

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

10822 HOUSE JUDICIARY



# STATE OF ALASKA

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL

*Frank H. Murkowski, Governor*

P.O. BOX 110300  
JUNEAU, ALASKA 99811-0300  
PHONE: (907)465-3600  
FAX: (907)465-2075

April 17, 2003

Representative Lesil McGuire  
House Judiciary Committee  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801

Re: HB 225 – “An act relating to certain civil actions brought by the attorney general under monopoly and restraint of trade statutes; relating to the award of damages in actions brought under those statutes”

Dear Representative McGuire:

I am writing to request that you schedule HB 225 for a hearing at your earliest convenience. This bill has passed out of the House Special Committee on Economic Development International Trade and Tourism.

This bill updates the Alaska antitrust statutes consistent with recent United States Supreme Court precedent to provide a statutory basis for the attorney general to bring a parens patrie action on behalf of state businesses, residents, and governmental entities as indirect purchasers for violations of antitrust statutes and to recover damages. In contrast to other states, under current Alaska antitrust statutes, indirect purchasers are without any remedy for antitrust injuries.

Parens patrie actions typically involve civil actions on behalf of numerous persons and sometimes on behalf of numerous governmental entities. Accordingly, the bill provides for proof of antitrust damages by way of statistical methods consistent with federal law.

The bill also removes the current requirement in the antitrust statutes that any antitrust plaintiff must prove willful conduct before a court may award treble damages.

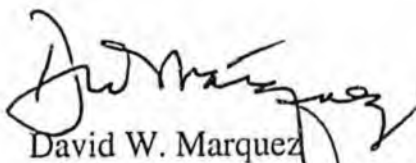
Representative Lesil McGuire  
House Judiciary Committee

April 17, 2003  
Page 2

If you have any questions about this legislation, please do not hesitate to contact my office.

Sincerely,

GREGG D. RENKES  
Attorney General

By:   
David W. Marquez  
Assistant Attorney General

DWM:lb

Cc: Mike Tibbles, Legislative Director, Office of the Governor  
Deborah Behr, Legislation and Regulations Attorney, Department of Law

## SPONSOR STATEMENT

In 1977, the US Supreme Court issued a ruling in a seminal antitrust case called *Illinois Brick Co. v. Illinois*. The case held that federal antitrust laws do not allow "indirect purchasers" to recover damages from "upstream" antitrust violators. The Court further held, however, that states are free to formulate their own public policy on the issue of anti trust lawsuits brought on behalf of indirect purchasers. Since the *Illinois Brick* decision, over 30 states have passed laws that allow recovery of damages by indirect purchasers under various state antitrust statutes. This legislation would update Alaska antitrust statutes to allow the Attorney General to bring actions on behalf of indirect purchasers.

An indirect purchaser is a person who does not buy the suspect product directly from the wrongdoer. For example, suppose two drug manufacturers conspire to keep prescription drug prices high. A consumer who buys the drug from a pharmacy is an "indirect purchaser" because the pharmacy has not violated the antitrust laws. Currently, only direct purchasers, such as the distributor who bought directly from the drug manufacturer, have the option to bring suit for antitrust violations like price-fixing. Since these entities rarely pass on the overcharges they recover, indirect consumers don't really benefit from the suit.

This legislation also removes the requirement of proof of willfulness for treble damages, and provides for statistical methods of proof consistent with federal law. This allows the Attorney General to bring antitrust suits on behalf of Alaska's indirect purchasers, under Alaska law in an Alaskan court, rather than federal court.

## SECTIONAL ANALYSIS – HB 225 and SB 161

**“An Act relating to certain civil actions brought by the attorney general under monopoly and restraint of trade statutes; relating to the award of damages in actions brought under those statutes; and providing for an effective date.”**

---

**Section 1.** AS 45.50.576 is amended as follows:

**Sec. 45.50.576. Suits by persons injured; treble damages.**

This section is being modified to remove the requirement that a defendant be found to have acted “willfully” before treble damages can be awarded. Removing this requirement will make this section consistent with other state and Federal antitrust acts. *See* 15 U.S.C. § 15a.

Subsection (b) is modified to remove duplicative language and make the section consistent with the new section added below.

**Section 2.** AS 45.50 is amended to add a new section as follows:

**Sec. 45.50.577. Enforcement by attorney general.**

This new section will accomplish several things. Currently, the State of Alaska, through the attorney general, is without authority to bring an action on behalf of consumers for “indirect damages.” Indirect damages are damages that a consumer may suffer because of an antitrust violation that occurred “upstream” from the consumer transaction. For example, when a consumer purchases drugs from a pharmacy, the price may be artificially high because of an illegal deal made between two competing manufacturers. The price increase that results from this illegal agreement is passed down to the wholesaler, then to the distributor, then to the retailer, who finally passes the increase to the consumer.

The entity “directly” harmed in the above scenario is the wholesaler who bought the drugs directly from the manufacturer. Thus, under current antitrust law, the only person who can bring an antitrust action against the manufacturers is the wholesaler, or other persons who bought directly from the manufacturer (some

state agencies make these direct purchases). This rule of law was enunciated in a U.S. Supreme Court decision called *Illinois Brick Co. v. Illinois*. That case left open, however, the opportunity for individual states to enact their own laws that would allow the recovery of these “indirect” damages under state-specific antitrust statutes. In response to this case, several states have enacted such laws, called “*Illinois Brick* repealer” statutes because they repeal the effect of the *Illinois Brick* decision.

Alaska has been involved in several multi-state antitrust actions in the last several years. Ever since the tobacco litigation, states’ attorneys general have cooperated with each other to bring these actions against antitrust violators for various kinds of illegal antitrust conduct. The claims Alaska has been able to assert in these cases, however, are limited to claims on behalf of state agencies that have been directly harmed by the alleged illegal conduct. We have limited and questionable authority to make claims on behalf of consumers for their “indirect purchases” of drugs and other products. For example, Alaska lost out on several hundred thousand dollars in consumer relief recently in the “Vitamins” case. That case involved allegations of illegal contracts between vitamin manufacturers. Alaska was initially excluded from the settlement because we did not have an “*Illinois Brick* repealer.” We eventually received about \$100,000, while other states that had such a statute received about \$1 million.

This section provides that the attorney general can bring an action in superior court in the name of the state, and on behalf of consumers and nonstate governmental entities (which includes municipalities) for the recovery of **both** direct and indirect damages.

Subsections (a) and (b) accomplish the above.

Subsection (c) requires the court to exclude from any monetary award any amount that duplicates amounts that have already been awarded for the same injury. The court can also allocate part of an award to persons who have excluded their claims under subsection (e).

Subsection (d) allows the recovery of costs, full reasonable attorney’s fees, and treble damages if the state is the prevailing party.

Subsections (e) and (f) require publication of the proposed action and an opportunity for a person or governmental entity to elect to be excluded from the action. Any judgment issued in the action precludes claims by anyone who does not elect to be excluded.

Subsection (g) provides that any action brought under this section cannot be dismissed without approval of the court.

Subsection (h) provides that any recovery under this section must be distributed in accordance with court instructions, and requires that everyone on whose behalf the action was brought be given an opportunity to recover the participant's appropriate portion of the proceeds.

Subsection (i) provides that only the attorney general can seek monetary relief for persons who suffer indirect injury sustained by a violation of the antitrust laws.

**Section 3.** AS 45.50 is amended by adding a new section as follows:

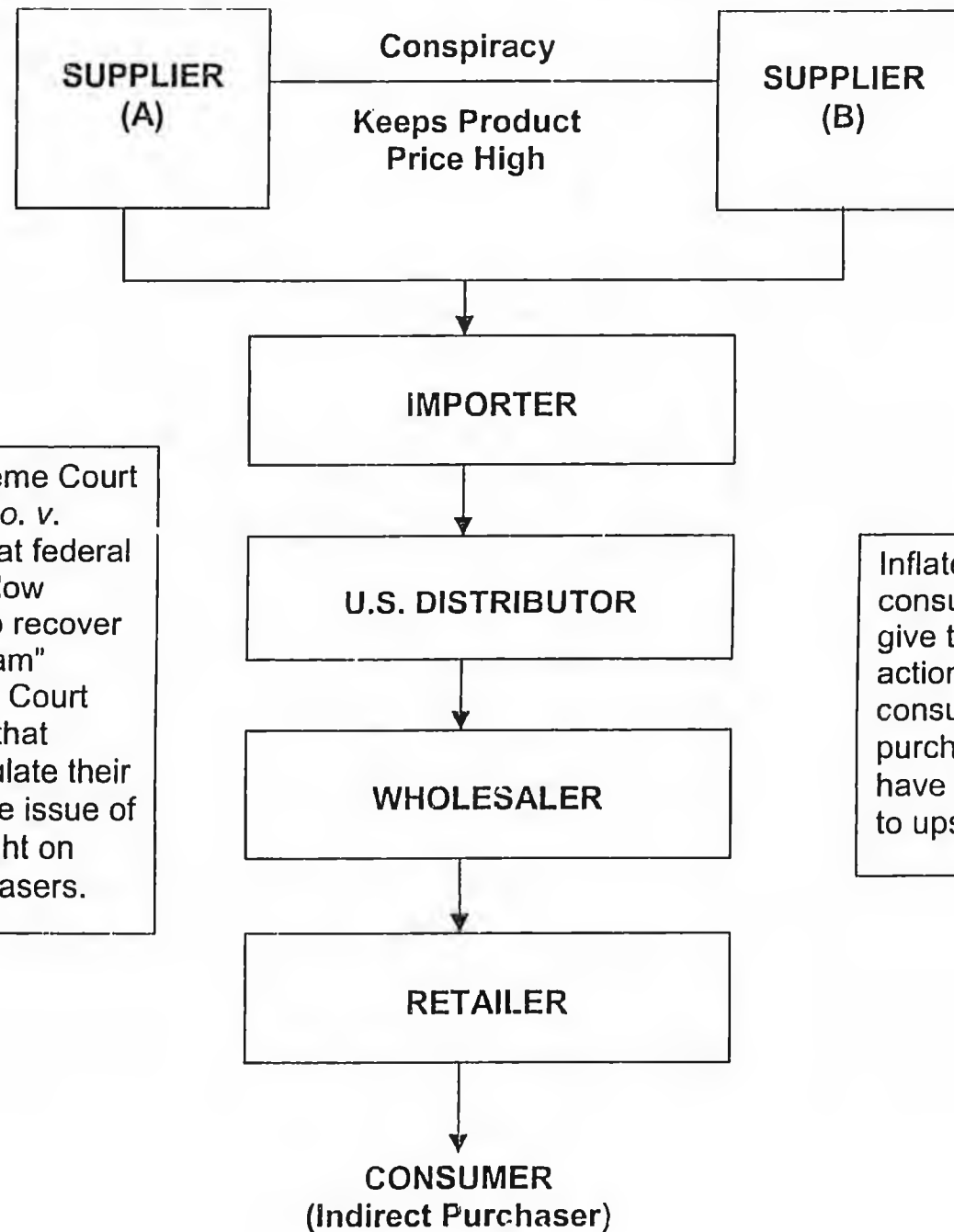
**Sec. 45.50.579. Proof of aggregate damages.**

This section provides that the attorney general can recover aggregate damages using accepted sampling methods approved by the court.

**Section 4. Applicability.** AS 45.50.596 is amended as follows:

This section provides that the Act applies to actions occurring on or after the effective date of the Act.

HB 225



In 1977 the U.S. Supreme Court decided *Illinois Brick Co. v. Illinois*, which states that federal antitrust laws do not allow "indirect purchasers" to recover damages from "upstream" antitrust violators. The Court further held, however, that states are free to formulate their own public policy on the issue of antitrust lawsuits brought on behalf of indirect purchasers.

Inflated price passed on to consumer. This legislation will give the AG authority to bring actions on behalf of consumers who are "indirect purchasers" of products that have artificially high prices due to upstream antitrust behavior.

