

12185

HOUSE

JUDICIARY



Legal Concerns Raised by HB 303

1. Provisions¹ establishing responsibility for damage to products during transportation are not necessary because the Uniform Commercial Code (UCC), as enacted by Alaska, already governs the allocation of responsibility.
 - a. Alaska substantially has adopted the Uniform Commercial Code, which governs, among other things, the allocation of responsibility for damage to products in transportation.
 - b. To the extent, HB 303 Section 45.27.260 differs from the UCC it would create a new allocation of responsibility without justification; to the extent it is the same as the applicable UCC provisions, it is redundant and unnecessary.

¹ Section 45.27.260. Product damage responsibility. (a) A manufacturer or distributor is solely responsible for damage to a product that occurs before the manufacturer or distributor delivers the product to a carrier.

(b) An authorized dealer is not responsible for damage to a new product that occurs while the product is in the possession of the carrier unless the authorized dealer selects the method of transportation and the carrier.

(c) An authorized dealer is solely responsible for damage to a new product that occurs after the authorized dealer accepts the product from the carrier and before delivery to the ultimate purchaser unless the damage results from a latent or hidden defect or is not reasonably observable at the time the authorized dealer accepts the product. An authorized dealer accepts a product when the authorized dealer signs a delivery receipt for the product.

(d) An authorized dealer may refuse to accept a damaged product from a manufacturer or distributor by giving written notice to the manufacturer or distributor within 10 business days after the product is delivered to the authorized dealer. If an authorized dealer refuses to accept the damaged product, the manufacturer or distributor shall, within 10 days after receiving the notice from the authorized dealer, credit the authorized dealer's account for the product cost that the manufacturer or distributor charged to the authorized dealer and any freight and interest charged to the authorized dealer for the product.

2. Provisions² mandating response by manufacturers/distributors (M/Ds) to so-called "defects" conflict with Consumer Product Safety Act's regulatory scheme.
- a. The Consumer Product Safety Act regulations (C.F.R. § 1115.20(a) et seq.) provide M/Ds the option of submitting to CPSC a corrective action plan setting forth remedial action to protect the public from substantial product hazards.
 - i. C.F.R. § 1115.20(a)(1)(viii) specifically requires "[a] statement of the action which will be undertaken to correct product units in the distribution chain, including a timetable and specific information about the number and location of such units."
 - ii. Recognizing that appropriate and efficient responses depend on the particular circumstances, the sub-section provides for M/Ds to develop a flexible, situation-specific response for units within the distribution chain, which shall be approved by CPSC.
 - iii. HB 303's mandating of an unreasonably short initial response time and punitive remedies is inconsistent with the letter and spirit of the existing regulatory scheme for potentially dangerous defects.
 - b. HB 303 Section 45.2.410 is particularly problematic because it is vague and overly broad.
 - i. The term "defective" is undefined in the bill.
 - ii. Since the term is undefined, it could be interpreted to encompass significantly more products than would be considered "substantial product hazards" under the CPSA.
 - iii. It is incongruous for state law to provide for onerous and restrictive responses in connection with all so-called defects, while federal law provides for a flexible, situation-specific response in connection with potentially dangerous defects.

² Section 45.27.410. Defective Products. * * * (b) Except as provided by (c) of this section, a manufacturer or distributor shall, within 30 days after an authorized dealer's request, provide the authorized dealer with the original factory parts required to cure the defective product.

(c) If a manufacturer or distributor is unable to supply the authorized dealer with adequate needed warranty service parts for a defective product within the 30 days established by (b) of this section or by an agreed upon reasonable alternative time, the authorized dealer may, at the authorized dealer's option,

(1) return the defective product, and the manufacturer or distributor shall provide an identical product that is not defective; or

(2) receive full credit for the authorized dealer's landed cost of the product, if the authorized dealer is the original selling authorized dealer.

(d) In this section, "defective product" means a product that is defective in design, assembly, engineering, or manufacturing.

3. Provision³ exempting dealer from paying M/D money due and owing if underlying transaction occurred more than two years prior to beginning of an audit creates a special statute of limitations without justification.
 - a. Alaska Statutes Section 09.10.053 provides for a three-year statute of limitation for express or implied contractual claims.
 - b. HB 303 would alter established Alaska law regarding the contractual limitations period for a certain class of claimants, i.e. M/Ds.
 - c. There is no need or justification for such unique and discriminatory treatment.

³ Section 45.27.600. Liability resulting from audit. (a) An authorized dealer is not liable to a manufacturer or distributor for money that an audit of the authorized dealer's financial records determines to be owed to the manufacturer or distributor, or to a wholesaler, distributor branch, or factory branch, if the money is a result of transactions that occurred more than two years before the beginning of the audit, unless the money is owed as a result of a fraudulent practice of the authorized dealer.

(b) An authorized dealer is not liable to a manufacturer or distributor for money if an audit shows that the authorized dealer failed to retain product parts for more than three months.



COMMENTS IN OPPOSITION TO HB303

The Specialty Vehicle Institute of America (SVIA) is a not-for-profit national trade association representing manufacturers and distributors of all-terrain vehicles.

SVIA opposes HB 303 as unnecessary and simply bad public policy. Enactment of HB 303 would have a negative impact not only on ATV and snowmobile manufacturers and distributors, but probably more importantly to the Committee, on Alaska consumers.

There are numerous problems with this legislation - some provisions are egregious, some unnecessary or in conflict with existing state or federal law, and some simply poorly crafted and ill-conceived.

We believe the issues addressed in this legislation are more appropriately addressed between the individual manufacturers and their dealers rather than by statute. These issues involve competitive considerations. The majority of powersports dealerships are multi-brand dealers. Every dealer signs a dealer agreement with its manufacturer or distributor clearly setting forth the terms to which both the dealer and the manufacturer agree. We have not been informed of dealer concerns and would welcome the opportunity to discuss specific concerns with the dealers, should they be ATV-related, rather than the boat-related issues that were discussed at the House Commerce and Labor Committee hearing.

Alaska already has a body of law [Title 45, Chapter 45, Article 9A] providing numerous protections to all dealers. We do not believe that a particular class of dealers should be singled out for special treatment under the law.

The bill mandates very lengthy notice periods before a dealer can be terminated. The 120 days required notice (4 months) can be an entire selling season. Materially under-performing dealers will be allowed to continue with seriously deficient behavior for an overly long time causing high levels of customer dissatisfaction with customer needs going unmet, costing a large amount of money in lost sales revenue, and unreasonably raising business costs. [45.27.020]

Even more egregious, the bill provides that the manufacturer must continue to provide the dealer with product parts for 2 years AFTER termination, and allows any dealer who discontinues engaging in business to, at his sole discretion, retain discontinued products and parts, effectively ensuring that the underperforming, or nonperforming, dealer continues to represent the brand name. [45.27.230]

Our dealerships are full-line dealerships designed to both sell and service our products and to provide our customers with the highest quality experience in terms of product choice, after-sale service and customer support. Dividing product sale from parts sale and enabling dealers to provide one of these vital functions but not the other is unacceptable. It will enable unfair competition, cause customer confusion, have a negative impact on the permanent investment of full-line vehicle dealers and disrupt the manufacturers' distribution channel. Replacement parts represent a significant profit center for our dealers who make a sizable permanent investment in facility, inventory, staffing and advertising. A parts-only dealer could, and likely would, capture this lucrative profit opportunity while making little to no permanent investment. The parts could even be sold on-line, where no facility or customer interface is required. Allowing terminated dealers to continue to engage in the sale of parts undercuts all the valued dealers in Alaska who are carrying a full line of products and parts and providing quality service to the consumer.

All of our manufacturers reasonably reimburse dealers for the required warranty service they provide on our products. While each manufacturer establishes its reimbursement rates, which are agreed upon by the dealer in its dealer agreement, the ATV industry generally reimburses dealers at the posted shop rate for warranty and recall work, and at least dealer cost for parts plus a 15% mark-up.

However, not only does this bill require warranty service work to be reimbursed at the dealer's retail rate (which anyone who has ever had service work done knows is not a cut rate), but in addition requires reimbursement of yet an additional hour at the retail rate for administration of each claim AND an additional mark-up of 25% of the dealer's normal handling fee for shipping a part replaced under a warranty that the dealer returns for testing or inspection at the manufacturer's request. We don't think anyone would find anything reasonable about these provisions. [45.27.450]

Another example of the unnecessary nature of this legislation is the regulation of factory recall notices; however federal law [Sec. 15 of the Consumer Product Safety Act] already strictly regulates recalls and notice thereof and it is unnecessary, if not inappropriate, for state law to do so. The Federal Magnuson-Moss Act also regulates warranties. Other provisions mandate a 30-day time limit for providing warranty parts and require the manufacturer to provide an identical replacement product or full refund to the dealer if this time limit is not met for any reason. Obviously, manufacturers strive to make parts for warranty repairs available as quickly as possible, but I am not aware of any state law that mandates these requirements, and especially in Alaska where transport is at times more time-consuming, an absolute time by which a repair part must be supplied to the dealer, is not only extremely problematic, but grossly unreasonable. The overriding objective of warranty repair and recalls is consumer safety. Curing a defect may involve reengineering and manufacture, in addition to distribution and these functions cannot be rushed to meet an unrealistic deadline. [45.27.410]

The provision allowing a dealer to refuse to accept a damaged product from a manufacturer or distributor by giving written notice to the manufacturer or distributor within 10 business days after the product is delivered is seriously problematic. This would enable a dealer to return vehicles that he or she ordered and have already been delivered to the dealership without good cause. Transportation-related issues are already heavily regulated by the Uniform Commercial Code and Alaska state law that provide the dealer with remedies related to shipping damages and problems. [45.27.410]

Likewise, we are not aware of any other state statute providing that a dealer can dictate the method and carrier for product delivery. Manufacturers have an established delivery system and using another carrier or method will raise costs, not only for delivery itself, but also in manpower costs for administering different systems. [45.27.250]

Section 45.27.600 providing that a dealer is not liable to a manufacturer for money if an audit shows that the dealer failed to retain product parts for more than three months establishes some type of private statute of limitations, imposed only on manufacturers. If an audit shows the dealer performed non-compliant activities or failed to maintain parts then the dealer must also bear responsibility.

The language enacting provisions relative to area of responsibility and restricting the establishment of new dealerships limits competition and is very convoluted. We particularly oppose the requirement that a manufacturer give at least 90 days' notice. This lengthy time period ties the hands of both the prospective new dealer and the manufacturer and since ATV dealership facilities can be used for many other types of retail outlets, the planned facility may no longer be available if it takes too long to approve the decision to establish the new dealer. The bill also makes a manufacturer responsible for calculating the financial effect on the new dealer and the existing dealers who may be affected. It is not realistic to require the manufacturer to do this. There are too many variables and the dealers may not supply the needed input to the manufacturer. These are not appropriate requirements at the time notice of a new dealer would be provided. Should there be a hearing on the merits of the establishment, these factors may be considered or determined. [45.27.100-120]

Another particularly objectionable provision is the requirement that a manufacturer respond to a dealer's request for consent to a dealership sale or transfer within 30 days after of receiving the dealer's written request. This does not provide for the applicant dealer supplying all the information that a manufacturer needs to determine the prospective dealer's capability to comply with the manufacturer's dealership standards and for the manufacturer to be able to adequately review that information to make an informed decision. It is in no one's best interest for unqualified dealers to be established and imperative that the manufacturer has all information reasonably required upon which to base an approval of a sale or transfer. [45.27.030]

Also, as currently drafted, this bill would obstruct the sale of a dealership by an existing dealer. A dealer wanting to sell his dealership to another dealer would be subject to protest. This is a large impediment not only to a new dealer, but to existing dealers wishing to sell their dealerships.

