKI

3111 C STREET, SUITE 550  
ANCHORAGE, ALASKA 99503  
(907) 561-7615

While in Juneau  
STATE CAPITOL  
JUNEAU, ALASKA 99801-1182  
(907) 465-3818

Senate

MEMORANDUM

22 April 1992

TO: Representative Gene Kubina  
Chairman, House State Affairs Committee

FROM: Senator Arliss Sturgulewski *AS*

RE: Senate Bill 192

I respectfully request your scheduling Senate Bill 192 for a hearing before the House State Affairs Committee. This legislation amends current seizure and forfeiture laws as they pertain to drugs and bootleg alcohol.

The major change to current procedures is a new chapter in Title 12 outlining seizure and forfeiture proceedings. That new chapter clarifies current procedures and adds an administrative proceeding to the current methods by which property can be declared forfeit.

The major policy changes addressed by the bill include

1. Applying these seizure and forfeiture provisions to violations of alcohol laws.
2. Adding real property to the list of items subject to seizure in felony cases.

3. Adding to the ways in which persons may obtain relief from seizure and forfeiture provisions. This is accomplished by a section exempting persons who provide for than half the support of a minor child in that persons' household. This relief is the same as that listed in the Alaska Exemptions Act (from bankruptcy).

This legislation is needed in order to bring our state's forfeiture and seizure laws more closely in line with the federal model forfeiture act and with constitutional standards set by the courts since the current law was enacted.

Because of the backlog in the federal courts, there is a possibility that states with seizure laws will have to start processing drug cases through their own courts.

As you know, this bill was introduced into the 15th Legislature and the 16th Legislature as well. The Senate has passed this bill both times.

This is good legislation that gives our law enforcement agencies better tools with which to work and at the same time protects the rights of our citizenry.

A sectional analysis will be provided. Please contact me or Melissa Fouse of my staff at 3818 if you have any questions.

SENATE BILL 192  
SECTIONAL ANALYSIS/COMPARISON WITH CURRENT LAW  
05 May 1992

**SECTION 1:**

**Removes current law that allows the state to sell seized liquor without a license. The bill calls for seized liquor to be destroyed.**  
*Page 1, lines 4-7*

**SECTION 2:**

**Repeals and reenacts current law regarding seizure and forfeiture of property for violation of bootlegging statutes.**

*CURRENT LAW*  
AS 04.16.220(a)(1)

04.16.220 FORFEITURES: (a) The following are subject to forfeiture:

(1) alcoholic beverages manufactured, sold, offered for sale or possessed for sale, bartered or exchanged for goods and services in this state in violation of AS 04.11.010; alcoholic beverages possessed, stocked, warehoused, or otherwise stored in violation of AS 04.21.060; alcoholic beverages sold or offered for sale in an area where the results of a local option election have, under AS 04.11.490 - 04.11.500, prohibited the possession of alcoholic beverages or prohibited the board from issuing, renewing, or transferring one or more licenses or permits under this title in the area; alcoholic beverages transported into the state and sold to persons not licensed under this chapter in violation of AS 04.16.170(b);

Sec 04.16.220 (a) outlines the conditions under which alcoholic beverages are subject to seizure and forfeiture. *Pg 1, lines 9-14*

(b) lists the conditions under which property is subject to seizure and forfeiture. *Pg 2, lines 3-12*

**Change from current law is the addition of a provision allowing property traceable to or derived from the illegal activity to be subject to forfeiture.**

(c) lists the property that may be forfeited. *Pg 2, lines 13-24*

*CURRENT LAW*  
AS 04.16.220(a)(2) &(3)

(2) materials and equipment used in the manufacture, sale, offering for sale, possession for sale, barter or exchange of alcoholic beverages for goods and services in this state in violation of AS 04.11.010; materials and equipment used in the stocking, warehousing, or storage of alcoholic beverages in violation of AS 04.21.060; materials and equipment used in the sale or offering for sale of an alcoholic beverage in an area where the results of a local option election have, under AS 04.11.490 - 04.11.500, prohibited the board from issuing, renewing, or transferring one or more licenses or permits under this title in the area;

(3) aircraft, vehicles, or vessels used to transport, or facilitate the transportation of  
(A) alcoholic beverages manufactured, sold, offered for sale or possessed for sale, bartered or exchanged for goods and services in this state in violation of AS 04.11.010;  
(B) property stocked, warehoused, or otherwise stored in violation of AS 04.21.060;  
(C) alcoholic beverages imported into a municipality or established village in violation of AS 04.11.496;

(4) alcoholic beverages found on licensed premises that do not bear federal excise stamps if excise stamps are required under federal law;

(5) alcoholic beverages, materials or equipment used in violation of AS 04.16.175.

