Willow Seay

From: Linda Wilson [linda_wilson@admin.state.ak.us]
Sent: Thursday, April 14, 2005 1:48 PM
To: Rep. John Coghill; Willow Seay; Rynnieva Moss
Subject: HB 232

Rep. Coghill, thank you so much for introducing this bill. The Agency has been seeking the introduction of a bill like this to raise the dollar amount of theft related crimes, so that we are more in line with current dollar values. For the most part, these amounts were set in the mid-seventies, and have not been adjusted since for inflation. If I can be of any help please let me know.

Also, thanks for your important work on HB 53 protecting the right of parents and familys.
Linda Wilson

Willow Seay

From: Todd Sharp [todd_sharp@dps.state.ak.us]
Sent: Thursday, April 21, 2005 8:13 AM
To: Willow Seay
Cc: Cliff Stone
Subject: HB232

DPS does not have any major objection to the raising of the $ value on these crimes. Overall it just reduces the # of felonies filed and grand juries needed. It should result in about the same amount of work on the part of law enforcement to investigate, prepare reports etc. whether the case is a C felony or A misdemeanor.

ALASKA DEPARTMENT OF LAW

CRIMINAL DIVISION

CRIMINAL LAW MANUAL

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INTRODUCTION: HISTORY OF THE ALASKA CRIMINAL CODE REVISION AND SUBSEQUENT AMENDMENTS

In 1975, Alaska's criminal law was primarily based on Oregon statutes that existed at the end of the nineteenth century.[1/] Prior to 1899, the Alaska Government Act of 1884 had provided that "the general laws of the State of Oregon now in force are hereby declared to be the law in said district, so far as the same may be applicable and not in conflict with the provisions of this act or the laws in the United States."[2/] In 1899, Congress approved a criminal code for Alaska based primarily on Oregon law.[3/] Most of these century-old Oregon criminal statutes were still in effect in Alaska in 1975 even though Oregon itself enacted a revised criminal code in 1971. In 1975, Alaska's criminal law was filled with outdated statutes, imprecise and obsolete terminology, needless distinctions and overly specific and sometimes unconstitutional provisions. The criminal law seemed to deal more adequately with concerns of nineteenth century Oregon than it did with problems of twentieth century Alaska.

1/ See generally, Brown, The Sources of the Alaska and Oregon Codes (pts. 1,2,), 2 U.C.L.A. - ALASKA L. REV. 15,87.

2/ Alaska Government Act of 1884, ch. 53, § 7, 23 Stat. 25-26 (1884).

3/ Act of March 3, 1899, ch. 429, 430, Stat. 1253. Other provisions were derived from New York and Ohio. See Brown, supra note 1, at 94-97.

AS 11.46.110

CONSOLIDATION OF THEFT OFFENSES: PLEADING AND PROOF

NEW CRIMINAL CODE

Sec. 11.46.110. CONSOLIDATION OF THEFT OFFENSES: PLEADING AND PROOF. (a) Each instance of conduct defined as theft under AS 11.46.100 constitutes theft in the first, second, third, or fourth degree.

(b) An accusation of theft is sufficient if it alleges that the defendant committed theft of property or services of the nature or value required for the commission of the crime charged without designating the particular way or manner in which the theft was committed.

(c) Proof that the defendant engaged in conduct constituting theft as defined in AS 11.46.100 is sufficient to support a conviction based upon any indictment, information, or complaint for theft. (§ 4, ch. 166 SLA 1978)

PRIOR CRIMINAL CODE - None.

COMMENTARY

From Senate Journal Supp. No. 47, at 32 (June 12, 1978):

AS 11.46.110 specifies the procedural consequences resulting from the consolidation of theft offenses. Under the Code a charge of theft is sufficient without designating the particular means by which the property or services was obtained. The section serves to underscore one of the chief aims of the article: elimination of the confusing distinctions among the most typical theft offenses. See generally, State v. Jim, 13 Or. App. 201, 508 P.2d 462 (1973) interpreting similar language in the Oregon consolidated theft statute.

See also TD III, 22-23.

CROSS REFERENCES

Theft defined - AS 11.46.100
Degrees of theft - AS 11.46.120 -- 11.46.150

AS 11.46.120 -- 11.46.150

THEFT IN THE FIRST, SECOND, THIRD, AND FOURTH DEGREE

NEW CRIMINAL CODE

Sec. 11.46.120. THEFT IN THE FIRST DEGREE. (a) A person commits the crime of theft in the first degree if the person commits theft as defined in AS 11.46.100 and the value of the property or services is $25,000 or more.

(b) Theft in the first degree is a class B felony. (§ 4, ch. 166 SLA 1978)

Sec. 11.46.130. THEFT IN THE SECOND DEGREE. (a) A person commits the crime of theft in the second degree if the person commits theft as defined in AS 11.46.100 and

(1) the value of the property or services is $500 or more but less than $25,000;

(2) the property is a firearm or explosive; or

(3) the property is taken from the person of another.

(b) Theft in the second degree is a class C felony. (§ 4, ch. 166 SLA 1978)

Sec. 11.46.140. THEFT IN THE THIRD DEGREE. (a) A person commits the crime of theft in the third degree if the person commits theft as defined in AS 11.46.100 and

(1) the value of the property or services is $50 or more but less than $500; or

(2) the property is a credit card.

(b) Theft in the third degree is a class A misdemeanor. (§ 4, ch. 166 SLA 1978)

Sec. 11.46.150. THEFT IN THE FOURTH DEGREE. (a) A person commits the crime of theft in the fourth degree if the person commits theft as defined in AS 11.46.100 and the value of the property or services is less than $50.

(b) Theft in the fourth degree is a class B misdemeanor. (§ 4, ch. 166 SLA 1978)

PRIOR CRIMINAL CODE

See former AS 11.20.140-510, statutes on theft related offenses for various penalties; AS 11.15.250, Larceny from the person.

COMMENTARY

From Senate Journal Supp. No. 47, at 32-33 (June 12, 1978):

A. Section 11.46.120. Theft in the First Degree

A person commits theft in the first degree, a class B felony, when he commits theft as described in AS 11.46.100 and the value of the property or service that is the subject of theft is $25,000 or more.

B. Section 11.46.130. Theft in the Second Degree

Subsection (1) provides that theft in the [second] degree, a class C felony, is committed if a person commits theft as described in AS 11.46.100 and the value of the property or services that is the subject of theft is $500 or more.

Subsection (2) provides that the theft of any firearm or explosive, regardless of value, is theft in the second degree. This provision is included because of the frequency with which stolen firearms and explosives are used in committing other crimes. The terms "firearm" and "explosive" are defined in AS 11.46.900(b).

Subsection (3) provides that the theft of any property from the person is treated as second degree theft. This is consistent with existing AS 11.15.250, larceny from a person, which treats non-forcible thefts from the person (i.e., picking

a pocket) as a felony, regardless of the value of the stolen property. Note, however, that if force is used the defendant has committed the more serious crime of robbery.

C. Sections 11.46.140-150. Theft in the Third and Fourth Degree

Theft of property or services worth between $50 and $500 or the theft of a credit card (defined in AS 11.81.900(b)(8)) is a class A misdemeanor, theft in the third degree.

Theft in the fourth degree, a class B misdemeanor, is committed by the theft of property or services worth less than $50.

See also TD III, 24-27.

CROSS REFERENCES

Definition of "property," "services," "firearm," "explosive," "credit card" - AS 11.81.900(b)
Theft defined - AS 11.46.100
Consolidation of theft offenses: pleading and proof - AS 11.46.110
Determination of value; aggregation of amounts - AS 11.46.980
Offenses defined by age or value - AS 11.81.615
Robbery in the first and second degree - AS 11.41.500, 11.41.510

The requirements of this statutes are (1) the obtaining of property by the defendant (2) knowing it to have been lost, mislaid or delivered to him by mistake and (3) failing to take reasonable measures to restore the property to its owner (4) with intent to deprive the owner of the property. Subsection (b) specifically lists notification of a peace officer or the owner as a "reasonable measure" to restore property.

See also TD III, 28-30.

CROSS REFERENCES

Definition of "property," "peace officer" - AS 11.81.-900(b)

Definition of "intentionally," "knowingly" - AS 11.81.-900(a)

Definition of "obtain," "property of another," "deprive" - AS 11.46.990

Theft defined - AS 11.46.100(2)

Consolidation of theft offenses: pleading and proof - AS 11.46.110

Theft in the first, second, third, and fourth degree - AS 11.46.120 -- 11.46.150

AS 11.46.160

THEFT OF LOST OR MISLAID PROPERTY

NEW CRIMINAL CODE

Sec. 11.46.160. THEFT OF LOST OR MISLAID PROPERTY. (a) A person commits theft of lost or mislaid property if the person obtains property of another knowing that the property was lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient and the person fails to take reasonable measures to restore the property to the owner with intent to deprive the owner of the property.

(b) As used in this section "reasonable measures" includes notifying the identified owner or a peace officer. (§ 4, ch. 166 SLA 1978)

PRIOR CRIMINAL CODE

Sec. 11.20.260. RETENTION OF LOST PROPERTY. A person who finds lost property and appropriates it to his own use or to the use of another person not entitled to it, without (1) immediately or within a reasonable time advertising that fact in a paper of general circulation published nearest the place where found, and setting out a full and true description of the property, with marks of identification, if any, or (2) notifying the peace officer nearest to the place where found and giving a full and true description of the property, together with the time, place and circumstances under which found, is guilty of larceny and is punishable as provided in § 140 of this chapter. The finder of the property may retain it until reimbursed for the cost of advertising and preserving or protecting the property.

COMMENTARY

From Senate Journal Supp. No. 47, at 35 (June 12, 1978):

Pursuant to AS 11.46.100(2), a person commits theft if he commits conduct described in AS 11.46.160, theft of lost or mislaid property.

AS 11.46.180

THEFT BY DECEPTION

NEW CRIMINAL CODE

Sec. 11.46.180. THEFT BY DECEPTION. (a) A person commits theft by deception if, with intent to deprive another of property or to appropriate property of another to oneself or a third person, the person obtains the property of another by deception.

(b) In a prosecution based on theft by deception, if the state seeks to prove that the defendant used deception by promising performance which the defendant did not intend to perform or knew would not be performed, that intent or knowledge may not be established solely by or inferred solely from the fact that the promise was not performed.

(c) As used in this section, "deception" has the meaning ascribed to it in AS 11.81.900 but does not include falsity as to matters having no pecuniary significance or "puffing" by statements unlikely to deceive reasonable persons in the group addressed. (§ 4, ch. 166 SLA 1978)

PRIOR CRIMINAL CODE

Sec. 11.20.360. OBTAINING MONEY OR PROPERTY BY FALSE PRETENSES. A person who, by false pretenses or by a privy or false token, and with intent to defraud, obtains, or attempts to obtain money or property from another, or who obtains, or attempts to obtain, with intent to defraud, the signature of a person to a writing, the false making of which is a forgery, upon conviction, is punishable by imprisonment in the penitentiary for not less than one nor more than five years.

See also AS 11.20.380, False invoice to defraud insurer; AS 11.20.390, Fraudulent conveyance; AS 11.20.450, False pretenses on soliciting for organizations.

