

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

10781 HOUSE JUDICIARY

Proposed Amendment #1

House Bill 52 - "An Act relating to the forfeiture of property used to possess or distribute child pornography"

INTENT. The forfeitures contemplated by this Act are intended to be forfeitures imposed in connection with conviction for a crime. The legislature intends for the forfeiture to be ordered to the commissioner of public safety or other law enforcement agency. Further, the legislature intends for the courts to continue to provide hearings to interested persons who have an ownership interest in equipment subject to forfeiture under this Act and to allow for remission to innocent nonnegligent third parties as applied in State v. Rice, 626 P.2d 104 (Alaska 1981), Fehir v. State, 755 P.2d 1107 (Alaska 1988), and Baum v. State, 24 P.3d 577 (Alaska App. 2001).

Proposed Amendment #2

House Bill 52 - "An Act relating to the forfeiture of property used to possess or distribute child pornography"

Pg. 2, Sec. 2, Lines 4 & 5

Sec. 11.41.468. Forfeiture of property used in sexual offense. (a) Property used to aid a violation of ~~AS 11.41.410 - 11.41.470~~ AS 11.41.410 - 11.41.458 or to aid the solicitation of, attempt to commit, or conspiracy to commit a violation of ~~AS 11.41.410 - 11.41.470~~ AS 11.41.410 - 11.41.458 may be forfeited to the state upon the conviction of the offender.

Alaska State Legislature

Session:
State Capitol
Juneau, AK 99801
Phone: (907) 465-2995
Fax: (907) 465-6592



Interim:
716 W 4th Avenue, Suite 300
Anchorage, AK 99501-2133
Phone: (907) 269-0250
Fax: (907) 269-0249

Representative Lesil McGuire
Chair, Judiciary Committee

House Bill 52

“An Act relating to the forfeiture of property used to possess or distribute child pornography”

Sponsor Statement and Sectional Analysis

While providing instant access to useful and valuable information for business and academic research, the expansion of the Internet and corresponding development of computer technology have also created an environment in which new types of criminal enterprise are flourishing. Perhaps the most pernicious and predatory are the ever-increasing crimes against children.

It is becoming far more common for pedophiles to seek new victims through on-line chatrooms and email and for child pornography profiteers to use these technologies as a means to distribute their materials. HB 52 will provide the state courts and law enforcement agencies another tool to combat these sexual predators by giving the courts additional punitive sentencing options and, in turn, awarding forfeited computer technology back to law enforcement agencies for ongoing monitoring operations.

HB 52 will make it possible for law enforcement to stay on top of this rapidly changing industry without spending more government dollars. Advances in technology seem to happen on an almost daily basis, and new technology can frequently outperform previous models. This creates greater restrictions for police detection and monitoring operations thus leaving them at a disadvantage. In order for law enforcement to effectively combat computer crime, they must have access to the necessary hardware.

There are forfeiture laws in place across the country and at the federal level. Several other states already have similar laws on the books relating to the forfeiture of computers used in sex crimes. The use of computers in the commission of sex crimes is a national problem, and Alaska can look toward other states' laws in this area to draw realistic conclusions about the likely impact here in our own state.

HB 52 will amend AS 11.41 and AS 11.61, respectively, by adding the necessary statutory language for the forfeiture of hardware used either in a sexual offense or in indecent viewing or photography or child pornography.

Alaska State Legislature

Session:
State Capitol
Juneau, AK 99801
Phone: (907) 465-2995
Fax: (907) 465-6592



Interim:
716 W 4th Avenue, Suite 300
Anchorage, AK 99501-2133
Phone: (907) 269-0250
Fax: (907) 269-0249

Representative Lesil McGuire
Chair, Judiciary Committee

HB 52 – Sectional Analysis

Section 1. Provides legislative intent that in cases where the owner of the forfeited property is innocent of the crime, their property is returned to them following existing procedure and as the courts deem reasonable.

Section 2. Adds a new section that authorizes forfeiture of property, specifically electronic equipment as defined in the section, used to aid in the commission of a sexual offense under AS 11.41.410 – 11.41.470 including inchoate forms of those sexual offenses.

Section 3. Adds a new section that authorizes forfeiture of property, specifically electronic equipment as defined in the section, used to aid in the commission of indecent photography or child pornography under AS 11.61.123 – 11.61.127 including inchoate forms of those offenses.



U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No.

101 E. Sixth Avenue
Anchorage, Alaska 99501

February 4, 2003

State Representative Lesil McGuire
716 West Fourth Avenue, Suite 300
Anchorage, Alaska 99501-2133

Dear Representative McGuire:

I have been informed that you intend to reintroduce House Bill 23, commonly referred to as the "Computer Forfeiture for Sex Crimes" bill. This bill would allow for the forfeiture of computers used in the commission of sex crimes against children, to include child pornography.

By way of background, as a FBI Supervisory Special Agent in Houston, and later as an Assistant Special Agent in Charge in Albany, New York, I created multi-agency task forces under the FBI's "Innocent Images" initiative. Innocent Images is a nation wide pro-active, on-line undercover investigation targetting pedophiles and child pornography collectors. In furtherance of our investigations and prosecutions these task forces routinely utilized Title 18, U. S. C. Sections 2253 and 2254 to seize and eventually forfeit computers used by the subjects of our cases. Forfeiting the very instruments used by sexual predators to commit crimes against children makes good sense and is consistent with federal statutes in this important area of concern.

I support your effort to reintroduce House Bill 23 and wish you the best of luck.

Sincerely yours,

Thomas C. McClenaghan
Special Agent in Charge



George P. Wuerch,
Mayor

Municipality of Anchorage

Anchorage Police Department

Walt Monegan, Chief



February 6, 2003

Representative Lesil McGuire, Chair
House Judiciary Committee
716 W. 4th Avenue, Suite 300
Anchorage, AK 99501-2133

Dear Representative McGuire:

This letter is written in support of HB 52, *An Act relating to the forfeiture of property used to possess or distribute child pornography, to commit indecent viewing or photography, to commit a sex offense, or to solicit the commission of, attempt to commit, or conspire to commit possession or distribution of child pornography, indecent viewing or photography, or a sexual offense.*

Law enforcement agencies are often required to return equipment used in these crimes to the perpetrator or to another person whom the perpetrator has designated. Many of these items have been specially designed or adapted for no other purpose than to commit specific criminal acts. This equipment is generally costly and sometimes hard to obtain.

We feel it is necessary and appropriate to deprive those convicted of sexual crimes of the means to commit them again or allow others to use them for the same purpose. We therefore offer our support for House Bill 52. Thank you for bringing this legislation forward.

Sincerely,

William Miller
Deputy Chief

Fairbanks Daily News-Miner

Man accused of molesting two enters plea agreement

By Associated Press

Tuesday, February 11, 2003 -

FAIRBANKS

A North Pole man arrested in August on charges of taking pornographic pictures of four minor teenage boys and molesting two of them faces a maximum of nine years in prison after agreeing to a plea deal in Fairbanks Superior Court.

Theodore Jenkins Jr., 29, who was originally facing 41 charges ranging from sexual abuse of a minor to viewing indecent photography, pleaded no contest to six of the charges Monday. He will be sentenced on May 15.

By entering no contest pleas, Jenkins is considered formally convicted of the charges.

The plea agreement also calls for Superior Court Judge Charles Pengilly to determine whether Jenkins is guilty of one count of first-degree sexual abuse of a minor in connection with an allegation that he molested one boy, a family member, while he was sleeping.

To render a verdict, Pengilly will review the transcript of the grand jury proceedings during which Jenkins was formally charged with the crimes as well as evidence presented to the grand jury.

Pengilly said Monday that he expects to make a decision in the next couple of days. Although a guilty decision would likely increase Jenkins' sentence, the most time the judge could give Jenkins to serve in jail for the entire case is nine years.

Alaska State Troopers said the case against Jenkins was opened in June when troopers received a report that he was taking photographs of a nude family member and saving the digital pictures on computer discs.

The boy was interviewed and identified himself and several of his friends in pornographic photographs provided to an investigator, according to a criminal complaint filed in the case.

After interviewing Jenkins, troopers also searched his property, discovering computer discs and videotapes that Jenkins admitted contained child pornography, computer equipment and a digital camera, the court document states.

Troopers have said that Jenkins gained access to the boys while they spent the night at the house where Jenkins was staying. He was charged with molesting both the family member and another boy in their sleep.

FAIRBANKS

Jury indicts man on several charges of sexual abuse of a minor

A 26-year-old man has been indicted on charges that he had sex in August with a 13-year-old North Pole girl he met over the Internet.

A grand jury indicted Jason R. Richards on four counts of second-degree sexual abuse of a

minor and two counts of third-degree sexual abuse of a minor, all stemming from the Aug. 17 encounter.

After meeting over the Internet, the two then talked for about two months before having sex at a North Pole residence Aug. 17, Alaska State Troopers Investigator Lantz Dahlke told the Fairbanks Daily News-Miner.

The accusations surfaced when troopers received a report from a crisis line that the girl called hours after the encounter, said trooper Michael Wery, who initially investigated the case before he was transferred to Bethel in December. The girl called a toll-free telephone

number that connected her to an agency in the Lower 48. That agency called troopers to report the incident, Wery said.

Richards, who Wery said is listed as a transient but has been staying with friends after living in abandoned houses in North Pole, is not in custody but has been issued a summons to appear in court today.

—The Associated Press

7-03-03

Anchorage Daily News

Cyber cops

Internet investigators trigger debate over computer privacy

By JOHN FRANK
The Virginian-Pilot

VERGINIA BEARDE, Va. — When 16-year-old Richard O. Temple engaged an Internet chat room called "Daddy's Law" last week, he thought he'd meet young girls.

But by long, he met one who claimed to be 21. He sent her messages sporadically with X-rated pictures and transmitted pictures depicting sex acts between youthful-looking girls and men.

Temple, a 16-year-old chat room friend turned snitch, is the 44-year-old police officer William Ernie, who was working undercover for the Illinois State Attorney's Office.

Ernie saved the latest messages and read them Nov. 13 in Virginia Beach Circuit Court, where Temple was found guilty of sending indecent liberties with a minor. He faces a sentence of up to 10 years in prison and a hefty fine. He is scheduled to be sentenced Feb. 10.

Increasingly, Internet communication has become a place for attacking the attitudes of law enforcement, "cyber pope" who writes the World Wide Web. In search of illegal activity, these electronic investigators have created a digital wild west of the computer.

Are these cybercops setting up high-tech traps for lawbreaking adults?

Or are they members of new-age police patrolling a virtual red-light district where crime alone means 347?

Both sides thank their advocates. Civil libertarians worry that the government is not only curtailing liberties but also invading privacy but also invading the rights and autonomy of people who have little or no experience of being on-line. They fear that the government is using its power to monitor and control the activities of its citizens.

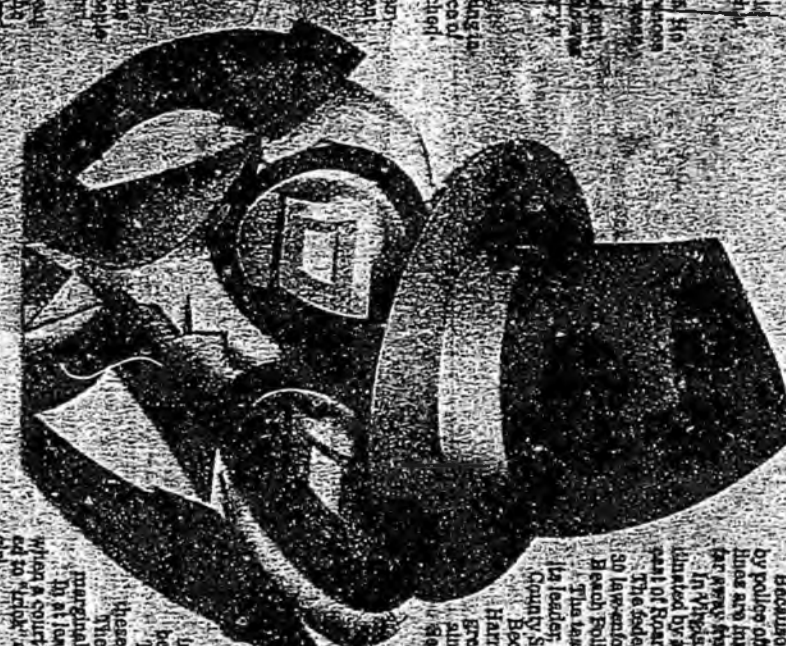
Child advocates counter that such investigations are needed to protect the young and to prevent the electronic superhighway from being a playground for predators.