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 225  
 (H) Publish Date: 3/28/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
 Title: "An Act relating to certain civil actions . . .  
monopoly and restraint of trade statutes; . . . damages . . ." BRU Civil Division  
 Component Fair Business Practices  
 Sponsor Rules Committee  
 Requester Governor Component No. 2206

**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						
<b>TOTAL OPERATING</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**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)						
<b>TOTAL</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>	<b>*****</b>

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)*

This bill updates Alaska antitrust statutes consistent with a recent United States Supreme Court precedent to allow the attorney general to bring a cause of action on behalf of both direct and indirect purchasers. Current Alaska statutes allow a cause of action only for purchasers who buy directly from the person or manufacturer that violated antitrust statutes. Because these type of actions typically involve civil actions on behalf of numerous persons and sometimes on behalf of numerous governmental entities, the bill provides for proof of antitrust damages by way of statistical methods consistent with federal law. The bill also removes the current requirement in the antitrust statutes that any antitrust plaintiff must prove willful conduct before a court may award treble damages. Federal law does not have this requirement, encouraging plaintiffs to resolve issues important to Alaska businesses and consumers in federal court, rather than state court.

Costs associated with passage of this bill will depend on the number and complexity of actions brought by the attorney general in any given year, and are too speculative to quantify at this time.

Prepared by: Joan M. Kasson Phone (907) 465-5370  
 Division Attorney General's Office Date/Time 1/27/03 8:29 AM  
 Approved by: Kathryn Daughhetee for Gregg D. Renkes, Attorney General Date 1/27/2003  
 Agency Department of Law

**HB**

**227**





# 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) 465-4900  
Fax (907) 465-6592

## House Judiciary Committee

### Memorandum

**To:** Leg. Legal  
**From:** Vanessa Tondini, Committee Aide  
House Judiciary Committee  
**Date:** February 9, 2004  
**Re:** CS Request

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Please create a final draft House Judiciary Committee Substitute for work order # 23-LS0896A, HB 227, incorporating the one attached title amendment (I.1). 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.

23-LS0896V.1  
Luckhaupt  
2/9/04

AMENDMENT #1 - PASSED

OFFERED IN THE HOUSE  
TO: CSHB 227(JUD)

BY REPRESENTATIVE GRUENBERG

- 1 Page 1, line 3, following "courts;":
- 2 Insert "limiting magistrates from hearing certain small claims cases;"

23-LS0896V  
Luckhaupt  
2/4/04

**CS FOR HOUSE BILL NO. 227(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-THIRD LEGISLATURE - SECOND SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:**

**Referred:**

**Sponsor(s): HOUSE JUDICIARY COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act increasing the jurisdictional limit for small claims and for magistrates from**  
2 **\$7,500 to \$10,000; increasing the jurisdictional limit of district courts in certain civil**  
3 **cases from \$50,000 to \$100,000; expanding the jurisdiction of district courts; and**  
4 **amending Rule 11(a)(4), Alaska District Court Rules of Civil Procedure, relating to**  
5 **service of process for small claims."**

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

7 **\* Section 1.** AS 22.15.030(a) is amended to read:

8 (a) The district court has jurisdiction of civil cases, including foreign  
9 judgments filed under AS 09.30.200 and arbitration proceedings under AS 09.43.170,  
10 as follows:

11 (1) for the recovery of money or damages when the amount claimed  
12 exclusive of costs, interest, and attorney fees does not exceed \$100,000 [\$50,000] for  
13 each defendant;

1 (2) for the recovery of specific personal property, when the value of  
2 the property claimed and the damages for the detention do not exceed \$100,000  
3 [\$50,000];

4 (3) for the recovery of a penalty or forfeiture, whether given by statute  
5 or arising out of contract, not exceeding \$100,000 [\$50,000];

6 (4) to give judgment without action upon the confession of the  
7 defendant for any of the cases specified in this section, except for a penalty or  
8 forfeiture imposed by statute;

9 (5) for establishing the fact of death or cause and manner of death of  
10 any person in the manner prescribed in AS 09.55.020 - 09.55.069;

11 (6) for the recovery of the possession of premises in the manner  
12 provided under AS 09.45.070 - 09.45.160 when the value of the arrears and damage to  
13 the property does not exceed \$100,000 [\$50,000];

14 (7) for the foreclosure of a lien when the amount in controversy does  
15 not exceed \$100,000 [\$50,000];

16 (8) for the recovery of money or damages in motor vehicle tort cases  
17 when the amount claimed exclusive of costs, interest, and attorney fees does not  
18 exceed \$100,000 [\$50,000] for each defendant;

19 (9) over civil actions for taking utility service and for damages to or  
20 interference with a utility line filed under AS 42.20.030;

21 (10) over cases involving protective orders for domestic violence  
22 under AS 18.66.100 - 18.66.180.

23 \* Sec. 2. AS 22.15.040(a) is amended to read:

24 (a) Except as otherwise provided in this subsection, when a claim for relief  
25 does not exceed \$10,000 [\$7,500], exclusive of costs, interest, and attorney fees, and  
26 request is so made, the district judge or magistrate shall hear the action as a small  
27 claim unless important or unusual points of law are involved or the state is a  
28 defendant. The Department of Labor and Workforce Development may bring an  
29 action as a small claim under this subsection for the payment of wages under  
30 AS 23.05.220 in an amount not to exceed \$20,000, exclusive of costs, interest, and  
31 attorney fees. The supreme court shall prescribe the procedural rules and standard

1 forms to assure simplicity and the expeditious handling of small claims.

2 \* **Sec. 3.** AS 22.15.050 is amended to read:

3 **Sec. 22.15.050. Actions not within civil jurisdiction.** The jurisdiction of the  
4 district courts does not extend to

5 (1) an action in which the title to real property is in question;

6 (2) an action [FOR FALSE IMPRISONMENT, LIBEL, SLANDER,  
7 MALICIOUS PROSECUTION, OR ACTIONS] of an equitable nature, except as  
8 otherwise provided by law.

9 \* **Sec. 4.** AS 22.15.120(a) is amended to read:

10 (a) A magistrate shall preside only in cases and proceedings under  
11 AS 22.15.040, 22.15.100, and 22.15.110, and as follows:

12 (1) for the recovery of money or damages only when the amount  
13 claimed, exclusive of costs, interest, and attorney fees, does not exceed \$10,000  
14 [\$7,500];

15 (2) for the recovery of specific personal property when the value of the  
16 property claimed and the damages for the detention do not exceed \$10,000 [\$7,500];

17 (3) for the recovery of a penalty or forfeiture, whether given by statute  
18 or arising out of contract, not exceeding \$10,000 [\$7,500];

19 (4) to give judgment without action upon the confession of the  
20 defendant for any of the cases specified in this section, except for a penalty or  
21 forfeiture imposed by statute;

22 (5) to give judgment of conviction upon a plea of guilty or no contest  
23 by the defendant in a criminal proceeding within the jurisdiction of the district court;

24 (6) to hear, try, and enter judgments in all cases involving  
25 misdemeanors that are not minor offenses if the defendant consents in writing that the  
26 magistrate may try the case;

27 (7) to hear, try, and enter judgments in all cases involving minor  
28 offenses and violations of ordinances of political subdivisions;

29 (8) for the extradition of fugitives as authorized under AS 12.70;

30 (9) to provide post-conviction relief under the Alaska Rules of  
31 Criminal Procedure for any of the cases specified in (5), (6), or (7) of this subsection if

1 the conviction occurred in the district court; or

2 (10) to hear, try, and enter judgments in actions for the payment of  
3 wages brought by the Department of Labor and Workforce Development as provided  
4 in AS 22.15.040(a).

5 \* **Sec. 5.** AS 22.15.120 is amended by adding a new subsection to read:

6 (c) A magistrate may not preside in small claims cases under AS 22.15.040  
7 when service is made on a defendant outside the state under Rule 11(a)(4)(C), District  
8 Court Rules of Civil Procedure.

9 \* **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to  
10 read:

11 DIRECT COURT RULE AMENDMENT. Rule 11(a), District Court Rules of  
12 Civil Procedure, is amended to read:

13 (a) The summons shall be issued and the summons and complaint served,  
14 according to the procedures of Civil Rule 4, except that:

15 (1) If personal service is used, the clerk shall deliver the summons for  
16 service to a peace officer or to a person specially appointed to serve it.

17 (2) If service is by registered or certified mail, the clerk shall mail the  
18 summons and a copy of the complaint as provided in Civil Rule 4(h).

19 (3) Service by publication or posting shall not be allowed.

20 (4) Service on a defendant who is outside the state shall be allowed

21 (A) [ONLY] in accordance with the Landlord-Tenant Act,  
22 AS 34.03.340;

23 (B) in accordance with [AND] AS 09.05.020, entitled Service  
24 of Process on Nonresident Owner or Operator of Motor Vehicle; or

25 (C) as otherwise permitted under Civil Rule 4.

26 (5) The affidavit required by Civil Rule 4(f) is not required in small  
27 claims cases and Civil Rule 4(j) shall not apply.

28 \* **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to  
29 read:

30 CONDITIONAL EFFECT. Sections 5 and 6 of this Act take effect only if sec. 6 of  
31 this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,

1 Constitution of the State of Alaska.



ALASKA COURT SYSTEM  
State of Alaska  
Office of the Administrative Director

Doug Wooliver  
Administrative Attorney

820 West 4th Avenue  
Anchorage, Alaska 99501-2005  
(907) 264-8265  
FAX (907) 264-8291

February 18, 2004

The Honorable Lesil McGuire  
Chair, House Judiciary Committee  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Dear Representative McGuire:

This letter is in response to questions raised in the House Judiciary Committee regarding HB 227 and the appropriate jurisdictional amount for small claims cases. Specifically I was asked to consider the implications of raising the jurisdictional limit to either \$15,000 or \$20,000. In an effort to answer this question I communicated with several district court judges and magistrates. Although their views varied between support and opposition, most judges opposed an increase beyond the currently proposed limit of \$10,000.

Those that support a limit up to or even exceeding \$20,000 do so because they believe that the higher limits would make it easier for people of limited means to file actions in court. They are not concerned about the larger cases flooding the system or blurring the lines between district court and small claims court.

Those that oppose an increase above \$10,000 do so for several reasons. One is the fear that large cases will interfere with the small claims calendar and slow the process to the detriment of those litigants with smaller claims.

Another concern is that small claims court is not the proper forum for large claims because the informal procedures inadequately protect the rights of the parties. The same lack of formality that makes it easy and inexpensive to sue someone also increases the likelihood that the end result of that suit will be unjust. Small claims court represents a trade-off between simplicity, cost savings and speed on the one hand, and thoroughness and due process on the other. The higher the jurisdictional limit, the more concerned judges become about the adequacy of the process. One judge put it this way:

Discovery in small claims and presentation at trial is often insufficient to allow adequate and fair resolution of the type of issues commonly involve in such larger claims. [Additionally], any inequities tend to work against the defendant "little guy" because they are often up against either lawyers or experienced claim adjusters for the creditor.

Representative Lesil McGuire  
Small Claims Jurisdictional Amount  
February 18, 2004  
Page 2 of 2

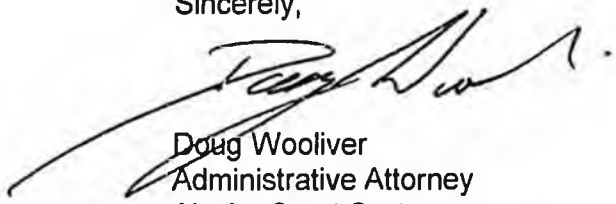
This concern with the fairness of the outcome is compounded by the fact that the sparse record developed in small claims cases makes them difficult to appeal.

Although an inexperienced defendant may always elect to proceed in district court rather than small claims court, as a practical matter, many do not understand the differences between the two courts and the benefits of the greater protections afforded in district court.