COMMENTARY

From Senate Journal Supp. No. 47, at 35-37 (June 12, 1978):

AS 11.46. 80 provides that a person commits theft if, acting with the specified intent "he obtains property of another by deception." To insure that the criminal courts are not swamped with cases which should be treated as civil breach of contract claims, subsection (b) requires that the deception be established by more than a mere showing that the defendant's promise was not kept.

"Deception" is defined in AS 11.81.900(b)(14) to cover five forms of conduct. Paragraph (A) codifies the traditional false pretenses concept of knowingly creating a false impression, but broadens its scope to include confirming another's impression which the defendant does not believe to be true. The false impression may relate to law, value, intention, or other state of mind. The traditional restriction to "existing facts" is rejected, as is the requirement of a "false token."

If the defendant knowingly fails to correct a false impression which he has previously created he has committed deception under paragraph (B). Paragraph (C) provides that deception also occurs when a seller knowingly prevents a buyer from acquiring relevant information to the disposition of property or services.

Paragraph (D) reaches the conduct currently covered by AS 11.20.400 - conveying an interest in property and failing to disclose a claim which impairs the enjoyment of the property.

Paragraph (E) provides that a person obtains property by deception if he promises performance which he intends or knows will not be performed. The original promise is actually the creating of a false impression under paragraph (A). However, it is advisable to provide specifically for theft by a false promise to emphasize that the common law restriction to "existing facts" cannot be interpreted to exempt false promises from the coverage of the theft statute.

AS 11.46.180 provides that "deception" does not include falsity as to matters having no pecuniary significance, such as a false statement by a car salesman that he belongs to the Elks in order to sell a car to an enthusiastic Elk. The subsection also provides that "deception" does not include "puffing" by statements unlikely to deceive ordinary persons in the group addressed. An example of "puffing" would be a salesman's statement that "this shampoo will make persons of the opposite sex fall all over you."

It should also be noted in AS 11.46.985 the Code specifically rejects any possible defense that deception cannot occur unless a person was deceived. Frauds involving machines, ranging from inserting a slug into a parking meter to large scale computer frauds, will be covered under the consolidated theft statute.

See also TD III, 30-34.

CROSS REFERENCES

Definition of "property," "deception" - AS 11.81.900(b)
Definition of "deprive another of property," "appropriate property of another to himself or a third person," "property of another," "obtains" - AS 11.46.990
Definition of "intentionally," "knowingly" - AS 11.81.-900(a)
Theft defined - AS 11.46.100(3)
Consolidation of theft offenses: pleading and proof - AS 11.46.110
Theft in the first, second, third, and fourth degree - AS 11.46.120 -- 11.46.150
Scheme to defraud - AS 11.46.600
Deceptive business practices - AS 11.46.710
Deceiving a machine - AS 11.46.985

AS 11.46.190

THEFT BY RECEIVING

NEW CRIMINAL CODE

Sec. 11.46.190. THEFT BY RECEIVING. (a) A person commits theft by receiving if the person buys, receives, retains, conceals, or disposes of stolen property with reckless disregard that the property was stolen.

(b) As used in this section, "receives" includes acquiring possession, control, or title, or lending on the security of the property. (§ 4, ch. 166 SLA 1978)

PRIOR CRIMINAL CODE

Sec. 11.20.350. BUYING, RECEIVING, OR CONCEALING STOLEN PROPERTY. A person who buys, receives, or conceals money, goods, bank notes, or other thing which may be the subject of larceny and which has been taken, embezzled, or stolen from another person, knowing it to have been taken, embezzled, or stolen, is punishable by a fine of not more than $1,000 and by imprisonment for not less than one year nor more than three years.

COMMENTARY

From Senate Journal Supp. No. 47, at 37-38 (June 12, 1978):

The Code provision provides that a person commits theft if he "buys, receives, retains, conceals, or disposes of stolen property with reckless disregard that the property was stolen." The term "stolen property" is defined in AS 11.46.990(7).

The statute does not require that the defendant "know" that the property was stolen; reckless disregard as to this element is sufficient. The definition of recklessly in AS 11.81.900(a)(3) would require the state to establish that the defendant was actually aware and consciously disregarded a substantial and unjustifiable risk that the property was stolen. Further, the defendant's disregard of the risk that the property was stolen must constitute "a gross deviation from the standard of conduct that a reasonable person would observe in the situation." Buying a new color television from a person in the street for $50 would be an example of conduct done with "reckless disregard" as to whether the property was stolen.

See also TD III, 34-36.

CROSS REFERENCES

Definition of "stolen property" - AS 11.46.990
Definition of "recklessly" - AS 11.81.900(a)
Definition of "property" - AS 11.81.900(b)
Theft defined - AS 11.46.100(4)
Consolidation of theft offenses: pleading and proof - AS 11.46.110
Theft in the first, second, third, and fourth degree - AS 11.46.120 -- 11.46.150

AS 11.46.200

THEFT OF SERVICES

NEW CRIMINAL CODE

Sec. 11.46.200. THEFT OF SERVICES. (a) A person commits theft of services if

(1) the person obtains services, known by that person to be available only for compensation, by deception, force, threat, or other means to avoid payment for the services; or

(2) having control over the disposition of services of others to which the person is not entitled, the person knowingly diverts those services to the person's own benefit or to the benefit of another not entitled to them; or

(3) the person obtains the use of computer time, a computer system, a computer program, a computer network, or any part of a computer system or network, with reckless disregard that the use by that person is unauthorized.

(b) Absconding without paying for hotel, restaurant, or other services for which compensation is customarily paid immediately upon the receiving of them is prima facie evidence that the services were obtained by deception.

(c) A person may not be prosecuted under this section for theft of cable, microwave, subscription, or pay television or other telecommunications service if the service was obtained through the use of a device designed and used to intercept electromagnetic signals directly from a satellite, including a device commonly referred to as a home earth station. (§ 4,

ch. 166 SLA 1978; paragraph (a)(3) added by § 1, ch. 79 SLA 1984; subsection (c) added by § 1, ch. 114 SLA 1984)

PRIOR CRIMINAL CODE

See former AS 11.20.480, Defrauding hotel or boardinghouse operator; AS 11.20.495, Fraudulent use of telecommunication service.

COMMENTARY

From Senate Journal Supp. No. 47, at 38 (June 12, 1978):

The purpose of AS 11.46.200 is to protect both individuals and commercial enterprises that supply services to the public from conduct now only partly covered by existing statutes. "Services" is defined broadly in AS 11.81.900(b)(50) to include all types of services mentioned in existing law but, in addition, specifically covers theft of labor and professional services.

Subsection (a)(1) covers the obtaining of services by deception, force, threat or other means to avoid payment for the services. Enforceability is simplified by subsection (b), which provides that absconding without paying for hotel, restaurant or other similar services is prima facie evidence that the services were obtained by deception.

Theft of services also occurs when a person improperly diverts services under his control to his or another's benefit. Paragraph (a)(2) would cover, for example, the foreman of a painting crew who has his subordinates paint his house on company time.

[Note: The legislature did not adopt any commentary to accompany the 1984 amendments to this statute.]

See also TD III, 39-41.

CROSS REFERENCES

Definition of "services," "deception," "force," "threat," "knowingly" - AS 11.81.900
Definition of "obtain," "access," "computer," "computer network," "computer system," "computer program," "data" - AS 11.46.990
Theft defined - AS 11.46.100(5)
Consolidation of theft offenses - AS 11.46.110 -- 11.46.-150
Criminal mischief in the third degree - AS 11.46.484
Criminal use of a computer - AS 11.46.740

AS 11.46.210

THEFT BY FAILURE TO MAKE REQUIRED
DISPOSITION OF FUNDS RECEIVED OR HELD

NEW CRIMINAL CODE

Sec. 11.46.210. THEFT BY FAILURE TO MAKE REQUIRED DISPOSITION OF FUNDS RECEIVED OR HELD. (a) A person commits theft by failure to make required disposition of funds received or held if the person

(1) obtains property from anyone or personal services from an employee upon an agreement or subject to a known legal obligation to make specified payment or other disposition to a third person, whether from that property or its proceeds or from the person's own property to be reserved in equivalent amount; and

(2) exercises control over the property or services as the person's own and fails to make the required payment or disposition.

(b) It is no a defense to a prosecution based on theft by failure to make required disposition of funds received or held that it may be impossible to identify particular property as belonging to the victim at the time of the defendant's failure to make the required payment or disposition.

(c) In a prosecution based on theft by failure to make required disposition of funds received or held, the fact that the defendant was a fiduciary or an officer or employee of a government or a financial institution is prima facie evidence

(1) that the defendant exercised control over property or services as the defendant's own if the defendant

failed to pay or account upon lawful demand or if an audit reveals a shortage or falsification of accounts; and

(2) that the defendant knew any legal obligation relevant under (a)(1) of this section. (§ 4, ch. 166 SLA 1978; subsection (b) amended by § 10, ch. 102 SLA 1980)

PRIOR CRIMINAL CODE - None.

COMMENTARY

From Senate Journal Supp. No. 47, at 39-40 (June 12, 1978):

It is questionable whether existing Alaska law covers the situation where a person receives property or services by promising to dispose of it in a certain way, exercises control over the property or services and fails to fulfill the obligation. The most typical examples are the employer who withholds amounts from his employees' pay for taxes, or the storekeeper who receives contributions for charity later to be transmitted by check to the ultimate charity recipient, and simply keeps the money.

The conduct described by subsection (a)(1) is criminal only if the holder of the funds knows of his legal obligation to pay. Enforcement of this section is made easier by the prima facie evidence provision of subsection (c) that an employee or officer of the government or a financial institution or a fiduciary knows his relevant legal obligations. Such a person is also presumed to have dealt with the held funds as his own if he fails to account for the funds on lawful demand, or if an audit reveals a shortage or falsification of accounts. The terms "government" and "fiduciary" are defined in AS 11.81.990(b). The term "financial institution" is defined in AS 11.46.990(3).

Subsection (b) provides an exception to the rule that requires stolen property to be specifically identified. A person who violates this section will not escape conviction simply because he has mingled the victim's money with his own funds.

From Senate Journal Supp. No. 44, at 8 (May 29, 1980):

The amendment makes no substantive change in this statute but conforms language in subsection (b) to the Code's consolidated theft statute. The amendment clarifies that a person who engages in conduct described in AS 11.46.210 is prosecuted for "Theft" under AS 11.46.120-150 and not for

"Theft by Failure to Make Required Disposition of Funds Received or Held" (See AS 11.46.110).

See also TD III, 41-42.

CROSS REFERENCES

Definition of "property," "services," "fiduciary," "government" - AS 11.81.900(b)
Definition of "financial institution," "obtains" - AS 11.46.990
Definition of "knowingly" - AS 11.81.900(a)
Theft defined - AS 11.46.100(6)
Consolidation of theft offenses: pleading and proof - AS 11.46.110
Theft in the first, second, third, and fourth degree - AS 11.46.120 -- 11.46.150
Misapplication of property - AS 11.46.620

AS 11.46.220, 11.46.230

CONCEALMENT OF MERCHANDISE; REASONABLE DETENTION AS A DEFENSE

NEW CRIMINAL CODE

Sec. 11.46.220. CONCEALMENT OF MERCHANDISE. (a) A person commits the crime of concealment of merchandise if without authority the person knowingly conceals on or about the person the merchandise of a commercial establishment, not purchased by the person, while still upon the premises of the commercial establishment, with intent to deprive the owner of the merchandise or with intent to appropriate the merchandise.