**Change from current law adds items in (1), (2), (3), (4), and (6).**

(d) *new language* that allows a peace officer to immediately destroy alcoholic beverages if the alcoholic beverages are in a prohibited area. *Pg 2, lines 25-31*

(e) requires that seized alcoholic beverages be destroyed. *Pg 3, lines 1-3*

### Current Law

(partial) AS 04.16.220(h) Alcoholic beverages forfeited under (d) of this section shall be placed in the custody of a peace officer of the state and destroyed no later than 30 days after forfeiture.

### SECTION 3:

**This is a new chapter in Title 12 (Code of Criminal Procedure). It sets out procedures to be followed in declaring seized property forfeit.**

Sec. 12.38.010 - procedures apply to property seized under the controlled substance, imitation controlled substance, and bootlegging statutes. *Pg 3, lines 6-7*

Sec. 12.38.020 - (a) list the conditions under which property may be seized with and without a court order.

(b) describes how constructive seizure may take place. Pg 3, lines 16-25

*CURRENT LAW*  
*AS 04.16.220*

AS 04.16.220(b):

(b) Property subject to forfeiture under this section may be actually or constructively seized under an order issued by the superior court upon a showing of probable cause that the property is subject to forfeiture under this section. Constructive seizure is effected upon posting a signed notice of seizure on the item to be forfeited, stating the violation and the date and place of seizure. Seizure without a court order may be made if

(1) the seizure is incident to a valid arrest or search;

(2) the property subject to seizure is the subject of a prior judgment in favor of the state; or

(3) there is probable cause to believe that the property is subject to forfeiture under (a) of this section; except for alcoholic beverages possessed on violation of AS 04.11.498 or an ordinance adopted under AS 04.11.498, property seized under this paragraph may not be held over 48 hours or until an order of forfeiture is issued by the court, whichever is earlier.

*Current Law*  
*AS 17.30.114*

(a) Property listed in AS 17.30.110 may be seized by a peace officer upon an order issued by a court having jurisdiction over the property upon a showing of probable cause that the property may be forfeited under AS 17.30.110. Seizure without a court order may be made if

(1) the seizure is incident to a valid arrest or a search under a valid search warrant;

(2) the property subject to seizure has been the subject of an earlier judgment in favor of the state in a criminal proceeding or civil proceeding in rem under this chapter or AS 11.71; or

(3) there is probable cause that the property was used, is being used, or is intended for use, in violation of this chapter or AS 11.71 and the property is easily movable; property seized under this paragraph may not be held for more than 48 hours without a court order obtained to continue its detention.

Sec. 12.38.030 (a) requires the agency with custody of the property to give notice of the seizure to interested parties within 30 days. Pg 3, lines 26-31

*Current Law*  
*AS 04.16.220(c)*

(c) Within 30 days of a seizure under this section the Department of Public Safety shall make reasonable efforts to ascertain the identity and whereabouts of any person holding an interest or an assignee of a person holding an interest in the property seized, including a right to possession, a lien, mortgage, or conditional sales contract. The Department of Public Safety shall notify the person ascertained to have an interest in property seized of the impending forfeiture, and before forfeiture the Department of Law shall publish, once a week for four consecutive calendar weeks, a notice of the impending forfeiture in a newspaper of general circulation in the judicial district in which the seizure was made, or if no newspaper is published in that judicial district, in a newspaper published in the state and distributed in that judicial district.

*Current Law*  
*Sec. 17.30.118*

Sec. 17.30.116. Procedure for forfeiture action.(a) Within 20 days after a seizure under AS 17.30.110-17.30.126, the commissioner of public safety shall, by certified mail, notify any person known to have an interest in an item with an appraised value of \$500 or more, or who is ascertainable from

official registration numbers, licenses, or other state, federal or municipal numbers on the item, of the pending forfeiture action. Additionally, the commissioner of public safety shall publish notice of forfeiture action of an item valued at \$500 or more in a newspaper of general circulation in the judicial district in which the seizure was made, or if no newspaper is published in that judicial district, in a newspaper published in the state and distributed in that judicial district. The notice shall be published once each week during four consecutive calendar weeks. The requirements of this subsection do not apply to the forfeiture of controlled substances which have been manufactured, distributed, dispensed, or possessed in violation of this chapter or AS 11.71, regardless of their value.