Inventory repurchase is already addressed in the current Alaska distributorship law referenced above, so this provision too is unnecessary. The legislation basically requires manufacturers to insulate dealers from all risk normally assumed by any business owner in the free enterprise system. These provisions add extensive inventory repurchase obligations upon any franchise termination, regardless of the reason. If a dealer simply decides to go out of business and terminates his franchise, the manufacturer is responsible for repurchasing his inventory. The manufacturer becomes a financial guarantor for the dealer. The dealer makes the decisions regarding inventory purchase and should be responsible to bear the risk of costs when making such decisions. If a dealer is guaranteed that any excess inventory will be repurchased, there is no reason to make wise business decisions. A dealer can order too many parts and have a parts department bloated with parts which the manufacturer must repurchase at the dealer's LANDED COST. Landed cost includes not only the dealer's original cost for the inventory, but all freight, transportation, flooring expense, interest expense, authorized dealer preparation cost, assembly cost, and reasonable handling costs. This would significantly and unreasonably raise the cost of doing business in Alaska. Manufacturers should not be required under law to insulate their dealers from loss when other business owners assume that risk in the free enterprise system. Further, this bill requires inventory repurchase within 30 days after a terminated dealer submits to the manufacturer the final inventory. This illustrates the poorly conceived nature of this legislation, since there is no requirement that the dealer first provide clear title to the inventory proposed to be repurchased. Under this provision, a dealer could sell back inventory that he does not own. [45.27.300-340]

Creating a criminal penalty is an unreasonably harsh consequence for a business dealing dispute.

A law such as this would disproportionately protect poorly or underperforming dealers that are not providing the appropriate level of sales and service support to consumers at the expense of other dealers and the consumers of Alaska. The dealers that are investing in the brand are harmed because underperforming dealers remain in the network for a longer period of time and offer buyers poor experiences - both in terms of service and availability of product. It hurts both the brand name and our consumers. And, higher operation costs for manufacturers and increased litigation costs only lead to higher product costs for consumers.

Regulating dealerships in this manner will only serve to increase the cost of doing business, reduce consumer choice, decrease competition and ultimately increase the cost of recreational products to Alaskans.

We respectfully ask that you oppose this legislation. The provisions of this bill are extremely over-reaching and would make it difficult for manufacturers to do business in Alaska. If enacted, the interests of retail purchasers, distributors and manufacturers will be harmed and Alaska law would contain extremely onerous and unneeded provisions, some of which do not exist in any other state for either recreational product franchises or even for automobile franchises.



Personal Watercraft
Industry Association

Testimony on House Bill 303

House Judiciary Committee

The Personal Watercraft Industry Association (PWIA) was founded in 1987 to represent and advocate for the interests of the four primary personal watercraft manufacturers at the local, state, and federal levels of government. The mission of the organization is two-fold as we not only work to support the advancement of our manufacturer's products by way of a fair and competitive free market system, but also promote the safe and responsible operation of personal watercraft for all operators. In advancing this two-pronged mission, our industry has committed itself to providing consumers with a range of products that are among the most safe, most quiet, and most environmentally friendly marine vessels on the water today.

With competition and consumer choice driving the industry's latest innovations, including a transition in the past eight years from two stroke to more emission-friendly four stroke engines, one can see that the industry, and the public, benefits greatly from having manufacturer flexibility to meet growing demand. Additionally, greater latitude for manufacturers in the marketplace also contributes to lower prices for consumers of personal watercraft vessels and all related equipment. With these firmly held positions in mind, PWIA would strongly encourage the Judiciary Committee to oppose passage of House Bill 303 or any other similar measures that might seek to restrict the flexibility of our manufacturers to meet consumer demands.

As proposed, House Bill 303 would impose rigid regulations on the relationship between a marine product manufacturer and its respective dealerships in a variety of areas. First and foremost, the proposal seeks to establish a "one size fits all" approach to the business relationship that will undoubtedly reign in higher prices for personal watercraft, and in turn negatively impact consumers and manufacturers alike. One such provision is the requirement for mandatory repurchase of new or unused product upon delivery of a 30 day notice of discontinuance by the dealership. Certainly, one can see the perils and increased costs that will result from this provision alone relative to an expedited timeline for product re-distribution and storage.

The second major concern that our industry has with the present language contained within House Bill 303 is the assignment of significant liability to our manufacturer members. The first indication that marine product manufacturers will incur great liability under this measure is provided in Section 45.27.240 where the bill stipulates that a violation of this law has occurred if a manufacturer fails to deliver a product order in "reasonable quantities to an authorized dealer unless the delay, refusal, or failure is caused by an act beyond the control..." of said manufacturer or distributor. Attempting to define the term "reasonable" in this application is very challenging as each manufacturer and dealer represented may provide a wide array of

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Personal Watercraft
Industry Association

opinions. Furthermore, the legislation does not take into account circumstances such as factory production time and seasonality which may present delays that would find manufacturers in a state of noncompliance, and thus subject to penalty.

Second on the issue of enhanced manufacturer liability under this proposal is Section 45.27.810 which would require a manufacturer to indemnify an authorized dealership for damages arising out of "complaints, claims, or lawsuits, to the extent that the damages arise out of alleged acts of the manufacturer and distributor...". Blanket indemnification for dealerships for "alleged" acts will certainly come at a significant cost to consumers of our manufacturer's products in the state, which will place every personal watercraft sold in Alaska at a competitive disadvantage.

In closing, the creation of a "one size fits all" approach to the business relationship between marine product dealers and their manufacturers coupled with the additional liability incurred by manufacturers will serve to only harm consumers in Alaska. It is our belief that enactment of this proposal will likely lead to increased costs for our manufacturer's products courtesy of dramatically increased liability. Our industry believes strongly that the issues asserted in this bill are ones that need to be addressed by individual manufacturers and their dealers, and not the state legislature. We again encourage you to oppose House Bill 303 or any other similar measures.

Thank you for your opposition to House Bill 303.

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NEWS

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A Family Affair

Bounty of Alaska game enriches family through the generations

Photos provided by the Kubley family

Fifth-generation Alaskan Dylan "Hawk" Kubley 14, downed his first deer at the age of six. When he was 8 years old, he got his first moose under extreme conditions. The following year he bagged his first bear.

While still in middle school last season, the incoming Juneau-Douglas High School freshman bagged more than 100 racks and got his limit of four deer.

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Kubley has a firm understanding of his family's hunting heritage in the Last Frontier. Don Kubley, Dylan's father, said he has worked hard to instill in his son the importance of being an "ambassador of the Alaskan lifestyle."

"I don't think there is anything more positive and beneficial than for a young man to be in the woods with his father or an adult he trusts and knows," Don Kubley said. "I think it's really one of the most important and beautiful things we have living in Alaska."

He said deer hunting with his son in the woods of Admiralty or Chichagof Islands in the presence of brown bears helps teach lessons that are applicable to daily life inside and out of Alaska.

"I am convinced that Alaskans like him that have experienced that kind of challenge of being responsible at a young age, when they go off to college or off to the work place, they are so grounded," Don Kubley said.

Dylan Kubley said hunting has enabled him to be quick on the draw and sharp-witted.

"If a bear's coming at you, you don't have time to think about what's going on," he said. "You have to make that decision quickly."

And "Hawk" who earned his nickname for his sharp eye in the field, has learned from experience. He's been charged by brown bears on several occasions.

"Be ready for anything," he said. "You've always got to be prepared for stuff."

Main Babcock, a state-certified hunter education instructor, said passing on the hunting traditions from generation to generation plays a pivotal role in ensuring that ethical practices continue in the field.

"Hunting certainly is a part of our



Photos provided by the Kubley family

• Dylan Kubley with a brown bear on biggest hunt yet.



Photos provided by the Kubley family

• Dylan poses with the first moose he shot with his father, Don Kubley.



Photos provided by the Kubley family

• Mother, Dylan Kubley with a total bag of two deer.



Photos provided by the Kubley family

• Three generations of Kubleys, Don, Dylan and Don, take a break at the family's hunting cabin on Minto Lake, just north of Juneau. For five generations since Dylan's great-great-grandfather, Arnold Kubley, the Kubleys have been hunting Alaska game.

TOP ADS section with various job listings: TOP JOBS, Field Engineer JEDC, Financial Services Consultant, Full Time Deckhand, CELLULAR ONE The, Controller City And, View All TopJobs.

Advertisement for "The Juneau Empire's guide to the Alaska legislative session" featuring a book cover with a person's face.

Advertisement for "JUNEAU ROLFING / DAVID HAM ROLFING" featuring a silhouette of a person.

Advertisement for "JUNEAU'S IMAGINATION STATION" featuring a book cover titled "Did you hear? There's a SALE 20% OFF".

Advertisement for "JUNEAU'S IMAGINATION STATION" with a list of items: 1. 1000 Wild, 2. 1000 2nd, 3. 1000 3rd.

frontier culture," she said. "I think it's important for the adults to foster the proper attitudes and respect for the resources."

Eighty-five-year old Wally Kubley of Ketchikan, Dylan's grandfather, said there is one important lesson he made sure he passed down to his family to keep Alaska's hunting tradition and conditions vibrant.

"Don't waste any meat at all," he said. "And I think they've been that way all the way through. I never killed anything that I didn't bring home and eat."

Don Kubley said his family has survived off the bounty of Alaska since his great-grandfather first came to Alaska in the beginning of the 20th century.

"You certainly didn't go down to Fred Meyer or Costco for fresh meat," he said.

The only meat he says he will purchase from a grocery store is chicken or pork.

"That's still how we feed our family up here, and there's not so many places you do that," Don Kubley said. "That's our tradition."

Wally Kubley said he is pleased to see his grandson become so involved with hunting, something he says has helped him become a well-rounded and grounded individual.

"I think that has a hell of a lot to do with outdoor life and I'm glad to see him doing that," he said.

Hunting also can help keep kids away from negative influences such as drugs and alcohol, Wally Kubley said.

"I think of all kids that like to duck hunt and go deer hunting, their minds are on that instead of smoking and doping and all that," he said.

Don Kubley said the hunting heritage of Alaska has enriched the lives of his entire family.

"I know it made a difference in my life," he said. "Some of the greatest memories I have as a child is spending time in the woods."

READER COMMENTS

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Alaska Outdoor Council

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(907) 455-4AOC (4262)
aoc@alaska.net
www.alaskaoutdoorcouncil.org

February 6th, 2008

Representative Jay Ramras, Chairman
House Judiciary Committee
Alaska House of Representatives
State Capitol Building
Juneau, Alaska 99801

Representative Ramras,

Alaskans from Ketchikan to Kaktovic depend on motorized vehicles for access to the far reaches of our land and water. Many of these people belong to the Alaska Outdoor Council, a group of 3,000 individuals and 47 member clubs. AOC supports HB 303 because we believe it will lead to more affordable and reliable outboard motors, ORV's, and snowmachines.