It is a question that has a great impact on how for law enforcement, said Kathy Stone, executive director for the National Center for Missing and Exploited Children in Bethesda, Md. "There are a lot of legal and ethical questions."

Janez M. Kertz, a spokeswoman for the state attorney general's office, said the government should not be using its power to monitor and control the activities of its citizens.

If the government does not try to control the Internet, but merely to engage in a dialogue and make judgments on the Internet, should it be called "Internet law?"

There is a strong feeling that the government should not be using its power to monitor and control the activities of its citizens.



Artistic rendering of a person wearing a computer mouse as a hat and holding a computer keyboard as a shield.

Legitimate critics are more easily prosecuted. Because these investigations tend to be conducted by police officers working solely in cyberspace, state laws are inadequate, Kerr said. Perpetrators may be far away from the investigators who catch them.

In Virginia, for instance, investigators are coordinated by a task force based in Bedford County, just east of Roanoke.

The task force has worked in 1998, according to the state attorney general, including the Virginia Beach Police Department.

The task force began work in 1998, according to the state attorney general, including the Virginia Beach Police Department.

Because cybercrime is a global problem, Kerr said, the Virginia task force has great reach, working cases with Great Britain and a Scotland Yard, the FBI and U.S. Postal Service inspectors.

Harmony said the task force has helped more than 100 cases.

More than 50 such task forces are operating nationwide, Harmony said.

Although it is easy to appear that people are being "snatched" by these computer dragnets, federal appellate courts have set up safeguards against the investigations, Kerr said.

Two issues prominently are raised on appeal, Kerr said. The first is that the investigators do not have to prove that they have been court-ordered.

This has been "universally rejected in these types of cases," Kerr said.

The second issue — arrestment — has been marginally more successful, Kerr said.

In at least one case, a conviction was overturned when a court determined that police actively attempted to "trap" a suspect into having sex with a teenage girl.

The court determined that the police actively enticed the defendant.

The key, Kerr believes, is for police officers not to aggressively pursue the defendant.

As long as the cops remain passive in getting the defendant, Kerr said.

But Merritt of the defense lawyers group said that the goal of law enforcement is to police crimes, not to protect privacy thoughts, she said. "The police are yielding on the Internet in the interest of his own house."

We need to avoid a one-sided and pro-cyber equity standard of justice.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 52
(H) Publish Date: 2/12/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title An Act related to forfeiture of property BRU Legal and Advocacy Services
used in sexual offense Component Public Defender Agency
Sponsor Rep. McGuire
Requester (H) STA Component No. 1531

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would have some effect on Agency operations, simply because if the state requests forfeiture, it will make the sentencing more complicated in some cases. However we do not anticipate much of an impact.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416
Division Public Defender Agency Date/Time 2/11/03 7:07 AM
Approved by: Mike Miller, Commissioner Date 2/11/2003
Agency Department of Administration

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 52
(H) Publish Date: 2/12/03

Revision Date/Time (Note if correction): N/A Dept. Affected: Public Safety
Title: An act relating to the forfeiture of property used BRU: AST Detachment
to possess or distribute child pornography.... Component: AST Detachment
Sponsor: Representative McGuire
Requester: House State Affairs Component No.: 2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2003) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact to the department.

Prepared by: Lieutenant Matthew Leveque
Division: Alaska State Troopers
Approved by: William Tandeske, Commissioner
Agency: Department of Public Safety

Phone 907 269-0390
Date/Time 2/11/03 8:09 AM
Date 2/11/2003

HB

54

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 9, 2004

FURTHER REFERRALS: Finance

Date of Committee Action: May 6, 2004

The JUDICIARY Committee considered:

SSHB 54

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 54

ASSAULT ON SCHOOL EMPLOYEES/CLERGY

"An Act relating to the crime of assault."

Recommends it be replaced with HCS or CS for SSHB 54 (JUD)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts.:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 IISS
 LEG
 LAW
 LWF
 MVA
 DNR
 DPS
 REV
 DOT
 UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LAW ADM			✓	✓

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	SAMUELS			X	
	Gara			X	
	ANDERSON	X			
	Gruenberg	✓			
	O'Connell				✓
Chair:		X			
Chair:					

LEGAL SERVICES

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

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

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

MEMORANDUM

May 6, 2004

SUBJECT: Mental States and CSSSHB 54(JUD)
(Work Order No. 23-LS0263\H)

TO: Representative Lesil McGuire
Attn: Vanessa Tondini

FROM: Gerald P. Luckhaupt *GPL*
Legislative Counsel

Enclosed is the CS(JUD) you requested. I have one comment. This bill now utilizes, in the same subsection, all four culpable mental states that the legislature has defined for use in our criminal code. Proposed AS 12.55.135(d)(2) requires that a person first be convicted of assault in the fourth degree in violation of AS 11.41.230. AS 11.41.230(a)(1) requires that persons have the culpable mental state of "reckless" when they are causing physical injury. AS 11.41.230(a)(2) requires a culpable mental state of criminal negligence² when causing physical injury by means of a dangerous instrument. Proof must be beyond a reasonable doubt. At sentencing the prosecution must show by clear and convincing evidence that the defendant knowingly³ directed the offense at a school employee engaged in the performance of school duties in order for the defendant to be subject to the minimum periods of imprisonment.⁴ And now due to the committee's amendment the prosecution must also show that the defendant intentionally⁵ engaged in the assault at sentencing. Presumably, the proof required is merely clear and convincing, but I am not sure since we are apparently changing the mental state required for the underlying crime from reckless or criminally negligent to intentional. Maybe we have to show the intentional mental state beyond a reasonable doubt to the jury. Frankly, I do not know what is happening in the statute or how it will be interpreted by the courts.

GPL:mdr
04-224.mdr

Enclosure

¹ Defined in AS 11.81.900(a)(3).

² Defined in AS 11.81.900(a)(4).

³ Defined in AS 11.81.900(a)(2).

⁴ This is not appreciably different than what we provide for similar crimes committed against peace officers, fire fighters, and other emergency workers.

⁵ Defined in AS 11.81.900(a)(1).

ALASKA STATE LEGISLATURE

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



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

House Judiciary Committee

Memorandum

To: Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: May 6, 2004
Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS0263\D, SSHB 54, incorporating the following two amendments:

Conceptual Amendment #1 by Rep. Gara is written into the attached text of page 2 of the bill.

Amendment #2 by Rep. Gruenberg was to tighten the title.

The bill was passed out of committee today. If you have any questions, please call me at 4990.
Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 54
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE LYNN

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the crime of assault."

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

3 * Section 1. AS 12.55.135(d) is amended to read:

4 (d) A defendant convicted of assault in the fourth degree who knowingly
5 directed the conduct constituting the offense at

6 (1) a uniformed or otherwise clearly identified peace officer, fire
7 fighter, correctional employee, emergency medical technician, paramedic, ambulance
8 attendant, or other emergency responder who was engaged in the performance of
9 official duties at the time of the assault shall be sentenced to a minimum term of
10 imprisonment of

11 (A) [(1)] 60 days if the defendant violated AS 11.41.230(a)(1)
12 or (2);

13 (B) [(2)] 30 days if the defendant violated AS 11.41.230(a)(3);

14 (2) an employee of an elementary, junior high, or secondary school
15 who was engaged in the performance of school duties at the time of the assault

conceptual
A#1
by
Gara
PASSET

if the assault was intentional

shall be sentenced to a minimum term of imprisonment of

1
2
3
4

(A) 60 days if the defendant violated AS 11.41.230(a)(1) or

(2)

~~(B) 30 days if the defendant violated AS 11.41.230(a)(3)~~

Legislative Research Services

Alaska State Legislature
Legislative Affairs Agency
Division of Legal and Research Services

State Capitol
Juneau, AK 99801
Phone: 907-465-3991
Fax: 907-465-3908

May 4, 2004

Memorandum

TO: Representative Bob Lynn

FROM: Roger Withington
Legislative Analyst



RE: Penalties for Committing an Assault on a School Employee

You asked for information regarding assaults committed against school employees. Specifically you wanted to know if there are any states that have laws that specify a mandatory sentence for those individuals convicted of assault against a school employee.

In the limited amount of time we had to conduct our search, we were unable to locate a comprehensive source for the specified information.¹ We were able to locate one document, published in 1998 by the Education Commission of the States, which we attach, that summarizes state measures designed to promote the protection of teachers.

In addition, we were able to locate a couple of examples of state laws that specifically make an assault against a school employee (as well as other groups of people) a more serious offense than if the offense were perpetrated against a non-school employee. However, none of the examples we were able to locate included sentencing criteria.

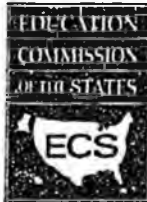
We hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

¹ In addition to other likely sources for this information, we contacted the National Education Association, National Conference of State Legislatures, and the American Federation of Teachers. As yet we have not heard from these organizations.

This is Google's cache of <http://www.ecs.org/clearinghouse/14/42/1442.htm>.
 Google's cache is the snapshot that we took of the page as we crawled the web.
 The page may have changed since that time. Click here for the [current page](#) without highlighting.
 To link to or bookmark this page, use the following url: <http://www.google.com/search?q=cache:2hAJXdRRq0EJ:www.ecs.org/clearinghouse/14/42/1442.htm+prevent+assaults+on+teachers&hl=en>

Google is not affiliated with the authors of this page nor responsible for its content.

These search terms have been highlighted: **prevent assaults teachers**



ECS StateNotes

Safety/Crime/Violence

Education Commission of the States • 700 Broadway, Suite 1200 • Denver, CO 80203-3460 • 303-299-3600 • fax 303-296-8332 • www.ecs.org

Teachers: Protections/Limits on Liability

March 1998

ECS Information Clearinghouse

State	Legislation	Limits on teacher action	Assaults against teachers	Other rights of teachers and school employees
AL	HB 470/SB 367; enacted 7-95 S 79 (Acts 94-794); enacted 5-94	Teachers granted immunity, as long as their actions are within the boundaries of local board policy	Warrant of arrest issued against anyone assaulting teacher; offender prosecuted Felony offense	Legal support provided by board; exempt from child-abuse charges when acting within parameters of written board policies; immunity when reporting suspected drug abuse
AR	HB 1422; enacted 4-95		Must be reported by principals to the appropriate local law enforcement agency	
FL	96-293; became law 5-96 without governor's signature		Reclassification of offenses for person committing assault on an elected official or employee of a school district, private school, state-supported school or state university. Any student found to have committed assault on a school employee (as above) – a violation of 784.081, Florida Statutes – shall be expelled and placed in an	Child who attacks school employee to be expelled and placed in an alternative school setting for at least one year

			alternative setting for a minimum of 1 year.	
GA	20-2-1000; enacted 4-95	Teacher free from threat of civil damages when disciplining student, "except for acts or omissions of willful or wanton misconduct"		Legal fees (if teacher/defendant found innocent) paid by plaintiff; county or local board to provide legal support for educator, except in cases when educator violated board policy
IA	Safe Schools Bill; enacted 5-94 HF 2383; enacted 6-94	Teachers may use "reasonable force" to maintain order	Students who commit a violent act against a school employee are to be automatically suspended School board may choose to expel student	Those prosecuting teachers for use of excessive force must present "clear and convincing" evidence of abuse, rather than a "preponderance" of evidence Schools authorized to share information regarding students who wish to transfer school; employees are given leave for injuries incurred during a violent episode at school
IN	enacted 5-95			Legislation allows suspensions once limited to five days to be increased to ten days; Teachers can keep students from their areas of supervision for up to five days; Monies collected from fines to be used to purchase metal detectors and other safety equipment; Schools may enact dress codes
IN	SB 73; enacted 3-96		Punished by school principal by means of up to 120 days of community service or by assigning juvenile court counseling conducted in the presence of a representative of the school corporation; fines assessed for crimes committed with weapons	
MD	HB 298; enacted 1-96		School staff may "take reasonable action necessary to prevent violence"	County board will compensate staff member for medical expenses incurred while breaking up violence; County board will provide legal counsel for staff member who has taken "reasonable action necessary to prevent violence"
MI	PA 158; enacted 6-94		Any person who assaults another person with less than the intent to commit murder or to inflict great bodily harm, with a gun,	A parent of a minor is guilty of a misdemeanor if he or she has custody of the minor, the minor is found in possession of a weapon in a weapon-free school zone, and