(b) Merchandise found concealed upon or about the person which has not been purchased by the person is prima facie evidence of knowing concealment.

(c) Concealment of merchandise is

(1) a class C felony if the merchandise is a firearm or the value of the merchandise is $500 or more;

(2) a class A misdemeanor if the value of the merchandise is $50 or more but less than $500;

(3) a class B misdemeanor if the value of the merchandise is less than $50. (§ 4, ch. 166 SLA 1978; amended by § 11, ch. 102 SLA 1980)

Sec. 11.46.230. REASONABLE DETENTION AS DEFENSE. (a) In a civil or criminal action upon the complaint of a person who has been detained in or in the immediate vicinity of a commercial establishment for the purpose of investigation or

questioning as to the ownership of merchandise, it is a defense that

(1) the person was detained in a reasonable manner and for not more than a reasonable time to permit investigation or questioning by a peace officer or by the owner of the commercial establishment or the owner's agent; and

(2) the peace officer, owner, or owner's agent had probable cause to believe that the person detained was committing or attempting to commit concealment of merchandise.

(b) As used in this section, "reasonable time" means the time necessary to permit the person detained to make a statement or refuse to make a statement, and any additional time necessary to examine employees and records of the commercial establishment relative to the ownership of the merchandise. (§ 4, ch. 166 SLA 1978)

PRIOR CRIMINAL CODE

See former AS 11.20.275, Concealment of merchandise; AS 11.20.277, Reasonable detention as defense.

COMMENTARY

From Senate Journal Supp. No. 47, at 40 (June 12, 1978):

AS 11.46.220 is derived from existing AS 11.20.275 but allows for felony prosecutions when over $500 in merchandise is involved.

AS 11.46.230 is derived from existing AS 11.20.277. It provides that a peace officer, or the owner of a store or his agent can detain a person when he has probable cause that the person has committed shoplifting. Note that the more clearly defined term "probable cause" has been substituted for the existing term "reasonable cause" in subsection (a)(2).

From Senate Journal Supp. No. 44, at 8 (May 29, 1980):

The 1980 amendments to AS 11.46.220 make two changes to the Concealment of Merchandise statute. The first is a

technical one and clarifies the intent element in language that more closely parallels the general theft provisions. See AS 11.46.100(1). While the definition of "intent to deprive" (AS 11.46.990(2)) is broad enough to include conduct included within the definition of "intent to appropriate" (AS 11.46.-990(1)), it is preferable to closely parallel the general language of the theft statutes in the Concealment of Merchandise statute.

The second change is to provide that the concealment of any firearm, regardless of value, is a class C felony. This amendment is intended to conform the Concealment of Merchandise statute with the general theft statutes which provide that the theft of any firearm is a class C felony. See, AS 11.46.-130(a)(2).

See also TD III, 42-43.

CROSS REFERENCES

Definition of "intentionally," "knowingly" - AS 11.81.-900(a)
Definition of "deprive" - AS 11.46.990
Determination of value; aggregation of amounts - AS 11.-46.980
Offenses defined by age or value - AS 11.81.615

AS 11.46.260, 11.46.270

REMOVAL OF IDENTIFICATION MARKS; UNLAWFUL POSSESSION

NEW CRIMINAL CODE

Sec. 11.46.260. REMOVAL OF IDENTIFICATION MARKS. (a) A person commits the crime of removal of identification marks if, with intent to cause interruption to the ownership of another, the person defaces, erases, or otherwise alters or attempts to deface, erase, or otherwise alter any serial number or identification mark placed or inscribed on a propelled vehicle, bicycle, firearm, movable or immovable construction tool or equipment, appliance, merchandise, or other article or its component parts.

(b) Removal of identification marks is

(1) a class C felony if the value of the property on which the serial number or identification mark appeared is $500 or more;

(2) a class A misdemeanor if the value of the property on which the serial number or identification mark appeared is $50 or more but less than $500;

(3) a class B misdemeanor if the value of the property on which the serial number or identification mark appeared is less than $50. (§ 4, ch. 166 SLA 1978)

Sec. 11.46.270. UNLAWFUL POSSESSION. (a) A person commits the crime of unlawful possession if the person possesses a propelled vehicle, bicycle, firearm, movable or immovable construction tool or equipment, appliance,

merchandise or other article or its component parts knowing that the serial number or identification mark placed on it by the manufacturer or owner for the purpose of identification has been defaced, erased, or otherwise altered with the intent of causing interruption to the ownership of another.

(b) Unlawful possession is

(1) a class C felony if the value of the property on which the serial number or identification mark appeared is $500 or more;

(2) a class A misdemeanor if the value of the property on which the serial number or identification mark appeared is $50 or more but less than $500;

(3) a class B misdemeanor if the value of the property on which the serial number or identification mark appeared is less than $50. (§ 4, ch. 166 SLA 1978)

PRIOR CRIMINAL CODE - None.

COMMENTARY

From Senate Journal Supp. No. 47, at 40-41 (June 12, 1978):

The crime of removal of identification marks prohibits the defacing, erasing or the altering of a serial number or identification mark "with intent to cause interruption to the ownership of another." The intent element prevents conviction of persons who alter their own property.

The crime of unlawful possession prohibits the possession of property "knowing that the serial number or identification mark ... has been erased, altered, changed or removed with the intent of causing interruption to ownership of another." There should be few problems in convincing a jury that a person discovered, for example, with ten television sets in his basement, all with their serial numbers removed, possessed that property knowing it had been altered with the intent to cause interruption to the ownership of another.

See also TD III, 46-47.

CROSS REFERENCES

Definition of "propelled vehicle," "firearm," "possess" - AS 11.81.900(b)

Definition of "intentionally," "knowingly" - AS 11.81.-900(a)

Theft by deception - AS 11.46.180

Determination of value; aggregation of amounts - AS 11.-46.980

Offenses defined by age or value - AS 11.81.615

AS 11.46.280

ISSUING A BAD CHECK

NEW CRIMINAL CODE

Sec. 11.46.280. ISSUING A BAD CHECK. (a) A person commits the crime of issuing a bad check if the person issues a check knowing that it will not be honored by the drawee.

(b) In a prosecution under this section, it is prima facie evidence that the drawer knew the check would not be honored by the drawee if

(1) payment of the check was refused by the drawee for lack of funds upon presentation within 30 days after issue, and the drawer failed to make full satisfaction of the amount due within 15 days after notice of dishonor was deposited as first class mail, addressed to the drawer at the address appearing on the dishonored check or the drawer's last known address; or

(2) the drawer had no account with the drawee at the time the check was issued.

(c) In this section,

(1) "amount due" means the face amount of the dishonored check plus all costs and protest fees assessed by the drawee;

(2) "check" means a draft, check, or similar sight order for the payment of money, but does not include a post-dated check or a promissory note:

(3) a person "issues" a check when as a drawer the person delivers it or causes it to be delivered to a person who

thereby acquires a right against the drawer with respect to the check; a person who draws a check with the intent that it be so delivered is considered to have issued it if the delivery occurs.

(d) Issuing a bad check is

(1) a class B felony if the face amount of the check is $25,000 or more;

(2) a class C felony if the face amount of the check is $500 or more but less than $25,000;

(3) a class A misdemeanor if the face amount of the check is $50 or more but less than $500;

(4) a class B misdemeanor if the face amount of the check is less than $50. (§ 4, ch. 166 SLA 1978)

PRIOR CRIMINAL CODE

Sec. 11.20.210. ISSUING CHECKS WITHOUT FUNDS OR CREDIT. A person is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both, if he

(1) makes, draws, utters, or delivers a check, draft or order drawn upon a bank or other depository, for payment of money, knowing at the time of the making, drawing, uttering or delivering that the maker or drawer does not have sufficient funds or credit with the bank or other depository for its payment in full, upon presentation, and without informing the payee or the person to whom it is delivered, at the time of the making, uttering, drawing or delivery of it, that the person making, drawing, uttering or delivering the check, draft or order does not have sufficient funds or credit with the bank or other depository for its payment in full, upon presentation, or

(2) has funds or credits at the time he makes, draws, utters, or delivers a check, draft or order sufficient for its payment, but who has knowingly drawn, made, uttered or delivered other checks, drafts or orders which, if presented in due course, would exhaust the funds or credits; or

(3) knows at the time he makes, draws, utters or delivers a check, draft or order, that for other reasons the

funds or credits will be exhausted by the time check, draft or order is presented; or

(4) knowingly, after drawing, making, uttering or delivering a check, draft or order, exhausts by any means the funds or credits upon which the check, draft or order is drawn before it is presented for payment.

Sec. 11.20.220. EVIDENCE OF KNOWLEDGE OF INSUFFICIENT FUNDS. The making, drawing, uttering, or delivering of a check, draft, or order, payment of which is refused by the drawee, is prima facie evidence of knowledge of insufficient funds or credit with the bank or other depository, against the maker or drawer, if the maker or drawer has not paid the drawee the amount due with cost and protest fees, within two days after receiving notice that the check, draft or order has not been paid by the drawee.

See also, AS 11.20.230, Drawing a check with insufficient funds; AS 11.20.240, Punishment for violation of § 230 of this chapter; AS 11.20.250, Evidence of intent to defraud.

COMMENTARY

From Senate Journal Supp. No. 47, at 41 (June 12, 1978):

The crime of issuing a bad check is committed when a person issues (defined in subsection (c)(3)) a check (defined in subsection (c)(2)) knowing that it will not be honored by the drawee. The penalty for issuing a bad check parallels the general theft provisions and is based on the face value of the check.

Under subsection (b), the state meets its initial burden of proving knowledge if it shows that the issuer of the bad check had no account with the drawee at the time the check was issued or that the drawee refused the check within 30 days of issue and the drawer of the check failed to make full satisfaction within 15 days after notice of dishonor was sent to him.

See also TD V, 28-31.

CROSS REFERENCES

Definition of "knowingly" - AS 11.81.900(a)
Theft by deception - AS 11.46.180
Determination of "value"; aggregation of amounts - AS 11.46.980

AS 11.46.285, 11.46.290

FRAUDULENT USE OF A CREDIT CARD; OBTAINING A CREDIT CARD BY FRAUDULENT MEANS

NEW CRIMINAL CODE

Sec. 11.46.285. FRAUDULENT USE OF A CREDIT CARD. (a) A person commits the crime of fraudulent use of a credit card if, with intent to defraud, the person uses a credit card to obtain property or services with knowledge that

(1) the card is stolen or forged;

(2) the card is expired or has been revoked or cancelled; or

(3) for any other reason that person's use of the card is unauthorized by either the issuer or the person to whom the credit card is issued.