(b) authorizes the seizing agency to keep the property, or in its discretion, release the property to an appropriate person. *Pg 4, lines 2-5*

### *Current Law*

*AS 17.30.114(b)*

(b) Property taken or detained under (a) of this section shall be held in the custody of either the commissioner of public safety or a municipal law enforcement agency authorized by the commissioner of public safety to retain custody of property listed in AS 17.30.110 subject only to the orders and decrees of the court having jurisdiction over any forfeiture proceedings. If property is seized under this chapter, the commissioner of public safety or an authorized municipal law enforcement agency may

- (1) place the property under seal;
- (2) remove the property to a place designated by the court; or
- (3) take custody of the property and remove it to an appropriate location for

disposition in accordance with law.

(c) directs the department of public safety to inventory the seized property and estimate its value. The inventory and estimate is to be sent to the attorney general. *Pg 4, lines 6-8*

### *Current Law*

*AS 17.30.114(c)*

(c) Within 10 days after a seizure under AS 17.30.110 - 17.30.126, the commissioner of public safety shall make an inventory of any property seized, including controlled substances, and shall appraise the value of any items seized other than controlled substances.

(d) gives the attorney general authority to decide whether or not to pursue forfeiture proceedings on seized property. If forfeiture proceedings are not pursued, the seized property must be returned. *Page 4, lines 9-12*

(e) exempts controlled substances, imitation controlled substances, bootleg alcohol, and property ordered forfeit by a court from this section. *Page 4, lines 13 & 14*

Sec. 12.38.040 (a) allows the court to issue orders or

requirements to ensure the availability of seized property. *Page 4, lines 16-18*

(b) authorizes the state to request sale or other disposition of the property. A person claiming an interest in the property may also request a sale or other disposition if the conditions in subsections 1 - 5 are met. *Page 4, lines 19-31*

(c) makes the proceeds from the sale of the property, plus interest, subject to forfeiture. *Page 5, lines 3-5*

*Current Law*  
**AS 17.30.118-120**

**Sec. 17.30.118 Petition for release of seized items.**(a) A claimant under AS 17.30.116(b) may at any time petition for release of a seized item as follows:

- (1) to a court in which a warrant for seizure has been issued;
- (2) to a court in which a criminal or civil action alleging forfeiture of the item has been filed; or
- (3) before an action is filed, or if no seizure warrant was issued, to a court in the judicial district in which the violation took place.

(b) An item may not be released by the court under (a) of this section unless the claimant gives adequate assurance that the item will remain subject to the court's jurisdiction and

- (1) the court finds that the release is in the best interests of the state; or
- (2) the claimant provides a bond or other valid and equivalent security equal to twice the assessed value of the item.

**Sec. 17.30.120. Petition for sale of seized item.** A claimant may petition the court for sale of an item before final disposition of court proceedings. The court shall grant a petition for sale upon a finding that the sale is in the best interests of the state and the preservation and maintenance of the item seized. Proceeds from the sale plus interest to the date of final disposition of the court proceedings become the subject of the forfeiture action.

**Sec. 12.38.050** (a) sets out conditions under which a forfeiture proceeding may begin:

- (1) by the state's filing of a motion in a civil or criminal proceeding
  - (2) by the state's filing a complaint in a separate *in rem* proceeding
  - (3) by publication of a notice by the commissioner of public safety that the state intends to seek administrative forfeiture.
- Page 5, lines 7-14*

(b) requires that within 30 days after initiation of a forfeiture proceeding persons with an interest in the property must be served with notice and public notice of the proceeding must be initiated. This subsection sets out the requirements for public notice. *Page 5,*

lines 15-31

(c) exempts public notice requirements for those items subject to automatic forfeiture. *Page 6, lines 1&2*

(d) requires the state to prove in court by a preponderance of the evidence that the property is subject to forfeiture. Establishes that it is *prima facie* evidence that the defendant has been convicted of the conduct making the property subject to forfeiture or that a grand jury has returned an indictment specifying that the property is subject to forfeiture. *Page 6, lines 3-9*

(e) outlines court procedures in forfeiture cases. *Page 6, lines 10-15*

#### Current Law

#### AS 04.16.220

(d) Property subject to forfeiture under (a) of this section may be forfeited

(1) upon conviction of a person under AS 04.11.010, 04.11.496(b), or AS 04.21.060 or upon entry of judgment under AS 04.11.498 or an ordinance adopted under AS 04.11.498.