We are reassured by fact that the network of dealers and suppliers who sell and repair the products that enable us to live our Alaskan lifestyle also support this legislation. If enacted into law, we believe that information about the performance of motorized outdoor equipment can be better utilized by consumers, dealers and manufacturers, and that it will ultimately result in better and safer equipment.

Thank you for your consideration,

Rod Arno, Executive Director Alaska Outdoor Council
(907) 376-2913



The Alaskan way to go

February 12, 2008

Representative Jay B. Ramras
1292 Sadler Way
Fairbanks, AK 99701

Dear Representative Ramras,

I am writing to you today not only as a constituent, but also as the owner of two small businesses that could be affected by HB303. Alaskan consumers and Alaskan dealers of boats, outboards, snowmobiles and ATV's need your help. I want to bring to your attention HB303. The quick passage this session of HB303 is very important to my customers and dealership. It helps to prevent the manufacturers of boats, outboard motors, snowmobiles, and ATV's from continuing the industry practice of shifting significant warranty repair and product defect costs onto the Alaskan dealer and consumer as has been done for many years.

The manufacturers have pulled out all stops to try and stop HB303 and the needed changes it contains. They are also doing the same thing in four other states that have introduced similar legislation. Seven states already have successfully passed warranty and dealer agreement reform in the past several years including Texas, Oklahoma, Louisiana, and New York. During the successful legislative efforts in these states, the manufacturers and their associations and paid lobbyists distorted many facts and tried their best to prevent fair and equitable treatment for consumers and dealers.

The abusive one-sided dealer agreements and the warranty service and design defect costs being put on consumers are a well-documented fact within the industry. For many years Dealers and the Marine Retailers Association of America (MRAA) have tried to get the manufacturers to have more equitable dealer agreements, warranty service and defective product design support policies to no avail.

In summary, the manufacturers want to stop HB303 so that they can continue their practice of shifting their warranty service and defective product costs to Alaskan consumers and dealers, and put all of those cost savings into their pockets. This issue is one of the most important that exists for my dealership and my customers. I am asking for your help on co-sponsoring and quickly passing HB303 to ensure that the manufacturers will finally be held accountable for their warranty service and defect issues. Thank you for your attention to this very important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Wade A. Huls".

Wade A. Huls
Vice-President
Marita Sea & Ski

ALASKA
POWER SPORTS

February 12, 2008

Representative Jay B. Ramras
1292 Sadler Way
Fairbanks, AK 99701

Dear Representative Ramras,

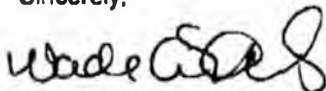
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Sincerely,



Wade A. Huls
Vice-President
Alaska Power Sports

Dear Representative/ Senator *Lyman Hoffmann*

Alaskan consumers and Alaskan dealers of boats, outboards, snowmobiles and ATV's need your help. I am one of your constituents and I want to bring to your attention HB303. The quick passage this session of HB303 is very important to my customers and dealership. It helps to prevent the manufacturers of boats, outboard motors, snowmobiles, and ATV's from continuing the industry practice of shifting significant warranty repair and product defect costs onto the Alaskan dealer and consumer as has done for many years.

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Sincerely,

Craig Boney
PROP SHOP
PO BOX 706
BETHEL, AK 99559

TESTIMONY IN OPPOSITION TO HB 303

Mr. Chairman and members of the Committee, thank you very much for the opportunity to provide comments today on HB 303.

My name is Paul Vitrano. I am the Executive Vice President and General Counsel of the Specialty Vehicle Institute of America (SVIA). SVIA is a national trade association representing manufacturers and distributors of all-terrain vehicles.

SVIA opposes this legislation as unnecessary and simply bad public policy. In addition to the comments made by my colleague, Kathy Van Kleeck, I want to briefly note a few legal or regulatory inconsistencies and concerns raised by HB 303.

First, several provisions of HB 303 address obligations, conduct and remedies in conjunction with sales transactions between dealers and manufacturers and distributors. Those provisions are not necessary because Alaska has adopted the Uniform Commercial Code (UCC), which already addresses the same subjects. To the extent HB 303 conflicts with the UCC, such provisions would add unnecessary complexity to dealer/manufacturer agreements without justification; to the extent HB 303 provisions are the same as the applicable UCC provisions, they are redundant and unnecessary.

Second, Section 45.27.410 would restrictively mandate the response by manufacturers and distributors to so-called "defects." HB 303's approach is inconsistent with the Consumer Product Safety Act's regulatory scheme.

The applicable CPSA regulations (C.F.R. § 1115.20(a) et seq.) provide manufacturers and distributors the option of submitting to the Consumer Product Safety Commission (CPSC) a corrective action plan outlining remedial action to protect the public from substantial product hazards. The regulations (C.F.R. § 1115.20(a)(1)(viii)) specifically require “[a] statement of the action which will be undertaken to correct product units in the distribution chain, including a timetable and specific information about the number and location of such units.”

Recognizing that appropriate and efficient responses depend on the particular circumstances, the CPSA regulations permit manufacturers and distributors to develop a flexible, situation-specific response for units within the distribution chain, and that response shall be approved by CPSC. HB 303’s mandating of an unreasonably short initial response time and punitive remedies for a late initial response is inconsistent with the letter and spirit of the CPSA’s regulatory scheme.

HB 303 Section 45.2.410 also is problematic because it is vague and overly broad. The term “defective” is undefined in the bill. Since the term is undefined, it could be interpreted to encompass significantly more products than would be considered “substantial product hazards” under the CPSA. It is incongruous for state law to provide for onerous and restrictive responses in connection with all so-called defects, while federal law provides for a flexible, situation-specific response in connection with potentially dangerous defects.

Third, Section 45.27.600 would exempt dealers from paying manufacturers and distributors money revealed by audit to be due and owing, if underlying transaction occurred more than two years prior to beginning of an audit. That provision would create a special statute of limitations without justification.

Alaska Statutes Section 09.10.053 provides for a three-year statute of limitation for express or implied contractual claims. HB 303 would alter established Alaska law regarding the contractual limitations period for a single class of claimants, i.e. manufacturers and distributors. There is no need or justification for such unique and discriminatory treatment.

We respectfully ask that you oppose this legislation due to the described legal or regulatory inconsistencies and concerns.

Thank you very much for your attention.



HARTLEY MOTORS, INC.

Palmer, Alaska 99645

Mi. 36 1/2 Parks Hwy.

(907) 745-4868

HONDA



1-29-08

from

Hartley Motors

PO Box 800

Palmer, AK 99645

TO: Representative Newman
^{and} Alaska Marine Dealers Assoc.

To Whom it may concern:

We are in full support of house
bill 303.

We have had many issues with
warranty and product issues that have
so hurt our ability to serve the
customers and keep our business operating
fairly and honestly, most of all profitably.

Manufacturers

Polaris

Honda

Kubota

Thank you
Alice Mollif
General manager
Hartley Motors Inc

Subj: Fwd: HB 303
Date: 1/29/2008 4:10:05 P.M. Alaskan Standard Time
From: Busterandcheryl
To: Busterandcheryl

Subject: HB 303

Dear Representative Mark Neuman, Rep Mark Neuman@legis.state.ak.us

I am the current president of the Alaskan Marine Dealers Association (AMDA). The AMDA is a non profit and was started over 20 years ago, and currently has over 24 Alaska dealers and businesses as it members.

I am writing to you about the important legislation, HB 303, that will have a huge impact on dealerships within Alaska. Boat, outboard, snowmobile and/or ATV manufacturers pay dealerships for a fraction of the time it takes for doing their warranty repairs. Dealers subsidize these same manufacturers various recalls and absorb repair costs that should be covered by the factories. The Manufacturers Dealer Agreements are mostly one-sided and protect only the factory interests and many dealers are pressured or threatened to purchase or order more units than needed.

HB 303 addresses all of that, and more.

I am hoping you will help the Alaskan Marine Dealers to get HB 303 passed through the House and the Senate. You have sponsored this bill, thank you very much.

Any help you can give us will be greatly appreciated.

Please call me if you would like to ask any questions or just want to discuss this HB 303

Thank you,



Buster Hall
Buster's Professional Upholstery
Alaskan Marine Dealers Association
907-276-8677

Start the year off right. Easy ways to stay in shape in the new year.

More new features than ever. Check out the new AOL Mail!



The Alaskan way to go

January 29, 2008

Mark Neuman
State Capitol Room 432
Juneau, AK 99801

Dear Representative Neuman,

As a partner and co-owner of Marita Sea & Ski and Alaska Power Sports, businesses located in Anchorage involved in the retail sale of boats, outboard motors, snowmachines, all terrain vehicles and motorcycles, I am writing this letter of support for House Bill # 303. As presented to the legislature this bill is a very important piece of legislation that protects and supports the consumers of Alaska when they purchase the type of equipment that we sell. It will allow the end user (the consumer) to be able to receive full support and all entitlements as outlined in any of the manufacturer's warranties. This bill also protects the rights of small business in Alaska and levels the playing field, keeping the large manufacturers from "bullying" the small businesses that attempt to take care of the consumer. Once again, we want to reiterate our support of House Bill # 303. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Wade A. Huls".

Wade A. Huls
Vice President/General Manager
Marita Sea & Ski
Alaska Power Sports



Homer Saw & Cycle



1532 Ocean Dr
Homer, Alaska 99603

Phone: 907-235-8408
Fax: 907-235-8950

To: Alaska Marine Dealers Association
Re: Pending Legislation

I support the pending legislation as I believe it will benefit the customer base in my area. We have been fighting unfair practice by our supplier for years and hope that this will be a positive direction for the industry. Please help us get this passed.

Thank you, Claire Waxman
Owner -Homer Saw & Cycle

HB

307

LEGAL SERVICES

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

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


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

MEMORANDUM

January 30, 2008

SUBJECT: Constitutionality of Three Strikes Penalties for Domestic Violence Offenders under *Blakely v. Washington* (HB 307) (Work Order No. 25-LS1236E)

TO: Representative Lindsey Holmes

FROM: Gerald P. Luckhaupt 
Legislative Counsel

You have asked if sec. 2 of HB 307, which enhances penalties for misdemeanor domestic violence offenders¹ is constitutional under *Blakely v. Washington*, 540 U.S. 1174, 124 S. Ct. 1493, 158 L. Ed. 2d 75 (2004). In my opinion it is.

HB 307 provides that a person who commits a crime of domestic violence that is a misdemeanor crime against a person and the person has been previously convicted on two prior occasions of crimes involving domestic violence that are crimes against a person then the current offense becomes a class C felony and the person shall be sentenced for a class C felony. Obviously, to comply with *Blakely* a jury will need to find the necessary facts of the present offense, those being the various elements of the misdemeanor crime against a person with which the person is accused and the fact that the offense constituted a crime of domestic violence -- the victim of the offense was a household member with the accused.² We currently utilize a similar procedure for enhancing a felony sentence based upon the domestic violence aggravating factor.³ This

¹ A "three strikes" law for misdemeanor domestic violence offenses.

² Unless, of course, the accused waives having a jury decide these issues.