(b) Fraudulent use of a credit card is

(1) a class C felony if the value of the property or services obtained is $500 or more;

(2) a class A misdemeanor if the value of the property or services obtained is $50 or more but less than $500;

(3) a class B misdemeanor if the value of the property or services obtained is less than $50. (§ 4, ch. 166 SLA 1978)

Sec. 11.46.290. OBTAINING A CREDIT CARD BY FRAUDULENT MEANS. (a) A person commits the crime of obtaining a credit card by fraudulent means if

(1) the person buys a credit card from a person other than the issuer or, as other than the issuer, the person sells a credit card;

(2) with intent to defraud, the person obtains control of a credit card as a security for debt; or

(3) with intent to defraud, the person makes a false statement in an application for a credit card.

(b) Obtaining a credit card by fraudulent means under (a)(1) or (2) of this section is a class C felony. Obtaining a credit card by fraudulent means under (a)(3) of this section is a class A misdemeanor. (§ 4, ch. 166 SLA 1978)

PRIOR CRIMINAL CODE

See former AS 11.22, Alaska Credit Card Crimes Act.

COMMENTARY

From Senate Journal Supp. No. 47, at 41-42 (June 12, 1978):

Obtaining property or services through the unauthorized use of a credit card is proscribed in AS 11.46.285. Penalties for the prohibited conduct parallel those provided for theft. However, because it is highly unlikely that the fraud will involve $25,000, B felony penalties are not provided. Note that amounts obtained pursuant to one course of conduct may be aggregated in determining the degree of the crime. See AS 11.46.980, infra.

The crime of obtaining a credit card by fraudulent means specifies three forms of unlawful acts involving credit cards. The penalty for the conduct described in subsection (a)(1) and (2) is a class C felony, while A misdemeanor penalties are provided for violation of subsection (a)(3).

See also TD V, 53-56.

CROSS REFERENCES

Definition of "intent to defraud," "obtain" - AS 11.46.990
Definition of "credit card," "property," "services" - AS 11.81.900(b)
Definition of "knowingly" - AS 11.81.900(a)

HB

240

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: April 18, 2006 **FURTHER REFERRALS:**

Date of Committee Action: 04/19/06

The JUDICIARY Committee considered: **HB 240**

HOUSE BILL NO. 240 **BREWERY & BREWPUB LICENSES**

"An Act relating to brewery and brew pub licensing."

Recommends it be replaced with [ ] HCS *or* [X] CS *for* HB 240 (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
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero
DPS				X

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	Cara			✓	
	Coghill			✓	
	Dyson	✓			
	WILSON			✓	
	Bracken	✓			
	ANDERSON			X	
			✓		
Chair:	McGuire	✓			
Chair:					

Alaska State Legislature

House of Representatives

House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

Sponsor Statement HB 240

"An Act relating to brewery and brew pub licensing"

The Brewers Guild of Alaska represents six breweries and five brewpubs operating in the state of Alaska. We are a growing industry that employs hundreds of Alaskans. The Brewers Guild is united in this bill in an effort to foster more equitable competition with breweries and brewpubs from outside of Alaska, while not harming small breweries in Alaska. In the State of Alaska, brewpubs and brewery licenses are exclusive licenses with different competitive markets, although the regular citizen sees no difference in these entities. Both Brewpubs and Brewery Licensees benefit from this bill, but if any of the core content is changed, then there will be an inequitable competitive landscape for either the breweries or the brewpubs.

Brewpubs are legally restricted to sell to consumers for consumption on their licensed premises and, with limitations, to consumers for off-premise consumption and to all other licensees through a distributor. Breweries are legally restricted to sell their product for off-site consumption whether to consumers, wholesalers or other licensees; breweries are also allowed to provide free samples of their product. The proposed legislation is a compromise between these licensees in order to improve the competitive environments of brewpubs and breweries, while not creating a significant impact on the competitive environments of other interested licensees, such as dispensary license owners and distributors.

This legislation increases the amount of beer a brewpub can produce (often referred to as the "production cap") from 150,000 gallons to 465,000 gallons. This cap is based upon the typical industry definition of the top level of production of a "microbrewery." In addition, this legislation increases the amount of beer a brewpub can sell to a licensed wholesaler from 15,000 gallons to 37,000 gallons. Outside brewpubs do not have a cap on the amount of beer they can sell in Alaska.

Current law allows breweries to provide free samples of their products. This legislation allows breweries to also charge for samples as is now common in tasting rooms in other states. Although there have been concerns voiced that this allows breweries to act as "taverns", this legislation includes restrictions that will differentiate the tasting rooms from the "tavern" concept, such as limited on-premise sales of only their beer, restricted hours of operation and a well-defined environment. The sale of samples allows breweries help defray the costs of on-premise sampling while still providing the promotional and ·ational aspects of product sampling.

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION

Alaska State Legislature

House of Representatives
House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

Sponsor Statement HB 240
"An Act relating to brewery and brew pub licensing"

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Current law allows breweries to provide free samples of their products. This legislation allows breweries to also charge for samples as is now common in tasting rooms in other states. Although there have been concerns voiced that this allows breweries to act as "taverns", this legislation includes restrictions that will differentiate the tasting rooms from the "tavern" concept, such as limited on-premise sales of only their beer, restricted hours of operation and a well-defined environment. The sale of samples allows breweries to help defray the costs of on-premise sampling while still providing the promotional and educational aspects of product sampling.

Finally, this legislation allows brewpubs in Anchorage and Fairbanks to self-distribute up to 200 barrels of beer per year. Under current law, brewpubs are required to use a wholesaler to distribute any beer off-premise. However, sales at this level are not necessarily profitable for the wholesaler, so it is difficult for a brewpub to initially get its product to the market. This change could potentially eliminate a competitive advantage to breweries in smaller communities in our state, thus the limitation of a population of 75,000 has been put in place to not harm the smallest of breweries.

The Brewers Guild is in support of this bill in its entirety.

Finance Office
3401 Denali St., 202-A
Anchorage, Alaska
99503

SNOW GOOSE RESTAURANT

Gary J. Klopfer
Member Manager/Owner
Phone: (907) 561-2274
Fax: (907) 563-9354

March 28, 2006

House Labor & Commerce Committee Members

Re: HB 240 – Brewery & Brewpub Licensing

Dear Committee Members;

I am writing this letter in support of HB 240 and asking for your support of this bill.

Our fledgling brewing industry in Alaska has gone through many changes in the last ten years and this new legislation will continue to support our industry. As an industry, we employ hundreds of Alaskans, we pay ten of thousands of dollars in taxes, we buy millions of dollars in suppliers from Alaskan vendors and we have spent millions of dollars in construction and renovation costs for our establishments in Alaska. We have accomplished this in just the last ten years and I might add without any state subsidies or hand outs! All we ask for our industry is to be treated fairly and equitably considering our financial impact on the communities where we live.

As an industry, we formed the Brewers Guild of Alaska (BGA), to work together (breweries and brewpubs) on issues that we feel are in our best interest and in the interest of the citizens and the economy of Alaska. The BGA wholeheartedly supports this bill and I hope that you will support it also.

Thank you for your time and if you have any questions, please call me or email me at gjklopfer@msn.com.

Sincerely,

Gary J Klopfer

SLEEPING LADY BREWING COMPANY

717 West Third Avenue, Anchorage, Alaska 99501 (907) 277-7727 www.alaskabeers.com

Craig Johnson

From: Ben Millstein/KODIAK ISLAND BREWING CO [bmills@ak.net]
Sent: Tuesday, March 28, 2006 2:00 PM
To: Craig Johnson
Subject: HB 240

Greetings to all interested persons,

As a member of the Brewer's Guild of Alaska running the Kodiak Island Brewing Company, LLC. I would like to express my support for HB240. The Guild has worked long and hard to arrive at a bill that we can all support, and that we believe addresses the concerns of businesses outside our guild. What we propose is in no way unusual when other state laws are examined. Please support this bill, and feel free to call me if you have any questions about it.

Thank you,

Ben Millstein
Manager,
Kodiak Island Brewing Co. LLC

ANCHORAGE CHARR

4/14/08

Representative Lesil McGuire
Chair, House Judicial
State Capitol, Room 118
Juneau, AK 99801-1182

RE: HB 240, Brewery & Brewpub Licenses

Dear Representative McGuire:

The above referenced bill will change alcohol licensing laws for Brewers and Brewpubs. It also does away with the three-tier system which defines types of licenses in Alaska.

We have met with the Brewers and Brewpubs and decided in order for the majority (Beverage Dispensary Licenses) to agree with the bill, BDL's should also benefit from the licensing changes.

The Anchorage CHARR board members agreed to compromise with the following:
36 ounces for sale at Breweries
Closing at 8pm for Breweries
Delete "tasting rooms" or "rooms" from the bill and replace with licensed establishments
Insert amendment (below) to benefit BDL's

Recommended language by the Anchorage CHARR board to read as follows:

Notwithstanding (a) and (b) of this section, a beverage dispensary licensee or a licensee's agent or employee, or a holder of a general wholesale, wholesale malt beverage and wine licensee by non-resident brewer or the agent or employees of these licensees may provide, without charge, any customer a small sample of beer or wine for promotional purposes.

It was our understanding throughout our negotiations with the brewpubs this would be included in the bill. It has been brought to our attention there is denial by the brewpubs of supporting this amendment and the wholesalers have now backed off on pushing the amendment forward. Frankly, we are tired of the less than honorable approach this group has exhibited throughout the negotiations. We never would have met with the brewpubs and breweries if we knew this was the end goal. If the above amendment is not included in HB240, Anchorage CHARR will oppose this bill.

The issue is simplistic: If the Brewpubs want to brew more beer they should apply for a brewer's license. If the Breweries want to sell individual beer they should apply for a full beverage dispensary license. We have heard the brewpub and brewery excuses and know they are unsubstantiated.

The reality is: It is cheaper and easier to change licensing legislation than it is to purchase the proper license to accomplish goals. This bill with the above amendment is designed to benefit all licensees, not for the profit of a few. What we appear to have is a stalemate and request time for further negotiations regarding our amendment.

Thank you!

Sincerely,

Chuck Edwards
Government Affairs Chair

P.O. Box 111369, Anchorage, AK, 99511, 907 227-3423

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 240(L&C)
(H) Publish Date: 4/18/06

Revision Date/Time (Note if correction):
Dept. Affected: Public Safety
Title "An Act relating to brewery and brew pub licensing."
RDU Alcoholic Beverage Control Board
Component AEC Board
Sponsor House Judiciary Committee
Requester House Labor and Commerce Committee
Component No. 2690

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2006) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

This legislation will not have a fiscal impact on expenditures for the Department of Public Safety. A very small increase in revenues could be realized if any of the existing brewpubs were to upgrade to a brewery and pay the corresponding increased license fees.

Prepared by: Director Douglas B. Griffin
Phone 907-269-0351
Division Alcoholic Beverage Control Board
Date/Time 3/21/06 9:02 AM
Approved by: Commissioner William Tandeske
Date 3/21/2006
Agency Department of Public Safety

(Revised 9/23/2004 OMB)

HB

246

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. John Coghill
Rep. Pete Kott
Rep. Nancy Dahlstrom
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 246

"An Act requiring a member to opt into a class action; and amending Rule 23(c), Alaska Rules of Civil Procedure."