(2) upon judgment by the superior court in a proceeding in rem that the property was used in a manner subjecting it to forfeiture under (a) of this section.

#### AS 17.30.112

Sec. 17.30.112 Proceedings resulting in forfeiture. (a) Property listed in AS 17.30.110 may be forfeited to the state either upon conviction of the defendant of a violation of this chapter or AS 11.71, or upon judgment of a court in a separate civil proceeding in rem. The court may order a forfeiture in the in rem proceeding if it finds that an item specified in AS 17.30.110 was used during or in aid of a violation of this chapter or AS 11.71.

(f) allows the state or other party to request that forfeiture proceedings be delayed until the conclusion of a pending criminal action relating to the conduct that made the property subject to forfeiture. *Page 6, lines 16-19*

(g) states that it is not a defense in a forfeiture proceeding that a criminal violation has not been prosecuted, or has resulted in a conviction of a different offense or in an acquittal. *Page 6, lines 20-21*

#### CURRENT LAW

#### AS 04.16.220(g)

(g) It is no defense in an in rem forfeiture proceeding brought under (d)(2) of this section that a criminal proceeding is pending or has resulted in conviction or acquittal of a person charged with violating AS 04.11.010, 04.11.496(b), or AS 04.21.060.

AS 17.30.112(b)

(b) It is not a defense in an in rem proceeding brought under this section that a criminal proceeding has resulted in a conviction or conviction of a lesser offense for a violation of this chapter or AS 11.71.

Sec. 12.38.060 SUMMARY ADMINISTRATIVE FORFEITURE PROCEDURES: (a) allows the commissioner of public safety to order administrative forfeiture of property if the value does not exceed \$100,000 and is not real property. *Pg 6, lines 22 - 26*

(b) requires the commissioner to terminate the administrative proceeding and refer the matter to the attorney general if a claim is filed. *Pg 6, lines 27-31.*

Sec. 12.38.070 PROCEDURE FOR CLAIMANTS (a) sets out conditions under which a claim may be filed. *Page 7, lines 3-9*

(b) sets out where the claim must be filed and the information it must contain. *Page 7, lines 10-17*

(c) authorizes property to be forfeited to the state without further proceedings if the claim is not timely filed. *Page 7, lines 18-19*

Sec 12.38.080 (a) allows the court to order property to be forfeited to the state. *Page 7, lines 20-22*

(b) states that an order of judicial or administrative forfeiture provides to the state clear title to the property. States that an order on behalf of a party subject to relief from the order of forfeiture (see Sec. 12.38.090) clears any cloud on the title to the property resulting from the forfeiture proceeding. *Page 7, lines 23-25*

(c) orders costs of maintenance, storage, disposal, and attorneys' fees to be paid by the person causing the property to be subject to forfeiture. *Page 7, lines 26-29*

(d) allows a court to order other assets to be forfeited if the property subject to forfeiture is hard to reach. *Page 7, lines 30-31*

(e) allows an order of forfeiture to be made regardless of the

location of the property. *Page 8, lines 8-9*

(f) creates a perfected priority lien to the state over property ordered forfeited. That lien has priority over all unsecured and all unperfected secured debts associated with the property.\*\* *Page 8, lines 10-14*

\*\*This is in response to an Alaska Supreme Court ruling that unrecorded, unsecured creditors can file claims for remission of forfeitable property. According to the Department of Law this is a serious potential problem since it would require the state to give the property to an associate of the defendant unless it could be proven that the transaction was a sham. The Supreme Court (according to the Department of Law) hinted at a possible way of correcting this problem which would be to create a lien in favor of the state having priority over the "creditor's" unrecorded lien. This subsection was drafted to correct this problem.

Sec 12.38.090 (a) allows a person to obtain relief by filing a timely claim and proving by a preponderance of the evidence that

- the person has a valid right to the property

- the person did not knowingly participate in or facilitate the conduct that resulted in the property being subject to forfeiture, and

- did not know, or have reason to believe, that a person might engage in the conduct that resulted in the property being subject to forfeiture

Current Law  
AS 04.16.220

(e) The owner of property subject to forfeiture under (a) of this section is entitled to relief from the forfeiture in the nature of remission of the forfeiture if in an action under (d) of this section the owner shows that the owner was not a party to the violation and had no actual knowledge that the property was used or was to be used in violation of the law.