³ AS 12.55.155(c)(18) provides:

(c) The following factors shall be considered by the sentencing court if proven in accordance with this section, and may allow imposition of a sentence above the presumptive range set out in AS 12.55.125:

(18) the offense was a felony

(A) specified in AS 11.41 and was committed against a spouse, a former spouse, or a member of the social unit made up of those living together in the same dwelling as the defendant,

domestic violence aggravating factor must also be proved to the jury beyond a reasonable doubt.⁴ AS 12.55.155(f).

It is my opinion that proof of the existence of the two prior convictions in HB 307 can be done before a judge without a jury. *Blakely* does not require that proof of prior convictions be made by a jury but allows these decisions to be made by a judge.

Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.

Blakely, supra, 124 S. Ct. at 2536, quoting *Apprendi v. New Jersey*, 530 U.S. 466, (2000) (emphasis added).⁵ See, also, *State v. Hermann*, 140 P.3d 895 (Alaska App. 2006); *Milligrock, supra*.

It can be argued that the decision to be made with regard to prior convictions in HB 307 goes beyond a mere finding that the previous convictions exist but requires a finding that the previous convictions were crimes involving domestic violence and it is this finding that must go to the jury. It is still my opinion that *Blakely* does not mandate this result. Other jurisdictions have held that findings by a judge that prior convictions that are otherwise derivative of a defendant's criminal history are not implicated by *Blakely*. *Carson v. State*, 813 N.E. 2d 1187 (Ind. Ct. App. 2004). Furthermore, that these prior convictions are crimes involving domestic violence can be established before the court solely by the record of conviction in at least some cases by the fact of the defendant's prior conviction and by observing that the defendant received an enhanced minimum sentence under AS 12.55.135(c) or (g)⁶ or if the aggravating factor in AS 12.55.155(c)(18) was applied.⁷

⁴ The Alaska Court of Appeals has previously found, in at least two cases, that failure to submit this aggravating factor to the jury is subject to a harmless error analysis and, where the evidence was undisputed that the victim and defendant lived in the same household or were spouses, that failure to submit the issue to a jury was harmless beyond a reasonable doubt. See, *Milligrock v. State*, 118 P.3d 11 (Alaska App. 2005) (lived in same household); *Cloyd v. State*, ___ P.3d ___, 2007 Alas. App. LEXIS 44 (Alaska App. 2007) (spouses).

⁵ *Blakely* built upon the decision in *Apprendi*, which required that a jury decide beyond a reasonable doubt that a hate crime law that increased the statutory maximum for an underlying offense applied to the defendant's conduct.

⁶ Factors that increase a minimum sentence or require imposition of a mandatory minimum sentence do not have to be submitted to a jury under *Blakely*.

Certainly this will not cover all possible prior offenses but will cover the most common assault in the fourth degree for which a mandatory minimum sentence is imposed under

Finally, in *Shepard v. United States*, 544 U.S. 13, 161 L. Ed. 2d 205, 125 S. Ct. 125⁹ (2005), the U.S. Supreme Court considered whether a judge may determine under federal law if a defendant's prior conviction for burglary was for a violent crime.⁸ Under federal law only some burglary offenses would satisfy this requirement, but it was not clear from the charging documents or from the conviction itself that Shepard's conviction was of the required type as Shepard had pled guilty to a generic form of burglary and there was nothing in the record to show that Shepard had admitted the facts that made his conviction "violent" for purposes of an enhanced sentence under federal law in his present case. The Court found that this decision had to be made by the jury.

While the disputed fact here can be described as a fact about a prior conviction, it is too far removed from the conclusive significance of a prior judicial record, and too much like the findings subject to *Jones* and *Apprendi*, to say that *Almendarez-Torres* clearly authorizes a judge to resolve the dispute. The rule of reading statutes to avoid serious risks of unconstitutionality [citation omitted] therefore counsels us to limit the scope of judicial factfinding on the disputed generic character of a prior plea, just as *Taylor* constrained judicial findings about the generic implication of a jury's verdict.

Shepard, 544 U.S. at 25 - 26. In light of *Shepard*, even if my opinion that *Blakely* does not apply to findings concerning these prior offenses is incorrect it still does not follow that HB 307 is unconstitutional. There is nothing in HB 307 that prevents the jury from deciding if the victim of these prior offenses was a household member of the offender. There is no reason to think that the prosecutors and the courts will not be able apply this sentencing provision. Submitting the issue of whether the victim of the prior offenses was a household member with the accused would clearly be constitutional under *Blakely* and *Shepard* and while it may not be entirely beneficial to defendants, as the jury may hear evidence of their prior crimes which may not endear the jury to them, there is nothing in HB 307 that prevents the Department of Law and the Alaska Court System from applying HB 307 in this manner if that is what the Department of Law and the courts think that *Blakely* requires.^{9, 10}

AS 12.55.135. In other situations, if *Blakely* applies, the issue of whether these prior offenses were committed against a household member (and therefore are crimes involving domestic violence) could be submitted to the jury.

⁸ This finding increased the maximum sentence that may be imposed on the defendant.

⁹ That HB 307 does not set forth the specific procedures to be utilized with regard to these prior convictions also does not imply unconstitutionality, or that the bill is lacking in any way, as the legislature has also not set forth the procedure to be utilized for those aggravating factors that must be proven to a jury under AS 12.55.155(f). Instead the

A wholly different approach would be to create a different type of enhancement for a current domestic violence offense.¹¹ For example, we could provide that a person who commits a misdemeanor crime of domestic violence shall be sentenced as a class C felon if the person has two prior convictions for any of various felonies or misdemeanors that could constitute domestic violence and that are crimes against persons under AS 11.41.¹² Then we could set up a procedure to allow the judge to not sentence the person as a felon (and only impose the normal misdemeanor penalty for the offense) if the defendant shows the prior convictions were not crimes of domestic violence. There is authority for this approach that places the burden of proof on the defendant.

Apprendi, however, does not apply to the trial court's discretionary decision . . . to strike a prior conviction. . . . *Apprendi* carved out a "narrow exception" for sentence enhancements based on "the fact of a prior conviction." The *Almendarez-Torres* exception was not altered by *Blakely*. . . .

Because the sentence enhancement was based on Stevenson's four prior convictions, the calculation of his sentence falls within the *Almendarez-Torres* exception to *Apprendi*. Furthermore, because the trial judge's

legislature said that those factors "shall be presented to a trial jury under procedures set by the court." AS 12.55.155(f)(2).

¹⁰ The *Shepard* Court considered something similar to this and said:

The dissent charges that our decision may portend the extension of *Apprendi v. New Jersey*, 530 U.S. 466, 147 L. Ed. 2d 435, 120 S. Ct. 2348 (2000), to proof of prior convictions, a move which (if it should occur) "surely will do no favors for future defendants in Shepard's shoes." *Post*, at 38, 161 L. Ed. 2d, at 225. According to the dissent, the Government, bearing the burden of proving the defendant's prior burglaries to the jury, would then have the right to introduce evidence of those burglaries at trial, and so threaten severe prejudice to the defendant. It is up to the future to show whether the dissent is good prophesy, but the dissent's apprehensiveness can be resolved right now, for if the dissent turns out to be right that *Apprendi* will reach further, any defendant who feels that the risk of prejudice is too high can waive the right to have a jury decide questions about his prior convictions.

Shepard, 544 U.S. at 26.

¹¹ An enhancement that is a hybrid between the approach used in HB 323, the Governor's crime bill, and HB 307.

¹² Crimes involving domestic violence are listed in AS 18.66.990(3).

Representative Lindsey Holmes
January 30, 2008
Page 5

consideration of evidence not proved to the jury constituted a discretionary decision not to decrease Stevenson's sentence, *Apprendi* is inapposite. Finding a defendant to be outside the "spirit" of the Three Strikes law is a mitigating factor in sentencing, rather than a prerequisite to imposing an enhanced sentence. Thus, the trial judge's consideration of facts not proved to a jury did not offend Stevenson's constitutional rights under *Apprendi*. . . .

Stevenson v. Lewis, 2004 U.S. App. LEXIS 22511 (9th Cir. Oct. 28, 2004)

GPL:ljw
08-047.ljw



HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
(907) 465-4990

COMMITTEE MEMBERS

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Room 204
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Rep. Mike Doogan
Room 112
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: February 8, 2008

To: Representative Kevin Meyer
Co-Chair House Finance Committee

From: Representative Jay Ramras
Chair House Judiciary Committee

Re: Referral file for HB 307

Attached please find the following documents:

- Sponsor Statement
- HB 307 (25-LS1236\E)
- Sectional Analysis
- Fiscal Notes
 - COR – Ind.
 - ADM – Ind.
 - ADM – Ind.
- Support
- Legal memo
- HJUD Committee Report



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Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

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To: Representative Kevin Meyer
Co-Chair House Finance Committee

From: Representative Jay Ramras
Chair House Judiciary Committee

Re: Referral file for HB 307

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- Legal memo

ALASKA STATE LEGISLATURE



REPRESENTATIVE LINDSEY HOLMES
REPRESENTATIVE NANCY DALHSTROM
REPRESENTATIVE ANNA FAIRCLOUGH
REPRESENTATIVE LES GARA
REPRESENTATIVE JOHN HARRIS
REPRESENTATIVE CRAIG JOHNSON
REPRESENTATIVE BOB BUCH
REPRESENTATIVE ANDREA DOLL

House Bill 307: "Three Domestic Violence Strikes: 3rd misdemeanor conviction will be charged as a felony."

Sponsor Statement

Alaska domestic violence rates are one of the highest in the country. Alaska currently has the highest per capita for female homicide death by a male perpetrator. This continuing cycle of violence needs to stop. Additionally, serious domestic violence cases are sometimes pled down to misdemeanors.

House Bill 307 (HB 307) seeks increased penalties for repeat offenders by making a third misdemeanor case a felony. This bill is narrowly crafted to only pertain for crimes against a person involving domestic violence. These repeat offenders will be subject to a felony charge after their first two misdemeanors. This penalty will act as deterrent for those persons who are repeat offenders. There needs to be a serious deterrent to stop the cycles of violence that are killing our communities.

Domestic Violence harms everyone in a community, not just the victims. Increasing penalties for the offenses is just one part of the solution. According to the National Coalition Against Domestic Violence boys who witness domestic violence are twice as likely to abuse as adults.

Please do not hesitate to contact us if you have any questions or if you need additional information.

ALASKA STATE LEGISLATURE



REPRESENTATIVE LINDSEY HOLMES
REPRESENTATIVE NANCY DALHSTROM
REPRESENTATIVE ANNA FAIRCLOUGH
REPRESENTATIVE LES GARA
REPRESENTATIVE JOHN HARRIS
REPRESENTATIVE CRAIG JOHNSON
REPRESENTATIVE BOB BUCH
REPRESENTATIVE ANDREA DOLL

House Bill 307: "Three Domestic Violence Strikes: 3rd misdemeanor conviction will be charged as a felony."

Sectional Analysis

Section 1. Adds intent language that establishes the defendant in a domestic violence case subject to an enhanced penalty must be the perpetrator of the crime and not an innocent victim of domestic violence.

Section 2. Adds Chapter 21 to Alaska Statutes that establishes a new policy regarding repeat domestic violence misdemeanor crimes. When a person has been previously convicted on two or more separate occasions the third or next domestic violence crime is increased to a class C felony and the perpetrator is subject to the penalty for such.