Most judges believe that the district court is the proper forum for cases with a value in excess of \$10,000. As the court continues in its efforts to develop more pro se forms and other services this option will become increasingly accessible to the unrepresented litigant.

I hope that this answers your question. Thank you for the opportunity to respond.

Sincerely,

A handwritten signature in black ink, appearing to read "Doug Wooliver", written over a horizontal line.

Doug Wooliver  
Administrative Attorney  
Alaska Court System

# 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: Representative John Harris, Co-Chair  
Representative Bill Williams, Co-Chair  
House Finance Committee

From: Representative Lesil McGuire, Chair   
House Judiciary Committee

Date: February 25, 2004

Re: Request for Hearing, HB 227: District Courts & Small Claims

---

I respectfully request that HB 227: District Courts & Small Claims, be scheduled for a hearing at your earliest convenience. I have attached the following for your information:

1. Sponsor Statement
2. Sectional Analysis
3. CSHB 227 (JUD)
4. HB 227
5. Fiscal Note

If you have any questions please feel free to contact me personally, or my staff, Vanessa Tondini, at 4990.





# 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:** Gerry Luckhaupt, Leg. Legal  
**From:** Vanessa Tondini, Committee Aide  
House Judiciary Committee  
**Date:** February 3, 2004  
**Re:** CS Request

---

Please create a work draft House Judiciary Committee Substitute for work order # 23-LS0896D, HB 227, incorporating the following change: (delete Section 4 (Page 3, Lines 27-30) from version "D") and incorporating the attached amendment adding a new section to the bill.

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.

CSHB 227 WITHDRAWN  
Conceptual A. #2 by Sara

Small claims →  
~~\$50,000~~

OR  
\$20,000 ~~by DFG~~

extend for just  
auto claims + landlord/tenant  
OR, all <sup>real</sup> personal property  
claims

By Gruenberg

HB 227

~~AMENDMENT~~

Add new section to bill:

Section \_\_\_\_ AS 22.15.050 is amended to read:

Sec. 22.15.050. Actions not within civil jurisdiction. The jurisdiction of the district courts does not extend to

- (1) an action in which the title to real property is in question;
- (2) an action [FOR FALSE IMPRISONMENT, LIBEL, SLANDER, MALICIOUS PROSECUTION, OR ACTIONS] of an equitable nature, except as otherwise provided by law.

23-LS0896\D  
Luckhaupt  
2/2/04

**CS FOR HOUSE BILL NO. 227(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): HOUSE JUDICIARY COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act increasing the jurisdictional limit for small claims and for magistrates from**  
2 **\$7,500 to \$10,000; increasing the jurisdictional limit of district courts in certain civil**  
3 **cases from \$50,000 to \$100,000; and amending Rule 11(a)(4), Alaska District Court**  
4 **Rules of Civil Procedure, relating to service of process for small claims."**

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

6 **\* Section 1. AS 22.15.030(a) is amended to read:**

7 (a) The district court has jurisdiction of civil cases, including foreign  
8 judgments filed under AS 09.30.200 and arbitration proceedings under AS 09.43.170,  
9 as follows:

10 (1) for the recovery of money or damages when the amount claimed  
11 exclusive of costs, interest, and attorney fees does not exceed \$100,000 [\$50,000] for  
12 each defendant;

13 (2) for the recovery of specific personal property, when the value of  
14 the property claimed and the damages for the detention do not exceed \$100,000

1           [\$50,000];

2                       (3) for the recovery of a penalty or forfeiture, whether given by statute  
3 or arising out of contract, not exceeding \$100,000 [\$50,000];

4                       (4) to give judgment without action upon the confession of the  
5 defendant for any of the cases specified in this section, except for a penalty or  
6 forfeiture imposed by statute;

7                       (5) for establishing the fact of death or cause and manner of death of  
8 any person in the manner prescribed in AS 09.55.020 - 09.55.069;

9                       (6) for the recovery of the possession of premises in the manner  
10 provided under AS 09.45.070 - 09.45.160 when the value of the arrears and damage to  
11 the property does not exceed \$100,000 [\$50,000];

12                       (7) for the foreclosure of a lien when the amount in controversy does  
13 not exceed \$100,000 [\$50,000];

14                       (8) for the recovery of money or damages in motor vehicle tort cases  
15 when the amount claimed exclusive of costs, interest, and attorney fees does not  
16 exceed \$100,000 [\$50,000] for each defendant;

17                       (9) over civil actions for taking utility service and for damages to or  
18 interference with a utility line filed under AS 42.20.030;

19                       (10) over cases involving protective orders for domestic violence  
20 under AS 18.66.100 - 18.66.180.

21 \* **Sec. 2.** AS 22.15.040(a) is amended to read:

22           (a) Except as otherwise provided in this subsection, when a claim for relief  
23 does not exceed \$10,000 [\$7,500], exclusive of costs, interest, and attorney fees, and  
24 request is so made, the district judge or magistrate shall hear the action as a small  
25 claim unless important or unusual points of law are involved or the state is a  
26 defendant. The Department of Labor and Workforce Development may bring an  
27 action as a small claim under this subsection for the payment of wages under  
28 AS 23.05.220 in an amount not to exceed \$20,000, exclusive of costs, interest, and  
29 attorney fees. The supreme court shall prescribe the procedural rules and standard  
30 forms to assure simplicity and the expeditious handling of small claims.

31 \* **Sec. 3.** AS 22.15.120(a) is amended to read:

1 (a) A magistrate shall preside only in cases and proceedings under  
2 AS 22.15.040, 22.15.100, and 22.15.110, and as follows:

3 (1) for the recovery of money or damages only when the amount  
4 claimed, exclusive of costs, interest, and attorney fees, does not exceed \$10,000  
5 [\$7,500];

6 (2) for the recovery of specific personal property when the value of the  
7 property claimed and the damages for the detention do not exceed \$10,000 [\$7,500];

8 (3) for the recovery of a penalty or forfeiture, whether given by statute  
9 or arising out of contract, not exceeding \$10,000 [\$7,500];

10 (4) to give judgment without action upon the confession of the  
11 defendant for any of the cases specified in this section, except for a penalty or  
12 forfeiture imposed by statute;

13 (5) to give judgment of conviction upon a plea of guilty or no contest  
14 by the defendant in a criminal proceeding within the jurisdiction of the district court;

15 (6) to hear, try, and enter judgments in all cases involving  
16 misdemeanors that are not minor offenses if the defendant consents in writing that the  
17 magistrate may try the case;

18 (7) to hear, try, and enter judgments in all cases involving minor  
19 offenses and violations of ordinances of political subdivisions;

20 (8) for the extradition of fugitives as authorized under AS 12.70;

21 (9) to provide post-conviction relief under the Alaska Rules of  
22 Criminal Procedure for any of the cases specified in (5), (6), or (7) of this subsection if  
23 the conviction occurred in the district court; or

24 (10) to hear, try, and enter judgments in actions for the payment of  
25 wages brought by the Department of Labor and Workforce Development as provided  
26 in AS 22.15.040(a).

27 \* **Sec. 4.** AS 22.15.120 is amended by adding a new subsection to read:

28 (c) A magistrate may not preside in small claims cases under AS 22.15.040  
29 when service is made on a defendant outside the state under Rule 11(a)(4)(C), District  
30 Court Rules of Civil Procedure.

31 \* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 DIRECT COURT RULE AMENDMENT. Rule 11(a), District Court Rules of  
3 Civil Procedure, is amended to read:

4 (a) The summons shall be issued and the summons and complaint served,  
5 according to the procedures of Civil Rule 4, except that:

6 (1) If personal service is used, the clerk shall deliver the summons for  
7 service to a peace officer or to a person specially appointed to serve it.

8 (2) If service is by registered or certified mail, the clerk shall mail the  
9 summons and a copy of the complaint as provided in Civil Rule 4(h).

10 (3) Service by publication or posting shall not be allowed.

11 (4) Service on a defendant who is outside the state shall be allowed

12 (A) [ONLY] in accordance with the Landlord-Tenant Act,  
13 AS 34.03.340;

14 (B) in accordance with [AND] AS 09.05.020, entitled Service  
15 of Process on Nonresident Owner or Operator of Motor Vehicle; or

16 (C) when the cause of action is based upon a debt,  
17 contractual obligation, personal injury, or property damage incurred or  
18 occurring while the defendant was physically present in Alaska.

19 (5) The affidavit required by Civil Rule 4(f) is not required in small  
20 claims cases and Civil Rule 4(j) shall not apply.

21 \* Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to  
22 read:

23 CONDITIONAL EFFECT. Sections 4 and 5 of this Act take effect only if sec. 5 of  
24 this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,  
25 Constitution of the State of Alaska.

# 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:** January 29, 2004  
**Re:** CS Request

---

Please create a work draft House Judiciary Committee Substitute for work order # 23-LS0896A, HB 227, incorporating the amendments described below. The bill will be heard in committee on Monday, 2/2. I have also written the changes into the attached copy of HB 227 for clarification.

**Amendments:**

- 1) Increase the jurisdictional limit for district courts to \$100,000, instead of \$75,000.
- 2) Incorporate language to limit magistrates' jurisdiction, creating an exception notwithstanding AS 22.15.120 (a), to preclude a magistrate from presiding in cases or proceedings brought against a defendant who was served under Dist. Ct. R. Civ. Pro. 11(a)(4)(C). Please feel free to draft this concept where and how you feel appropriate.

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.

**HOUSE BILL NO. 227**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-THIRD LEGISLATURE - FIRST SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Introduced: 3/28/03**

**Referred: Labor and Commerce, Judiciary**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act increasing the jurisdictional limit for small claims and for magistrates from  
2 \$7,500 to \$10,000; increasing the jurisdictional limit of district courts in certain civil  
3 cases from \$50,000 to \$75,000; and amending Rule 11(a)(4), Alaska District Court Rules  
4 of Civil Procedure, relating to service of process for small claims."

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

6 \* Section 1. AS 22.15.030(a) is amended to read:

7 (a) The district court has jurisdiction of civil cases, including foreign  
8 judgments filed under AS 09.30.200 and arbitration proceedings under AS 09.43.170,  
9 as follows:

10 (1) for the recovery of money or damages when the amount claimed  
11 exclusive of costs, interest, and attorney fees does not exceed ~~\$75,000~~ <sup>100,000</sup> [ \$50,000 ] for  
12 each defendant;

13 (2) for the recovery of specific personal property, when the value of  
14 the property claimed and the damages for the detention do not exceed ~~\$75,000~~

1           [\$50,000];

2                           (3) for the recovery of a penalty or forfeiture, whether given by statute  
3 or arising out of contract, not exceeding ~~\$75,000~~ [\$50,000];

4                           (4) to give judgment without action upon the confession of the  
5 defendant for any of the cases specified in this section, except for a penalty or  
6 forfeiture imposed by statute;

7                           (5) for establishing the fact of death or cause and manner of death of  
8 any person in the manner prescribed in AS 09.55.020 - 09.55.069;

9                           (6) for the recovery of the possession of premises in the manner  
10 provided under AS 09.45.070 - 09.45.160 when the value of the arrears and damage to  
11 the property does not exceed ~~\$75,000~~ [\$50,000];

12                           (7) for the foreclosure of a lien when the amount in controversy does  
13 not exceed ~~\$75,000~~ [\$50,000];

14                           (8) for the recovery of money or damages in motor vehicle tort cases  
15 when the amount claimed exclusive of costs, interest, and attorney fees does not  
16 exceed ~~\$75,000~~ [\$50,000] for each defendant;

17                           (9) over civil actions for taking utility service and for damages to or  
18 interference with a utility line filed under AS 42.20.030;

19                           (10) over cases involving protective orders for domestic violence  
20 under AS 18.66.100 - 18.66.180.