(f) A person other than the owner holding, or the assignee of, a lien, mortgage, conditional sales contract on, or the right to possession to property subject to forfeiture under (a) of this section is entitled to relief from the forfeiture in the nature of remission of the forfeiture if in an action under (d) of this section the person shows that the person was not a party to the violation subjecting the property to forfeiture and had no actual knowledge that the property was used or was to be used in violation of the law.

AS 17.30.110 (4)(A)(B)

\*(4) a conveyance, including but not limited to aircraft, vehicles or vessels, which as been used or is

intended for use in transporting or in any manner in facilitating the transportation, sale, receipt, possession, or concealment of property described in (1) or (2) of this section in violation of a felony offense under this chapter or AS 11.71; however,

(A) a conveyance may not be forfeited under this paragraph if the owner of the conveyance establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that the use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the owner was neither a consenting party nor privy to the violation;

(B) a forfeiture of a conveyance encumbered by a valid security interest at the time of the seizure is subject to the interest of the secured party if the secured party establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that the use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the secured party was neither a consenting party nor privy to the violation.

\*Note: this section of current law applies to conveyances only.

OR

that the person provides more than half the support of a minor dependent living in the person's household and is claiming exemptions from the forfeiture under the Alaska Exemptions Act (AS 09.38.010 - 09.38.090.) This exemption does not apply to liquor licenses. *Page 8, lines 15-28*

(b) allows a person with a partial interest in the property to choose to receive the partial value, or, after paying the difference, the entire property. Disposition of multiple claims is to be proportional based on the priority and value of each person's respective interest, or is to be otherwise allocated by a court in the interests of justice. *Page 8, lines 29-31*

Sec. 12.38.100 (a) directs property be transferred to the commissioner of administration for disposal. Sets out methods by which property may be disposed of. *Page 9, lines 4-22*

#### Current Law

#### AS 04.16.220

Partial AS 04.16.220 (h) All other property forfeited under this section shall be placed in the custody of the commissioner of public safety for disposition according to an order entered by the court. The court shall order destroyed any property forfeited under this section that is harmful to the public.

#### AS 17.30.126

**Sec. 17.30.126 Forfeiture of controlled substances.** (a) A controlled substance manufactured, possessed, transferred, sold, or offered for sale in violation of this chapter or AS 11.71 is contraband and must be seized and summarily forfeited to the state. The commissioner of public safety or the commissioner's designee, including a municipal law enforcement agency authorized under AS 17.30.114(b) of this section to retain custody of controlled substances, is responsible for the disposal of controlled substances which have been forfeited. The controlled substances shall be disposed of in accordance with procedures and requirements prescribed by the commissioner.

(b) Plants from which controlled substances may be derived and which have been planted or

cultivated in violation of this chapter or AS 11.71, or which are grown in the wild, may be seized and summarily forfeited to the state.

**Sec. 17.30.122 State disposal of forfeited property.** Property forfeited under AS 17.30.110-17.30.126 other than controlled substances shall be disposed of by the commissioner of administration in accordance with applicable law. The commissioner of administration may

- (1) destroy property harmful to the public;
- (2) sell the property and use the proceeds for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, custody, and court costs;
- (3) take custody of the property and authorize its use in the enforcement of this chapter or AS 11.71, or transfer it to another agency of the state or a political subdivision of the state for a use in furtherance of the administration of justice;
- (4) take custody of the property and remove it for disposition in accordance with law;
- (5) forward it to the Drug Enforcement Administration of the United States Department of Justice for disposition; or
- (6) transfer ownership of an aircraft to the Alaska Wing, Civil Air Patrol.

(b) directs the commissioner of administration to separately account for the proceeds of the sale of forfeited property. Allows for these funds to be appropriated for the furtherance of the administration of justice. *Page 9, lines 23-27*

Current Law  
AS 04.16.220

partial AS 04.16.220(h) Other property shall be ordered sold and the proceeds used for payment of expenses of the proceedings for forfeiture and sale, including expenses of seizure, custody and court costs. The remainder of the proceeds shall be deposited in the general fund.