Section 3. This section establishes that the new statute will not be applied to previous domestic violence convictions, but previous domestic violence convictions will count as "strikes" for any domestic violence crime committed on or after the effective date.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number _____
 Bill Version HB307-DOC-DO-02-06-08
 () Publish Date: _____

Identifier (file name): HB307-DOC-DO-02-06-08 Dept. Affected: Corrections
 Title: "Act relating to penalizing certain misdemeanor domestic violence offenses as felonies." RDU: Population Management
 Sponsor: Representatives Holmes, Gara, Dahstrom, Fairclough, Johnson, Component: Institution Directors Office
 Requester: House Judiciary Component Number: 524

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services
Travel
Contractual
Supplies
Equipment
Land & Structures
Grants & Claims
Miscellaneous
TOTAL OPERATING

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 Interagency Receipts	.	.	.	.	.	.	.	.
TOTAL	.	.	.	.	.	.	.	.

Estimate of any current year (FY2008) cost: 00

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

The department anticipates approximately 1 - 3 offenders would be sentenced for a class C felony as a result of this legislation. This has an estimated impact of 2 - 6 beds annually. The potential cost associated with housing these offenders would range from \$62,050 to \$186,150 annually.

One additional Adult Probation Officer position with support costs will be necessary when the total crime legislation increases the offender population by 80. The estimated cost for each required position is \$85,600.

Prepared by: Sharleen Griffin, Director Phone: (907) 465-3339
 Division: Administrative Services Date/Time: 2/6/08 5:23 PM
 Approved by: Dwayne Peebles, Deputy Commissioner Date: 2/6/2008
Department of Corrections

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number _____
 Bill Version: HB 307
 () Publish Date _____

Identifier (file name) HB307-DOA-PDA-2-06-08 Dept Affected: Administration
 Title "An Act relating to penalizing certain misdemeanor domestic violence offenses as felonies" RDU Legal and Advocacy Services
 Sponsor Representative Holmes Component Public Defender Agency
 Requester _____ Component Number 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	*	0.0	*	*	*	*	*	*
Travel	*	0.0	*	*	*	*	*	*
Contractual	*	0.0	*	*	*	*	*	*
Supplies	*	0.0	*	*	*	*	*	*
Equipment	*	0.0	*	*	*	*	*	*
Land & Structures	*	0.0	*	*	*	*	*	*
Grants & Claims	*	0.0	*	*	*	*	*	*
Miscellaneous	*	0.0	*	*	*	*	*	*
TOTAL OPERATING	*	0.0	*	*	*	*	*	*

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	*	0.0	*	*	*	*	*	*
1003 GF Match	*	0.0	*	*	*	*	*	*
1004 GF	*	0.0	*	*	*	*	*	*
1005 GF/Program Receipts	*	0.0	*	*	*	*	*	*
1037 GF/Mental Health	*	0.0	*	*	*	*	*	*
Other Interagency Receipts	*	0.0	*	*	*	*	*	*
TOTAL	*	0.0	*	*	*	*	*	*

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This bill elevates a misdemeanor conviction for any crime against a person under A.S. 11.41 to a C felony if the person has been previously convicted on two or more separate occasions of crimes involving domestic violence. The bill is expected to have a fiscal impact on the Agency, however, the data necessary to estimate the fiscal impact is not currently available. The Agency, therefore, submits an indeterminate fiscal note.

Prepared by Quinlan Steiner, Director
 Division Public Defender Agency
 Approved by Rachael Petro, Deputy Commissioner
Department of Administration

Phone 907-334-4414
 Date/Time 2/6/08 11:00 AM
 Date 2/6/2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number _____
Bill Version: HB 307
() Publish Date: _____

Identifier (file name) HB307-DOA-OPA-2-5-08 Dept. Affected Administration
Title "An Act relating to penalizing certain misdemeanor domestic violence offenses as felonies" RDU Legal and Advocacy Services
Sponsor Reps. Holmes, Gara, Dahlstrom, Fairclough, Johnson et al Component Office of Public Advocacy
Requester _____ Component Number 43

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES							
Personal Services	*	0.0	*	*	*	*	*
Travel	*	0.0	*	*	*	*	*
Contractual	*	0.0	*	*	*	*	*
Supplies	*	0.0	*	*	*	*	*
Equipment	*	0.0	*	*	*	*	*
Land & Structures	*	0.0	*	*	*	*	*
Grants & Claims	*	0.0	*	*	*	*	*
Miscellaneous	*	0.0	*	*	*	*	*
TOTAL OPERATING	*	0.0	*	*	*	*	*

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	*	0.0	*	*	*	*	*
1005 GF/Program Receipts	*	0.0	*	*	*	*	*
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	*	0.0	*	*	*	*	*

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This bill will convert misdemeanor crimes under AS 11.41 into C felonies, punishable by up to five years in prison, if the defendant is charged with a crime involving domestic violence and the defendant has two or more prior convictions for crimes involving domestic violence under AS 11.41. Although the agency has been unable to get accurate estimates regarding how many new felonies this change in the law will produce, the number is likely to be significant. Therefore, the agency predicts that there will be a fiscal impact on OPA. Accordingly, the agency has submitted an indeterminate note.

Prepared by Joshua P. Fink, Director
Division Office of Public Advocacy
Approved by Rachael Petro, Deputy Commissioner
Department of Administration

Phone 907-269-3501
Date/Time 2/6/08 12:00 p.m.
Date 2/6/2008



State of Alaska
Department of Public Safety
Council on Domestic Violence & Sexual Assault

Sarah Palin, Governor
Walter Monegan, Commissioner

February 8, 2008

Representative Lindsey Holmes
State Capitol, Room 405
Juneau, Alaska 99801-1182

Subject: Support for HB 307

Dear Representative Holmes and HB 307 Sponsors:

Thank you for introducing HB307, Domestic Violence Offenses, a bill that will hold the most serious repeat domestic violence offenders accountable for their actions.

We must turn the tide of Alaska's chronically high rates of interpersonal violence. To accomplish that, victims must be kept safe and perpetrators must know that they will be appropriately punished for their actions. We believe the legislation you propose sends a strong message that our state will not tolerate the levels of domestic violence that currently exist.

This bill's welcome message is that "serial battering" is a serious crime that Alaska will not accept. When repeat offenders are held to a higher standard of accountability, the message to both victims and perpetrators is that the recurrence of harm to an individual matters. We expect the classification of such behavior as a felony to act as a deterrent and, if not, then it would provide a heavier consequence to include prison time and oversight by Department of Corrections upon release.

As you probably know, as of 2005, at least 26 states have also taken a stand on this issue by enacting some type of enhanced penalty for repeat domestic violence offenders. We encourage Alaska to join them and appreciate the opportunity to support this legislation.

Sincerely,

Chris Ashenbrenner
Executive Director

"Public Safety through Public Service"

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355



Business Manager

Joseph Young
Anchorage

Board of Directors

Angella Long, President
Wasilla

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Soldotna

Leo Brandlen, Past President
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Pres. Anchorage Chapter

John Janini, Member
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Fairbanks
Pres. Fairbanks North Chapter

Dan Boone, Member
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Pres. Aleutian Islands Chapter

Felix Shover, Member
Wasilla
Pres. Wasilla Chapter

Scott McCumby, Member
Wasilla
Pres. Fairbanks Chapter

January 24, 2008

Representative Jay Ramras
House Judiciary Committee Chair
State Capitol
Juneau AK 99801-1182

Dear Representative Ramras:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for considering HB 307, an act relating to penalizing certain misdemeanor domestic violence offenses as felonies.

The APOA State Board's Legislative Committee recently reviewed this proposed legislation and decided to unanimously support this bill.

We thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515, if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

Angella Long
State President



DOMESTIC VIOLENCE FACTS: ALASKA



DID YOU KNOW?

- ◊ One in every four women will experience domestic violence in her lifetime.¹ One in 33 men have experienced an attempted or completed rape.²
- ◊ An estimated 1.3 million women are victims of physical assault by an intimate partner each year.³
- ◊ The majority (73%) of family violence victims are female. Females were 84% of spousal abuse victims and 86% of abuse victims at the hands of a boyfriend.⁴
- ◊ The cost of intimate partner violence exceeds \$5.8 billion each year. \$4.1 billion of which is for direct medical and mental health services.⁵
- ◊ Boys who witness domestic violence are *twice as likely* to abuse their own partners and children when they become adults.⁶

CHALLENGES

- The extreme remoteness of many Alaskan communities, (including travelling to access services), remains the major obstacle to providing services to victims in these areas.
- Alaska's statistics on violence against women are among the highest in the nation. Local programs are in dire need of more funding to serve the sheer volume of victims that seek their services.

STATEMENTS FROM SERVICE PROVIDERS

"We are operating on a minimal basis. We have the minimum number of staff to get the job done. We have very little money for program supplies, travel, training, and outreach to the villages. We have been doing more for less for so long its hard to remember what it would look like to have enough."

-Advocate, Sitkans Against Family Violence⁹

"Increases wouldn't just be nice for programs, they are imperative for them to keep up with utility costs. We have diversified funding sources to the nth degree and overall still have fewer position [to provide victim services] than we did 3 years ago, 5 years ago, 8 years ago."

-Advocate, Tundra Women's Coalition⁹

DOMESTIC VIOLENCE AND SEXUAL ASSAULT IN ALASKA

- Almost 75% of Alaskans have experienced or know someone who has experienced domestic violence or sexual assault.⁷
- There were over 6,000 reported cases of domestic violence in Alaska in 2005.⁷
- 524 forcible rapes were reported in Alaska in 2005, representing almost 13% of all violent crimes.⁸
- The Alaska rape rate is 2.5 times the national average.⁷
- Child sexual assault in Alaska is almost six times the national average.⁷
- Alaska has the highest rate per capita of men murdering women.⁷
- Almost 30% of Alaskans were not able to access victim services or encourage others to do so because there were no services available in their area at the time.⁷
- Almost 90% of Alaskans would vote to increase funding for victim service programs, and over 90% would support increased penalties for domestic violence and sexual assault perpetrators.⁷

STATE RESOURCES

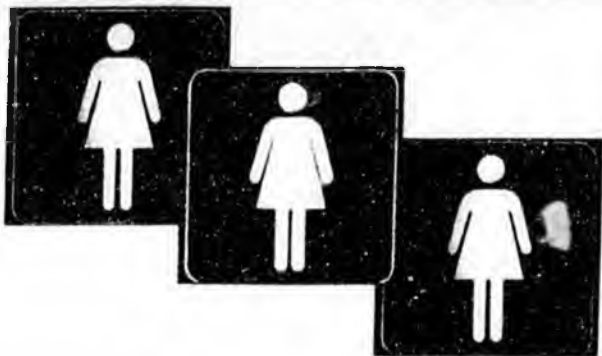
Alaska Network on Domestic Violence
and Sexual Assault
www.andvsa.org

- ◊ The Network is a non-profit membership organization that is composed of 21 programs across Alaska. The 21 programs provide victim services for domestic violence and sexual assault, offender services, and crisis intervention services. The Network exists to promote communication and information sharing between programs across the state and to expose and eliminate interpersonal violence in the lives of Alaskan victims.

For more information or to get help, please visit
<http://www.andvsa.org/programs/programs.htm>
to get local program and hotline information.