21 \* **Sec. 2.** AS 22.15.040(a) is amended to read:

22                           (a) Except as otherwise provided in this subsection, when a claim for relief  
23 does not exceed \$10,000 [\$7,500], exclusive of costs, interest, and attorney fees, and  
24 request is so made, the district judge or magistrate shall hear the action as a small  
25 claim unless important or unusual points of law are involved or the state is a  
26 defendant. The Department of Labor and Workforce Development may bring an  
27 action as a small claim under this subsection for the payment of wages under  
28 AS 23.05.220 in an amount not to exceed \$20,000, exclusive of costs, interest, and  
29 attorney fees. The supreme court shall prescribe the procedural rules and standard  
30 forms to assure simplicity and the expeditious handling of small claims.

31 \* **Sec. 3.** AS 22.15.120(a) is amended to read:

1 (a) A magistrate shall preside only in cases and proceedings under  
2 AS 22.15.040, 22.15.100, and 22.15.110, and as follows:

3 (1) for the recovery of money or damages only when the amount  
4 claimed, exclusive of costs, interest, and attorney fees, does not exceed \$10,000  
5 [\$7,500];

6 (2) for the recovery of specific personal property when the value of the  
7 property claimed and the damage for the detention do not exceed \$10,000 [\$7,500];

8 (3) for the recovery of a penalty or forfeiture, whether given by statute  
9 or arising out of contract, not exceeding \$10,000 [\$7,500];

10 (4) to give judgment without action upon the confession of the  
11 defendant for any of the cases specified in this section, except for a penalty or  
12 forfeiture imposed by statute;

13 (5) to give judgment of conviction upon a plea of guilty or no contest  
14 by the defendant in a criminal proceeding within the jurisdiction of the district court;

15 (6) to hear, try, and enter judgments in all cases involving  
16 misdemeanors that are not minor offenses if the defendant consents in writing that the  
17 magistrate may try the case;

18 (7) to hear, try, and enter judgments in all cases involving minor  
19 offenses and violations of ordinances of political subdivisions;

20 (8) for the extradition of fugitives as authorized under AS 12.70;

21 (9) to provide post-conviction relief under the Alaska Rules of  
22 Criminal Procedure for any of the cases specified in (5), (6), or (7) of this subsection if  
23 the conviction occurred in the district court; or

24 (10) to hear, try, and enter judgments in actions for the payment of  
25 wages brought by the Department of Labor and Workforce Development as provided  
26 in AS 22.15.040(a).

27 \* Sec. 4. Rule 11(a), District Court Rules of Civil Procedure, is amended to read:

28 (a) The summons shall be issued and the summons and complaint served,  
29 according to the procedures of Civil Rule 4, except that:

30 (1) If personal service is used, the clerk shall deliver the summons for  
31 service to a peace officer or to a person specially appointed to serve it.

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(2) If service is by registered or certified mail, the clerk shall mail the summons and a copy of the complaint as provided in Civil Rule 4(h).

(3) Service by publication or posting shall not be allowed.

(4) Service on a defendant who is outside the state shall be allowed

(A) [ONLY] in accordance with the Landlord-Tenant Act, AS 34.03.340;

(B) in accordance with [AND] AS 09.05.020, entitled Service of Process on Nonresident Owner or Operator of Motor Vehicle; or

(C) when the cause of action is based upon a debt, contractual obligation, personal injury, or property damage incurred or occurring while the defendant was physically present in Alaska.

(5) The affidavit required by Civil Rule 4(f) is not required in small claims cases and Civil Rule 4(j) shall not apply.

\* Sec. 5. The uncoded law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. Section 4 of this Act takes effect only if that section receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

~~except that~~

(b) Notwithstanding (a) of this —  
A magistrate may not preside in cases or proceedings <sup>brought</sup> against a defendant who was served under ~~(a)(4)(C)~~  
Alaska ~~Rules of~~ Civil Rule 11(a)(4)(C).

# ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair  
Rep. Tom Anderson, Vice-Chair  
Rep. Dan Ogg  
Rep. Jim Holla  
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

### Sponsor Statement HB 227

**"An Act increasing the jurisdictional limit for small claims and for magistrates from \$7,500 to \$10,000; increasing the jurisdictional limit of district courts in certain civil cases from \$50,000 to \$75,000; and amending Rule 11(a)(4), Alaska District Court Rules of Civil Procedure, relating to service of process for small claims."**

The jurisdictional limit for district courts was last raised in 1990 when the legislature raised the limit from \$35,000 to \$50,000. By raising the jurisdictional limit from \$50,000 to \$75,000, this bill will allow for increases in inflation and provide increased flexibility for litigants regarding whether to file in district court or superior court.

The jurisdictional limit on small claims court and magistrate court was last raised in 1997 when the legislature raised the limit from \$5000 to \$7500. Small claims court offers many advantages over district court to private litigants, including less formal discovery requirements, reduced filing fees, and relaxed evidentiary rules. This bill will increase the limit to \$10,000.

Finally, the bill will allow suits in small claims court against people who caused damage or breached contracts while they were visiting Alaska. Under the current rule governing small claims court, the defendant must be served with process in Alaska. This bill allows suits against defendants who are no longer in Alaska although the claim arose in the state.

# 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  
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## House Judiciary Committee

### Sectional Analysis

#### HB 227

**"An Act increasing the jurisdictional limit for small claims and for magistrates from \$7,500 to \$10,000; increasing the jurisdictional limit of district courts in certain civil cases from \$50,000 to \$75,000; and amending Rule 11(a)(4), Alaska District Court Rules of Civil Procedure, relating to service of process for small claims."**

**Section 1** increases the jurisdictional limit of district courts from \$50,000 to \$75,000.

**Sections 2 and 3** increase the jurisdictional limits of the small claims court and the magistrate court from \$7500 to \$10,000.

**Section 4** allows suits in small claims court against out-of-state defendants who caused damage while they were physically present in Alaska.

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 227  
 (H) Publish Date: 1/23/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
 Title District courts and small claims BRU Alaska Court System  
 Component Trial Courts  
 Sponsor House Judiciary Committee  
 Requester House Labor and Commerce Component No. 768

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*	*	*	*	*	*

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**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)						
<b>TOTAL</b>	*	*	*	*	*	*

Estimate of any current year (FY2004) cost:           \*  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

House Bill 227 will increase the jurisdictional limit of the district court from \$50,000 to \$75,000 per defendant. The court does not anticipate a significant impact from this change. The bill also increases the jurisdictional limit of small claims court from \$7,500 to \$10,000 and allows a plaintiff to sue an out-of-state defendant in those cases where the claim arose in Alaska. Both changes are likely to increase the number of cases filed in small claims court. The cases with out-of-state defendants are likely to be more lengthy than would otherwise be the case. However, because the increase in the number of cases filed in small claims court will be partially offset by a corresponding decrease in the number of cases filed in the district court and because the number of likely out-of-state defendants is unknown, the impact of the passage of HB 227 is too speculative to support a fiscal note at this time. If the impact turns out to be significant the court may return to the legislature with a request for additional funding.

Prepared by: Douglas Wooliver, Administrative Attorney Phone 463-4750  
 Division: Alaska Court System Date/Time 1/16/04 8:17 AM  
 Approved by: Stephanie Cole, Administrative Director Date 1/16/2004  
 Agency: Alaska Court System

**HB**

**244**





HOUSE COMMITTEE REPORT

5-12-03

(7)  
Date Referred to Committee: April 4, 2003

FURTHER REFERRALS: Finance

Date of Committee Action: May 9, 2003

The JUDICIARY Committee considered:

HB 244

HOUSE BILL NO. 244

CRIMINAL LAW/SENTENCING/PROBATION/PAROLE

"An Act relating to the Code of Criminal Procedure; relating to defenses, affirmative defenses, and justifications to certain criminal acts; relating to rights of prisoners after arrest; relating to discovery, immunity from prosecution, notice of defenses, admissibility of certain evidence, and right to representation in criminal proceedings; relating to sentencing, probation, and discretionary parole; amending Rule 16, Alaska Rules of Criminal Procedure, and Rules 404, 412, 609, and 803, Alaska Rules of Evidence; and providing for an effective date."

Recommends it be replaced with [ ] HCS or [X] CS for HB 244 (JUD)  
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR \_\_\_\_\_ [ ] Same Title [X] 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  
LEG  
LAW  
LWF  
MVA  
DNR  
DPS  
REV  
DOT  
UA

NEW FISCAL NOTES				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
ADM	3	✓		

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
LAW	1			✓
COR	2	✓		

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	Holm	(1)	(1)	(4)	
	Sara O'Quinn		✓	✓	
	Greenberg			✓	
	SAMUEL	✓			
Chair:	McClure				✓
Chair:					

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: HB244-LAW-CDCO-3-17  
 Bill Version: CSHB 244 (2d JUD)  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
 Title "An Act relating to murder in the BRU Criminal  
second degree, the defense of acting in the heat of passion..." Component All  
 Sponsor House Rules Committee  
 Requester House Judiciary Committee Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

The bill proposes a number of changes in the law regarding criminal defenses and procedures.

1. Makes the death of any person in the course of the enumerated crimes such as robbery murder in the second degree.
2. It makes self-defense unavailable to violence resulting from gang activity or illegal drug transaction and it reverses certain self-defense decisions.
3. It adopt a procedure for the courts to determine whether a valid privilege against self-incrimination exists, and if found makes requirements of the court to inform prosecution of the seriousness of the crime to which privilege applies.
4. The bill adopts guidelines and direction to courts in imposing concurrent and consecutive terms of imprisonment when a defendant is convicted of more than one crime.

Prepared by: Kathryn Daughhete, Director Phone \_\_\_\_\_  
 Division: Administrative Services Date/Time 3/16/04 4:31 PM  
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 3/16/2004  
 Agency: Department of Law

**FISCAL NOTE**

**STATE OF ALASKA  
2004 LEGISLATIVE SESSION**

**BILL NO.** \_\_\_\_\_

**ANALYSIS CONTINUATION**

5. It also makes failure to report a violation of a condition of release by a third party custodian a misdemeanor.
6. it expands the crime of sexual abuse of a minor in the third degree to include offenders under 16 years of age engaging in sexual penetration with a person under 13 years of age and at least three years younger than the offender and makes it a class C felony. It also authorizes the release to the public, upon request, of agency records concerning adjudication of a sexual offense to protect the safety of a child or vulnerable adult.
7. Finally, this bill also relates to local options regarding alcoholic beverages; the boundaries of local option areas; furnishing alcoholic beverages to a person under 21 years old; and forfeiture of money and other valuable items derived from violation of laws relating to alcoholic beverages.

Passage of this legislation will have no foreseeable fiscal impact on the Department of Law.

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: CSHB244-DOC-IDO-03-16-I  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Corrections  
Title Criminal Procedures, Sentencing & Related RDU Administration & Operations  
Issues. Component Institution Director's Office  
Sponsor \_\_\_\_\_  
Requester \_\_\_\_\_ Component No. 1381

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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	3.4	54.6	98.9	174.2	195.0	225.7
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
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
<b>TOTAL OPERATING</b>	<b>3.4</b>	<b>54.6</b>	<b>98.9</b>	<b>174.2</b>	<b>195.0</b>	<b>225.7</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**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	3.4	54.6	98.9	174.2	195.0	225.7
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 (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>3.4</b>	<b>54.6</b>	<b>98.9</b>	<b>174.2</b>	<b>195.0</b>	<b>225.7</b>

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 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)

Time served is estimated based on the time that would have been served under this bill for defendants sentenced during the time period 1/1/2001 through 12/31/2001. Time served under current law is not included on Fiscal Note estimates. Months are based on an average of 30 days per month and the FY04 cost of care of \$113.69. Sentences timeframe is estimated as beginning 7/1/2004.