**SECTION 4:**

Sec. 17.30.110 sets out the list of property subject to forfeiture.  
*Page 10, lines 1-26*

Current Law  
AS 17.30.110

**Sec. 17.30.110 Items subject to forfeiture.** The following may be forfeited to the state:

- (1) a controlled substance which has been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or AS 11.71;
- (2) raw materials, products, and equipment which are used or intended for use in manufacturing, distributing, compounding, processing, delivering, importing, or exporting a controlled substance which is a felony under this chapter or AS 11.71;
- (3) property which is used or intended for use as a container for property described in (1) or (2) of this section;
- (4) a conveyance, including but not limited to aircraft, vehicles or vessels, which as been used or is intended for use in transporting or in any manner in facilitating the transportation, sale, receipt, possession, or concealment of property described in (1) or (2) of this section in violation of a felony offense under this chapter or AS 11.71; however,
  - (A) a conveyance may not be forfeited under this paragraph if the owner of the conveyance establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that the use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the owner was neither a consenting party nor privy to the violation;
  - (B) a forfeiture of a conveyance encumbered by a valid security interest at the time of the seizure is subject to the interest of the secured party if the secured party establishes, by a preponderance

of the evidence, at a hearing before the court as the trier of fact, that the use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the secured party was neither a consenting party nor privy to the violation'

(5) books, records, and research products and materials, including formulas, microfilm, tapes, and data, which are used in violation of this chapter or AS 11.71;

(6) money, securities, negotiable instruments, or other things of value used in financial transactions derived from activity prohibited by this chapter and AS 11.71; and

(7) a firearm which is visible, carried during, or used in furtherance of a violation of this chapter or AS 11.71.

**The major change from current law is the addition of real property. This conforms to the federal model forfeiture act, except that in this bill real property is subject to forfeiture only in cases of a felony offense.**

#### **SECTION 5:**

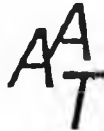
**This is current law with the addition of a statutory reference to the forfeiture procedures under AS 12.38. *Page 10, lines 30-31***

#### **SECTION 6:**

**Repeals current forfeiture provisions in Title 11 (Criminal Law) and Title 17 (Controlled Substances). *Page 11, lines 14-15***

**State asset forfeiture laws should achieve the following objectives:**

- They should allow the use of civil proceedings, so that prosecutors need not wait for the conclusion of an often lengthy criminal trial before forfeiting assets obviously derived from or connected with the drug trade. Civil forfeiture is also essential where a property owner is a fugitive from justice or outside the jurisdiction of the seizing agency.
- They should recognize a *prima facie* case for the forfeiture of property if:
  - 1) The defendant engaged in drug related conduct;
  - 2) The property was acquired during the period of time he engaged in such conduct; or
  - 3) There was no other likely source of income for the property.
- They should permit the authorities to seize and forfeit real property owned by drug traffickers.
- They should ensure that State asset seizure laws confer *in personam* jurisdiction over the defendant to permit prosecutors to seize *all* of his assets, including assets that are located out-of-state.
- They should authorize forfeiture of substitute assets of an equal value belonging to the trafficker when drug-related assets are leased or mortgaged.
- They should preserve the interests of innocent owners of seized assets by protecting the value and assuring the speedy return of such assets.
- They should provide for the expense of conducting future asset forfeiture programs by returning at least 90 percent of the proceeds derived from the sale of forfeited assets to law enforcement activities.
- They should specify time limits within which a State must initiate forfeiture and require that the State give notice of any pending forfeiture, thereby protecting potential purchasers of seized property.
- They should permit forfeiture of proceeds derived directly or indirectly from drug transactions. They should permit forfeiture of interests (e.g. stock ownership) that afford a source of influence over an enterprise established, controlled, or participated in to facilitate drug-related activities.
- They should provide that inchoate or preparatory offenses in furtherance of a drug operation which are punishable by more than one year in jail (e.g. an attempt or conspiracy to sell drugs).
- They should include a rebuttable presumption that money or negotiable instruments found in close proximity to drugs or an instrumentality of a drug offense are proceeds of a drug transaction.
- They should include lien procedures that permit the State to establish its interest in real property without removing residents from the property.



## Alaska Action Trust

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### POSITION PAPER

#### Senate Bill No. 192

"An Act related to seizure and forfeiture of property in cases involving alcoholic beverages, controlled substances, and imitation controlled substances."

The Alaska Action Trust opposes this Bill. It will be unfairly used by law enforcement agencies to take property from innocent citizens whose only crime is an effort to provide a home to a family member who is trying to overcome a drug or alcohol problem.

At bottom, forfeiture statutes are premised on the legal fiction that all right, title and interest in tangible property automatically vests in the sovereign at the moment such property is used in or obtained from the commission of a criminal offense. The procedures regulating forfeiture proceedings proposed in the Senate Bill are less protective than those which apply in the criminal cases often associated with such proceedings. Defenses to forfeiture proceedings are generally limited. Taken together, the concept, procedures, and effects of a wide-ranging forfeiture provision are to allow extensive redistribution of private property from individuals to the state, often with little meaningful protection for the interests of legitimate property holders.