			<p>revolver, pistol, knife, iron bar, club, brass knuckles or other dangerous weapon in a weapon-free school zone is guilty of a felony punishable by one or more of the following: 1. imprisonment for not more than four years 2. community service for not more than 150 hours 3. fine of not more than \$6,000</p>	<p>the parent is aware that the minor would violate the firearms act or acts to further the violation;</p> <p>The misdemeanor is punishable by one or more of the following: 1. a fine of not more than \$2,000 2. community service for not more than 100 hours 3. probation;</p> <p>Anyone in possession of a weapon in a weapon-free school zone is guilty of a misdemeanor punishable by one or more of the following: 1. imprisonment for not more than 93 days 2. community service of not more than 100 hours 3. fine of not more than \$2,000</p>
NC	HB 496; enacted 6-95			Offense for assaulting a school bus driver
NC				<p>Amends GS 115c-391 to:</p> <ol style="list-style-type: none"> 1. permit expulsion of student 14 years or older who had been adjudicated delinquent for committing offense that would be felony if committed by adult 2. require suspension of 365 days for any student who brings firearm onto school property
NH	HB 1286; enacted 6-96		Automatic expulsion for student who assaults teacher	
NV	<p>392.465; enacted 6-94</p> <p>AB 370; enacted 6-94</p> <p>AB 385; enacted 6-95</p>	<p>Corporal punishment prohibited in public schools, when defined as the intentional infliction of physical pain or physical restraint as a disciplinary technique for pupils</p>	<p>Unlawful to threaten or attack teachers within a school building or on school property, in school transportation vehicles and places where pupils or school employees are involved in school-sponsored activities</p> <p>Requires the expulsion or suspension from school of certain pupils committing an</p>	<p>Teachers may use reasonable force to maintain order;</p> <p>School employee may defend himself if attacked by pupil</p> <p>Provides an additional penalty for felonies committed on school property; prohibits probation for any person convicted of using a firearm to commit a crime; makes various changes relating to criminal gangs to provisions governing education, parole and proceedings in juvenile court; removes the limitation on the civil liability of parents from the delinquent acts of a minor</p>

			assault on an employee of the school	
NY	<p>S 1410; proposed 3-96, pending as of 7-22-96</p> <p>SB 5157; proposed 3-96, pending as of 7-22-96</p> <p>SB 5160; proposed 3-96, pending as of 7-22-96</p>		<p>Would make assaults on teachers and other school employees felonies</p>	<p>Would give educational workers the same protections currently afforded police officers and firefighters</p> <p>Would allow teachers to suspend students for up to five days; would improve instructional mandates for the education of at-risk students; teachers would be authorized to unilaterally identify offensive student behavior, determine guilt, and dispense punishment;</p> <p>Would mandate districts to establish separate schools or set aside norms for instruction of disruptive students, and dictate when students must be assigned to these segregated settings</p> <p>School employees granted criminal and civil immunity when reporting suspected incidents of violence;</p> <p>District may not take retaliatory action against the employee for reporting such incidents;</p> <p>The employee may sue the director for taking retaliatory action</p>
OR	<p>HB 2487A; enacted 7-95</p>		<p>A school superintendent may ask that a student's driving privileges be revoked for bringing a weapon to school, assault, harassment, menacing, use of threat or intimidation</p>	<p>Public schools allowed more latitude in student suspension and discipline;</p> <p>Teachers may include considerations of attendance when deciding upon grades;</p> <p>Students who bring weapons to school may be expelled for one calendar year</p>
TX	<p>Compact for Safe Schools; active 6-94</p> <p>380.1312, effective 7-96</p>	<p>Teachers allowed reasonable physical force to maintain control</p>	<p>Students who perpetrate violent acts removed from the regular school program</p>	
UT	<p>SB 230; enacted 6-94</p>			<p>Schools notified when pupil is adjudicated for a violent offense;</p>

				<p>school districts must notify principals who must pass on information to teachers on a need-to-know basis;</p> <p>Board of education must decide upon process of dissemination of information;</p> <p>Leaders must be notified when a student is discovered on school property or at a school-sponsored event with a dangerous weapon</p>
VA	<p>22.1-279.1.1; enacted 3-95</p> <p>Notice of Juvenile Arrest; enacted 5-95</p> <p>HB 1041; proposed 1-96, pending as of 7-22-96</p> <p>SB 472</p>	<p>Teachers forbidden to exercise corporal punishment, except when needed to maintain order</p>		<p>Requires the intake officer to notify the division superintendent whenever a juvenile is arrested and charged with a delinquent act involving death, weapons, drugs, assaults, woundings, arson, or burglary</p> <p>Codifies a Virginia Supreme Court decision by granting immunity from civil damages to public school teachers when acting in good faith within their scope of employment while supervising, caring for or disciplining students, unless the acts or omission were the result of gross negligence or willful misconduct</p> <p>Same wording as above, ends at "employment"</p>

© Copyright 1998 by the Education Commission of the States (ECS). All rights reserved.

The Education Commission of the States is a nonprofit, nationwide organization that helps state leaders shape education policy. It is ECS policy to take affirmative action to prevent discrimination in its policies, programs and employment practices.

To request permission to excerpt part of this publication, either in print or electronically, please fax a request to the attention of the ECS Communications Department, 303-296-8332 or e-mail ecs@ecs.org.

Alaska State Legislature

Member

Resources Committee
Labor and Commerce Committee
State Affairs Committee
Joint Armed Services Committee
Military and Veterans Affairs Committee



Finance Subcommittees

House Environmental Conservation
House Military & Veterans' Affairs
House Court System

A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

Session:
Alaska State Capitol
Juneau, AK 99801-1182

Phone: (907) 465-4931
Fax: (907) 465-4316
Toll Free: (800) 870-4391

Interim:
716 W. 4th Ave., #330
Anchorage, AK 99501-2133

Phone: (907) 269-0205
Fax: (907) 269-0207
representative_Bob_Lynn@legis.state.ak.us

February 4, 2004

To: Representative Lesil McGuire, Chairman
Judiciary Committee

Fr: Representative Bob Lynn 

Re: Scheduling of HB 54 - "An Act relating to the crime of assault"

Please schedule HB 54 to be heard in the Judiciary Committee at your earliest convenience. Attached is a copy of the Bill and supporting documents including a sponsor amendment taking out the clergy part of the bill. Thank you.

23-LS0263A.1
Luckhaupt
1/29/04

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE LYNN

TO: HB 54

- 1 Page 2, line 4:
- 2 Delete ";"
- 3 Insert "."
- 4
- 5 Page 2, lines 5 - 10:
- 6 Delete all material.

Alaska State Legislature

Member

Resources Committee
Labor and Commerce Committee
State Affairs Committee
Joint Armed Services Committee
Military and Veterans Affairs Committee



Finance Subcommittees

House Environmental Conservation
House Military & Veterans' Affairs
House Court System

A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

Session:
Alaska State Capitol
Juneau, AK 99801-1182

Phone: (907) 465-4931
Fax: (907) 465-4316
Toll Free: (800) 870-4391

Interim:
716 W. 4th Ave., #330
Anchorage, AK 99501-2133

Phone: (907) 269-0205
Fax: (907) 269-0207
Representative_Bob_Lynn@legis.state.ak.us

SPONSOR STATEMENT HB 54

State statute provides for specific terms of imprisonment for crimes committed against certain public employees, such as peace officers, firefighters, etc., in the performance of their official duties. School employees, who, each day, work with our most precious resource, our children, deserve the same level of respect and protection under the law.

This bill revises sentencing guidelines so that an individual convicted as an adult of assault on a school employee during, or because of, the performance of official duties, will receive a *mandatory* minimum term of imprisonment. This would be similar to that imposed upon an individual who assaults a uniformed or otherwise clearly identified peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendance or other emergency responder engaged in the performance of official duties at the time of the offense.

Schools must be safe for teachers and other school employees, as well as for children, and this bill adds a giant step toward that safety. Your support of HB54 is respectfully requested.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 54
 () Publish Date: _____

Revision Date/Time (correction): 2/11/03 11:47 AM Dept. Affected: Law
 Title "An Act relating to the crime of assault." BRU Criminal Division
 Component All
 Sponsor Representative Lynn
 Requester House Judiciary Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 54 requires a judge to impose a mandatory minimum sentence for assault in the 4th degree when the crime included conduct that was directed at a school employee who was performing his or her duties at the time of the assault or a member of the clergy who was performing his or her religious duties at the time of assault.

This bill will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Phone (907) 465-5370
 Division Attorney General's Office Date/Time 2/11/03 11:47 AM
 Approved by: Kathryn Daughhetee for Gregg D. Renkes, Attorney General Date 2/11/2003
 Agency Department of Law

Angry parent punches schoolteacher

ATTACK: Mother assaults Fairview Elementary teacher; district will pursue charges.

By KATIE PESZNECKER
Anchorage Daily News

(Published: October 15, 2003)

The mother of a Fairview Elementary School student was cited for misdemeanor assault Monday after she confronted her son's teacher in a school hallway and hit the man several times.

Police said the teacher had broken up a fight between two sixth-graders earlier in the day, placing one, Cassaundra L. West's son, in a "bear hug" to pull him off the other student. Principal Lois Mance called West, 39, and asked her to come to school to discuss the incident, said Superintendent Carol Comeau.

According to police and school officials, West arrived after school hours and attacked the 40-year-old teacher outside his classroom. She punched him three times, police said.

Comeau said she met with the Fairview teacher Tuesday. He was shaken up, she said, and she assured him the district will pursue charges.

"This is absolutely intolerable," Comeau said. "Our employees should feel safe wherever they are, and nobody has a right to assault an Anchorage employee for any reason. Assaulting school personnel is illegal and she will be prosecuted to the full extent of the law."

In an interview Tuesday, West said she didn't go to the school intending to hit her son's teacher. She said she and her son arrived at the school about 3:45 p.m. While they were there, she said, her son told her he had felt "choked" under the teacher's restraint.

West said she felt overcome with anger and went up to the classroom. When she arrived, she said, she asked the teacher if they could talk. She wanted to be polite, she said.

West said the teacher immediately left the room and suggested they go to the office. He was walking away, with West swearing at him, according to police and West's own account.

"Excuse me," West said she called after him. "I want to know why you put your hands on my kid."

She then jumped on him and hit him, West said. A second teacher intervened and the principal came on the scene.

"To put your hands on somebody's child, it doesn't make sense," West said Tuesday evening. "I was tripped out."

School staff members called police.

West had left in her vehicle when officers arrived, McGee said. Police found her at her home and cited her.

The contract for district teachers says they may "use reasonable and necessary physical force on a student to protect the teacher, a student(s) or others from physical injury" and "in any extraordinary case of breach of discipline, to restrain a physically disruptive student."