See attached:

Prepared by: Jerry D. Burnett, Director Phone (907) 465-3339  
Division Administrative Services Date/Time 3/16/04 8:05 AM  
Approved by: Portia C.K. Parker, Deputy Commissioner Date 3/16/2004  
Agency Department of Corrections

**FISCAL NOTE**

**STATE OF ALASKA  
2004 LEGISLATIVE SESSION**

**BILL NO.** CSHB244-DOC-IDO-03-16-I

**ANALYSIS CONTINUATION**

For years past FY 2010, there could be a cumulative effect of long-term and short-term sentence increases that would result in higher costs on an annual basis. We have not attempted to estimate these future year costs past FY 2010. Given the recidivism rates for many offenders, it is not clear that these longer sentences will actually have the effect of increasing costs to the Department of Corrections. Our costs are the same on a daily basis whether offenders are serving an extra period of incarceration or are reincarcerated for a new offense. To the extent that increased sentences reduce recidivism for this group of offenders, the legislation may result in lower costs in future years.

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CSHB 244(2d JUD)  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title An Act relating to murder in the BRU Legal and Advocacy Service  
second degree,... Component Public Defender Agency  
 Sponsor Rules Committee  
 Requester House Judiciary Component No. 1631

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	74.5	74.5	74.5	74.5	74.5	74.5
Travel	2.1	2.1	2.1	2.1	2.1	2.1
Contractual	6.5	6.5	6.5	6.5	6.5	6.5
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	6.7	0.7	0.7	0.7	0.7	0.7
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>90.8</b>	<b>84.8</b>	<b>84.8</b>	<b>84.8</b>	<b>84.8</b>	<b>84.8</b>

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

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	90.8	84.8	84.8	84.8	84.8	84.8
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>90.8</b>	<b>84.8</b>	<b>84.8</b>	<b>84.8</b>	<b>84.8</b>	<b>84.8</b>

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

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

The Public Defender's operations will be fiscally affected by this proposed legislation if it becomes law. In sections 1-7, if established villages and municipalities adopt lower amounts of alcohol for local option purposes than established in Title 4 that would increase the number of prosecutions per year, depending upon the number of local option areas that adopt lower amounts. The Agency cannot predict how many local option areas will lower the amounts, so the fiscal impact cannot be quantified. Expanding the circumstances under which the offense of furnishing alcohol to a minor is a class C felony instead of a class A misdemeanor, to include violations that occur  
 See attached page.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416  
 Division: Public Defender Agency Date/Time 4/2/04 11:43 AM  
 Approved by: Mike Miller, Commissioner Date 4/2/2004  
 Agency: Department of Administration

FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

HB 244 (2d JUD)  
BILL NO. ~~CS SB 170~~

**ANALYSIS CONTINUATION**

within the boundaries of a local option area will have a fiscal impact on the operation of the Agency. Increasing what was a misdemeanor to a felony increases the workload of the Agency. Felonies are more difficult cases and often require more work, investigation, and resources to defend, especially in rural areas, that would be most impacted by this change. Allowing the forfeiture of money and other items used in financial transactions derived from prohibited activity violative of local option laws, will have a fiscal impact on the operations of the Agency, because there will be more hearings on the issue of forfeiture involving potential claims by lienholders, owners, and others with an interest in the property subject to forfeiture.

Section 9 expands the crime of assault in the third degree, a class C felony, to include when a person with criminal negligence causes serious physical injury by means of a dangerous instrument. This conduct is currently an A misdemeanor. Expanding the crime of third degree assault, a C felony, to include causing serious physical injury with criminal negligence, by means of a dangerous instrument, most likely a vehicle, will certainly have a fiscal impact on Agency operations. Increasing what is now a misdemeanor to a felony level offense increases the workload of the Agency. Felonies are more difficult cases that require more resources to defend. It cannot be accurately predicted however what the increased number of cases from misdemeanor to felony will be, that are the target of this section.

Section 12 (with conforming Section 28(a)) seeks to increase the penalties for and create a new criminal offense for violations of a court-ordered third party custodian's duty. Changing what is now a contempt violation to a charge for a class A or B misdemeanor with significantly stiffer penalties will result in less clients getting out of jail on bail, which will increase the need to more quickly prepare a case for trial and then go to trial more quickly for these clients to ensure their right to a speedy trial. It will also increase the Public Defender Agency's caseloads because it may be appointed to represent many of these custodians charged with these misdemeanors for failing to immediately report a violation.

Section 13 will have a fiscal affect on the Agency operations because more cases will be prosecuted where self-defense used to be legitimately raised, but now will be disallowed, however, it is impossible to accurately predict how many of these new prosecutions will result.

Section 14 proposes changing the quantum of proof that the defendant must produce to the satisfaction of the judge, sitting without a jury, in order to raise self-defense or defense of others to the jury. Instead of "some evidence" as currently required, Section 14 proposes "some plausible evidence."

The Agency will have increased investigative costs as a result of these changes, primarily in the Anchorage office that handles the most cases.

Sections 18-19, 25-26, and 28(b) seek to amend the sentencing statutes to expand the situations in which consecutive sentencing is mandated and to eliminate or restrict the court's ability to determine the appropriate amount of consecutive time to be imposed for certain crimes. This change in the sentencing statutes will likely result in the inability to resolve cases short of trial, when the case is one in which conviction of more than one count would otherwise have been an appropriate resolution, now would be forced to go to trial because of the exposure to mandatory consecutive sentences. This fiscal impact is not easily determined, but inevitable.

Sections 21-24 concern drunk driving and refusal laws under Title 28. It broadens felony DUI and refusal to include a person driving under the influence who has any prior conviction for felony DUI or refusal. Making any subsequent DUI or refusal a felony if there is a prior conviction for felony DUI or refusal will impact the operations of the agency, probably not immediately, but in the future. It is unknown how many people convicted of felony DUI or refusal will allegedly reoffend after 10 years has elapsed. Since the enactment of felony DUI and refusal in 1996, the number of these cases handled by the Agency has increased every year. In FY 99 the Agency handled approximately 125 felony DUI and refusals, but in FY02 it handled over 300. Felony prosecutions are more difficult cases and require more work, investigation, and resources to defend, especially in rural areas.

For all of the above reasons, one full time investigator is required in the Anchorage office to meet the fiscal challenges this bill will have on the operations of the Agency.

# 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 Letter of Intent CSHB 244 (JUD)

The Alaska State Legislature acknowledges the findings contained in the Alaska Judicial Council's study "Alaska Felony Process: 1999" that the use of third party custodians was initially intended to give indigent defendants an equal opportunity for predisposition release, that this bail condition was one of the most important influences on the length of time that defendants spent incarcerated before disposition of their cases, and that this bail condition has resulted in substantially longer terms of predisposition incarceration in non-violent type cases. Given the right to bail guaranteed by Article I, Section 11 of the Alaska Constitution, it is the intent of the Legislature that judicial officers appoint third party custodians in a manner that will further the intent of the statute.

A handwritten signature in cursive script, appearing to read "Lesil McGuire", written over a horizontal line.

Representative Lesil McGuire  
Chair

# 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 *Attn: Jerry Luckhaupt*  
**From:** Vanessa Tondini, Committee Aide  
House Judiciary Committee  
**Date:** April 19, 2004  
**Re:** CS Request

---

Please create a new final draft House Judiciary Committee Substitute for work order # 23-GH 1024\Q, HB 244, substituting the attached language regarding the "firewall" immunity provisions of Sec. 21, AS 12.50.101, Page 11, Lines 4-9. Also, regarding the language change that you suggested for Sec. 25 (replacing "the alleged offense was committed" with "the operation or driving"), please make this change if it is okay with Dean Gueneli at the DOL.

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

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.

HB 244 (Jewell)

“If the court finds that the witness has a valid claim of privilege, it shall advise an attorney designated by the attorney general of that finding and inform the attorney of the category or categories of offenses to which the privilege applies: higher-level felony, lower-level felony, or misdemeanor. If the designate attorney decides that granting immunity to the witness is appropriate, the designated attorney shall deliver or cause to be delivered a letter to that effect to the witness or an attorney for the witness. The designated attorney may not disclose the category of offense to anyone.”

# 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

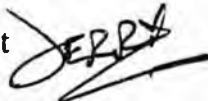
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 13, 2004

**SUBJECT:** CSHB 244(2d JUD) ( Work Order No. 23-GH1024\Q)

**TO:** Representative Lesil McGuire  
Attn: Vanessa Tondini

**FROM:** Gerald P. Luckhaupt   
Legislative Counsel

Enclosed is the CS(2d JUD) you requested, I have a couple of comments. First, look closely at the "firewall" immunity provisions of sec. 21 to see if I correctly discerned the intent of the amendment. Second, regarding sec. 25, there is at least some concern in this office that lines 13 - 17 are no longer as clear as they should be and accordingly I recommend that the phrase "the alleged offense was committed" on line 14 be replaced with "the operation or driving." This change will remove any possible ambiguity in the statute.

GPL:mdr  
04-153.mdr

Enclosure

# 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:** April 7, 2004  
**Re:** CS Request

---

Please create a final draft House Judiciary Committee Substitute for work order # 23-GH 1024\I, HB 244, incorporating the attached eight amendments (Rescind Previous Amendment #3, Conceptual Amendment #17, Amendment #2, Amendment #19, Amendment #20A, Technical Amendment #20B, Amendment #21, and Amendment #23 (which is #22 amended)). All amendments are conceptual for the purpose of proper placement and renumbering within the bill. The bill was finally passed out of committee today!

If you have any questions, please call me at 4990. I will actually be out of town until Tuesday evening, 4/13, so if you do have questions regarding the amendments we can talk Wed. morning, and until then just use your best judgment. I don't think we're in a big rush to hand the bill in, as the committee members will want to review all the changes. Thank you so very much and have a Happy Easter!

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4/9 - ~~WALTER~~ motion  
motion to Rescind Action on passing this A. (A#3) - PASSED/RESCINDED  
by Rep. Samuels.

AMENDMENT NO. 3 - PASSED 4/2  
by Rep. ~~WALTER~~ GRUENBERG  
OFFERED TO CSHB 244 (JUD)

Page 9, lines 2 and 3: Delete all material.

Page 9, line 4: Delete "(4)" and replace it with "(2)"

Page 9, line 30 to Page 10, line 1: Delete "and inform the prosecution of the category of offense to which the privilege applies: a higher level felony, a lower level felony, or a misdemeanor"

CSHB 244 (JUD) version "I"

\* Conceptual Amendment # 17 - PASSED  
by Rep. Samuels

sect. 18

Create a "chinese fire wall"

... Designate one person from Dept. of Law  
to be in receipt of the information, who  
is to be bound by rules of confidentiality.

(If you have questions regarding this Amendment,  
please speak with Rep. Samuels)

OFFERED IN THE HOUSE

AMENDMENT # 2  
by Rep. Samuels

-set aside 4/2  
PASSED 4/7

TO: CSHB 244(2<sup>nd</sup> JUD)  
VERSION "I"

Page 8, after line <sup>22</sup> 18:

Insert the following:

“\*Sec. 15. AS 12.25.150(b) is repealed and reenacted to read:

(b) Immediately after an arrest, a prisoner has the right to (1) telephone or otherwise communicate with the prisoner’s attorney; (2) telephone or otherwise communicate with any relative or friend; (3) an immediate visit from an attorney at law entitled to practice in the courts of Alaska requested by the prisoner; and (4) a visit from a relative or friend requested by the prisoner. This subsection does not provide a prisoner with the right to initiate communication or attempt to initiate communication under circumstances prescribed under AS 11.56.755.”

Renumber the following bill sections accordingly.