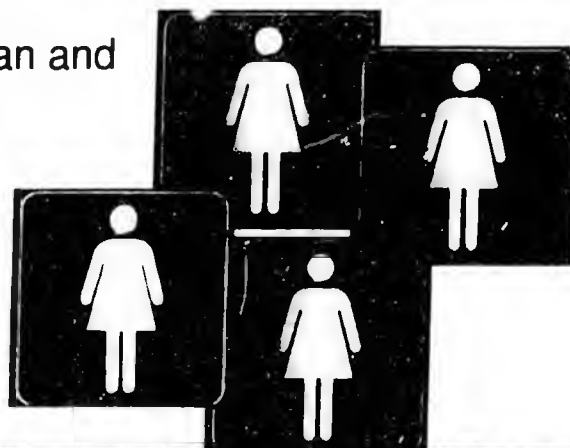
The National Domestic Violence Hotline at 1-800-799-SAFE
The National Sexual Assault Hotline at 1-800-656-HOPE

American Indian and Alaska Native Women



More than 1 out of every 3 American Indian and Alaska Native women will be raped in her lifetime.¹

More than 3 out of every 4 American Indian and Alaska Native women will be physically assaulted in her lifetime.¹



When Men Murder Women¹⁰

Alaska ranks first in the nation with the highest homicide rate for female victims killed by a male perpetrator.¹

Number of Females Murdered by Males in Single Victim/Single Offender Homicides and Rates by State in 2003, Ranked by Rate

Ranking	State	Homicide Rate per 100,000
1	Alaska	2.87
2	Nevada	2.64
3 (tie)	Louisiana	2.42
3 (tie)	New Mexico	2.42
5	Tennessee	2.38

SOURCES

- ¹ Tjaden, P. & Thoennes, N. (2000). *Extent, Nature and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Survey*. National Institute of Justice and the Centers for Disease Control and Prevention.
- ² U.S. Department of Justice. (November 1998). "Prevalence, Incidence, and Consequences of Violence Against Women."
- ³ Centers for Disease Control and Prevention. (2003). *Costs of Intimate Partner Violence Against Women in the United States*. Atlanta, GA: National Centers for Injury Prevention and Control.
- ⁴ Bureau of Justice Statistics. (June 2005). *Family Violence Statistics*. U.S. Department of Justice.
- ⁵ Centers for Disease Control and Prevention. (2003). *Costs of Intimate Partner Violence Against Women in the United States*. Atlanta, GA: National Centers for Injury Prevention and Control.
- ⁶ Strauss, Gelles, & Smith. (1990). *Physical violence in American Families: Risk Factors and Adaptations to Violence in 8,145 Families*. Transaction Publishers.
- ⁷ Alaska Network on Domestic Violence and Sexual Assault. (2006). 2006 Annual Report: Working in Alaska Communities For Safety, Justice, Advocacy and Education. Violence Prevention. Juneau, Alaska.
- ⁸ Alaska Department of Public Safety. (2005). Crime Reported in Alaska, 2005. Uniform Crime Reporting Program. Accessed November 29, 2007 at http://www.dps.state.ak.us/UCR/Docs/UCR_2005.pdf
- ⁹ Alaska Network on Domestic Violence and Sexual Assault. (December 2005). Alaska Program Directors Report How They Are Coping With Inadequate Funding. Accessed November 29, 2007 at <http://www.andvsa.org/pdfs/December%202005%20Quotes%20from%20Directors.pdf>
- ¹⁰ Violence Policy Center. (September 2005). When Men Murder Women. Accessed November 29, 2007 at <http://www.vpc.org/studies/wmmw2005.pdf>



The Public Policy Office of the National Coalition Against Domestic Violence (NCADV) is a national leader in the effort to create and influence Federal legislation that positively affects the lives of domestic violence victims and children. We work closely with advocates at the local, state and national level to identify the issues facing domestic violence victims, their children and the people who serve them and to develop a legislative agenda to address these issues. NCADV welcomes you to join us in our effort to end domestic violence.

HB

317



HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 519
465-4945

MEMORANDUM

COMMITTEE MEMBERS

Rep. Jay Ramras
Chairman
Room 118
465-3004

Rep. Nancy Dahlstrom
Vice-Chairman
Room 409
465-3783

Rep. Ralph Samuels
Room 204
465-2095

Rep. John Coghill
Room 214
465-3719

Rep. Bob Lynn
Room 104
465-4931

Rep. Max Gruenberg
Room 110
465-4940

Rep. Lindsey Holmes
Room 405
465-44919
465-4451

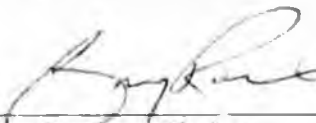
Date: January 25, 2008

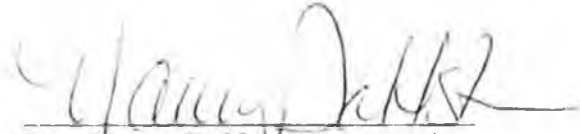
To: Speaker John Harris

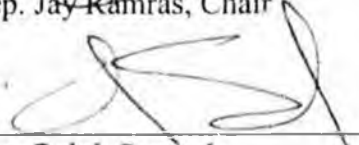
From: House Judiciary Committee

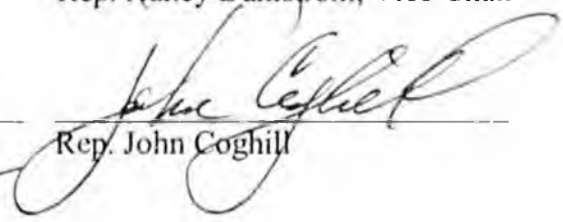
Re: HB 317 Compassionate Gifts

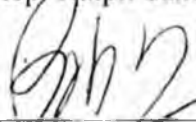
Representative Coghill, sponsor of HB 317, "An Act eliminating the limit on compassionate gifts that a legislator or legislative employee may solicit, accept, or receive under the Legislative Ethics Act; and providing for an effective date." has requested the bill be waived from House Judiciary Committee. The committee members have agreed to waive the bill from committee.


Rep. Jay Ramras, Chair


Rep. Nancy Dahlstrom, Vice-Chair


Rep. Ralph Samuels


Rep. John Coghill


Rep. Bob Lynn


Rep. Max Gruenberg


Rep. Lindsey Holmes

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB317
() Publish Date: _____

Identifier (file name): HB317-LEG-ETH-01-29-08 Dept. Affected: Legislature
Title: "An act eliminating the limit on compassionate gifts that
a legislator or legislative employee..." RDU: Legislative Council
Component: Select Committee on Legislative
Sponsor: "Representative Coghill, Chenault, Johnson..." Ethics
Requester: House State Affairs Component Number: 2321

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
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	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 Interagency Receipts								
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This legislation has zero fiscal impact on the Legislative Affairs Agency.

Prepared by: Karla Schofield, Deputy Director
Division: Legislative Affairs Agency
Approved by: Pamela Varni, Executive Director
Legislative Affairs Agency

Phone 465-6626
Date/Time 1/29/08 3 24 PM
Date 1/29/2008

ALASKA STATE HOUSE OF REPRESENTATIVES



Session

Contact:

Interim Address:

**3340 Badger Road
North Pole, AK 99705
(907)-488-5725
Fax# (907)-488-4271**

(907)-465-3719

FAX# (907)-465-3258

**State Capitol
Room 214**

REPRESENTATIVE JOHN COGHILL

HB 317 - COMPASSIONATE GIFTS

SPONSOR STATEMENT

This legislation was requested by the Select Committee on Legislative Ethics as a fix to an unintended consequence of HB 109, the Governor's ethics bill passed by the Legislature last year. An amendment offered to the Ethics Bill on the House Floor by Representative Dahlstrom allowing for compassionate gifts of less than \$250 from the same person in a calendar year was passed unanimously.

After numerous inquiries from legislative staffers during the interim concerning organ donations and frequent flyer miles, Joyce Anderson, administrator for the Select Committee on Legislative Ethics approached me about repealing the \$250 limit from AS 24.60.075(c). She said the limit did prevent a legislative staffer from donating an organ to another legislative staffer or legislator and it prevented either from donating frequent flyer miles to the other.

One safeguard already in place is the requirement that the chair of the Legislative Council or the chair or vice-chair of the Select Committee on Legislative Ethics must approve the compassionate gift exemption before a legislator or legislative staff can accept compassionate gifts.

The question of donating leave came up during mandatory ethics training. AS 39.30.245(b) already allows an officer or employee of the State to donate accrued personal or annual leave to another officer or employee "only for use as leave for medical reasons".

HB 317 eliminates the less than \$250 limit on compassionate gifts from AS 24.60.075(c) and allows unlimited compassionate contributions, including organ and frequent flyer donations. Mandatory reporting of the compassionate gifts is still required.

**SELECT COMMITTEE ON LEGISLATIVE ETHICS
Alaska State Legislature**

THE ADVISOR

July 2007

Committee Members: Chair Dennis "Skip" Cook, Senator Gary Stevens, Senator Con Bunde, Representative Bob Roses, Representative Berta Gardner, H. Conner Thomas, Ann Rabinowitz, Gary J. Turner and Herman G. Walker Jr.

Alternate Legislative Members: Senator Hollis French, Senator Gary Wilken, Representative Carl Gatto and Representative Lindsey Holmes.

Staff: Joyce Anderson

QUOTE OF THE MONTH: "Always do the right thing. It will gratify some and astonish the rest."

Mark Twain

IMPORTANT NEWS:

Governor Palin signed HB 109, the omnibus Ethics Bill, on Monday, July 9, 2007. Changes to the Legislative Ethics Act became effective Tuesday, July 10, 2007.

This newsletter will highlight some of the areas that require your immediate attention. (See areas in RED.) The Ethics Office is available to answer any questions you may have concerning the changes and will work with you to determine the ethical parameters regarding specific situations.

NEW GIFT REQUIREMENTS and PROHIBITIONS:

AS 24.60.075 and AS 24.60.080

A gift is defined as: money, services, loans, travel, entertainment, hospitality, promise or other form.

Gifts exceeding \$250 in value fall into two categories:

- 1. allowed but must be disclosed**
- 2. prohibited**

GIFTS – COMPASSIONATE REASON

- Compassionate gifts may be received from anyone (including a lobbyist) as long as the aggregate amount does not exceed \$250 in a calendar year from the same person.
 - Compassionate gift requirements apply to legislator, legislative employee and immediate family member
 - Compassionate gift: intended to aid or comfort in contending with a catastrophe, tragedy or health-related emergency
 - Pre-approval required by Legislative Council and Ethics Committee

***** DISCLOSURES *****

AS 24.60.105 and AS 24.60.115

The requirement to file a disclosure applies to legislators, staff to legislators, LAA staff, other legislative staff, employees of the Office of the Ombudsman and Office of Victims' Rights.

NEW REPORTING REQUIREMENTS

- **ALL DISCLOSURES** are now due within 30 days
 - of the association
 - or receipt of certain gifts
- **Annual disclosures:** "association" disclosures are due annually within the first 30 days of session
- **Final Day of Service disclosures:** any disclosures not previously reported are due within 90 days after final day of service

Please review the information below to determine if you need to file a disclosure under the new provisions of the Legislative Ethics Act. The ethics web site, found on the Legislature's home page by clicking on "Ethics" and then "Disclosures," will show an updated list of current disclosures.