Top Jobs

The Galena City School District currently has openings for two [More...](#)

NW Arctic Borough School District, headquartered in Kotzebue, AK, is [More...](#)

PHARMACISTS Providence Extended Care Center is seeking both a managing [More...](#)

Alaska Children's Services Family Treatment Home Supervisor Provide: Clinical supervision [More...](#)

Make a difference at Key. Become part of a team [More...](#)

Mechanical Engineers Arctic Sun Engineering in Eagle River is accepting [More...](#)

F/T Temporary Warehouse Person Light warehouse work, pulling, packing & [More...](#)

[View all 42 Top Jobs](#)

[Go to Employment](#)

[Daily News job openings](#)

"Had a student been attacking another student and the teacher stood by and just yelled at the kid, somebody would now hold that teacher responsible for not intervening to prevent injury," said Bob Roses, president of the Anchorage Education Association teachers union. "You have to err on the side of caution."

The teacher did not want to be identified or interviewed, Roses said. "He wants this thing to go away." Police and school officials also refused to identify the teacher.

West has lived in Alaska for eight years and said it hasn't been without trouble. She has been cited several times for minor crimes ranging from assault to theft and said she spent three years in prison on a drug conviction.

She said hitting the teacher was wrong.

"But wasn't it wrong when he touched (my son)?" said West, sipping apple juice at her apartment and wearing a red and white T-shirt that read "Beware! Attitude out of control."

West said she plans to look into filing charges against the teacher.

If someone thinks a teacher has behaved inappropriately, there are procedures in place to investigate that, Roses said.

"The real problem here is the parent coming in and deciding to attack a teacher," he said. "It is never appropriate for any (parent) to take matters into their own hand."

Monday's assault is only the second time an Anchorage teacher has been assaulted at school, district officials say. A Taku Elementary mother in December 2001 assaulted her daughter's teacher in front of a classroom of children. That woman, Angel Carter, was sentenced to 90 days in jail.

Daily News reporter Katie Pesznecker can be reached at kpesznecker@adn.com.



NEA-ALASKA

Affiliated with the National Education Association

February 5, 2004

Rep. Bob Lynn
State Capitol, Room 415
Juneau, AK 99801

Dear Representative Lynn:

Parents have always sent their children to school feeling their children are in the safest place they could be away from home. Because of acts of violence in public schools around the country and in our state in recent years, the safety of a child or a school employee in the school environment has increasingly been questioned.

Safe schools and classrooms are absolutely essential for student success. In 2000, the legislature passed HB 253 sponsored by then Representative Fred Dyson requiring school disciplinary and safety programs. We commend that effort. We believe more must be done.

NEA-Alaska concluded its 48th Annual Delegate Assembly in Anchorage this past weekend. Over 350 public school employees from virtually every school district in Alaska gathered as elected representatives for the nearly 13,000 members of NEA-Alaska.

One of the issues addressed at the Delegate Assembly was to continue the NEA-Alaska position that *NEA-Alaska shall seek legislation making the consequences of an assault of an educational employee the same as though the assault were to occur on a police officer.* Your introduction of House Bill (HB 54) accomplishes this task and is appreciated by the members of NEA-Alaska. **We are in support of HB 54.**

NEA-Alaska looks forward to HB 54 being heard soon in the committee process and will be ready to testify in support of this legislation.

Sincerely,

Rich Kronberg, President
NEA-Alaska

HB

56

ALASKA STATE LEGISLATURE

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



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

House Judiciary Committee

MEMORANDUM

To: House Judiciary Committee
From: Rep. Lesil McGuire, Chair, Judiciary Committee
Date: May 12, 2003
Re: Waiver Request for House Judiciary Committee Referral for
HB 56: Unfair Trade Practices; Antitrust

I respectfully request your consideration to waive HB 56: Unfair Trade Practices; Antitrust, sponsored by Rep. Gara, from the House Judiciary Committee due to the Committee's current extremely busy schedule. The bill was given a full public hearing in the House Labor and Commerce Committee on April 25, 2003, and has a further referral to the House Finance Committee.

Thank you.

AGREEMENT TO WAIVE HB 56 FROM THE HOUSE JUDICIARY COMMITTEE

Rep. Lesil McGuire (Chair) _____

Rep. Tom Anderson (Vice-Chair) _____

Rep. Dan Ogg _____

Rep. Ralph Samuels _____

Rep. James Holm _____

Rep. Max Gruenberg _____

Rep. Les Gara _____

ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

MEMORANDUM

DATE: April 28, 2003

TO: Rep. Lesil McGuire
Chair, House Judiciary Committee

FROM: Rep Les Gara

RE: Hearing Request for HB 56, "Consumer Attorney's Fees"

I respectfully request that HB 56, "Consumer Attorney's Fees", be scheduled for hearing in the House Judiciary Committee. Please feel free to contact me, or my aide Ryan Peterson, with questions or thoughts at 465-2647.

Attached you will find a background packet for HB 56. This includes the original bill, a Labor and Commerce Committee Substitute, a sponsor's statement, sectional analysis, and letters of support.

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 21, 2003

FURTHER REFERRALS: Judiciary

Date of Committee Action: April 25, 2003

The LABOR AND COMMERCE Committee considered:

HB 56

HOUSE BILL NO. 56

UNFAIR TRADE PRACTICES ATTY FEES/COSTS

"An Act relating to the attorney fees and costs awarded in certain court actions relating to unfair trade practices; and, if considered court rule changes, amending Rules 54(d), 79, and 82, Alaska Rules of Civil Procedure."

Recommends it be replaced with HCS or CS for HB 56 (LSC)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

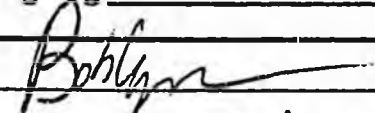
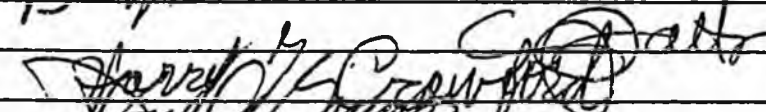
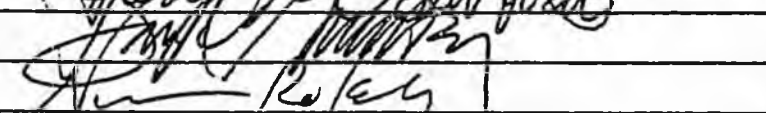
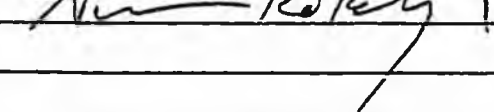
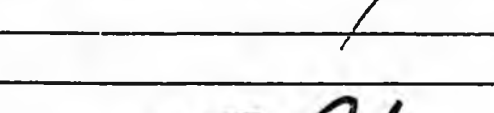
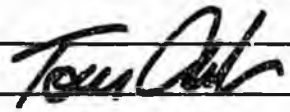
- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of
Abbrev
for
Depts.:

- ADM
- CED
- COR
- CRT
- EED
- DEC
- DFG
- GOV
- HSS
- LAA
- LAW
- LWF
- MVA
- DNR
- DPS
- REV
- DOT
- UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
<u>LAW</u>			/	

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	GATTO			L	
	CRAWFORD	✓			
	GUTTENBERG	✓			
	ROKEBERG				✓
Chair: 	ANDERSON	X			
Chair:					

ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

Differences Between HB 56 and CSHB 56(L&C)

There is one change:

The original bill did not include a statement that this bill involves a court rule change.

Since that version was introduced, however, it has been made clear that, indeed, the Act would substantively change Court Rules 54(d), 79 and 82 of the Alaska Rules of Civil Procedure. The proposed CSHB 56 takes this into account and incorporates the court rule changes (Sec. 2., starting page 1, line 10 of proposed CS).

The bill now states a 2/3 vote is required because a court rule change is involved.

As a result, Sec. 4 of the original bill, the EFFECT NOTWITHSTANDING VOTE clause, is no longer necessary and has also been removed.

ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

SPONSOR STATEMENT

HB 56: Making State's Fight Against Consumer Fraud More Effective; And More Cost Effective.

This bill provides the state with a needed tool to fight consumer fraud more effectively, more efficiently, and without any cost to the state. This bill strengthens the state's ability to represent Alaskans who have been victimized by fraudulent business practices, whether by used car dealers, telemarketers, or others who prey on Alaska's consumers. It does so while actually saving the state money. Senator Fred Dyson and I have worked on similar cost-effective consumer protection measures in the past, and will join hands to advance this proposal in our respective legislative houses.

Currently victims of consumer fraud can contact the State's Attorney General's Office for help. However, due to budget constraints, the State cannot help many such victims. In 2001 roughly half of all Alaskans who complained of consumer law violations were turned away due to budget constraints.

HB 56 changes the law to allow the state to recover its full enforcement, investigation and court costs if it prevails against a party that has violated Alaska's consumer protection laws. The bill is modeled after legislation in other areas that allow state and federal investigators and enforcement authorities to recover their enforcement costs. For example, federal anti-trust, and federal and state hazardous waste laws allow the recovery of enforcement costs and full attorneys fees from parties who violate the law.

The public policies behind this bill are simple: Those who engage in unfair business practices should not force the state to bear the costs of their misconduct. Moreover, by allowing the state to recover not only the existing penalties that are available under state law, but it's enforcement costs, the law will help fund a more vibrant, more cost-effective consumer protection presence in Alaska.

Current law prevents the state from recovering many types of investigative and enforcement costs, and allows the state to recover only 20% of its attorney fee costs. Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in black ink that reads "Les Gara".

Les Gara

ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

Sectional Analysis: HB 56

This bill provides the state with a needed tool to fight consumer fraud more effectively, more efficiently, and without any cost to the state. This bill strengthens the state's ability to represent Alaskans who have been victimized by fraudulent business practices, whether by dishonest used car dealers, telemarketers, or others who prey on Alaska's consumers. It does so while actually saving the state money.

HB 56 changes the law to allow the state to recover its full enforcement, investigation and court costs if it prevails against a party that has violated Alaska's consumer protection laws. The bill is modeled after legislation in other areas that allows the state to recover its enforcement costs. For example, federal anti-trust, and federal and state hazardous waste laws allow the state to recover its enforcement costs from parties who violate the law.

Section 1: Currently the state is entitled to only partial compensation for its enforcement efforts when it prevails in a case under Alaska's consumer protection law, the Unfair Trade Practices Act. This section changes the law to entitle the state, if it prevails in such a case, to receive full compensation for its enforcement efforts on behalf of a victim. Under this section, a court may award full compensation to the state for its attorneys fees and investigation and other enforcement costs. The state would have to prove that these costs were reasonable.

Section 2: This notice is required when the Legislature changes existing court rules on attorney's fees and costs.

Section 3: Provides for a standard effective date, and that the new law only applies to new cases that arise because of conduct that occurs after this law is enacted.

LEGAL SERVICES

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

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


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

MEMORANDUM

March 7, 2003

SUBJECT: CSHB 56() relating to attorney fees and costs awarded in unfair trade actions (Work Order No. 23-LS0300\H)

TO: Representative Les Gara
Attn: Ryan

FROM:  Theresa L. Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Provides that in an unfair trade practice action the state shall be awarded its actual reasonable attorney fees and costs, including investigation costs, if the state wins the case.

Section 2. Explains how sec. 1 indirectly causes changes in Rules 54(d), 79, and 82 of the court's rules of civil procedure.

Section 3. Applies sec. 1 to causes of action that accrue on or after the effective date of this Act.

If I may be of further assistance, please advise.

TLB:med
03-272.med



Honorable Tom Anderson, Chair
House Labor and Commerce Committee
Alaska Capital, Room 432
Juneau, AK 99801-1182

March 27, 2003

RE: HB 56 (Gara)-Support

Dear Chair Anderson:

On behalf of the AARP members in Alaska, we encourage you and your colleagues on the House Labor and Commerce Committee to support HB 56, authored by Representative Les Gara.