Additionally, the Senate Bill, as written, puts potential claimants against forfeiture actions to an improper Hobson's choice of electing between the right to contest forfeiture and the right to enjoy their constitutional privileges against self-incrimination in related criminal proceedings.

The scope of the Bill is vast. For the first time in Alaska, the Bill purports to permit seizure and forfeiture of a person's primary residence or other real property if any minimal connection is made between such property and any alleged felony alcohol or narcotics offense. The unfairness of forfeiture proceedings is exacerbated because the Bill makes it extremely difficult for individuals to be represented by counsel in resisting forfeiture efforts by the state. The Bill makes no provision for court-appointed counsel, and raises the specter that individuals who are able to retain counsel will find themselves subject to forfeiture for less than the amount of fees paid in making a claim. The reality is that few people can afford effectively to contest forfeiture proceedings. Frequently, the value of the property itself will be less than the cost of resisting forfeiture. This means, in the majority of cases, that the state will succeed in taking away the private property of Alaskans simply on a showing of probable cause, without ever having to prove, even by a preponderance of evidence, that it is entitled to the property. Substantial redistributions of property and wealth from the individual to the state will occur because, in most individual cases, it will not be

worth the time and expense to a claimant who potentially could succeed to try to resist the state's effort.

Because of these and other reasons, learned through centuries of experience dating back to the American Revolution, "forfeitures are disfavored by law. . . ." F/V American Eagle v. State, 620 P.2d 657, 671 (Alaska 1980); One Cocktail Glass v. State, 565 P.2d 1265, 1268 (Alaska 1977); Sakow v. J.E. Riley Inv. Co., 9 Alaska 427, 446 (D. Alaska 1939).

The unfairness of an expansive forfeiture system takes many forms. Not only may a family lose its residence, but a claimant acquitted in a related criminal case may be subjected to financial losses by forfeiture far in excess of the maximum fine which could have been imposed if convicted for the offense. (The maximum fine for an individual for a class A, B, or C felony is \$50,000. AS 12.55.035(b)(2).)

1. The Scope Of The Forfeitures Envisioned By The Bill Is Vast.

Without question, the most frequently prosecuted offenses in Alaska consist of alleged violations of drug laws. In addition to providing procedures for forfeiture, the Senate Bill amends AS 17.30.110, and specifically authorizes the seizure and forfeiture of real property, including any improvements and appurtenances, which was "used, or intended to be used" in a drug offense. Under the Bill, if one member of a residence uses or intends to use the family home in order to possess, conceal, or store a small amount of a controlled substance, possession of which is a class C



(2) Delete the purported authorization to forfeit real property, or at least exempt entirely an individual's primary residence.

(3) No forfeiture of real property should be permitted unless the interest in the property "contributes directly and materially to the commission of a specified" serious felony offense for which the defendant is convicted. N.Y. CPLR Art. 13A §1310(4)(a); New York Penal Laws §480.00(6).

2. The Act Violates The Privilege  
Against Self-Incrimination.

Although the Senate Bill permits the State to cause an automatic abeyance of forfeiture proceedings, including discovery, until the conclusion of related criminal action (see proposed §12.38.050(f)), it provides no such entitlement on behalf of a criminal defendant. Frequently, there will be simultaneous criminal and forfeiture proceedings underway. The Senate Bill protects the tactical interest of the prosecution in protecting its criminal case from the broader discovery tools available to claimants in forfeiture proceedings. However, it provides no protection to the corresponding interest of the criminal defendant in asserting his privilege against self-incrimination until the prosecution against him has been resolved. While the prosecution has a purely tactical interest which it can protect by automatically causing an abeyance in forfeiture proceedings, the accused has a specific constitutional entitlement not to be compelled to make statements against his penal interest. Art. I, §9, Alaska

Constitution; Amendments V & XIV, United States Constitution. The Alaska provision has been given broader meaning than its federal counterpart, the Fifth Amendment. Particularly relevant is the holding by the Alaska Supreme Court that the state privilege against self-incrimination bars almost all prosecution-initiated discovery in criminal cases. Scott v. State, 519 P.2d 774 (Alaska 1974).