AMENDMENT NO. 19 - PASSED

OFFERED TO CSHB 244 (2d JUD)

BY REPRESENTATIVE GRUENBERG

Page 12, line 7: Add a new bill section and renumber bill sections and section references accordingly:

Sec. \_\_. AS 28.35.030(a) is amended to read:

(a) A person commits the crime of driving while under the influence of an alcoholic beverage, inhalant, or controlled substance if the person operates or drives a motor vehicle or operates an aircraft or a watercraft

(i) while under the influence of an alcoholic beverage, intoxicating liquor, inhalant, or any controlled substance, singly or in combination; or

(2) if [WHEN], as determined by a chemical test taken within four hours after the alleged offense was committed, there is 0.08 percent or more by weight of alcohol in the person's blood or 80 milligrams or more of alcohol per 100 milliliters of blood, or if [WHEN] there is 0.08 grams or more of alcohol per 210 liters of the person's breath[; OR

(3) WHILE THE PERSON IS UNDER THE COMBINED INFLUENCE OF AN ALCOHOLIC BEVERAGE, AN INTOXICATING LIQUOR, AN INHALANT, AND A CONTROLLED SUBSTANCE].

Revised Amendment #20 by Rep. Gara

HB 244  
AMENDMENT TO CSSE 170 (JUD) Work Draft 3/8/2004

~~13 WAAV~~ Lines 14-17  
Delete Page 15, line 31 to page 16, lines 1-3

Insert in its place:

(s) In a prosecution under (a) of this section, a person may introduce evidence on the amount of alcohol consumed before or after operating or driving the motor vehicle, aircraft or watercraft, to rebut or explain the results of a chemical test, but the consumption of alcohol before operating or driving cannot be used as a defense that the chemical test did not measure the blood alcohol at the time of the operating or driving. Consumption of alcohol after operating or driving the motor vehicle, aircraft or watercraft may be used to raise such a defense.

A#20A  
PASSED

Add a new section and renumber other sections accordingly:

\*Sec. \_\_\_\_ AS 28.35.030(a) is amended to read:

(a) A person commits the crime of driving while under the influence of an alcoholic beverage, inhalant, or controlled substance if the person operates or drives a motor vehicle or operates an aircraft or a watercraft

(1) while under the influence of an alcoholic beverage, intoxicating liquor, inhalant, or any controlled substance ;

Insert: and (2) if [WHEN], as determined by a chemical test taken within four hours after the alleged offense was committed, there is 0.08 percent or more by weight of alcohol in the person's blood or 80 milligrams or more of alcohol per 100 milliliters of blood, or [WHEN] there is 0.08 grams or more of alcohol per 210 liters of the person's breath; or

(3) while the person is under the combined influence of an alcoholic beverage, an intoxicating liquor, an inhalant, or [AND] a controlled substance.

A#20B  
by Rep. McGuire  
just make  
technical  
A's to this  
section  
Delete  
"if"

CSHB 244 (JUD) Version "I"

Amendment #21 - PASSED  
by Rep. Gara

P. 8, Line 24  
After "written"  
Insert "or oral"

AMENDMENT NO. 22 - FAILED

OFFERED TO CSHB 244 (2d JUD), Version I

BY REPRESENTATIVE GRUENBERG

Page 5, line 9: Insert new bill section and renumber bill sections and section references accordingly:

Sec. \_\_\_\_ AS 09.50.020(a) is amended to read:

(a) A person who is guilty of contempt is punishable by a fine of not more than \$300 or by imprisonment for not more than six months. However, when the contempt is one mentioned in AS 09.50.010(3) - (12), or in an action before a magistrate, the person is punishable by a fine of not more than \$100 unless it appears that a right or remedy of a party to an action or proceeding was defeated or prejudiced by the contempt, in which case the penalty shall be as prescribed for contempts described in AS 09.50.010(1) and [,] (2) [, AND (13)].

YES  
A#23

Page 7, lines 23-31: Amend existing language as follows

Sec. 11.56.758. Violation of custodian's duty. (a) A person commits the crime of violation of a custodian's duty if the person knowingly fails, when acting as a custodian appointed by the court for a released person under AS 12.30, to report immediately as directed by the court that the person released has violated a condition of the release.

(b) Violation of custodian's duty is

[(1) A CLASS A MISDEMEANOR IF THE RELEASED PERSON IS CHARGED WITH A FELONY;

(2)] a class B misdemeanor [IF THE RELEASED PERSON IS CHARGED WITH A MISDEMEANOR].

NO

★  
PASSED  
A#23  
by Rep. McGuire  
Everything  
on this page  
except (b) →

Conceptual A. to the A.:

★★ ALSO, amend AS/2.30.020 (b)(1) to conform to repeal of AS 09.50.010 (13).

YES A#23

AMENDMENT NO. 18 - FAILED

OFFERED IN THE HOUSE

To: CSHB 244(JUD) Work Draft 1/16/2004 *version I*

Page 8, Sec 14 lines <sup>18-22</sup>~~14-18~~, omit all of proposed section 14.

[Sec. 11.81.345. DEFENSE OF SELF AND OTHERS. A COURT MAY INSTRUCT THE JURY ABOUT THE JUSTIFICATION DESCRIBED IN AS 11.81.330 -11.81.340 IF THE COURT, SITTING WITHOUT A JURY, FINDS THAT THERE IS SOME PLAUSIBLE EVIDENCE TO WARRANT A REASONABLE JURY TO FIND THE ELEMENTS OF THE JUSTIFICATION.]

*M*

AMENDMENT NO. 24 - FAILED

OFFERED TO CSHB 244 (2d JUD), Version I

BY REPRESENTATIVE GRUENBERG

Page 8, lines 1-17: Delete bill section 13.

AMENDMENT TO AMENDMENT NO. 2 - *not offered*

OFFERED TO CSHB 244 (JUD)

BY REPRESENTATIVE GRUENBERG

Following the word "prisoner" on line 5 of the text of subsection (b), insert the words "or any relative or friend of the prisoner."

# 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

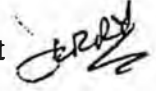
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 6, 2004

**SUBJECT:** Omnibus Criminal Law Bill - CSHB 244(2d JUD)  
(Work Order No. 23-GH1024I)

**TO:** Representative Lesil McGuire  
Attn: Vanessa Tondini

**FROM:** Gerald P. Luckhaupt   
Legislative Counsel

Enclosed is my first attempt at the CS(2d JUD) you requested. I have several comments.

Because the working draft was not a document produced by this office we have not been able to review it as well as we normally might. There is at least one problem with the document in that bill sec. 29(a) repeals AS 09.50.010(13). AS 09.50.010(13) is referenced in AS 09.50.020(a) and that reference will need to be corrected by the addition of a bill section accomplishing that. AS 12.30.020(b)(1) may also need to be amended because of the repeal of AS 09.50.010(13). I also removed "criminal" from p.1, line 3 of the title as bill section 21 is potentially not limited to criminal proceedings.

We have rewritten amendment 6, but are still not sure we have reflected the committee's intent. See p. 5, lines 23 - 25 and 28 - 30. If this is not what the committee intended let me know and I will try again.

Amendment 15 originally was not included in this draft as I was unsure what the committee intended. After talking to Representative Gruenberg at Vanessa's suggestion I discovered an explanation and intention that was not readily apparent and I have included what I think was intended.

GPL:med  
04-374.med

Enclosure

23-GH1024\I  
Luckhaupt  
4/6/04

**CS FOR HOUSE BILL NO. 244(2d JUD)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-THIRD LEGISLATURE - SECOND SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:**  
**Referred:**

**Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to murder in the second degree, the justification of defense of self or**  
2 **others, release before trial, immunity from prosecution, sentencing, probation,**  
3 **discretionary parole, and the right to representation in certain proceedings; relating to**  
4 **violation of a custodian's duty; relating to sexual abuse of a minor; relating to release of**  
5 **certain agency records; relating to local options regarding alcoholic beverages, the**  
6 **offense of furnishing or delivery of alcoholic beverages to a person under 21 years of**  
7 **age, and forfeiture of money or other items of value used in financial transactions**  
8 **derived from violation of certain laws relating to alcoholic beverages; relating to assault**  
9 **by means of a dangerous instrument; relating to operating or driving a motor vehicle,**  
10 **aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or**  
11 **controlled substance, to the refusal to submit to a chemical test, and to the presumptions**  
12 **and chemical analysis of breath or blood; and providing for an effective date."**

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

2 \* **Section 1.** AS 04.11.010(c) is amended to read:

3 (c) Unless a municipality or established village has adopted a more  
4 restrictive local option under AS 04.11.491(g), in [IN] a criminal prosecution for  
5 possession of alcoholic beverages for sale in violation of (a) of this section, the fact  
6 that a person

7 (1) possessed more than 12 liters of distilled spirits, 24 liters or more  
8 of wine, or 12 gallons or more of malt beverages in an area where the sale of alcoholic  
9 beverages is restricted or prohibited under AS 04.11.491 creates a presumption that  
10 the person possessed the alcoholic beverages for sale;

11 (2) sends, transports, or brings more than 12 liters of distilled  
12 spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages to an  
13 area where the sale of alcoholic beverages is restricted or prohibited under  
14 AS 04.11.491 creates a presumption that the person sent, transported, or brought  
15 the alcoholic beverages for sale in the area.

16 \* **Sec. 2.** AS 04.11.010 is amended by adding a new subsection to read:

17 (d) In this section,

18 (1) "bring" has the meaning given in AS 04.11.499;

19 (2) "send" has the meaning given in AS 04.11.499;

20 (3) "transport" has the meaning given in AS 04.11.499.

21 \* **Sec. 3.** AS 04.11.150(g) is amended to read:

22 (g) If a shipment is to an area that has restricted the sale of alcoholic  
23 beverages under AS 04.11.491(a)(1), (2), or (3) or (b)(1) or (2), a package store  
24 licensee, agent, or employee may not ship to a purchaser more than 10 and one-half  
25 liters of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt  
26 beverages in a calendar month, or a lower amount of distilled spirits, wine, or malt  
27 beverages if the municipality or established village has adopted the lower amount  
28 by local option under AS 04.11.491(g).

29 \* **Sec. 4.** AS 04.11.491 is amended by adding a new subsection to read:

30 (g) If a municipality or established village has adopted a local option under  
31 (a)(1), (2), (3), or (4), or (b)(1), (2), or (3) of this section, the municipality or

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established village, as part of the local option question or questions placed before the voters, may

(1) adopt an amount of alcoholic beverages that may be imported that is less than the amounts set out in AS 04.11.150(g);

(2) adopt an amount of alcoholic beverages that would give rise to a presumption that the person possessed the alcoholic beverages for sale; the amounts adopted under this paragraph may be lower than those set out in AS 04.11.010(c);

(3) opt to not apply a class C felony to violations of AS 04.16.051 that apply solely by reason of the municipality or established village adopting a local option under this section.

\* Sec. 5. AS 04.16.051(d) is amended to read:

(d) A person acting with criminal negligence who violates this section is guilty of a class C felony if

(1) within the five years preceding the violation, the person has been previously convicted under

(A) this section; or

(B) a law or ordinance of this or another jurisdiction with elements substantially similar to this section; [OR]

(2) the person who receives the alcoholic beverage negligently causes serious physical injury to or the death of another person while under the influence of the alcoholic beverage received in violation of this section; in this paragraph,

(A) "negligently" means acting with civil negligence; and

(B) "serious physical injury" has the meaning given in AS 11.81.900; or

**(3) the violation occurs within the boundaries of a municipality or the perimeter of an established village that has adopted a local option under AS 04.11.491 and has not opted out of applying a class C felony to violations of this section under AS 04.11.491(g).**

\* Sec. 6. AS 04.16.220(a) is amended to read:

(a) The following are subject to forfeiture:

(1) alcoholic beverages manufactured, sold, offered for sale or

1 possessed for sale, bartered or exchanged for goods and services in this state in  
 2 violation of AS 04.11.010; alcoholic beverages possessed, stocked, warehoused, or  
 3 otherwise stored in violation of AS 04.21.060; alcoholic beverages sold, or offered for  
 4 sale in violation of a local option adopted under AS 04.11.491; alcoholic beverages  
 5 transported into the state and sold to persons not licensed under this chapter in  
 6 violation of AS 04.16.170(b);

7 (2) materials and equipment used in the manufacture, sale, offering for  
 8 sale, possession for sale, barter or exchange of alcoholic beverages for goods and  
 9 services in this state in violation of AS 04.11.010; materials and equipment used in the  
 10 stocking, warehousing, or storage of alcoholic beverages in violation of AS 04.21.060;  
 11 materials and equipment used in the sale or offering for sale of an alcoholic beverage  
 12 in an area in violation of a local option adopted under AS 04.11.491;

13 (3) aircraft, vehicles, or vessels used to transport, or facilitate the  
 14 transportation of

15 (A) alcoholic beverages manufactured, sold, offered for sale or  
 16 possessed for sale, bartered or exchanged for goods and services in this state in  
 17 violation of AS 04.11.010;

18 (B) property stocked, warehoused, or otherwise stored in  
 19 violation of AS 04.21.060;

20 (C) alcoholic beverages imported into a municipality or  
 21 established village in violation of AS 04.11.499;

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

24 (5) alcoholic beverages, materials or equipment used in violation of  
 25 AS 04.16.175;

26 (6) money, securities, negotiable instruments, or other things of  
 27 value used in financial transactions derived from activity prohibited under  
 28 AS 04.11.010 or in violation of a local option adopted under AS 04.11.491.