This bill will allow the State of Alaska to recover all costs involved in the prosecution of an entity that violates the State's consumer protection laws. We fully agree with Representative Gara that the State should not bear the costs for someone who conducts business illegally here. Many AARP members are the victims of consumer fraud. We know many more would be able to secure the professional assistance of the Attorney General's office if more funding was available. HB 56 is an ideal way to provide that funding.

AARP urges an "AYE" vote on HB 56.

Should you have any questions about our position, please feel free to contact Marie Darlin (907.586.3637), Coordinator of the AARP Capitol City Task Force; Patrick Luby

(907.762.3314), AARP Legislative Representative; or me (907.245.5259).

Sincerely,

Marguerite Stetson

Marguerite Stetson
AARP Alaska
Executive Council Member for Advocacy
3009 Northwood Street
Anchorage, AK 99517-1871
907.245.5259 voice
907.245.5279 fax
ffmas@aurora.uaf.edu

cc: Vice-Chair Bob Lynn
Representative Nancy Dahlstrom
Representative Carl Gatto
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg
Representative Les Gara
Marie Darlin
Patrick Luby



AKPIRG

ALASKA PUBLIC INTEREST RESEARCH GROUP

PO Box 101093 ♦ Anchorage, Alaska 99510-1093 ♦ Ph: (907) 278-3661 ♦ Fax: (907) 278-9300 ♦ email: akpirg@akpirg.org

Statement in Support of HB 56

HB 56 deserves a prompt hearing because of its value to Alaskan consumers and the Attorney General's office.

HB 56 bolsters the State of Alaska's ability to fight consumer fraud. With the proliferation of both phone and internet solicitations and Alaskan's reliance on such commercial mechanisms, fraudulent businesses have ever-increasing avenues to engage in illegal business practices. Identity theft has risen to become the most prevalent form of fraud reported to the Department of Law. Yet, in 2001 around half of all Alaskans who complained about consumer law violations couldn't get help from the state due to a lack of funding. This bill makes bad businesses pay for their violations

HB 56 gives the state another method to fight consumer fraud without expense to the state. Through this legislation, the state will be able to represent Alaskans who have been wronged by fraudulent business practices. While doing this, the law will also allow the state to recover its full court costs if it prevails against a party that has violated Alaska's consumer protection laws. Current law prevents the state from recovering many types of investigative and enforcement costs, and allows the state to recover only 20% of its attorney fee costs. Just as businesses must purchase a license to operate in Alaska, those businesses that break Alaska laws should be held responsible for the costs they rack up in Alaska courts.

HB 56 is patterned after legislation, both state and federal, which allows the recovery of enforcement costs. Federal anti-trust laws, and federal and state hazardous waste laws allow the state to recover its enforcement costs from parties who violate the law.

Currently, Alaska is entitled to only partial compensation for its enforcement efforts when it prevails in a case under the Unfair Trade Practices Act. HB 56 changes the law to entitle the state to receive full compensation for its investigation and enforcement efforts on behalf of a victim, if it prevails in such a case. The state would have to prove that these costs were reasonable.

AkPIRG urges quick passage of HB 56.

HB

59

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 59(JUD)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Environmental Conservation
 Title An Act Relating to Evaluation and BRU Spill Prevention and Response
Cleanup of Illegal Drug Sites Component Prevention and Emergency Response
 Sponsor Rep. Holm
 Requester House Judiciary Component No. 2064

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	25.0	7.0	7.0	7.0	7.0	7.0
Supplies	5.0	5.0	5.0	5.0	5.0	5.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	30.0	12.0	12.0	12.0	12.0	12.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
1052 Oil and Haz. Sub. Response Fund	30.0	12.0	12.0	12.0	12.0	12.0
TOTAL	30.0	12.0	12.0	12.0	12.0	12.0

Estimate of any current year (FY2003) cost: 0.0

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

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

The evaluation and cleanup process for illegal drug sites proposed in this bill will require the Department to develop health standards, sampling protocols, analytical methods, and decontamination guidelines for lead, mercury, volatile organic compounds, and methamphetamines. The Department may also determine whether additional substances pose a substantial risk and include such substances in the guidelines development. In the first year funds will be used for the initial guidelines development. In the out years funds will be used to review and update the standards and protocols, and provide for the development of additional standards for compounds that may be added to the list of substances covered under this legislation. An addition of one compound per year is assumed.

Prepared by: Larry Dietrick, Director
 Division: Division of Spill Prevention and Response
 Approved by: Kurt Fredriksson
 Agency: Department of Environmental Conservation

Phone 465-5255
 Date/Time 2/25/03 4:41 PM
 Date 2/25/2003

FISCAL NOTE

**STATE OF ALASKA
2003 LEGISLATIVE SESSION**

BILL NO. CSHB 59(JUD)

ANALYSIS CONTINUATION

Continuation from Page 1

The Department will maintain a list of laboratories, a list of contaminated properties, and develop the proposed regulations using existing staff resources, and will contract for compound analysis and guidelines development. Once a property owner has certified to the Department that a site has been cleaned up in accordance with the Department's guidelines, the property will be removed from the list. It is assumed that the Department will not be undertaking any independent verification of laboratories or of the property owner's certification.

In preparing this fiscal note, the Department has assumed that the expected number of contaminated sites requiring evaluation and cleanup would be approximately 20 a year based on actual numbers of 13 sites last year and 25 the year before. Additionally, it is assumed that standards and cleanup guidance documents from other states can be used as templates.

Line Item Description	FY 2004	FY 2005	FY 2006	FY 2007	FY2008	FY2009
Personal Services	\$0	\$0	\$0	\$0	\$0	\$0
Travel	\$0	\$0	\$0	\$0	\$0	\$0
Contractual						
• Analytical Methods	\$4,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
• Health Standards	\$4,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
• Sampling protocols	\$7,000	\$1,750	\$1,750	\$1,750	\$1,750	\$1,750
• Decontamination guidelines	\$9,000	\$2,250	\$2,250	\$2,250	\$2,250	\$2,250
• Additional substance analysis	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
Subtotal:	\$25,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000
Supplies						
• Copies of regulations and guidance	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
Equipment	\$0	\$0	\$0	\$0	\$0	\$0
Total	\$30,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 59 (JUD)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title An act relating to the evaluation and BRU AST Detachment
cleanup of sites where ... Component AST Detachment
 Sponsor Representative Holm
 Requester House Judiciary Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 No fiscal impact.

Prepared by: Lieutenant Matthew Leveque Phone 907 269-0390
 Division: Alaska State Troopers Date/Time 2/26/03 8:48 AM
 Approved by: William Tandeske, Commissioner Date 2/25/2003
 Agency: Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 59
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Environmental Conservation
 Title An Act Relating to Evaluation and BRU Spill Prevention and Response
Cleanup of Illegal Drug Sites Component Prevention and Emergency Response
 Sponsor Rep. Holm
 Requester House Judiciary Component No. 2064

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	58.2	58.2	58.2	58.2	58.2	58.2
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	24.0	7.0	7.0	7.0	7.0	7.0
Supplies	5.0	5.0	5.0	5.0	5.0	5.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	87.2	70.2	70.2	70.2	70.2	70.2

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Oil and Haz. Sub. Response Fund)	87.2	70.2	70.2	70.2	70.2	70.2
TOTAL	87.2	70.2	70.2	70.2	70.2	70.2

Estimate of any current year (FY2003) cost: 0 0

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

POSITIONS

Full-time	0.5	0.5	0.5	0.5	0.5	0.5
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

The evaluation and cleanup process of illegal drug sites as proposed in this bill will require the Department to develop health standards, sampling protocols, analytical methods, and decontamination guidelines for lead, mercury, volatile organic compounds and methamphetamines. In the first year funds will be required for regulations and guidelines development. In the out years funds will be used to review and update the standards and protocols, and provide for the development of additional standards for compounds that may be added to the list of substances covered under this legislation.

The evaluation and cleanup of sites where certain controlled substances may have been manufactured or stored will require the Department to employ one Environmental Specialist III (Range 18) half-time.

Prepared by: Larry Dietrick, Director
 Division Division of Spill Prevention and Response
 Approved by: Kurt Frødricksson
 Agency Department of Environmental Conservation

Phone 465-5255
 Date/Time 2/19/03 9:41 AM
 Date 2/19/2003

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. HB 59

ANALYSIS CONTINUATION

Continuation from Page 1

The Environmental Specialist will review approximately 20 plans annually, maintain laboratory lists, maintain a list of contaminated properties, manage contracts, and hold public meetings for proposed regulations.

In preparing this fiscal note, the Department has assumed that the expected number of contaminated sites requiring evaluation and cleanup would be approximately 20 a year based on actual numbers of 13 sites last year and 25 the year before. Additionally, it is anticipated that Alaska can use standards and cleanup guidance documents from other states as templates.

Line Item Description	FY 2004	FY 2005	FY 2006	FY 2007	FY2008	FY2009
Personal Services	\$58,200	\$58,200	\$58,200	\$58,200	\$58,200	\$58,200
• 0.5 FTE ES III						
Travel	\$0	\$0	\$0	\$0	\$0	\$0
Contractual						
• Analytical Methods	\$4,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
• Health Standards	\$4,000	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500
• Sampling protocols	\$7,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
• Decontamination guidelines	\$9,000	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500
Subtotal:	\$24,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000
Supplies						
• Copies of regulations and guidance	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
Equipment	\$0	\$0	\$0	\$0	\$0	\$0
Total	\$87,200	\$70,200	\$70,200	\$70,200	\$70,200	\$70,200

Personal Services New Position Detail

Department of Environmental Conservation

HB 59 Fiscal Note

Scenario: All Fiscal Notes - DEC FY2004 (3085)

Component: Prevention and Emergency Response (2064)

BRU Name: Spill Prevention and Response (208)

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Annual Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#001	Environmental Spec III	PT	A	GG	Anchorage	1A	18A	12.0		46,080	0	0	12,095	58,175

Justification:

Implementation of HB 59.

Funding Detail:

1052	Oil/Hazardous Response Fund	100.00%	58,175
Total Funding:		100.00%	58,175

Component Summary:

Total New Positions: 1

Fund Description	Fund Percent	Fund Amount
1052 Oil/Hazardous Response Fund	100.00%	58,175
Total Funding:	100.00%	58,175

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 59
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title An act relating to the evaluation and BRU AST Detachment
cleanup of sites where certain... Component AST Detachment
 Sponsor Representative Holm
 Requester House Judiciary Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 No fiscal impact.

Prepared by: Lieutenant Matthew Leveque Phone 907 269-0390
 Division Alaska State Troopers Date/Time 2/19/03 10:20 AM
 Approved by: William Tandeska, Commissioner Date 2/14/2003
 Agency Department of Public Safety

LEGAL SERVICES

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

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

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

MEMORANDUM

February 20, 2003

SUBJECT: Illegal Drug Sites (CSHB 59(JUD)); "H" version)

TO: Representative Lesil McGuire
Attn: Vanessa

FROM: Terri Lauterbach
Legislative Counsel

TMLauterbach

Enclosed is the CS you requested.

As we discussed on the telephone, "Amendment #3" was an incomplete amendment. I have put the change in the CS at the end of Sec. 46.03.530(a), as requested. However, proper incorporation of the concept contained in "Amendment #3" would require conforming changes in several other parts of the bill, including the parts where references are made to substances either "listed" or "specified" in AS 46.03.530, and in Sec. 46.03.530(b).

If I can be of assistance in making these conforming amendments, please do not hesitate to let me know. If you are considering doing the conforming amendments, it would be best for the committee to provide a legislative standard for how the department should exercise its authority to add "other substances" to the list. Such a standard could be, "If the department determines that there are other substances associated with illegal drug manufacturing sites that may be harmful to public health or occupants of the property, the department may set limits for these other substances." Language like this should be added to Sec. 46.03.530(b). If the committee adopts some guiding language like this and makes the rest of Amendment #3 a "conceptual" amendment, then I could make the conforming amendments required in other parts of the bill.