ASSOCIATION DISCLOSURES

- **Membership on a Board of Directors - AS 24.60.030(f)** – Are you an officer or board member of any organization?
NEW - all board memberships must be reported. New board memberships must be disclosed within 30 days of appointment.
ACTION REQUIRED: Complete a disclosure by August 7 of all boards you currently serve on or have served on since April 10, 2007.
- **Participation in Certain State Benefit and Loan Programs - AS 24.60.050(c)(d)** - Do you presently have an outstanding benefit or loan amount administered through the state?

funds? Always due within 30 days of receipt of the gift.

- **Gift Received by Family Member Because of Legislative Connection – AS 24.60.080(i) -**
Did an immediate family receive a gift worth \$250 or more because of your legislative connection? For example, did a family member accompany you to a conference and some or all of the costs associated with the conference were paid for by an organization/entity. Always due within 30 days of receipt of the gift.
- **Gift of Legal Services Related to Legislative Matters - AS 24.60.080(c)(8) –** Did you receive a gift of legal services related to legislative matters worth \$250 or more? Monetary gifts to be used for legal services must not exceed the gift limit of \$250. In-kind gifts, i.e., reduced rates, pro- bono services, etc. that is more than \$250 in value must be disclosed. Always due within 30 days of receipt of the gift.
- **Gift for Compassionate Reasons - AS 24.60.075 - (NEW Disclosure)**
Compassionate gifts must be pre-approved by Legislative Council and the Ethics Committee. Compassionate gifts requirements apply to a legislator, legislative employee and immediate family member. A compassionate gift is intended to aid or comfort in contending with a catastrophe, tragedy or health-related emergency. Contact the Ethics Office for more information if this exemption applies to you or an immediate family member.

Gift from Another Government – AS 24.60.080(f) – Have you received a gift from another government or official from another government worth \$250 or more? Must be delivered to Legislative Council within 60 days.

IMPORTANT: Fines are levied for late disclosures. The fine is \$2.00 per day up to a maximum of \$100. Committee policy has been to allow for one late disclosure before levying fines. A late disclosure is a “one time only” waiver.

- **NEW** forms for all disclosures are on the ethics website. Discard old forms.
- Please give the Ethics Office a call if you have questions about what to disclose.

When completing disclosures, please keep in mind:

1. **PLEASE PRINT CLEARLY OR TYPE YOUR DISCLOSURE INFORMATION.**
Remember, the Ethics Office and the Senate Secretary or House Clerk must be able to read the information on your disclosure form.
2. An original copy of the disclosure is not required. A fax copy is acceptable. Keep the original in your Ethics file for future reference if needed.
3. Please complete all required information. Remember, these are public disclosures and the public has a right to know.
4. Under the “address” section for the discloser, keep in mind if you list your home address, your home address will be printed in the Legislative Journal. It is appropriate to list your legislative office address.

bill, testimony indicated that this provision was designed to permit legislators to report promptly to their constituents on special legislative sessions held after the regular session and before the next state primary or general election.

Section 21 of the bill would require legislators and legislative employees to disclose to the Select Committee every board of an organization on which they serve. Current law requires disclosure only of service on boards of organizations that regularly have substantial interest in the legislator's or legislative employee's legislative activities. A person affected by this disclosure requirement might claim that it violates the right of privacy under art. 1, sec. 22 of the Alaska Constitution and similar protections under the United States Constitution. Article 1, sec. 22 provides, in part, that "[t]he right of the people to privacy is recognized and shall not be infringed."

The outcome of a constitutional challenge to the disclosure provision on these grounds is uncertain. Although a challenge might succeed, we believe we could defend that provision in good faith.

Section 22 of the bill would require publication of legislators' and legislative employees' disclosures of their own and immediate family members' interests in state contracts and leases. The disclosures would be published in the appropriate journal or supplemental journal not later than the next regularly scheduled publication of ethics disclosures.

Section 23 of the bill would require that disclosures of legislators' and legislative employees' participation in state programs or loans also be published in the appropriate supplemental journal not later than the next regularly scheduled publication of ethics disclosures. The Select Committee could keep any part of a disclosure confidential if the committee determined that making the entire disclosure public would unjustifiably invade personal privacy.

Section 24 of the bill would eliminate an exception to the Legislative Ethics Act's requirements for reporting close economic associations. Legislators and legislative employees currently must disclose their close economic associations with public officials unless the officials are appointed municipal officers. Section 24 of the bill would eliminate that exception.

Section 25 of the bill would make changes to conform to sec. 16's lobbying prohibition on spouses and domestic partners of legislators and legislative employees.

Section 26 of the bill would create an exemption from gift restrictions in the Legislative Ethics Act for "compassionate gifts." The exemption would allow gifts to a legislator or legislative employee to aid or comfort the recipient or a member of the recipient's immediate family because of a catastrophe, tragedy, or health-related emergency. The exemption would apply only if the chair of the Legislative Council and the chair or vice-chair of the Select Committee approved in writing a written request for approval of the gift. The gifts would also be subject to a value limit: the cumulative, fair market value of an individual's compassionate gifts to a particular legislator or legislative employee during a calendar year would be required to be less than \$250.

What is a “compassionate gift?”

“... a solicited or unsolicited gift intended to aid or comfort a recipient or a member of the recipient’s immediate family in contending with a catastrophe, a tragedy, or a health-related emergency.”

AS 24.60.075

HB

323



HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
(907) 465-4990

COMMITTEE MEMBERS

Rep. Jay Ramras
Chairman
Room, 118
(907) 465-3004

Rep. Nancy Dahlstrom
Vice-Chairman
Room 409
(907) 465-3783

Rep. John Coghill
Room 214
(907) 465-3719

Rep. Bob Lynn
Room 104
(907) 465-4931

Rep. Ralph Samuels
Room 204
(907) 465-2095

Rep. Max Gruenberg
Room 110
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: April 7, 2008

To: Representative Kevin Meyer
Co-Chair House Finance Committee

From: Representative Jay Ramras
Chair House Judiciary Committee

Re: Referral File for HB323

Attached please find the following documents:

- Governor's transmittal letter
- CSHB323(JUD) 25-GH2038.O
- HJUD Letter of Intent
- Legal fax re: HJUD Amendments
- Work Draft CSHB323(JUD) 25-GH2038\L
- Legal fax re: HJUD Amendments
- Work Draft CSHB323(JUD) 25-GH2038\K
- Amendments from version \E
- Work Draft CSHB323(JUD) 25-GH2038\E
- Fiscal Notes
 - HSS - 0
 - DPS - 0
 - COR - Indeterminate
 - LAW - \$
 - ADM - 0
 - ADM - 0
- HB323 25-GH2038\A
- Back-up re: amendments
- Relevant Statutes
- HJUD Committee Report

SARAH PALIN
GOVERNOR

GOVERNOR@GOV.STATE.AK.US

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

P.O. Box 110001
JUNEAU, ALASKA 99811-0001
PHONE (907) 465-3500
FAX (907) 465-3532
WWW.GOV.STATE.AK.US

January 15, 2008

The Honorable John Harris
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Harris:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill making important changes to Alaska criminal law. These changes would continue the state's efforts to make Alaska a safer and healthier place to live and work.

Domestic and other forms of violence are highly prevalent in Alaska. It is shocking that women are murdered by men in Alaska at one of the highest rates in the country. Domestic violence, and other forms of violence, often begin by a perpetrator committing less serious assaults, and then progressing to more harmful conduct. Most domestic violence assaults are prosecuted as assault in the fourth degree, which is a class A misdemeanor. The bill would address the progressive nature of violence by providing that a person convicted of assault in the fourth degree (except under the theory of recklessly placing another in fear) who has two or more convictions for serious crimes against a person in the past 10 years, would be guilty of a class C felony. The maximum term of incarceration for a class C felony is five years.

The procedure for protecting the public from a person, who as a result of a mental disease or defect is incompetent to be tried for a crime, has some cracks that need to be filled. Two recent cases have highlighted the problem. For example, a person charged with a serious felony was found to be incompetent to be tried for the offense. After a period at Alaska Psychiatric Institute, the person was released, returned to the person's home community, and again committed the same serious felony. The bill would address this problem in several ways; first it requires a person found incompetent to be referred to the commissioner of health and social services for evaluation and treatment. It would also require ten days notice to the prosecuting

The Honorable John Harris
January 15, 2008
Page 2

authority by the professional in charge of the person's care before the person may be released.

The bill would also clarify the intent of the Legislature when it provided, in the late 1980s, that a third conviction for theft within a five year period would increase the severity of the crime one level. At that time it was generally assumed, for purposes of subsequent enhancement, that a conviction occurs at the time the sentence was imposed. The bill would provide expressly in statute that, in looking back to the prior convictions for purposes of enhancing the current theft, the court should look back to the date the defendant was sentenced for the prior offenses.

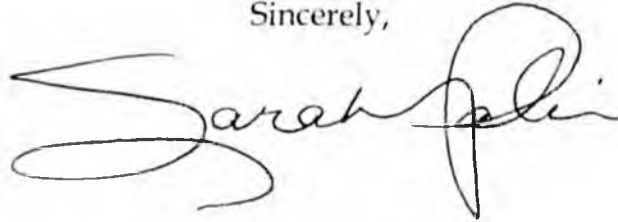
Since early statehood, Alaska has had a statutory prohibition on the state prosecuting and punishing a person, including a corporation, for an act that another jurisdiction has already prosecuted. This policy is not based on constitutional law; the state and federal constitutional prohibitions against being placed twice in jeopardy for the same act do not prohibit distinct government authorities from prosecuting the same act under different bodies of law. Recent events have suggested a reconsideration of this policy. The federal criminal prosecution of misconduct by public officials in Alaska is an example of crime that might also be pursued under state law. The state should be able to protect its unique interests, even when the federal government has acted to redress federal interests. Repeal of AS 11.71.310 (Bar to Prosecution) and AS 12.20.010 (Conviction or Acquittal Elsewhere as Bar) would assist in that endeavor.

The bill would make other changes in criminal law. One would allow a court to issue a search warrant by telephone or other reliable means rather than an in person hearing. Telephonic communications today are sophisticated enough to allow for a fair hearing without requiring a personal appearance; most Alaskans rely on telephonic communications for many of their important affairs. The bill would also give judges more discretion to allow a later return of a search warrant inventory to allow for long-term investigations and protection of persons working with law enforcement. Another provision adds the substances commonly know as Soma and Ambien to Schedule IVA of Alaska's prohibited substances. Recent injuries from driving impaired by misuse of these substances support their addition to Alaska's drug schedules as controlled substances.

The Honorable John Harris
January 15, 2008
Page 3

Enactment of this bill into law would protect Alaskans and help the criminal justice system function fairly and at the same time more efficiently. I urge your prompt and favorable consideration of it.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Palin". The signature is fluid and cursive, with a large, sweeping initial "S" and a distinct "P" for "Palin".