A class action is a lawsuit filed by one or more people on behalf of themselves and a larger group of people "who are similarly situated." Rule 23, Alaska Rules of Civil Procedure, provides the procedure for class actions in the state. The Rule sets out the prerequisites that must be met and the factors that must be weighed by the court before determining whether the class action should be maintained. If the class action is maintained, the court must then direct notice to the class.

Rule 23 currently requires that the court use the best notice practicable to all members that can be identified through reasonable effort to tell members when to "opt out" of participation as a class member, that any judgment will affect all class members who do not "opt out" and that any member not "opting out" may enter an appearance through counsel. Under this system, many people are unfortunately made a part of a class action without being aware of it. An unknowing class member can get swept into massive litigation, affecting their personal and professional lives, without ever consenting to it. They can also be left without recourse if they learn of the suit after a judgment is made and are unsatisfied with the award.

HB 246 recognizes the value and importance of class action lawsuits in our legal system and does not make any changes to the prerequisites used to determine if a class action is appropriate and in the best interests of the members of the class. It simply changes the notice provision of Rule 23(c) to require that a member "opt in" to the class in order to become part of the action. Common sense and fairness in our legal system dictate that a person should take some affirmative action before becoming part of a lawsuit, whatever the circumstances or outcome may be. This is especially true in a large rural state such as Alaska with a sizeable transient population where notice, and therefore the opportunity to "opt out," may not reach many potential class members.

4/11/2005

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 8, 2005

SUBJECT: Class action and collective action (HB 246)

TO: Representative Lesil McGuire
Attn: Vanessa Tondini

FROM: Donald M. Bullock Jr.
Legislative Counsel

You asked for the list of states that use "opt-in" versus "opt-out" for determining participants in a class action lawsuit. You also wanted a description of the procedure for a class action lawsuit under Rule 23, Alaska Rules of Civil Procedure.

Under the "opt-out" procedure, a member in the class is part of the class litigation unless the member opts out; under the "opt-in" procedure, a member of the class is not part of the litigation unless the member affirmatively opts in to participate. To find out if any state uses the "opt-in" rather than the "opt-out" procedure for determining class participation, I searched the Lexis database that includes all state statutes and court rules. I could not find a state that uses "opt-in" for class participation. As you may already know, Rule 23 of the Federal Rules of Civil Procedure uses "opt-out."

However, there are two federal statutes that provide for opting in to participate in a class action. In the "opt-in" situation, the action is referred to as a "collective action" rather than a class action. The two federal statutes that provide for opting into an action are 29 U.S.C. 216(b) of the Fair Labor Standards Act[1] and 29 U.S.C. 626(b) of the Age Discrimination in Employment Act.[2]

---

[1] **Damages; right of action; attorney's fees and costs; termination of right of action** Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Any employer who violates the provisions of section 215 (a)(3) of this title shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 215 (a)(3) of this title, including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages. An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees

Rule 23, Alaska Rules of Civil Procedure, provides the procedure for class actions in the state. The prerequisites to a class action are listed in subsection (a) of the rule as follows:

> (1) the class is so numerous that joinder of all members is impracticable,
> (2) there are questions of law or fact common to the class,
> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and
> (4) the representative parties will fairly and adequately protect the interests of the class.

In the list above, (2) and (3) are directed to the similarities among the class members in the litigation, that they have common factual circumstances and legal issues. The first prerequisite is directed at the number of members of the class, and the fourth requires that the class will be adequately represented by the representatives initiating and pursuing the litigation.

After the prerequisites in (a) are met, Rule 23(b) imposes additional requirements that weigh the benefits of a class action against numerous actions by individual class members. Among the considerations are whether there is the risk of inconsistent or varying adjudications, the risk that an individual's adjudication may be dispositive of or impair the interests of other members of the class, whether the party opposing the class has acted or refuses to act on grounds generally applicable to the members of the class, whether the questions of law or fact common to the class predominate over any questions affecting some individual members, and whether a class action is superior to other methods for the fair and efficient adjudication of the controversy.

---

similarly situated. ***No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought.*** The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 217 of this title in which

(1) restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation, as the case may be, owing to such employee under section 206 or section 207 of this title by an employer liable therefor under the provisions of this subsection or

(2) legal or equitable relief is sought as a result of alleged violations of section 215 (a)(3) of this title. [Emphasis added.]

[2] Sec. 626(b) directs that the enforcement of the Age Discrimination in Employment Act use the procedures in 29 U.S.C. 216, which requires the affirmative consent by an individual to participate in the litigation.

Rule 23(c), that would be amended by HB 246, provides the procedures to be followed by the court. First, the issue of whether to proceed as a class action should be decided "as soon as practicable after the commencement of an action brought as a class action . . . ." Next, after finding that "the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy", the court uses the best practicable notice to all members to tell the members when to opt out of participation as a class member, that any judgment will affect all class members who do not opt out, and that any member not opting out may enter an appearance through counsel. A judgment in a class action must describe those found by the judge to be members of the class, and, if notice of the opportunity to opt out was provided, those to whom the notice was directed and who did not opt out of the class. Other provisions in Rule 23(c) allow for a limitation on the issues to be included in the class action and the division of a class into subclasses that may each be treated as a class.

Rule 23(d) and (e) describe procedures for orders in the conduct of class actions and the dismissal or compromise of the class action.

In general, Rule 23 requires a court to look at the efficiency of litigation by combining potential litigants who have common issues of law and fact, but also consider whether a class action will adequately represent the individuals fitting within the parameters of a class member. Members who do not opt out are subject to the outcome of the litigation, but those who do may litigate their claims separately.

If I may be of further assistance, please advise.

DMB:med
05-244.med

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 246
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected:
Title: Require Opt-In for Class Actions
BRU: Alaska Court System
Component: Trial Courts
Sponsor: House Judiciary Committee
Requester:
Component No.: 768

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

The court system does not anticipate any fiscal impact from the passage of HB 246.

Prepared by: Douglas Wooliver, Administrative Attorney
Phone 463-4750
Division: Alaska Court System
Date/Time 4/8/05 7:23 AM
Approved by: Doug Wooliver for Stephanie Cole, Administrative Director
Date 4/8/2005
Agency: Alaska Court System

(Revised 9/2002 OMB)

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB246-LAW-C&FB-4-9-0
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: LAW
Title "An Act requiring a member to opt into a class action; and amending Rule 23(c)..."
RDU CIVIL
Component Commercial & Fair Business
Sponsor House Judiciary
Requester House Judiciary
Component No.

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other - Regulatory Cost Charge						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill amends Alaska Civil Rule 23(c) to require that members of a potential class be notified of their ability to "opt-in" to he class before a class action can be maintained under Rule 23(b)(3). Currently, the rule requires notice to class members with an "opt-out" requirement.

Passage of this legislation will not have a fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhetee, Director
Phone 465-3673
Division Administrative Services Division
Date/Time 4/9/05 2:31 PM
Approved by: Kathryn Daughhetee for David Márquez, Attorney General
Date 4/9/2005
Agency Department of Law

(Revised 9/23/2004 OMB)

Friday, February 18, 2005

President Bush Signs Class-Action Fairness Act of 2005 Into Law

THE PRESIDENT: Thank you all. Thanks for coming. (Applause.) Please be seated. Thank you for coming. Thanks for the warm welcome. Welcome to the people's house. Glad you're here for the first bill signing ceremony of 2005. (Applause.)

The bill I'm about to sign is a model of effective, bipartisan legislation. By working together over several years, we have agreed on a practical way to begin restoring common sense and balance to America's legal system. The Class-Action Fairness Act of 2005 marks a critical step toward ending the lawsuit culture in our country. The bill will ease the needless burden of litigation on every American worker, business, and family. By beginning the important work of legal reform, we are meeting our duty to solve problems now, and not to pass them on to future generations.

I appreciate so very much the leadership that Senator Frist and Senator McConnell have shown on this bill in the United States Senate. I want to thank Senator Chris Dodd and Senator Tom Carper and Senator Craig Thomas, as well for working in a bipartisan fashion to get this good bill to my desk.

I appreciate Congressman Jim Sensenbrenner, as well as Congressman Lamar Smith, joining us today. I particularly want to pay tribute to the bill sponsors -- Senator Grassley and Senator Kohl, as well as Congressman Bob Goodlatte and Congressman Rick Boucher, who are with us here today.

Congress showed what is possible when we set aside partisan differences and focus on what's doing right for Congress, and you all are to be -- I mean, for the country -- and you're to be credited for your good work. Thank you very much. (Applause.)

I welcome our new Attorney General -- oh, right there. (Laughter.) How quickly they forget in Washington. (Laughter.) Al Gonzales. Proud you're up here, Al. Hector Barreto, the SBA. Thank you, all the business leaders, community leaders, consumer groups who care about this issue. Thanks for your hard work. Thanks for being patient. Thanks for not becoming discouraged. And thanks for witnessing the fruits of your labor as I sign this bill.

Class-actions can serve a valuable purpose in our legal system. They allow numerous victims of the same wrong-doing to merge their claims into a single lawsuit. When used properly, class-actions make the legal system more efficient and help guarantee that injured people receive proper compensation. That is an important principle of justice. So the bill I sign today maintains every victim's right to seek justice, and ensures that wrong-doers are held to account.

Class-actions can also be manipulated for personal gain. Lawyers who represent plaintiffs from multiple states can shop around for the state court where they expect to win the most money. A few weeks ago, I visited Madison County, Illinois, where juries have earned a reputation for awarding large verdicts. The number of class-actions filed in Madison County has gone from two in 1998 to 82 in 2004 -- even though the vast majority of the defendants named in those suits are not from Madison County. Trial lawyers have already filed 24 class-actions in Madison County this year. We're in February. (Laughter.) Including 20 in the past week -- after Congress made it clear their chance to exploit the class-action system would soon be gone.

Before today, trial lawyers were able to drag defendants from all over the country into sympathetic local courts, even if those businesses have done nothing wrong. Many businesses decided it was cheaper to settle the lawsuits, rather than risk a massive jury award. In many cases, lawyers went

home with huge pay-outs, while the plaintiffs ended up with coupons worth only a few dollars. By the time the settlement in at least one case was finished, plaintiffs actually owed their lawyers money.

A newspaper editorial called the class-action system "an extortion racket that only Congress can fix." This bill helps fix the system. Congress has done its duty, and I'm proud to sign it into law.

Over the past few years I've met people from all over the country who know the importance of class-action reform firsthand, and three of them are with us today. Marylou Rigat lives in Connecticut, yet a class-action involving her faulty roof was resolved by a judge in Alabama. The award covered only a fraction of the cost of new shingles, but that wasn't Marylou's biggest problem. She had no idea she was part of the class-action in the first place, and no one contacted her about her award. She only learned by accident when she called the company about her warranty. And then she found out there was nothing more she could do.

Hilda Bankston is with us. And her late husband used to own a drugstore in Fayette, Mississippi. Their business was doing well, until the store got swept up in massive litigation just because it dispensed prescription drugs for a certain drug -- prescriptions for a certain drug. She had to sell the pharmacy six years ago. But she's still getting dragged into court, again and again. Here's what she said: "My husband and I lived the American Dream until we were caught up in what has become an American nightmare."