TML:med
03-170.med

Enclosure

23-LS0341\H
Lauterbach
2/20/03

CS FOR HOUSE BILL NO. 59(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE HOLM

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the evaluation and cleanup of sites where certain controlled**
2 **substances may have been manufactured or stored; and providing for an effective date."**

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

4 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 **PURPOSE.** The purpose of this Act is to provide a just, equitable, and practicable
7 method, to be cumulative with and in addition to any other remedy provided by law, whereby
8 property that endangers the life, safety, or welfare of the general public or occupants of the
9 property because of toxic chemical contamination that may result from illegal drug
10 manufacturing may be required to be decontaminated or vacated and secured against use.

11 *** Sec. 2.** AS 46.03 is amended by adding new sections to read:

12 **Article 7A. Cleanup of Illegal Drug Sites.**

13 **Sec. 46.03.500. Notice of illegal drug manufacturing site.** (a) When a law
14 enforcement officer, qualified under federal regulations to investigate and dismantle

1 illegal drug manufacturing sites, determines that a site constitutes an illegal drug
2 manufacturing site, the law enforcement agency that employs the officer shall notify
3 the owner of the property, the occupants and users of the property, and the department
4 that the determination has been made. The owner of the property may appeal the
5 determination to the superior court for review of whether the determination was made
6 in compliance with this subsection. In the appeal, the burden of proving by a
7 preponderance of the evidence that the determination was made in compliance with
8 this subsection is on the law enforcement agency that employed the officer who made
9 the determination.

10 (b) The notice to the property owner required under (a) of this section shall be
11 given in a manner that is consistent with the Alaska Rules of Civil Procedure for the
12 service of process in a civil action in this state and must include the following
13 information:

14 (1) the parcel identification number and legal description of the
15 property where the site is located;

16 (2) a statement of the determination made by the law enforcement
17 officer that the site was an illegal drug manufacturing site and the findings that formed
18 the basis for the determination;

19 (3) a citation to, and short summary of, AS 46.03.510, which restricts
20 transfer and occupancy of the site until it is determined to be fit for use; and

21 (4) the following information, which shall be provided to the law
22 enforcement agency by the department:

23 (A) a copy of the standards contained in regulations adopted
24 under AS 46.03.530 that determine whether the property is fit for use;

25 (B) a copy of the testing procedures established under
26 AS 46.03.520(b) and a copy of the list of laboratories maintained under
27 AS 46.03.520(c) that must be used for determining whether the property is fit
28 for use; and

29 (C) a copy of the guidelines for decontamination established by
30 the department under AS 46.03.540(b).

31 (c) The notice to the department required under (a) of this section must

1 include

2 (1) the parcel identification number and legal description of the
3 property where the site is located;

4 (2) a statement of the determination made by the law enforcement
5 officer that the site was an illegal drug manufacturing site and the findings that formed
6 the basis for the determination; and

7 (3) the name and mailing address of the person who owns the property
8 where the site is located.

9 (d) The notice required under (a) of this section for the occupants and users of
10 the property shall be accomplished by immediate posting of the entryway of the
11 property with a notice that includes the location of the property, the information
12 described in (b)(2) and (3) of this section, and a statement that the property may pose a
13 substantial risk of physical harm to persons or animals that enter or occupy the
14 property.

15 (e) If a person other than the owner, such as a property manager or rental
16 agency, is authorized to let others use or occupy property for which an owner has
17 received a notice under (a) of this section or is authorized to transfer, sell, lease, or
18 rent the property to others, the owner of the property shall communicate the substance
19 of the notice to that person within four days after receiving the notice.

20 **Sec. 46.03.510. Restrictions on property.** (a) Until determined to be fit for
21 use under AS 46.03.550, the property for which a notice has been issued under
22 AS 46.03.500(a) may not be transferred, sold, leased, or rented to another person
23 except as provided in (b) of this section, and a person may not use or occupy the
24 property at any time after the fourth day following the day on which the property was
25 posted with the notice required under AS 46.03.500(d), except as necessary for testing
26 or decontamination under AS 46.03.520 and 46.03.540. An oral or written contract
27 that would transfer, sell, lease, rent, or otherwise allow the use of the property in
28 violation of this subsection is voidable between the parties at the option of the
29 purchaser, transferee, user, lessee, or renter. However, this subsection does not

30 (1) make voidable a promissory note or other evidence of indebtedness
31 or a mortgage, trust deed, or other security interest securing the promissory note or

1 evidence of indebtedness, if the note or evidence of indebtedness, mortgage, trust
2 deed, or other security interest was given to a person other than the person
3 transferring, selling, using, leasing, or renting the property to induce the person to
4 finance the transfer, sale, use, leasing, or rental of the property;

5 (2) make voidable a lease or rental agreement between the property
6 owner and the person who caused the property to be contaminated and determined
7 unfit for use; or

8 (3) impair obligations or duties required to be performed on
9 termination of a contract, as required by the contract, such as payment of damages or
10 return of refundable deposits.

11 (b) Notwithstanding (a) of this section, property covered by (a) of this section
12 may be transferred or sold if full written disclosure is made to the prospective
13 transferee or purchaser that the property has been determined to be an illegal drug
14 manufacturing site and the property has not been determined to be fit for use. The
15 disclosure shall be attached to the earnest money receipt, if any, and shall accompany
16 the transfer or sale document. The disclosure is not considered to be part of the
17 transfer or sale document, however, and may not be recorded. The property shall
18 continue to be subject to the restrictions in (a) of this section after transfer or sale
19 under this subsection.

20 (c) A person who knowingly transfers, sells, leases, or rents property to
21 another, knowingly allows another to use or occupy property, or, being the owner of
22 property, knowingly occupies or uses the property, in violation of this section is guilty
23 of a class A misdemeanor. In this subsection, "knowingly" has the meaning given in
24 AS 11.81.900(a).

25 (d) It is an affirmative defense to a prosecution under (c) of this section for
26 allowing another to use or occupy the property that the defendant or an agent of the
27 defendant, within four days after receiving a notice under AS 46.03.500, filed an
28 appropriate civil action to remove the user or occupier from the property for which the
29 notice was received.

30 **Sec. 46.03.520. Testing procedures.** (a) If the owner of the property for
31 which notice was received under AS 46.03.500(b) desires to determine if the property

1 is fit for use, the owner shall cause the site to be tested for the substances specified in
2 AS 46.03.530, using the procedures and laboratory services specified under (b) and (c)
3 of this section. The property owner shall inform the laboratory used for a test under
4 this subsection that the test is related to property that has been determined to be an
5 illegal drug manufacturing site.

6 (b) The department shall establish procedures for testing property that may
7 have been an illegal drug manufacturing site.

8 (c) The department shall establish and maintain a list of laboratories in the
9 state that have notified the department that they have the capacity to perform the
10 testing procedures and that they wish to be on the list maintained under this
11 subsection. A laboratory may not be included on the list unless the laboratory agrees
12 to send the department a copy of test results related to properties whose owners have
13 informed the laboratory that the test results are for property that has been determined
14 to be an illegal drug manufacturing site.

15 **Sec. 46.03.530. Standards for determining fitness.** (a) Property for which a
16 notice was received under AS 46.03.500(b) is not fit for use if a test of the property
17 shows the presence of one of the following substances above the limit set by the
18 department for that substance: lead, mercury, methamphetamines, volatile organic
19 compounds, and other substances for which the department has set a limit under (b) of
20 this section.

21 (b) The department shall adopt regulations that set the limit for each substance
22 listed in (a) of this section for purposes of determining whether the property for which
23 a notice was received under AS 46.03.500 is fit for use.

24 **Sec. 46.03.540. Decontamination requirements.** (a) If the owner desires to
25 decontaminate the property for which a notice has been issued under AS 46.03.500,
26 the owner shall follow the guidelines established by the department under (b) of this
27 section.

28 (b) The department shall establish guidelines, including guidelines to protect
29 the safety of those removing the controlled substances, for decontamination of sites
30 that are determined to be unfit for use under AS 46.03.530. The department shall
31 provide a copy of the guidelines to any person who requests a copy.

1 **Sec. 46.03.550. Fitness for use.** (a) Property for which a notice has been
2 issued under AS 46.03.500 shall be determined by the department to be fit for use if
3 the owner certifies to the department under penalty of unsworn falsification that

4 (1) based on testing procedures established by the department under
5 AS 46.03.520(b) and performed by laboratories that are on the list maintained by the
6 department under AS 46.03.520(c), the limits on substances specified in AS 46.03.530
7 are not exceeded on the property;

8 (2) if the property was ever tested under AS 46.03.520 and the test
9 results showed the property to be unfit for use under AS 46.03.530, decontamination
10 procedures were performed in accordance with the guidelines established under
11 AS 46.03.540(b) and the requirements of (1) of this subsection have been met; or

12 (3) a court has held that the determination that the property was an
13 illegal drug manufacturing site was not made in compliance with AS 46.03.500(a).

14 (b) The department shall maintain a list of properties for which the department
15 has received notice under AS 46.03.500(c). When the department determines under
16 (a) of this section that a property on the list is fit for use, the department shall remove
17 the property from the list and notify the owner of the property that the property is fit
18 for use. On request, the department shall give a copy of the list maintained under this
19 section to any person who requests the list.

20 **Sec. 46.03.560. Securing the property.** The owner of property for which a
21 notice was received under AS 46.03.500(b) shall ensure that the property is vacated
22 and secured against use

23 (1) within four days after receiving the notice if the owner does not test
24 the property under AS 46.03.520 within four days after receiving the notice; or

25 (2) within four days after receiving the test results if the owner tests
26 the property within four days after receiving the notice, the test shows the presence of
27 a substance that exceeds the limits set in regulations adopted under AS 46.03.530, and
28 the owner does not begin decontamination procedures under AS 46.03.540 within four
29 days after receiving the test results.

30 **Sec. 46.03.570. Duties of the department; regulations.** (a) The department
31 shall adopt regulations implementing AS 46.03.500 - 46.03.599.

1 (b) The department shall periodically review information related to
2 decontamination of illegal drug manufacturing sites to determine whether substances
3 should be added to or deleted from AS 46.03.530. The department shall report written
4 findings to the governor if the department determines that a change should be made to
5 the list of substances in AS 46.03.530. The governor shall notify the legislature when
6 written findings have been made under this subsection and provide a copy of the
7 findings to a legislator on request.

8 **Sec. 46.03.599. Definitions.** In AS 46.03.500 - 46.03.599,

9 (1) "illegal drug manufacturing site" means property on which there is
10 reasonable cause to suspect contamination with chemicals associated with the
11 manufacturing of a controlled substance and where

12 (A) activity involving the unauthorized manufacture of a
13 controlled substance listed on schedule I or II in AS 11.71 or a precursor
14 chemical for the substances has occurred; or

15 (B) there are kept, stored, or located any of the devices,
16 equipment, things, or substances used for the unauthorized manufacture of a
17 controlled substance listed on schedule I or II in AS 11.71;

18 (2) "site" means an illegal drug manufacturing site.

19 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 **REGULATIONS.** The Department of Environmental Conservation may immediately
22 begin to develop and adopt regulations to implement this Act. The regulations take effect
23 under AS 44.62 (Administrative Procedure Act).

24 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 **CERTIFICATION OF EFFECTIVE DATE OF REGULATIONS.** The lieutenant
27 governor shall certify to the revisor of statutes the effective date of the initial regulations
28 adopted by the Department of Environmental Conservation under sec. 3 of this Act.

29 * **Sec. 5.** Sections 1 and 2 of this Act take effect on the effective date of the initial
30 regulations adopted by the Department of Environmental Conservation under sec. 3 of this
31 Act.

1

* Sec. 6. Sections 3 and 4 of this Act take effect immediately under AS 01.10.070(c).