29 \* Sec. 7. AS 04.16.220 is amended by adding a new subsection to read:

30 (i) When forfeiting property under (a) or (d) of this section, a court may award  
 31 to a municipal law enforcement agency that participated in the arrest or conviction of

1 the defendant, the seizure of property, or the identification of property for seizure,

2 (1) the property if the property is worth \$5,000 or less and is not  
3 money or some other thing that is divisible; or

4 (2) up to 75 percent of the property or the value of the property if the  
5 property is worth more than \$5,000 or is money or some other thing that is divisible;  
6 in determining the percentage a municipal law enforcement agency may receive under  
7 this subsection, the court shall consider the municipal law enforcement agency's total  
8 involvement in the case relative to the involvement of the state.

9 \* Sec. 8. AS 11.41.110(a) is amended to read:

10 (a) A person commits the crime of murder in the second degree if

11 (1) with intent to cause serious physical injury to another person or  
12 knowing that the conduct is substantially certain to cause death or serious physical  
13 injury to another person, the person causes the death of any person;

14 (2) the person knowingly engages in conduct that results in the death  
15 of another person under circumstances manifesting an extreme indifference to the  
16 value of human life;

17 (3) under circumstances not amounting to murder in the first degree  
18 under AS 11.41.100(a)(3), while acting either alone or with one or more persons, the  
19 person commits or attempts to commit arson in the first degree, kidnapping, sexual  
20 assault in the first degree, sexual assault in the second degree, sexual abuse of a minor  
21 in the first degree, sexual abuse of a minor in the second degree, burglary in the first  
22 degree, escape in the first or second degree, robbery in any degree, or misconduct  
23 involving a controlled substance under AS 11.71.010(a), 11.71.020(a), 11.71.030(a)(1)  
24 or (2), or 11.71.040(a)(1) or (2) and, in the course of or in furtherance of that crime or  
25 in immediate flight from that crime, any person causes the death of a person except  
26 when the killing is of a participant and is the direct result of felony criminal  
27 conduct by a nonparticipant [OTHER THAN ONE OF THE PARTICIPANTS];

28 (4) acting with a criminal street gang, the person commits or attempts  
29 to commit a crime that is a felony and, in the course of or in furtherance of that crime  
30 or in immediate flight from that crime, any person causes the death of a person except  
31 when the killing is of a participant and is the direct result of felony criminal

1 conduct by a nonparticipant [OTHER THAN ONE OF THE PARTICIPANTS]; or

2 (5) the person with criminal negligence causes the death of a child  
3 under the age of 16, and the person has been previously convicted of a crime involving  
4 a child under the age of 16 that was

5 (A) a felony violation of AS 11.41;

6 (B) in violation of a law or ordinance in another jurisdiction  
7 with elements similar to a felony under AS 11.41; or

8 (C) an attempt, a solicitation, or a conspiracy to commit a  
9 crime listed in (A) or (B) of this paragraph.

10 \* Sec. 9. AS 11.41.220(a) is amended to read:

11 (a) A person commits the crime of assault in the third degree if that person

12 (1) recklessly

13 (A) places another person in fear of imminent serious physical  
14 injury by means of a dangerous instrument;

15 (B) causes physical injury to another person by means of a  
16 dangerous instrument; or

17 (C) while being 18 years of age or older

18 (i) causes physical injury to a child under 10 years of  
19 age and the injury reasonably requires medical treatment;

20 (ii) causes physical injury to a child under 10 years of  
21 age on more than one occasion;

22 (2) with intent to place another person in fear of death or serious  
23 physical injury to the person or the person's family member makes repeated threats to  
24 cause death or serious physical injury to another person; [OR]

25 (3) while being 18 years of age or older, knowingly causes physical  
26 injury to a child under 16 years of age but at least 10 years of age and the injury  
27 reasonably requires medical treatment; or

28 (4) with criminal negligence causes serious physical injury under  
29 AS 11.81.900(b)(55)(B) to another person by means of a dangerous instrument.

30 \* Sec. 10. AS 11.41.438(a) is amended to read:

31 (a) An offender commits the crime of sexual abuse of a minor in the third

1 degree if

2 (1) being under 16 years of age, the offender engages in sexual  
3 penetration with a person who is under 13 years of age and at least three years  
4 younger than the offender;

5 (2) being 16 years of age or older, the offender engages in sexual  
6 contact with a person who is 13, 14, or 15 years of age and at least three years younger  
7 than the offender; or

8 (3) [(2)] being 18 years of age or older, the offender engages in sexual  
9 penetration with a person who is 16 or 17 years of age and at least three years younger  
10 than the offender, and the offender occupies a position of authority in relation to the  
11 victim.

12 \* Sec. 11. AS 11.41.440(a) is amended to read:

13 (a) An offender commits the crime of sexual abuse of a minor in the fourth  
14 degree if

15 (1) being under 16 years of age, the offender engages in [SEXUAL  
16 PENETRATION OR] sexual contact with a person who is under 13 years of age and  
17 at least three years younger than the offender; or

18 (2) being 18 years of age or older, the offender engages in sexual  
19 contact with a person who is 16 or 17 years of age and at least three years younger  
20 than the offender, and the offender occupies a position of authority in relation to the  
21 victim.

22 \* Sec. 12. AS 11.56 is amended by adding a new section to read:

23 **Sec. 11.56.758. Violation of custodian's duty.** (a) A person commits the  
24 crime of violation of custodian's duty if the person fails, when acting as a custodian  
25 appointed by the court for a released person under AS 12.30, to report immediately as  
26 directed by the court that the person released has violated a condition of release.

27 (b) Violation of custodian's duty is a

28 (1) class A misdemeanor if the released person is charged with a  
29 felony;

30 (2) class B misdemeanor if the released person is charged with a  
31 misdemeanor.

1 \* **Sec. 13.** AS 11.81.330(a) is amended to read:

2 (a) A person may use nondeadly force upon another when and to the extent the  
3 person reasonably believes it is necessary for self defense against what the person  
4 reasonably believes to be the use of unlawful force by the other, unless

5 (1) the force involved was the product of mutual combat not  
6 authorized by law;

7 (2) the person claiming the defense of justification provoked the  
8 other's conduct with intent to cause physical injury to the other; [OR]

9 (3) the person claiming the defense of justification was the initial  
10 aggressor; or

11 (4) the force applied was the result of using a deadly weapon that  
12 the person claiming the defense of justification possessed while

13 (A) acting alone or with others to further a felony criminal  
14 objective of the person or one or more other persons; or

15 (B) participating in a felony transaction or purported  
16 transaction, or in immediate flight from a felony transaction or purported  
17 transaction in violation of AS 11.71.

18 \* **Sec. 14.** AS 11.81 is amended by adding a new section to read:

19 **Sec. 11.81.345. Defense of self and others.** A court may instruct a jury about  
20 the justification described in AS 11.81.330 - 11.81.340 if the court, sitting without a  
21 jury, finds that there is some plausible evidence to warrant a reasonable jury to find  
22 the elements of the justification.

23 \* **Sec. 15.** AS 12.30.020 is amended by adding a new subsection to read:

24 (i) The court shall issue written findings to demonstrate why conditions  
25 provided under (b)(1) of this section needed to be imposed.

26 \* **Sec. 16.** AS 12.50.101(a) is amended to read:

27 (a) If a witness refuses, on the basis of the privilege against self-incrimination,  
28 to testify or provide other information in a criminal proceeding before or ancillary to a  
29 court or grand jury of this state, and a judge issues an order under (b) of this section,  
30 the witness may not refuse to comply with the order on the basis of the privilege  
31 against self-incrimination. If the witness fully complies with the order, the witness

1        may not be prosecuted for an offense about which the witness is compelled to  
2        testify [NO TESTIMONY OR OTHER INFORMATION COMPELLED UNDER  
3        THE ORDER, OR INFORMATION DIRECTLY OR INDIRECTLY DERIVED  
4        FROM THAT TESTIMONY OR OTHER INFORMATION, MAY BE USED  
5        AGAINST THE WITNESS IN A CRIMINAL CASE,] except in a prosecution based  
6        on perjury, giving a false statement, or otherwise knowingly providing false  
7        information, or hindering prosecution.

8        \* Sec. 17. AS 12.50.101(e) is amended to read:

9                (e) As used in this section,

10                (1) "other information" means books, papers, documents, records,  
11                recordings, or other similar material;

12                (2) "proffer" means a written or oral statement by the attorney for  
13                the witness, stating the attorney's good faith belief of the substance of the  
14                witness's testimony or other information.

15        \* Sec. 18. AS 12.50.101 is amended by adding new subsections to read:

16                (f) If a witness refuses, or there is reason to believe the witness will refuse, to  
17                testify or provide other information based on the privilege against self-incrimination,  
18                and if the attorney general or the attorney general's designee has not applied for an  
19                order under (b) of this section, the court shall inform the witness of the right to be  
20                represented by an attorney, and that an attorney will be appointed for the witness if the  
21                witness qualifies for counsel under AS 18.85. The court shall recess the proceeding to  
22                allow the witness to consult with the attorney for the witness.

23                (g) If the attorney general or the attorney general's designee declines to seek  
24                an order under (b) of this section after the witness has had an opportunity to consult  
25                with an attorney, and the witness continues to refuse to testify or provide other  
26                information, the court shall hold a hearing to determine the validity of the claim of  
27                privilege by the witness. The hearing shall be in camera.

28                (h) At the hearing under (g) of this section, the attorney for the witness, in the  
29                form of a proffer, shall describe the testimony or other information that the witness  
30                claims is privileged. The proffer must include a description of how the testimony or  
31                other information could connect the witness with a crime. The proffer is privileged

1 and inadmissible for any other purpose. If the proffer establishes a factual basis that  
2 there is a real or substantial danger that the testimony or other information to be  
3 compelled would support a conviction or would furnish a link in the chain of evidence  
4 leading to conviction for a crime, the court may find that the witness has a valid claim  
5 of privilege.

6 (i) If the court finds that the witness has a valid claim of privilege, it shall  
7 advise the prosecution of that finding.

8 \* **Sec. 19.** AS 12.55.025(c) is amended to read:

9 (c) Except as provided in (d) [AND (e)] of this section, when a defendant is  
10 sentenced to imprisonment, the term of confinement commences on the date of  
11 imposition of sentence unless the court specifically provides that the defendant must  
12 report to serve the sentence on another date. If the court provides another date to  
13 begin the term of confinement, the court shall provide the defendant with written  
14 notice of the date, time, and location of the correctional facility to which the defendant  
15 must report. A defendant shall receive credit for time spent in custody pending trial,  
16 sentencing, or appeal, if the detention was in connection with the offense for which  
17 sentence was imposed. A defendant may not receive credit for more than the actual  
18 time spent in custody pending trial, sentencing, or appeal. The time during which a  
19 defendant is voluntarily absent from official detention after the defendant has been  
20 sentenced may not be credited toward service of the sentence.