Alita Ditkowsky is with us. She was part of a class-action against a company that made faulty televisions. When the case was settled in Madison County, Illinois, Alita's lawyer took home a big check while she got a $50 rebate on another TV, built by the same company that had ruined the first TV. (Laughter.) Here's what she said: "I'm still left with a broken TV." (Laughter.) "He got $22 million. Where's the justice in this?"

I want to thank you all for letting me use your stories, not only here, but during different events we've had in highlighting the need for class-action reform, because this act will help ensure justice by making two essential reforms. First, it moves most large, interstate class-actions into federal courts. This will prevent trial lawyers from shopping around for friendly local venues. The bill will keep out-of-state businesses, workers, and shareholders from being dragged before unfriendly local juries, or forced into unfair settlements. And that's good for our system, and it's good for our economy.

Second, the bill provides new safeguards to ensure that plaintiffs and class-action lawsuits are treated fairly. The bill requires judges to consider the real monetary value of coupons and discounts, so that victims can count on true compensation for their injuries. It demands settlements and rulings to be explained in plain English, so that class members understand their full rights.

These are needed reforms. It's an important piece of legislation. It shows we're making important progress toward a better legal system.

There's more to do. Small business owners across America fear that one junk lawsuit could force them to close their doors for good. Medical liability lawsuits are driving up the cost for doctors and patients and entrepreneurs around the country. Asbestos litigation alone has led to the bankruptcy of dozens of companies and cost tens of thousands of jobs, even though many asbestos claims are filed on behalf of people who aren't actually sick.

Overall, junk lawsuits have driven the total cost of America's tort system to more than $240 billion a year, greater than any other major industrialized nation. It creates a needless disadvantage for America's workers and businesses in a global economy, imposes unfair costs on job creators, and

raises prices to consumers.

We have a responsibility to confront frivolous litigation head on. I will continue working with Congress to pass meaningful legal reforms, starting with reform in our asbestos and medical liability systems.

Once again, I want to thank you all for the hard work on this important legislation. Class-action reform will help keep America the best place in the world to do business. It will help ensure justice for our citizens, and I'm confident that this bill will be the first of many bipartisan achievements in the year 2005.

And now it is my honor to sign the Class-Action Fairness law. (Applause.)

Rule 23, Federal Rules of Civil Procedure

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

- (A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or
- (B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

(c) Determination by Order Whether Class Action to be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude the member from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if the member desires, enter an appearance through counsel.

(3) The judgment in an action maintained as a class action under subdivision (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

(d) Orders in Conduct of Actions. In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

(e) Dismissal or Compromise. A class action shall not be dismissed or compromised without

the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

(f) Appeals. A court of appeals may in its discretion permit an appeal from an order of a district court granting or denying class action certification under this rule if application is made to it within ten days after entry of the order. An appeal does not stay proceedings in the district court unless the district judge or the court of appeals so orders.

Rule 23.1 Derivative Actions by Shareholders.

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege (1) that the plaintiff was a shareholder or member at the time of the transaction of which the plaintiff complains or that the plaintiff's share or membership thereafter devolved on the plaintiff by operation of law, and (2) that the action is not a collusive one to confer jurisdiction on a court of the United States which it would not otherwise have. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for the plaintiff's failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

Rule 23.2 Actions Relating to Unincorporated Associations.

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e)

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How a Class Action Proceeds in Court

The following flow chart describes the typical procedures followed in class action litigation. The sequence of events described may vary from case; however, generally, a class action wil involve all of the steps noted.

Step 1: The first step is the drafting and filing of a complaint against the defendants. This document is then filed in court and delivered or "served" on the defendants by the U.S. mail or a process server.

Step 2: After the complaint is filed, the defendants will usually file an answer denying the allegations. Alternatively, they may elect to challenge the complaint by filing certain motions challenging the lawsuit. If motions are filed, an answer will be required after the judge rules on the motions unless the case is dismissed.

Step 3: After the answers are filed and any motions ruled on, a period of "discovery" will usually take place. Discovery involves the lawyers demanding documents from the other side, asking written questions, and taking depositions. Often courts will hold a conference with the lawyers and set a timetable for preliminary discovery needed for certification to be completed.

Step 4: During the discovery phase, the defendants may file motions to challenge the legal sufficiency or underlying factual basis for the action. These are usually called motions for summary judgment. If a defendant wins, some or all of the claims of plaintiffs may be dismissed.

Step 5: After all preliminary discovery is completed, the plaintiff will file motion to certify a class action. The defendants will file objections to certification. The Court will have a hearing. If plaintiffs win, the case proceeds to be certified.

Step 6: Notice. If the lawsuit is one for money, the court will order notice go to the class. Notice is publisned in the newspaper or sent through the mail. This notice advises class members of their rights, and sets deadlines for objecting, "opting out," or entering an appearance through a lawyer.

Step 7: Trial or Settlement. After final certification is granted, additional discovery may be needed before the case is tried. After that discovery is completed, the case is set for trial unless it settles. The trial of a class action procedurally is the same as for any other civil lawsuit.

Summary of Typical Procedures in a Class Action:

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Frequently Asked Questions about Class Actions

This page contains answers to common questions asked about class action litigation. For more detailed information, links to other sites are provided. Further, detailed information about some aspects of class action litigation may be found in the Federal Class Action Manual - Internet Edition on this website.

What is a Class Action?

A class action is a representative action wherein one or more plaintiffs actually named in the complaint, along with their counsel pursue a case for themselves and the defined class against one or more defendants. The claims of the "class representatives" must arise from facts or law common to the class members. Most class actions are called "plaintiff class actions;" however, in limited circumstances a class action can be filed against one or more defendants representing a group of defendants, i.e., a "defendant class" action.

In federal court, the procedures for certifying a class and the requisite elements for certification are governed by Rule 23, Federal Rules of Civil Procedure. For general information about federal courts and how they are structured, you may want to try "Understanding the Federal Courts." Another website with useful information on the federal court system and its procedures is the Federal Judiciary Homepage at www.uscourts.gov Also, a flow chart indicating the normal manner in which a typical class action proceeds through the courts is available on this site: Class Action Flow Chart.

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How do corporations improperly avoid class actions in consumer litigation?

In the early 1900's congress passed a law called the "Federal Arbitration Act." This law which was intended to apply only to merchants engaged in interstate commerce at the time it was passed, is now in the 1990's being used as a weapon against consumers. Arbitration was

intended to be a process whereby equally sophisticated businessmen could negotiate an agreement with each other to submit any dispute they might have to an independent third party for resolution instead of a court. The theory was that as to businessmen, the law should permit an alternative method for them to quickly resolve their differences outside of court. The fact is that most businesses engaged in such transactions have lawyers on retainer or on staff to negotiate such agreements, they fully understand the ramifications of arbitration, and the terms of the arbitration are agreed to by parties of equal bargaining strength.

Corporations are now using the same law to abuse the American consumer. Contracts with arbitration clauses involving credit, banking, insurance, and even home construction projects are now appearing with increasing frequency. An arbitration clause is particularly insidious when included in contracts of adhesion, i.e., contracts between businesses and consumers offered solely on a take-it-or-leave-it basis. Why are such arbitration clauses bad for consumers?

(1) An arbitration clause generally prohibits a consumer from filing any lawsuit in a court of law. In a lawsuit people have much broader procedural protections and rights than they have in arbitration. After a lawsuit is filed in court, a lawyer can force a defendant to submit his employees for deposition, to answer questions under oath in writing, and to allow an inspection of documents. If a defendant or its lawyers are caught concealing information or lying, severe penalties can be imposed by a judge. If a defendant refuses to produce documents or is evasive in answering questions, they can be forced by a court to fully answer, or in extreme cases a defendant can be found liable without a trial.

In an arbitration proceeding, these rights may not exist, or may be severely curtailed. Since a plaintiff likely will never be able to obtain full discovery, many frauds, lies and deceptions may go totally undiscovered. Even if a consumer, for instance finds an intentional pattern of fraud by a defendant to cheat thousands of people out of money in the same manner the consumer in arbitration was cheated, there is little that can be done to provide a remedy for those other people. Why?

(2) Because arbitration clauses generally prohibit the resolution of any dispute as a class action. Since no claims can be arbitrated as a class action, the most the defendant could ever be held accountable for is the claim of the individual who filed a demand for arbitration. So as long as the corporate crooks only cheats that consumer out of two or three hundred dollars, they probably have a license to steal. Even if the consumer gets mad, in the absence of a right to pursue a class action, he would never find a lawyer willing to take a case that involves only a couple hundred dollars. Therefore, the consumer would probably have to represent himself in an arbitration. If the consumer does try to represent himself, the filing fee to demand arbitration could be as much as a hundred dollars or more. If the consumer pays the filing fee and attempts to represent himself, he won't likely get the "discovery" that he needs to prove his claim. Finally, when the claim comes up for hearing, the corporate crooks send in three

high-powered shark defense lawyers to eat his lunch. Does this sound lop-sided? Now you know why corporations like arbitration clauses.

As a general rule, if any business wants you to agree to settle your differences out of court, you should find a different place to do business. Any arbitration agreement included in a contract involving any transaction where you don't have a lawyer representing you, and where you are not actively negotiating the "contract as a whole" is almost invariably bad news for the consumer. Any company that is engaged in consumer transactions and feels it needs protection from lawsuits is probably engaged in questionable business practices. In fact, including an arbitration clause in any consumer contract is itself a questionable business practice. For further information try: http://www.thecre.com/fedlaw/legal89.htm

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What types of class actions may be filed?

Most class actions are filed for compensatory (money) damages. Class actions may also be filed to resolve disputes over a "limited fund," where the money available is inadequate to fully compensate all class members. Occasionally, class actions are filed to seek a declaratory judgment. Finally, a class action may seek injunctive relief. For example, a class action may be filed to request the court order the police or authorities to discontinue an unconstitutional practice.

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Can I be bound by a settlement or judgment of a class action?

Yes. If the constitutional and procedural protections required for fairness are met in the underlying action, all absent class members are bound to the judgment or settlement of the case. However, if the action is primarily for compensatory damages, absent class members are entitled to notice and an opportunity to "opt-out" (exclude themselves) from the proceedings. If a person opts-out, he is not bound by any judgment or settlement of the class action. In the event a class action is for declaratory or injunctive relief, notice is not required to bind absent class members and the court may not allow your to opt-out.

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How do I join a class action?

A. Generally, before a court certifies a class action, it must conclude that there are too many class members for them all to be named as parties in the lawsuit. Technically, class members do not "join" into the litigation, but decide to participate by not "opting-out." It is only in rare instances when a suit is filed as an "opt-in" class action. In those rare instances, a claim form or

request to join form may be necessary. Ordinarily, the notice issued to class members in the usual suit for compensatory damages will tell the class if they need to take any action to participate. In a suit for compensatory damages, any class member who does not "opt-out" may be bound by the results of the litigation if it proceeds as a class action. If a class member should determine, however, that he wants to participate in the suit as a named party, he may hire his own lawyer and seek to intervene (participate) in the lawsuit

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If I have a claim, should I file my own lawsuit?