AMENDMENT #1

OFFERED IN THE HOUSE

REPRESENTATIVE HOLM

TO: CSHB 59(JUD), Draft Version "H"

& GRUENBERG

1 Page 5, line 1:

2 Delete "specified in"

3 Insert "covered in regulations adopted under"

4

5 Page 5, line 22, before "listed":

6 Insert "specifically"

7

8 Page 5, line 23, following "use.":

9 Insert "The department ^{may} ~~shall~~ also determine whether there are other substances
10 associated with illegal drug manufacturing sites that may pose a substantial risk of harm to
11 persons who occupy the site or to public health and ^{may} ~~shall~~ adopt regulations that set limits for
12 those substances for the purposes of determining whether the property for which notice was
13 received under AS 46.03.500 is fit for use."

14

15 Page 6, line 6, following "in":

16 Insert "regulations adopted under"

17

18 Page 7, line 3:

19 Delete "AS 46.03.530"

20 Insert "the list of substances specifically named in AS 46.03.530(a)"

21

22 Page 7, line 5:

23 Following "of":

- 1 Insert "specific"
- 2 Delete "AS 46.03.530"
- 3 Insert "AS 46.03.530(a)"

ALASKA STATE LEGISLATURE

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



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

House Judiciary Committee

Memorandum

To: Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: February 21, 2003
Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS0341\H,
CS HB 59; Cleanup of Illegal Drug Sites, incorporating the attached amendment. The bill was
(OTAR) passed out of committee today.

If you have any questions, please call me at 4990. Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

ALASKA STATE LEGISLATURE

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



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

House Judiciary Committee

Memorandum

To: Leg. Legal

From: Vanessa Tondini, Committee Aide
House Judiciary Committee

Date: February 19, 2003

Re: CS Request

Please disregard the last CS request I just faxed to you regarding this bill.

Please create a work draft House Judiciary Committee Substitute for work order # 23-LS0341\D, CSHB 59: Cleanup of Illegal Drug Sites, incorporating the attached **three** amendments.

If you have any questions, please call me at 4990. Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

AMENDMENT #1

OFFERED IN THE HOUSE
TO: CSHB 59 (JUD)

- 1 Page 5, line 9:
- 2 Between "that" and "they"
- 3 Insert "they have the capacity to perform the testing ^{procedures} ~~requirement~~ and
- 4 that"

AMENDMENT #2

Page 5, line 26:

After "guidelines," add:

"including guidelines to protect the safety of those removing the controlled substances,"

AMENDMENT #3

Page 5, line 17:

After "methamphetamines," delete "and"

Page 5, line 18:

After "compounds," add:

"and other substances for which the department has set a limit under (b) of this section."

Alaska State Legislature

Representative Jim Holm

District 9

Session

Capitol Building, Room 110

Juneau, AK 99801

Phone: (907) 465-3466

Fax: (907) 465-2937



Interim

119 N. Cushman St.

Fairbanks, AK 99701

Phone: (907) 456-7423

Fax: (907) 451-9293

Changes in House Bill 59 Version A

"CLEANUP OF ILLEGAL DRUG SITES"

Page 5 line 9: "have the capacity to perform the testing procedures and" has been stricken.

This phrase was taken out by the request of the Department of Environmental Conservation.

Page 6 line 1: "the owner submits satisfactory evidence to the department that" has been stricken and replaced with "the owner certifies to the department under penalty of unsworn falsification that."

This phrase was replaced by request for the Department of Environmental Conservation. The penalty of unsworn falsification was added so the owner's certification that the structure is habitable to the best of their knowledge is correct.

Sec. 11.56.210. Unsworn falsification.

(a) A person commits the crime of unsworn falsification if, with the intent to mislead a public servant in the performance of a duty, the person submits a false written or recorded statement which the person does not believe to be true

(1) in an application for a benefit; or

(2) on a form bearing notice, authorized by law, that false statements made in it are punishable.

(b) Unsworn falsification is a class A misdemeanor.

23-LS0341VD
Lauterbach
2/18/03

CS FOR HOUSE BILL NO. 59()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE HOLM

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the evaluation and cleanup of sites where certain controlled**
2 **substances may have been manufactured or stored; and providing for an effective date."**

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

4 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 **PURPOSE.** The purpose of this Act is to provide a just, equitable, and practicable
7 method, to be cumulative with and in addition to any other remedy provided by law, whereby
8 property that endangers the life, safety, or welfare of the general public or occupants of the
9 property because of toxic chemical contamination that may result from illegal drug
10 manufacturing may be required to be decontaminated or vacated and secured against use.

11 *** Sec. 2.** AS 46.03 is amended by adding new sections to read:

12 **Article 7A. Cleanup of Illegal Drug Sites.**

13 **Sec. 46.03.500. Notice of illegal drug manufacturing site.** (a) When a law
14 enforcement officer, qualified under federal regulations to investigate and dismantle

1 illegal drug manufacturing sites, determines that a site constitutes an illegal drug
2 manufacturing site, the law enforcement agency that employs the officer shall notify
3 the owner of the property, the occupants and users of the property, and the department
4 that the determination has been made. The owner of the property may appeal the
5 determination to the superior court for review of whether the determination was made
6 in compliance with this subsection. In the appeal, the burden of proving by a
7 preponderance of the evidence that the determination was made in compliance with
8 this subsection is on the law enforcement agency that employed the officer who made
9 the determination.

10 (b) The notice to the property owner required under (a) of this section shall be
11 given in a manner that is consistent with the Alaska Rules of Civil Procedure for the
12 service of process in a civil action in this state and must include the following
13 information:

14 (1) the parcel identification number and legal description of the
15 property where the site is located;

16 (2) a statement of the determination made by the law enforcement
17 officer that the site was an illegal drug manufacturing site and the findings that formed
18 the basis for the determination;

19 (3) a citation to, and short summary of, AS 46.03.510, which restricts
20 transfer and occupancy of the site until it is determined to be fit for use; and

21 (4) the following information, which shall be provided to the law
22 enforcement agency by the department:

23 (A) a copy of the standards contained in regulations adopted
24 under AS 46.03.530 that determine whether the property is fit for use;

25 (B) a copy of the testing procedures established under
26 AS 46.03.520(b) and a copy of the list of laboratories maintained under
27 AS 46.03.520(c) that must be used for determining whether the property is fit
28 for use; and

29 (C) a copy of the guidelines for decontamination established by
30 the department under AS 46.03.540(b).

31 (c) The notice to the department required under (a) of this section must

1 include

2 (1) the parcel identification number and legal description of the
3 property where the site is located;

4 (2) a statement of the determination made by the law enforcement
5 officer that the site was an illegal drug manufacturing site and the findings that formed
6 the basis for the determination; and

7 (3) the name and mailing address of the person who owns the property
8 where the site is located.

9 (d) The notice required under (a) of this section for the occupants and users of
10 the property shall be accomplished by immediate posting of the entryway of the
11 property with a notice that includes the location of the property, the information
12 described in (b)(2) and (3) of this section, and a statement that the property may pose a
13 substantial risk of physical harm to persons or animals that enter or occupy the
14 property.

15 (e) If a person other than the owner, such as a property manager or rental
16 agency, is authorized to let others use or occupy property for which an owner has
17 received a notice under (a) of this section or is authorized to transfer, sell, lease, or
18 rent the property to others, the owner of the property shall communicate the substance
19 of the notice to that person within four days after receiving the notice.

20 **Sec. 46.03.510. Restrictions on property.** (a) Until determined to be fit for
21 use under AS 46.03.550, the property for which a notice has been issued under
22 AS 46.03.500(a) may not be transferred, sold, leased, or rented to another person
23 except as provided in (b) of this section, and a person may not use or occupy the
24 property at any time after the fourth day following the day on which the property was
25 posted with the notice required under AS 46.03.500(d), except as necessary for testing
26 or decontamination under AS 46.03.520 and 46.03.540. An oral or written contract
27 that would transfer, sell, lease, rent, or otherwise allow the use of the property in
28 violation of this subsection is voidable between the parties at the option of the
29 purchaser, transferee, user, lessee, or renter. However, this subsection does not

30 (1) make voidable a promissory note or other evidence of indebtedness
31 or a mortgage, trust deed, or other security interest securing the promissory note or

1 evidence of indebtedness, if the note or evidence of indebtedness, mortgage, trust
2 deed, or other security interest was given to a person other than the person
3 transferring, selling, using, leasing, or renting the property to induce the person to
4 finance the transfer, sale, use, leasing, or rental of the property;

5 (2) make voidable a lease or rental agreement between the property
6 owner and the person who caused the property to be contaminated and determined
7 unfit for use; or

8 (3) impair obligations or duties required to be performed on
9 termination of a contract, as required by the contract, such as payment of damages or
10 return of refundable deposits.

11 (b) Notwithstanding (a) of this section, property covered by (a) of this section
12 may be transferred or sold if full written disclosure is made to the prospective
13 transferee or purchaser that the property has been determined to be an illegal drug
14 manufacturing site and the property has not been determined to be fit for use. The
15 disclosure shall be attached to the earnest money receipt, if any, and shall accompany
16 the transfer or sale document. The disclosure is not considered to be part of the
17 transfer or sale document, however, and may not be recorded. The property shall
18 continue to be subject to the restrictions in (a) of this section after transfer or sale
19 under this subsection.

20 (c) A person who knowingly transfers, sells, leases, or rents property to
21 another, knowingly allows another to use or occupy property, or, being the owner of
22 property, knowingly occupies or uses the property, in violation of this section is guilty
23 of a class A misdemeanor. In this subsection, "knowingly" has the meaning given in
24 AS 11.81.900(a).

25 (d) It is an affirmative defense to a prosecution under (c) of this section for
26 allowing another to use or occupy the property that the defendant or an agent of the
27 defendant, within four days after receiving a notice under AS 46.03.500, filed an
28 appropriate civil action to remove the user or occupier from the property for which the
29 notice was received.

30 **Sec. 46.03.520. Testing procedures.** (a) If the owner of the property for
31 which notice was received under AS 46.03.500(b) desires to determine if the property

1 is fit for use, the owner shall cause the site to be tested for the substances specified in
2 AS 46.03.530, using the procedures and laboratory services specified under (b) and (c)
3 of this section. The property owner shall inform the laboratory used for a test under
4 this subsection that the test is related to property that has been determined to be an
5 illegal drug manufacturing site.

6 (b) The department shall establish procedures for testing property that may
7 have been an illegal drug manufacturing site.

8 (c) The department shall establish and maintain a list of laboratories in the
9 state that have notified the department that they wish to be on the list maintained under
10 this subsection. A laboratory may not be included on the list unless the laboratory
11 agrees to send the department a copy of test results related to properties whose owners
12 have informed the laboratory that the test results are for property that has been
13 determined to be an illegal drug manufacturing site.

14 **Sec. 46.03.530. Standards for determining fitness.** (a) Property for which a
15 notice was received under AS 46.03.500(b) is not fit for use if a test of the property
16 shows the presence of one of the following substances above the limit set by the
17 department for that substance: lead, mercury, methamphetamines, and volatile organic
18 compounds.

19 (b) The department shall adopt regulations that set the limit for each substance
20 listed in (a) of this section for purposes of determining whether the property for which
21 a notice was received under AS 46.03.500 is fit for use.

22 **Sec. 46.03.540. Decontamination requirements.** (a) If the owner desires to
23 decontaminate the property for which a notice has been issued under AS 46.03.500,
24 the owner shall follow the guidelines established by the department under (b) of this
25 section.

26 (b) The department shall establish guidelines for decontamination of sites that
27 are determined to be unfit for use under AS 46.03.530. The department shall provide
28 a copy of the guidelines to any person who requests a copy.

29 **Sec. 46.03.550. Fitness for use.** (a) Property for which a notice has been
30 issued under AS 46.03.500 shall be determined by the department to be fit for use if
31 the owner certifies to the department under penalty of unsworn falsification that

1 (1) based on testing procedures established by the department under
2 AS 46.03.520(b) and performed by laboratories that are on the list maintained by the
3 department under AS 46.03.520(c), the limits on substances specified in AS 46.03.530
4 are not exceeded on the property;

5 (2) if the property was ever tested under AS 46.03.520 and the test
6 results showed the property to be unfit for use under AS 46.03.530, decontamination
7 procedures were performed in accordance with the guidelines established under
8 AS 46.03.540(b) and the requirements of (1) of this subsection have been met; or

9 (3) a court has held that the determination that the property was an
10 illegal drug manufacturing site was not made in compliance with AS 46.03.500(a).