21 \* **Sec. 20.** AS 12.55 is amended by adding a new section to read:

22 **Sec. 12.55.127. Consecutive terms of imprisonment.** (a) If a defendant is  
23 required to serve a term of imprisonment under a separate judgment, a term of  
24 imprisonment imposed in a later judgment, amended judgment, or probation  
25 revocation shall be consecutive.

26 (b) Except as provided in (c) of this section, if a defendant is being sentenced  
27 for two or more crimes in a single judgment, terms of imprisonment may be  
28 concurrent or partially concurrent.

29 (c) If the defendant is being sentenced for

30 (1) escape, the term of imprisonment shall be consecutive to the term  
31 for the underlying crime;

1 (2) two or more crimes under AS 11.41, a consecutive term of  
2 imprisonment shall be imposed for at least

3 (A) the mandatory minimum term under AS 12.55.125(a) for  
4 each additional crime that is murder in the first degree;

5 (B) the mandatory minimum term for each additional crime  
6 that is an unclassified felony governed by AS 12.55.125(b);

7 (C) the presumptive term specified in AS 12.55.125(c) or the  
8 active term of imprisonment, whichever is less, for each additional crime that  
9 is

10 (i) manslaughter; or

11 (ii) kidnapping that is a class A felony;

12 (D) two years or the active term of imprisonment, whichever is  
13 less, for each additional crime that is criminally negligent homicide;

14 (E) one-fourth of the presumptive term under AS 12.55.125(c)  
15 or (i) for each additional crime that is sexual assault in the first degree under  
16 AS 11.41.410, or sexual abuse of a minor in the first degree under  
17 AS 11.41.434, or an attempt, solicitation, or conspiracy to commit those  
18 offenses; and

19 (F) some additional term of imprisonment for each additional  
20 crime, or each additional attempt or solicitation to commit the offense, under  
21 AS 11.41.200 - 11.41.250, 11.41.420 - 11.41.432, 11.41.436 - 11.41.458, or  
22 11.41.500 - 11.41.520.

23 (d) In this section,

24 (1) "active term of imprisonment" means the total term of  
25 imprisonment imposed for a crime minus suspended imprisonment;

26 (2) "additional crime" means a crime that is not the primary crime;

27 (3) "primary crime" means the crime

28 (A) for which the sentencing court imposes the longest active  
29 term of imprisonment; or

30 (B) that is designated by the sentencing court as the primary  
31 crime when no single crime has the longest active term of imprisonment.

1 \* Sec. 21. AS 18.85.100 is amended by adding a new subsection to read:

2 (f) Notwithstanding (a) of this section, an indigent person is entitled to the  
3 representation and necessary services and facilities of representation as provided in (a)  
4 of this section when the person is a witness who refuses, or there is reason to believe  
5 will refuse, to testify or provide other information based on the privilege against self-  
6 incrimination.

7 \* Sec. 22. AS 28.35.030(n) is amended to read:

8 (n) A person is guilty of a class C felony if the person is convicted under (a) of  
9 this section and either has been previously convicted two or more times since  
10 January 1, 1996, and within the 10 years preceding the date of the present offense, or  
11 punishment under this subsection or under AS 28.35.032(p) was previously  
12 imposed within the last 20 years. For purposes of determining minimum sentences  
13 based on previous convictions, the provisions of (r)(4) of this section apply. Upon  
14 conviction, the court

15 (1) shall impose a fine of not less than \$10,000 and a minimum  
16 sentence of imprisonment of not less than

17 (A) 120 days if the person has been previously convicted twice;

18 (B) 240 days if the person has been previously convicted three  
19 times;

20 (C) 360 days if the person has been previously convicted four  
21 or more times;

22 (2) may not

23 (A) suspend execution of sentence or grant probation except on  
24 condition that the person serve the minimum imprisonment under (1) of this  
25 subsection; or

26 (B) suspend imposition of sentence;

27 (3) shall permanently revoke the person's driver's license, privilege to  
28 drive, or privilege to obtain a license subject to restoration of the license under (o) of  
29 this section;

30 (4) may order that the person, while incarcerated or as a condition of  
31 probation or parole, take a drug or combination of drugs, intended to prevent the

1 consumption of an alcoholic beverage; a condition of probation or parole imposed  
2 under this paragraph is in addition to any other condition authorized under another  
3 provision of law;

4 (5) shall order forfeiture under AS 28.35.036 of the vehicle, watercraft,  
5 or aircraft used in the commission of the offense, subject to remission under  
6 AS 28.35.037; and

7 (6) shall order the department to revoke the registration for any vehicle  
8 registered by the department in the name of the person convicted under this  
9 subsection; if a person convicted under this subsection is a registered co-owner of a  
10 vehicle or is registered as a co-owner under a business name, the department shall  
11 reissue the vehicle registration and omit the name of the person convicted under this  
12 subsection.

13 \* Sec. 23. AS 28.35.030 is amended by adding a new subsection to read:

14 (s) In a prosecution under (a) of this section, a person may introduce evidence  
15 of having consumed alcohol to rebut or explain the results of a chemical test, but only  
16 if the consumption of alcohol occurred after the driving of a motor vehicle or  
17 operating of an aircraft or watercraft that is the subject of the prosecution.

18 \* Sec. 24. AS 28.35.032(p) is amended to read:

19 (p) A person is guilty of a class C felony if the person is convicted under this  
20 section and either has been previously convicted two or more times since January 1,  
21 1996, and within the 10 years preceding the date of the present offense, or  
22 punishment under this subsection or under AS 28.35.030(n) was previously  
23 imposed within the last 20 years. For purposes of determining minimum sentences  
24 based on previous convictions, the provisions of AS 28.35.030(r)(4) apply. Upon  
25 conviction,

26 (1) the court shall impose a fine of not less than \$10,000 and a  
27 minimum sentence of imprisonment of not less than

28 (A) 120 days if the person has been previously convicted twice;

29 (B) 240 days if the person has been previously convicted three  
30 times;

31 (C) 360 days if the person has been previously convicted four

1 or more times;

2 (2) the court may not

3 (A) suspend execution of the sentence required by (1) of this  
4 subsection or grant probation, except on condition that the person serve the  
5 minimum imprisonment under (1) of this subsection; or

6 (B) suspend imposition of sentence;

7 (3) the court shall permanently revoke the person's driver's license,  
8 privilege to drive, or privilege to obtain a license subject to restoration under (q) of  
9 this section;

10 (4) the court may order that the person, while incarcerated or as a  
11 condition of probation or parole, take a drug, or combination of drugs, intended to  
12 prevent consumption of an alcoholic beverage; a condition of probation or parole  
13 imposed under this paragraph is in addition to any other condition authorized under  
14 another provision of law;

15 (5) the sentence imposed by the court under this subsection shall run  
16 consecutively with any other sentence of imprisonment imposed on the person;

17 (6) the court shall order forfeiture under AS 28.35.036, of the motor  
18 vehicle, aircraft, or watercraft used in the commission of the offense, subject to  
19 remission under AS 28.35.037; and

20 (7) the court shall order the department to revoke the registration for  
21 any vehicle registered by the department in the name of the person convicted under  
22 this subsection; if a person convicted under this subsection is a registered co-owner of  
23 a vehicle, the department shall reissue the vehicle registration and omit the name of  
24 the person convicted under this subsection.

25 \* Sec. 25. AS 28.35.033(c) is amended to read:

26 (c) Except as provided in AS 28.35.030(s), the [THE] provisions of (a) of  
27 this section may not be construed to limit the introduction of any other competent  
28 evidence bearing upon the question of whether the person was or was not under the  
29 influence of intoxicating liquor.

30 \* Sec. 26. AS 33.16.090(b) is amended to read:

31 (b) Except as provided in (e) of this section, a prisoner is not eligible for

1 discretionary parole during the term of a presumptive sentence; however, a prisoner is  
2 eligible for discretionary parole during a term of sentence enhancement imposed under  
3 AS 12.55.155(a) or during the term of a consecutive or partially consecutive  
4 presumptive sentence imposed under AS 12.55.127 [AS 12.55.025(e) OR (g)]. A  
5 prisoner sentenced to a mandatory 99-year term under AS 12.55.125(a) or a definite  
6 term under AS 12.55.125(l) is not eligible for discretionary parole during the entire  
7 term.

8 \* **Sec. 27.** AS 33.16.090(c) is amended to read:

9 (c) Except as provided in (e) of this section, a prisoner eligible for  
10 discretionary parole during a period of sentence enhancement imposed under  
11 AS 12.55.155(a) or during a consecutive or partially consecutive presumptive sentence  
12 imposed under AS 12.55.127 [AS 12.55.025(e) OR (g)] shall serve the unenhanced  
13 portion of the sentence or the initial presumptive sentence before being otherwise  
14 eligible for discretionary parole under AS 33.16.100(c) or (d). For purposes of this  
15 subsection, the sentence for the most serious offense in the case of consecutive or  
16 partially consecutive presumptive sentences shall be considered the initial presumptive  
17 sentence. The unenhanced sentence or the initial presumptive sentence is considered  
18 served for purposes of discretionary parole on the date the unenhanced or initial  
19 presumptive sentence is due to expire less good time earned under AS 33.20.010.

20 \* **Sec. 28.** AS 47.12.310 is amended by adding a new subsection to read:

21 (k) A state or municipal agency or authorized employee, other than a state or  
22 municipal law enforcement agency under (c) of this section, may disclose to the public  
23 information regarding a case as may be necessary to protect the safety of the public,  
24 provided the disclosure is authorized by regulations adopted by the department.

25 \* **Sec. 29.** (a) AS 09.50.010(13) is repealed.

26 (b) AS 12.55.025(e), 12.55.025(g), and 12.55.025(h) are repealed.

27 \* **Sec. 30.** The uncodified law of the State of Alaska is amended by adding a new section to  
28 read:

29 **APPLICABILITY.** (a) The changes made in secs. 5, 6, 8 - 11, 13, 14, 19, 20, 26, 27,  
30 and 29(b) of this Act apply to offenses committed on or after the respective effective date of  
31 those sections.

1           (b) Sections 22 and 24 of this Act apply to offenses occurring on or after the effective  
2 date of those sections, except that previous punishment, referred to in AS 28.35.030(n), as  
3 amended by sec. 22 of this Act, and in AS 28.35.032(p), as amended by sec. 24 of this Act,  
4 includes punishment imposed before, on, or after the effective date of secs. 22 and 24 of this  
5 Act.

6           (c) Section 12 of this Act applies to custodians who fail to report on or after the  
7 effective date of sec. 12 of this Act, for persons released for offenses committed before, on, or  
8 after the effective date of sec. 12 of this Act.

9           (d) The changes made in secs. 7, 16 - 18, 22, 23, and 26 of this Act apply to criminal  
10 proceedings for offenses committed before, on, or after the effective date of those sections.

11           (e) Section 28 of this Act applies to an offense occurring before, on, or after the  
12 effective date of this Act.

13       \* **Sec. 31.** This Act takes effect July 1, 2004.

# 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:** April 2, 2004

**Re:** CS Request

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Please create a work draft House Judiciary Committee Substitute based on the attached version of CSHB 244 (2d JUD), work order # 04-0033, 1/16/2004. I'm not sure if DOL or Leg. Legal drafted this version, so if it helps, last year the work order # assigned to HB 244 was 23-GH1024. In the work draft JUD CS, please also incorporate the attached eight amendments (A's # 1, 3, 4 as amended, 6 as amended, 10, 11 as amended, 15 as amended, and 16). Please call Rep. Gruenberg if you have any questions about Amendment 15 as amended. All amendments are conceptual for the purposes of proper placement within the bill.

The bill will be reheard on Monday, April 5<sup>th</sup> at 1:00 p.m. 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.