A. The answer depends on the nature of the suit and individual circumstances. Some class actions seek recovery for a large group of people; however, individual damages may be small. For instance, if a mortgage company was improperly charging interest, and as a result every class member paid $100 more than should have been charged, it may not be practical because of the cost of litigation to pursue such a case individually. On the other hand, if a person has substantial damages and a serious claim, a lawyer should be consulted to assist in making the decision. In cases where the damages involved do not amount to several thousand dollars, litigation involving complex issues, due to the cost involved, may result in no recovery after those expenses and costs are deducted.

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Who pays the lawyers in a class action lawsuit?

A. In a class action for money damages, lawyers who represent the class are generally paid out of the recovery, i.e., "common fund" they create for the plaintiff class. In class actions involving declaratory judgments or injunctive relief, lawyers may be paid by the plaintiffs that hired them, or in some cases, by the defendants if the plaintiffs win.

Attorney fee awards are subject to court review and approval. Ordinarily, if an award is made in a common fund case, it will be awarded as a percentage of the fund created for the class. A benchmark award generally accepted by the courts is approximately 25% to 35% although the award may be adjusted higher or lower depending on the specific facts of a case.

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What are the signs of an unfair settlement or improper representation?

A. There has been a great deal of criticism of class action litigation in the news in recent years. Much of the criticism is unjustified. A good deal of the criticism focuses on the fees that lawyers receive for representing a class in such litigation. The most vocal opponents of class action litigation are insurers who are required to pay covered claims as a result of the

litigation, or the wrongdoers involved in the underlying misconduct.

The truth of the matter is that the lawyers who represent a class will often recover in fees an award many times greater than the compensation received by any given class member; however, the total collective allocations to the class in a proper settlement are invariably many times the fee awarded to lawyers. Without a means to sue wrongdoers for cheating people out of small sums, we would all be at the mercy of small time cheats. No one person cheated out of a hundred dollars can find a lawyer to represent him. Several thousand people cheated out of a hundred dollars each, however, have a powerful collective wrong that attracts qualified legal representation to put a stop to the practice.

Notwithstanding the frequent unjustified criticism cast on lawyers handling class action litigation, there have been instances where representation of a class has been found by courts to be less than optimal, and proposed settlements have been found unfair. Although the presence of one or more of the following circumstances does not invariably mean a settlement is unfair, the following are examples of hypothetical circumstances which may justify heightened scrutiny of any proposed settlement of litigation.

(1) The proposed settlement fails to create a substantial return for the class in terms of collective benefit to the absent class members. For example, in a case alleging a defect in particular product, the proposed settlement provides only that class members are to receive a nontransferable coupon good for a limited time on the purchase of a new product by the same manufacturer. Thus, the class members only receive a benefit if they spend their own money in the process. Such an arrangement is of questionable value. It is likely that if the class purchased a defective product in the first instance, they might not be interested in repeating the mistake again with the same manufacturer. Moreover, it could be argued that the settlement is of more value to the defendant as a marketing scheme than to the class as compensation for damages. On the other hand, such a "coupon settlement" could be of substantial value if the coupon may be used on a product in great demand, offers substantial savings to the class, provides a reasonable period of time in which it may be used, and is transferable.

(2) A class action was filed as an action for compensatory damages; however, the settlement provides the class is to receive no compensatory award. Further, the attorney fee (which is purportedly based on a common fund theory) is for several million dollars and is based on purported "nontangible" benefits the class will purportedly receive. For example, in a case involving a vehicle subject to rollovers, class counsel negotiates a settlement whereby the class receives only an inspection of the vehicle to determine if it has been modified since the date of manufacturer, a warning sticker for the visor saying "watch out," and a toll free number they can call for a free tow if their vehicle rolls over. At the end of the proposed settlement, the class is still left with a dangerous, unmodified vehicle and provided no compensation for the defect. Yet, the class counsel contends the settlement is fair and worth millions in fees.

On the other hand, in some instances, nontangible benefits can be substantial. For example, in a pollution case, a defendant might be sued for both compensatory damages and injunctive relief in an effort to stop continued pollution. Under some circumstances, the injunctive relief could provide true substantial benefits to the class even in the absence of compensatory damages. If the pollution is stopped, the quality of life for those in the area of the polluter could very well be improved, potential illness and risk to children from the pollution eliminated, and any further damages to the class from continuing pollution stopped. In such a situation, a class counsel might make a conscious and intelligent decision that it is more important to the class to stop the pollution now by settlement than to continue it indefinitely by litigation. In such a situation, a substantial fee may be appropriate even if no direct compensation is paid to individual class members.

(3) Any settlement where the release being demanded as a condition of the settlement is extremely overbroad and encompasses claims that were neither pursued in the class complaint nor subject to true adversarial litigation prior to the settlement. For instance, a bank is improperly charging a "fax fee" when a person pays off a mortgage issued by the bank. Assume such a practice violates state loan charge disclosure statutes or the Truth in Lending Act and the fifteen dollar fee charged for a fax is improper.

Assume further that same bank is also improperly calculating interest due on a loan closing date and is overcharging some customers several hundred dollars in interest at the time a loan is paid off. A lawyer finds out about and sues over the improper fax fee, but never discovers the bank is improperly charging interest. It is possible that under some circumstances a bank could even lie about the interest charges and preclude the class attorney from discovering the lie by formal process. The bank agrees to settle the fax claim, but knowing it may soon be sued for the interest claim attempts to subvert the suit by insisting the release in the fax claim case encompass "every and all claims relating to loans, known or unknown" arising from any loan. If a demand by a defendant is made for a ridiculously overbroad release of claims, they may very well have something to hide.

(4) The virtual nonexistence of discovery by the class counsel who proposes a settlement. In order for an attorney to assert to a court that a settlement is fair, reasonable and adequate, he must be familiar with the underlying facts of the case. In class litigation there often is a committee of counsel. Although each and every attorney need not be familiar in depth with all underlying facts, that knowledge should be present among the group representing the class.

(5) The failure of the class counsel to notify the class in either general or specific terms the amount of the attorney fee that will sought as part of the settlement. If an attorney earns a fee, he should not be concerned about disclosing the amount. If a fee will be sought as a percentage of a common fund, the class should be informed of the maximum fee that may be requested. Such a disclosure could be made either by disclosing the maximum percentage that may be sought, or the amount in dollars. The failure to disclose the intended fee often is occurs when

the fee would be deemed excessive by many people.

(6) In a settlement class, the amount of attorney fees to be requested appears facially excessive, the fees were negotiated with the defendant, and the defendant had agreed not to object to the fee request as part of the settlement. This type of arrangement is known as a "clear sailing" agreement. The majority view on such clear sailing agreements is that they create an appearance of class counsel putting his interest ahead of the class. On the other hand, a clear sailing agreement might not be improper if the fee is reasonable, the fact the defendant will not be objecting is disclosed, the class is given an opportunity to object to the fee, and the court provides oversight on ultimate approval of the amount awarded.

As previously stated, the presence of one or more of the above situations does not invariably lead to the conclusion that a settlement is unfair or that the class has been poorly represented. However, if several of these elements are present in the same case, additional scrutiny may be necessary if the interests of the class are to be protected. In reviewing the fairness of a proposed settlement, the following are possible elements the court overseeing the action might consider:

- Whether the settlement was the product of fraud or collusion.
- The complexity, expense and likely duration of the litigation if the case were tried.
- The stage of the proceedings and the amount of discovery completed prior to settlement.
- The factual and legal obstacles to prevailing on the merits.
- The possible range of recovery and the certainty of damages.
- The ability of the defendant to pay claims if individual litigations were pursued.
- Whether other litigation involving the same claims has been filed against the defendant and the results in those cases.
- The respective opinions of the participants, including class counsel, class representatives, and absent class members.

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How can I obtain more information on any legal issue regarding a class action?

If you have a question about class action litigation, or are concerned you may be adversely affected by a pending case, you should consult a lawyer. Numerous notices regarding pending class action litigation are published in leading newspapers such as USA Today or the Wall Street Journal. You will also find information regarding pending or settled litigation on the Legal Notices page of this website and the links therefrom.

If you have an interest in obtaining more general information about class actions, or the law

generally, the American Association of Law Libraries has published an on-line guide for laymen, "How to Research a Legal Problem."

The staff of the Saint Louis University Law Library also has authored a research guide.

The Library of Congress has an on-line guide

Professor Smith's Guide to Legal research.

Marquette has published a guide about finding court cases.

Also, see the Legal Research Guides.

Another easy to use tool for legal research is the Internet Legal Resource Guide. If you are a novice to the web, try www.northernwebs.com/bc.

Finally, tips on legal research techniques may be found here.

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HB

257

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. John Coghill
Rep. Nancy Dahlstrom
Rep. Pete Kott
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: Terri Bannister, Leg. Legal

From: Vanessa Tondini, Committee Aide
House Judiciary Committee

Date: April 22, 2005

Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 24-LS0826\Y, HB 257, incorporating the attached amendment. Incorporate only the subsections dealing with the "preferences" in the attached document, i.e. Sect. 1, (c) – (r). The bill was passed out of committee today.

If you have any questions, please call me at 4990.
Thank you so much! We really appreciate all your help and hard work.

Amendment #1 - PASSED
Incorporate/Replace Sect. 1, (c) - (r) of this document into version "Y" of 24-LS0826*

A BILL

FOR AN ACT ENTITLED

"An Act relating to a procurement and electronic commerce tools program for state departments and instrumentalities of the state; and providing for an effective date."

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

*** Section 1.** AS 36.30 is amended by adding a new section to article 1 to read:

Sec. 36.30.093. State procurement and electronic commerce tools program.

(a) The department may enter into a program under which the department contracts with a person from the private sector to provide procurement services and to provide for the delivery and use of electronic commerce tools. Notwithstanding any other provision of this chapter, the contract shall be awarded under AS 36.30.100 - 36.30.265.

(b) Notwithstanding any other provision of this chapter, all state departments and instrumentalities of the state may participate in the program authorized by (a) of this section.

(c) A procurement conducted by the person selected under (a) of this section is not subject to this chapter or to AS 36.15. However, the procurement is subject to (d) – (r) of this section.

(d) A contract based on solicited bids shall be awarded to the lowest responsive and responsible bidder after an Alaska bidder preference of five percent has been applied for evaluation purposes.

(e) If a bidder qualifies as an Alaska bidder and is offering services through an employment program, a 15 percent cost preference will be applied during evaluation.

(f) If a bidder is an Alaska bidder and is a qualifying entity, a ten percent cost preference will be applied during evaluation.

(g) If a bidder is an Alaska bidder and if 50 percent or more of the bidder's employees at the time the bid is submitted are persons with disabilities, a ten percent cost preference will be applied during evaluation. The contract must contain a promise by the bidder that the percentage of the bidder's employees who are persons with disabilities will remain at 50 percent or more during the contract term.

(h) Insurance-related contracts shall be awarded to the lowest responsive and responsible bidder after an Alaska bidder preference of five percent has been applied during

evaluation. In this subsection, "Alaska bidder" means a person who is an Alaska bidder and an Alaska domestic insurer.