11 (b) The department shall maintain a list of properties for which the department
12 has received notice under AS 46.03.500(c). When the department determines under
13 (a) of this section that a property on the list is fit for use, the department shall remove
14 the property from the list and notify the owner of the property that the property is fit
15 for use. On request, the department shall give a copy of the list maintained under this
16 section to any person who requests the list.

17 **Sec. 46.03.560. Securing the property.** The owner of property for which a
18 notice was received under AS 46.03.500(b) shall ensure that the property is vacated
19 and secured against use

20 (1) within four days after receiving the notice if the owner does not test
21 the property under AS 46.03.520 within four days after receiving the notice; or

22 (2) within four days after receiving the test results if the owner tests
23 the property within four days after receiving the notice, the test shows the presence of
24 a substance that exceeds the limits set in regulations adopted under AS 46.03.530, and
25 the owner does not begin decontamination procedures under AS 46.03.540 within four
26 days after receiving the test results.

27 **Sec. 46.03.570. Duties of the department; regulations.** (a) The department
28 shall adopt regulations implementing AS 46.03.500 - 46.03.599.

29 (b) The department shall periodically review information related to
30 decontamination of illegal drug manufacturing sites to determine whether substances
31 should be added to or deleted from AS 46.03.530. The department shall report written

1 findings to the governor if the department determines that a change should be made to
2 the list of substances in AS 46.03.530. The governor shall notify the legislature when
3 written findings have been made under this subsection and provide a copy of the
4 findings to a legislator on request.

5 **Sec. 46.03.599. Definitions.** In AS 46.03.500 - 46.03.599,

6 (1) "illegal drug manufacturing site" means property on which there is
7 reasonable cause to suspect contamination with chemicals associated with the
8 manufacturing of a controlled substance and where

9 (A) activity involving the unauthorized manufacture of a
10 controlled substance listed on schedule I or II in AS 11.71 or a precursor
11 chemical for the substances has occurred; or

12 (B) there are kept, stored, or located any of the devices,
13 equipment, things, or substances used for the unauthorized manufacture of a
14 controlled substance listed on schedule I or II in AS 11.71;

15 (2) "site" means an illegal drug manufacturing site.

16 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 **REGULATIONS.** The Department of Environmental Conservation may immediately
19 begin to develop and adopt regulations to implement this Act. The regulations take effect
20 under AS 44.62 (Administrative Procedure Act).

21 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
22 read:

23 **CERTIFICATION OF EFFECTIVE DATE OF REGULATIONS.** The lieutenant
24 governor shall certify to the revisor of statutes the effective date of the initial regulations
25 adopted by the Department of Environmental Conservation under sec. 3 of this Act.

26 * **Sec. 5.** Sections 1 and 2 of this Act take effect on the effective date of the initial
27 regulations adopted by the Department of Environmental Conservation under sec. 3 of this
28 Act.

29 * **Sec. 6.** Sections 3 and 4 of this Act take effect immediately under AS 01.10.070(c).

Alaska State Legislature

Representative Jim Holm
District 9

Session
Capitol Building, Room 110
Juneau, AK 99801
Phone: (907) 465-3466
Fax: (907) 465-2937



Interim
119 N. Cushman St.
Fairbanks, AK 99701
Phone: (907) 456-7423
Fax: (907) 451-9293

Date: January 31, 2003

To: Representative Lesil McGuire,
Chair House Judiciary Committee

From: Representative Jim Holm

Re: House Bill 59 "Cleanup of Illegal Drug Sites"

I hereby request a hearing of House Bill 59 "Cleanup of Illegal Drug Sites," in the House Judiciary Committee at your earliest convenience.

JH/jg

Alaska State Legislature

Representative Jim Holm

District 9

Session

Capitol Building, Room 110
Juneau, AK 99801
Phone: (907) 465-3466
Fax: (907) 465-2937



Interim

119 N. Cushman St.
Fairbanks, AK 99701
Phone: (907) 456-7423
Fax: (907) 451-9293

Sponsor Statement House Bill 59

"An act relating to the evaluation and cleanup of sites where certain controlled substances may have been manufactured or stored, and providing for an effective date"

Alaska currently does not have basic standards for the cleanup of illegal drug labs. House Bill 59 will set standards and basic requirements for the cleanup of those sites to guarantee the safety of future residents.

Over the past four years, over ninety methamphetamine labs were discovered in Alaska. These labs were found in apartments, hotels, cabins, mobile homes, and even on boats. If left untreated, chemicals from "cooking meth" can be extremely hazardous and pose a serious threat for future residents, particularly children.

House Bill 59 will require that once law enforcement agencies discover an illegal lab, the property owner will be responsible to clean up the hazardous materials. A complete cleanup of the site will be needed before the structure can again be utilized. In order to demonstrate the property fit for habitation, the owner must provide test results showing the levels of contamination below Department of Environmental Conservation (DEC) limits.

House Bill 59 stipulates that the DEC or a law enforcement entity will provide information to the owner on required testing procedures and guidelines for cleanup. Additionally, a list of laboratories that may be used for determining whether the property is fit for use will be provided to the property owner.

House Bill 59 also stipulates full disclosure to future buyers if the property was used as an illegal drug site and was not properly cleaned to DEC standards.

LEGAL SERVICES

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

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

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

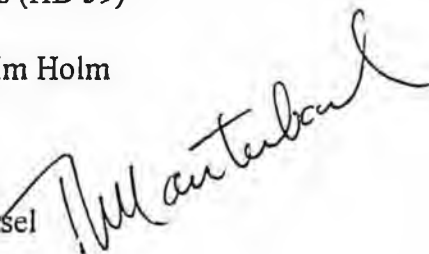
MEMORANDUM

January 21, 2003

SUBJECT: Illegal Drug Sites (HB 59)

TO: Representative Jim Holm
Attn: Jos

FROM: Terri Lauterbach
Legislative Counsel



You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Describes the purpose of the bill.

Section 2. Requires testing of property before continued use if a law enforcement officer has determined that the property was an illegal drug manufacturing or storage site. Declares that the property is unfit for use if it doesn't meet the limits set by the Department of Environmental Conservation for lead, mercury, methamphetamines, or volatile organic compounds. Requires decontamination, if done, to be done according to guidelines set by DEC. Specifies miscellaneous other duties for DEC and for the property owner.

TML:med
03-040.med

http://www.kci.org/meth_info/meth_cleanup.htm

What are possible health effects from exposure to meth lab contaminants?

Many of the contaminants present during meth's cooking process can be harmful if someone is exposed to them. These contaminants can cause health problems including respiratory (breathing) problems, skin and eye irritation, headaches, nausea and dizziness. Acute (short-term) exposures to high concentrations of some of these chemicals, such as those law enforcement officers face when they first enter a lab, can cause severe health problems including lung damage and burns to different parts of the body.

There is little known about the health effects from chronic (long-term) exposure to contaminants left behind after a meth lab is dismantled. Until the contaminants have been identified, their quantities measured, and their health effects known, MDOH advises property owners to exercise caution and use the safest possible cleaning practices in dealing with a former meth lab property and any possible remaining contamination.

The potential health effects depend on

- the specific chemicals to which a person is exposed
- how much of each chemical to which a person is exposed,
- how long a person is exposed, and
- the health condition of the person being exposed.

Exposure to meth residues may cause symptoms similar to those experienced by meth users.

Exposure to volatile organic compounds (VOCs) may cause symptoms such as nose and throat irritation, headaches, dizziness, nausea, vomiting, confusion and breathing difficulties. Benzene is a VOC known to cause cancer.

Acids or bases will cause a burning sensation on the skin and in mucous membranes, and can cause severe eye damage. Exposure to metals and salts can cause a wide range of health effects including respiratory irritation, decreased mental function, anemia, kidney damage and birth defects



http://www.kci.org/meth_info/neighborhood_lab.htm

IS THERE A METH LAB COOKIN' IN YOUR NEIGHBORHOOD?



Many people may be unaware that they're living near a meth lab. Here are some things to look for:

- Unusual, strong odors (like cat urine, ether, ammonia, acetone or other chemicals).
- Residences with windows blacked out.
- Renters who pay their landlords in cash. (Most drug dealers trade exclusively in cash.)
- Lots of traffic - people coming and going at unusual times. There may be little traffic during the day, but at night the activity increases dramatically.
- Excessive trash including large amounts of items such as: antifreeze containers, lantern fuel cans, red chemically stained coffee filters, drain cleaner and duct tape.
- Unusual amounts of clear glass containers being brought into the home.

Presence of the following items could indicate the existence of a meth lab:

Alcohol
Ether
Benzene
Toluene/Paint Thinner
Freon
Acetone
Chloroform
Camp Stove Fuel/Coleman Fuel
Starting Fluid
Anhydrous Ammonia
"Heet"
White Gasoline
Phenyl-2-Propane
Phenylacetone
Phenylpropanolamine
Iodine Crystals
Red Phosphorous
Black Iodine
Lye (Red Devil Lye)
Drano
Muriatic/Hydrochloric Acid
Battery Acid/Sulfuric Acid
Epsom Salts
Batteries/Lithium
Sodium Metal
Wooden Matches
Propane Cylinders
Hot Plates
Ephedrine (over-the-counter)
Cold Tablets
Bronchodilators
Energy Boosters
Rock Salt
Diet Aids

If you suspect a meth lab in your neighborhood call
the police

Fairbanks Daily News-Miner

Drug lab raided

By KYLE HOPKINS
Staff Writer

Friday, January 31, 2003 - Authorities arrested two men Thursday night at a Van Horn Road residence in a suspected methamphetamine operation linked to a pair of arrests earlier this week.

"Fairbanks has got a problem with meth labs," said Alaska State Trooper Teague Widmier, case supervisor for the two recent busts. Widmier is a member of the Fairbanks statewide drug unit, which with enough time could find multiple labs every week in the city and nearby communities, he said.

The unit served a warrant just before 5 p.m. at 3330 Van Horn Road, a trailer and addition that troopers have long suspected housed a meth lab. Jeff Lees, 39, was arrested outside the residence, said Sgt. Ron Wall, unit supervisor.

Lees is charged with a probation violation.

The team arrested Bruce H. Gillam, 40, inside the home and found an active, medium-sized lab, Wall said. Gillam, who lives at the residence according to borough records, is accused of possession of methamphetamine. Both men could face additional charges.

"Charges regarding the manufacture of methamphetamines will be referred to the D.A.'s office," Wall said.

On Tuesday, troopers found a small-scale lab in the Gold Rush Estates trailer park and charged Cinda J. Ingles, 44, and Harold T. Griffin, 79, on charges of possessing finished methamphetamines.

Statements by Griffin, a cab driver, led investigators to the Van Horn residence, where Ingles would travel by taxi and deliver methamphetamine ingredients, Widmier said.

"This is all manufactured for sale and there was a large quantity of processed meth that was on Mr. Gillam at the time the warrant was served," Widmier said.

Troopers suspected illegal activity was under way at the Gold Rush Estates residence for about a year, but in recent weeks enough evidence surfaced to serve a warrant.

The Fairbanks North Star Borough's hazardous materials team responded Tuesday night to handle the active chemicals. The drug unit team includes members of the Alaska State Troopers, Fairbanks Police Department, UAF Police Department and the Drug Enforcement Agency.

Inside the residence, authorities found an open safe containing assault rifles. Although dusty, the weapons appeared to have been handled recently, Widmier said.

In 2001, police reported finding Gillam with a small amount of methamphetamines after his vehicle caught fire on the Richardson Highway.

Contact Kyle Hopkins at 459-7593 or khopkins@newsminer.com