Plainly, potential claimants cannot be deprived of their property by forfeiture proceedings unless they receive due process of law. But, in order to obtain that process, the Senate Bill requires that potential claimants submit a sworn claim which "set[s] out with specificity the reasons why the property is not subject to forfeiture. . . ." (Proposed §12.38.070(b)). Under Scott, the prosecution is constitutionally barred from requiring criminal defendants to set out with specificity any elements of their potential defenses in a criminal prosecution. But under the Senate Bill, law enforcement and prosecuting agencies can successfully put a criminal defendant/potential claimant to the choice either of exercising his privilege against self-incrimination -- in which case "if a claim is not timely filed, the property shall be forfeited to the state without further proceedings" (proposed §12.38.070(c) -- of setting out with specificity the basis for his claim, thus waiving his privilege against self-incrimination. The latter choice then provides the prosecution with free discovery for use in the criminal case to which it is not otherwise entitled.

The Alaska Supreme Court has recognized the threat which forfeiture proceedings pose to a defendant/potential claimant's privilege against self-incrimination. Resek v. State, 706 P.2d 288, 294 (Alaska 1985). The Resek court indicated that forfeiture proceedings should be held in abeyance pending the outcome of related criminal proceedings at the request of a criminal defendant/potential claimant. Id. To the extent the Senate Bill does not authorize such a procedure, it is constitutionally invalid.<sup>1</sup> Cf. McCracken v. Corey, 612 P.2d 990 (Alaska 1980).

On the other hand, great unfairness can result to potential claimants deprived of their vehicles or residences by the initiation of forfeiture proceedings, who find that their ability to challenge the state's seizure is delayed for weeks, months, or even years pending the resolution of related criminal charges. The state should have no automatic right to obtain an abeyance of forfeiture proceedings. Rather, the state should be permitted, at most, to request a court authorization to hold forfeiture proceedings in abeyance, which authorization would be made only after notice to, and an opportunity to be heard by, all potentially interested parties.

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<sup>1</sup> It is also an apparent violation of the right of citizens to "fair and just treatment in executive and legislative investigations" for a statute to permit the prosecution an automatic stay of forfeiture proceedings in its own tactical interest while denying the equivalent protection to the constitutionally-informed tactical decisions of a criminal defendant. Art. I, §7, Alaska Constitution.

Recommendation:

(1) The criminal defendant who has a potential claim against a forfeiture action should have a statutory right, effectuating his constitutional guarantee, to have the forfeiture proceedings held in abeyance until resolution of the criminal case against him.

(2) The state's ability to obtain an abatement of a forfeiture proceeding should be conditioned upon application to, and authorization by, a court, entered only after notice to, and an opportunity to be heard by, all potentially interested parties.

3. As A Practical Matter, The Senate Bill Permits Massive Redistributions Of Private Property To Public Control Without Any Meaningful Process.

In Resek v. State, supra, the Alaska Supreme Court held that there was no right to court-appointed counsel in in rem forfeiture proceedings. Particularly where property seized for forfeiture is of relatively low value -- such as a used automobile, motorcycle, or other conveyance, or relatively small amount of currency -- the cost of retaining private counsel in an effort to resist the forfeiture will usually exceed the actual value of the property. In such cases, property holders will not make claims resisting the forfeiture, even though they have potentially valid defenses. Many attorneys in private practice have had to give this very advice to potential clients. When somebody learns the likely cost of resisting a forfeiture action, and compares that cost with the value of the property, the decision is frequently made just to

"let the state have the property." This does not mean that the state should have the property, but rather that it isn't worth the fight to try to save it.

Of course, in cases involving indigent claimants, even the option of private counsel is unavailable. Erroneous forfeitures routinely occur in such cases by default -- poor people may win the criminal cases against them with appointed counsel's assistance, only to lose their homes or means of transportation because they cannot afford to hire counsel to pursue forfeiture defenses.

Even where the value of the property is significant -- for example, where the state makes an effort to seize and forfeit a home -- the cost of obtaining counsel would be prohibitive for most people. It is unclear whether or not an attorney could ethically take a forfeiture defense on a contingent fee basis. On the one hand, Resek holds that such proceedings are sufficiently "non-criminal" to avoid the right to appointed counsel for indigents. On the other hand, Resek and many prior precedents of the court recognized that forfeiture proceedings are, at least, a civil/criminal hybrid. Resek v. State, supra, 706 P.2d, at 290-93; see, e.g., Graybill v. State, 545 P.2d 629, 631 (Alaska 1976) ("It is commonly understood that forfeitures, even when civil in form, are basically criminal in nature."). Attorneys cannot represent people in "criminal" cases on a contingent fee basis. DR 2-106(c).

Even if a lawyer could accept a forfeiture defense on a contingent basis, he or she would be a fool to do so. Given the