(f) Alaska products shall be used whenever practicable in procurements for a state agency. Recycled Alaska products shall be used when they are of comparable quality, of equivalent price, and appropriate for the intended use.

(g) If a bid indicates that the product(s) being purchased will be recycled Alaska products, a cost preference of five percent will be applied during evaluation.

(h) In a project financed by state money in which the use of timber, lumber, and manufactured lumber products is required, only timber, lumber, and manufactured lumber products originating in this state from local forests shall be used wherever practicable.

(i) When agricultural products are purchased , a seven percent cost preference will be applied during evaluation to agricultural products harvested in the state.

(j) When fisheries products are purchased, a seven percent cost preference will be applied during evaluation to fisheries products harvested or processed within the jurisdiction of the state.

(k) If a bid or offer designates the use of an Alaska product that is identified in the contract specifications and designated as a Class I, Class II, Class III state product under AS 36.30.332, a cost preference equal to the percentage established for the class under AS 36.30.332(c) will be applied to the product during evaluation. The program contractor shall use the Alaska product preference list, as described in 3 AAC 92.090(a), as the basis for establishing the percentage of Alaska product preference.

(l) If a contractor designates the use of an Alaska product in a bid or proposal and fails to use the designated product for a reason within their control, each payment under the contract shall be reduced according to the schedule set forth in AS 36.30.330(a).

(m) Except as provided under (q) of this section, all preferences are cumulative and shall be applied in the order referenced under (d) – (n) of this section.

(n) A bidder may not receive a preference under this section under both (d) and (e), (d) and (f), or (e) and (f) for the same contract.

(o) In order to qualify for a preference under (e), (f), or (g) of this section, a bidder shall add value by actually performing, controlling, managing, and supervising the services provided, or a bidder shall have sold supplies of the general nature solicited to other state agencies, governments, or the general public.

(p) When awarding a contract under competitive sealed proposals, the program contractor shall consider the preferences described in this section. Applicable preferences shall be applied solely to the cost portion of the proposals during evaluation.

(q) Informal procurements conducted by the program contractor are subject to the preferences described in this section.

(r) In this section,

(1) "agency" has the meaning given in AS 36.30.990(1);

(2) "agricultural products" has the meaning given in AS 36.15.050(g)(1);

(3) "Alaska bidder" has the meaning given in AS 36.30.170(b);

(4) "Alaska products" has the meaning given in AS 36.30.338(1);

(5) "contract" has the meaning given in AS 36.30.990(7);

(6) "employment program" has the meaning given in AS 36.30.990(11);

(7) "instrumentalities of the state" means a state public corporation, a state enterprise, or another administrative unit of state government that handles its procurement and supply management in a manner that is separate from a department of the state;

(8) "qualifying entity" has the meaning given in AS 36.30.170(e)(1)-(4);

(9) "person" has the meaning given in AS 36.30.990(16);

(10) "person with a disability" has the meaning given in AS 36.30.170(k);

(11) "program contractor" means the contractor selected by the department to manage the program;

(12) "recycled Alaska product" has the meaning given in AS 36.30.338(4).

*** Sec. 2.** The uncodified law of the State of Alaska enacted in secs. 2 and 3, ch. 51, SLA 2003, are repealed.

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

APPLICABILITY. Nothing in this Act affects the validity of actions taken by the Department of Administration under ch. 51, SLA 2003, before the effective date of this Act.

*** Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).

IOUSE COMMITTEE REPO

(7)

Date Referred to Committee: April 6, 2005 **FURTHER REFERRALS: Finance**

Date of Committee Action: April 22, 2005

The JUDICIARY Committee considered: **HB 257**

HOUSE BILL NO. 257 **STATE PROCUREMENT ELECTRONIC TOOLS**

"An Act relating to a procurement and electronic commerce tools program for state departments and instrumentalities of the state; and providing for an effective date."

Recommends it be replaced with [ ] HCS *or* [X] CS *for* HB 257 (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
CRT				✓
ATMN			✓	

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

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	GRUENBERG			✓	
	KOTT			X	
	ANDERSON	X			
	DAHLSTROM			X	
	COGHILL			✓	
	GARA			✓	
Chair:	McGUIRE	✓			
Chair:					

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THE ALLIANCE

... for responsible development of Alaska's Oil, Gas & Mineral Resources

April 18, 2005

The Honorable Lesil McGuire
Chair House Judiciary Committee
Room 120, Capitol
Juneau, AK 99801-1182

Dear Representative McGuire:

On behalf of the 380 member Alaska Support Industry Alliance I thank you for the hearing you held today on HB 257. We were listening to the testimony but as you are aware time ran short and we were not able to testify.

There was a certain wisdom to your comment to Representative Gruenberg that a "summer project might be to investigate the reasons behind the 47 or 48 entities that have opted out of the State Procurement Code." My experience during the eleven years I was employed by the Alaska Railroad Corporation is that the code is slow, cumbersome and ended up costing the ARRC more in the long run. While things may have changed this was certainly the case during my railroad tenure.

The Alliance Board of Directors fully supports HB 257 and the companion bill SB 160. We believe it is prudent for the legislature to extend and expand the "pilot procurement" program. As former Senator Duncan stated it is in the "public interest to reduce overhead and the cost of government." Therefore, this cost efficient private sector experiment in e-commerce should continue.

Again, on behalf of the Alaska Support Industry Alliance we urge your committee to pass HB 257.

Sincerely,

Larry Houle
General Manager
Alaska Support Industry Alliance

Cc: Rep. Tom Anderson
Rep. John Coghill, Jr.
Rep. Nancy Dahlstrom
Rep. Pete Kott
Rep. Les Gara
Rep. Max Gruenberg

adn.com
Anchorage Daily News

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Auditor urges spending clarification

PROCUREMENT CARD: Some of $14.9 million charged by city employees was inappropriate.

By ANNE AURAND
Anchorage Daily News

(Published: April 13, 2005)

City employees spent public money on lunches, birthday cakes, balloons, flowers and other "questionable" purchases, according to a recent internal audit.

Internal auditor Peter Raiskums said he doubts the purchases show corruption or irresponsibility. The problem is that no policy defines acceptable uses for the city's "procurement card," he said.

The "p-card" is basically a credit card issued to certain municipal employees to use on inexpensive goods, services, business- and travel-related expenses.

Most of the $14.9 million spent by about 800 card-holders was legitimate, the audit says. But some purchases, such as gasoline for municipal vehicles, violated the policy. Some departments didn't properly document their purchases. And some employees made questionable donations to charitable organizations such as the Mayor's Charity Ball, NAACP or the Chugiak Grad Blast, the audit said.

According to the audit, most purchases did not violate policy. Raiskums didn't calculate the amount of questionable purchases.

He presented his audit to the Assembly on Tuesday night. It recommended that city executives clearly define what's appropriate.

"Maybe in my judgment, it's OK to buy a cake for an office function. Maybe in your judgment it's not," Raiskums said.

City Manager Denis LeBlanc said it's efficient to allow managers some discretion over purchases. They have to document the reasons. Most of these explanations are adequate, LeBlanc said.

The audit shows that employees spent nearly $78,000 in restaurants and grocery stores in 2004. The city spent about $6,279 on coffee-related purchases in 2004, including coffee, sugar, creamer and a grinder. The justification, Raiskums said, is that some departments entertain guests and want to offer them coffee. There's no policy against it.

About $11,900 was spent on drinking water. One department paid $3,106 on bottled water. Another paid $772 for purified water in gallon jugs.

LeBlanc said this is a great example of where a blanket rule would not work. City Hall, he said, has good water in its faucets. But some small maintenance offices do not, and managers should buy filters or bottled water for employees there, he said.

Employees paid $2,506 for flowers, including $91 for one funeral. Raiskums and LeBlanc said they

didn't know whose funeral it was.

Employees paid another $27,500 for pictures, and one department paid $220 for frames for "mission and vision statements," the audit says.

The report does not name individuals or departments that made questionable purchases or failed to properly document purchases. Raiskums said his goal was not to identify anyone but to encourage managers to better define spending policies.

Daily News reporter Anne Aurand can be reached at aaurand@adn.com or 257-4591.

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Municipality of Anchorage, Alaska
Office of the Mayor
632 West 6th Avenue, Anchorage, Alaska 99501

For Immediate Release
August 17, 2004

Contact: Julie

PURCHASING AUTHORITY TO CUT COSTS FOR CITY
New technology will streamline purchase of supplies & equipment

As part of his commitment to find innovative ways to better serve the public and provide key serv Mayor Mark Begich today announced the creation of a new city Cooperative Services Authority. Th Authority will plan and control city purchases, lower the cost of purchases, and work with other in to achieve even greater savings.

"This is a painless way to help the city deal with its finances," Mayor Begich said. "We know we ca millions by cutting the cost of procurement which enables us to deliver essential services."

In February, Mayor Begich announced the creation of the Division of Efficiency to streamline purcl find cost-savings throughout the city. For the past six months, the DOE's staff of seven has been every purchase the municipality makes. Creating the Cooperative Services Authority makes it pos initiate cooperative purchases of goods and services with other governments and academic institu within Alaska.

In the first full year of operations, the city estimates the Authority can save a minimum of $7 mill example, by limiting product choices to the very basic requirements necessary for job performanc estimated the city could save $400,000 on computers, $300, 000 on copiers, $15,000 on pens an on file folders every year.

The Authority will support the Purchasing Department in negotiations with vendors for the best pc price, and then create a website catalog for city employees to purchase office supplies and other r goods. Only vendors on the website will be available for employees to purchase from, creating the efficient and least expensive procurement process the city has ever had.

An ordinance creating the Authority will be introduced at tonight's Assembly meeting. If it passes a public hearing on Sept. 7, the CSA will be established immediately and will have its technology 90 days.

Once the Authority is established, other qualifying institutions will be able to enter into partnershi municipality for mutually beneficial cooperative arrangements. The city is already working with th Alaska and the Anchorage School District on this effort.

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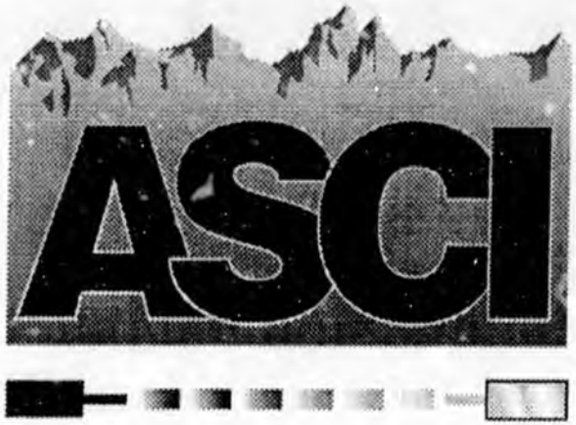

State Procurement Pilot

Review and Outlook

About ASCI

- AK Company, est. 1999
- ~150 employees: Anc, Prudhoe, Jnu, Wasilla
- Specialize in supply chain mgt
  - Web tools (full eCommerce platform)
  - Business process operation
  - Measurements & continuous improvement
- Public sector vision: "overhead" efficiency

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