Sarah Palin
Governor

Enclosure

ALASKA STATE LEGISLATURE HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras

Chairman

(907) 465-3004

Fax: (907) 465-2070

Representative Jay Ramras @legis.state.ak.us

1292 Sadler Way, Suite 324

Fairbanks, AK 99701



Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

April 6, 2008

Letter of Intent – House Bill 323
By the House Judiciary Committee

Section 30 of this Act corrects a misunderstanding in the applicability provision in ch. 24, section 36(e), SLA 2007. This section addressed the applicability of the newly adopted AS 12.72.025, which adopted a one-year statute of limitation on applications for post-conviction relief based on the claim that the applicant's attorney in his or her first application for post-conviction relief was ineffective. These applications are commonly called *Grinols* applications.

The purpose of AS 12.72.025 was to codify a statute of limitation with respect to second applications for post-conviction relief. Second applications for post-conviction relief raising a claim that an applicant's counsel rendered ineffective assistance in the first application were authorized by *Grinols v. State*, 10 P.3d 600 (Alaska App. 2000), *aff'd*, 74 P.3d 889 (Alaska 2003). *Grinols* also imposed a requirement of "due diligence" in bringing second applications. The court in *Grinols* assumed, but expressly declined to decide, that the existing statute-of-limitations in AS 12.72.020 applied in *Grinols*'s second application.

The purpose of AS 12.72.025 was to codify for second applications the same one-year statute of limitation as now exists for first applications, and was not to expand it or overrule *Grinols*'s due diligence requirement. But the applicability clause can be misinterpreted to mean that if an application was dismissed at any time prior to July 1, 2007, then a second application will be permitted if filed by July 1, 2008, regardless of how much time passed between the first and second applications, or whether the applicant had exercised due diligence in bringing it. That interpretation is inconsistent with the legislature's purpose in enacting AS 12.72.025 and inconsistent with the court's holding in *Grinols*.

Section 30 of this Act specifically corrects such a mistaken interpretation.

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman
(907) 465-3004
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Committee Members:
Representative Nancy Dahlstrom,
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Representative John Coghill
Representative Bob Lynn
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Representative Max Gruenberg
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1292 Sadler Way, Suite 324
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State Capitol, Room 120
Juneau, Alaska 99801-1182

Fax

To: Jerry Luckhaupt
Leg. Legal

Fax #: 2029

Number of pages including cover:

From: Jane Pierson

Date: April 6, 2008

Re: Final for HB 323 from version 25-GH20328/L.

Please go final on the above-referenced bill with the following amendments:

1. P. 2, L. 27 delete "10" insert "5"
P. 2, L. 28 delete "24" insert "12"
P. 2, L. 28 delete "12" insert "6"
Conform sections (2) and (3)
2. P. 3, L. 5 change 10 year look-back to 15 years.
3. P. 3, L. 13 delete "3000" insert "10,000"
L. 15 delete "4000" insert "10,000"
L. 18 delete "5000" insert "10,000"
L. 21 delete "6000" insert "10,000"
L. 24 delete "7000" insert "10,000"

4. P.6, L. 11 after "convicted" insert on two separate occasions."

Thank you!!!

~~Page 3~~

Amendment #2

ADOPTED.

Page 3

line 13 delete 3000,
insert 10,000

line 15 delete 4000
insert ~~5000~~ 10K

line 18 delete 5000
insert ~~20,000~~ 10K

line 21 delete 6000
insert ~~25,000~~ 10K

line 24 delete 7000
insert ~~30,000~~ 10K

25-GH2038/L
Luckhaupt
4/6/08

CS FOR HOUSE BILL NO. 323(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to furnishing or delivering alcoholic beverages to persons under 21
2 years of age; relating to shipping, sending, transporting, or bringing alcohol to a local
3 option area and providing alcohol to others in the local option area, including penalties
4 for violations; relating to reports of alcohol violations by minors; relating to certain
5 persons who lend money on secondhand articles; relating to arson and criminally
6 negligent burning; relating to defenses for the detention of persons suspected of
7 committing concealment of merchandise or theft; relating to controlled substances;
8 relating to the determination of time of a conviction; relating to issuance of search
9 warrants; relating to persons found incompetent to stand trial concerning criminal
10 conduct; relating to probation for certain offenses; relating to restitution for fish and
11 game violations; relating to aggravating factors at sentencing; relating to post-conviction
12 relief proceedings; relating to criminal extradition authority of the governor; removing

1 the statutory bar to prosecution of certain crimes; amending Rule 37(b), Alaska Rules of
2 Criminal Procedure, relating to execution of warrants, and Rule 35.1, Alaska Rules of
3 Criminal Procedure; and providing for an effective date."

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

5 * Section 1. AS 04.16.051(a) is amended to read:

6 (a) A person may not furnish or deliver an alcoholic beverage to a person
7 under the age of 21 years. T is subsection does not apply to a licensee or an agent
8 or employee of a licensee while working on licensed premises.

9 * Sec. 2. AS 04.16.052 is amended to read:

10 **Sec. 04.16.052. Furnishing of alcoholic beverages to persons under the age**
11 **of 21 by licensees.** A licensee or an agent or employee of the licensee may not with
12 criminal negligence

13 (1) allow another person to sell, barter, or give an alcoholic beverage
14 to a person under the age of 21 years within licensed premises;

15 (2) allow a person under the age of 21 years to enter and remain within
16 licensed premises except as provided in AS 04.16.049;

17 (3) allow a person under the age of 21 years to consume an alcoholic
18 beverage within licensed premises;

19 (4) allow a person under the age of 21 years to sell or serve alcoholic
20 beverages;

21 (5) while working on licensed premises, furnish or deliver alcoholic
22 beverages to a person under the age of 21 years.

23 * Sec. 3. AS 04.16.200(e) is amended to read:

24 (e) A person who sends, transports, or brings alcoholic beverages into a
25 municipality or established village in violation of AS 04.11.499(a) is, upon conviction,

26 (1) except as provided in (3) of this subsection, guilty of a class A
27 misdemeanor if the quantity of alcoholic beverages is less than 10 and one-half liters
28 of distilled spirits, 24 liters of wine, or 12 gallons of malt beverages; [OR]

29 (2) guilty of a class C felony if the quantity of alcoholic beverages is
30 10 and one-half liters or more of distilled spirits, 24 liters or more of wine, or 12

1 gallons or more of malt beverages; or

2 **(3) guilty of a class C felony if the quantity of alcoholic beverages**
3 **is less than 10 and one-half liters of distilled spirits, 24 liters of wine, or 12 gallons**
4 **of malt beverages and the person has been previously convicted under this**
5 **subsection or (b) of this section two or more times within 10 years of the date of**
6 **the present offense.**

7 * Sec. 4. AS 04.16.200 is amended by adding new subsections to read:

8 (g) Upon conviction of a class A misdemeanor under (e)(1) of this section, the
9 court

10 (1) shall impose a minimum sentence of imprisonment of

11 (A) not less than 72 consecutive hours and a fine of not less
12 than \$1,500 if the person has not been previously convicted;

13 (B) not less than 20 days and a fine of not less than \$3,000 if
14 the person has been previously convicted once;

15 (C) not less than 60 days and a fine of not less than \$4,000 if
16 the person has been previously convicted twice and is not subject to
17 punishment under (h) of this section;

18 (D) not less than 120 days and a fine of not less than \$5,000 if
19 the person has been previously convicted three times and is not subject to
20 punishment under (h) of this section;

21 (E) not less than 240 days and a fine of not less than \$6,000 if
22 the person has been previously convicted four times and is not subject to
23 punishment under (h) of this section;

24 (F) not less than 360 days and a fine of not less than \$7,000 if
25 the person has been previously convicted more than four times and is not
26 subject to punishment under (h) of this section;

27 (2) may not

28 (A) suspend execution of sentence or grant probation except on
29 the condition that the person

30 (i) serve the minimum imprisonment under (1) of this
31 subsection; and

1 (ii) pay the minimum fine required under (1) of this
2 subsection; or

3 (B) suspend imposition of sentence.

4 (h) Upon conviction of a class C felony under (b) or (e)(2) or (3) of this
5 section, the court

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

8 (A) 120 days if the person has been previously convicted once;

9 (B) 240 days if the person has been previously convicted two
10 times;

11 (C) 360 days if the person has been previously convicted three
12 or more times;

13 (2) may not

14 (A) suspend execution of sentence or grant probation except on
15 the condition that the person

16 (i) serve the minimum imprisonment under (1) of this
17 subsection; and

18 (ii) pay the minimum fine required under (1) of this
19 subsection; or

20 (B) suspend imposition of sentence.

21 (i) In (g) of this section, "previously convicted" means having been convicted,
22 within the 10 years preceding the date of the present offense, of an offense under (b)
23 or (e) of this section or a law or ordinance of another jurisdiction having elements
24 similar to those offenses.

25 (j) In (h) of this section, "previously convicted" means having been convicted,
26 within the 10 years preceding the date of the present offense, of a felony offense under
27 (b) or (e) of this section or a law or ordinance of another jurisdiction having elements
28 similar to those felony offenses.

29 (k) The court shall consider the date of a previous conviction as occurring on
30 the date that sentence is imposed for the prior offense.

31 * Sec. 5. AS 08.76.010 is amended by adding a new subsection to read:

1 (b) A person who lends money on secondhand articles under (a) of this section
2 and is located in a municipality that has a population of over 5,000 shall also maintain
3 an electronic record that provides the information required by (a)(1) and (4) of this
4 section for the secondhand articles on which the person lends money. The person shall
5 submit the electronic record as required by the municipal law enforcement agency.

6 * Sec. 6. AS 08.76.020 is amended to read:

7 **Sec. 08.76.020. Manner of recording entry.** The entries in the book and the
8 electronic record required by AS 08.76.010 shall appear in chronological order and,
9 when made in a book, in ink or indelible pencil. Blank lines may not be left between
10 entries. Obliterations, alterations, or erasures may not be made. Corrections shall be
11 made by drawing a line [IN INK] through the entry without destroying its legibility,
12 and, when made in a book, the line shall be drawn in ink. The book shall be open
13 to the inspection of a peace officer at reasonable times.

14 * Sec. 7. AS 11.46.230(a) is amended to read:

15 (a) In a civil or criminal action upon the complaint of a person who has been
16 detained in or in the immediate vicinity of a commercial establishment for the purpose
17 of investigation or questioning as to the ownership of merchandise, it is a defense that

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

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

24 * Sec. 8. AS 11.46.295 is amended to read:

25 **Sec. 11.46.295. Prior convictions.** For purposes of considering prior
26 convictions in prosecuting a crime of theft under AS 11.46.130(a)(6) or
27 11.46.140(a)(3), or in prosecuting the crime of concealment of merchandise under
28 AS 11.46.220(c), a conviction for an offense under another law or ordinance with
29 similar elements is a conviction of an offense having elements similar to those of an
30 offense defined as such under Alaska law at the time the offense was committed. The
31 court shall consider the date of a prior conviction as occurring on the date that

1 sentence is imposed for the prior offense.

2 * Sec. 9. AS 11.46.410(a) is amended to read:

3 (a) A person commits the crime of arson in the second degree if the person
4 knowingly [INTENTIONALLY] damages a building by starting a fire or causing an
5 explosion.

6 * Sec. 10. AS 11.46 is amended by adding a new section to read:

7 **Sec. 11.46.427. Criminally negligent burning in the first degree.** (a) A
8 person commits the crime of criminally negligent burning in the first degree if the
9 person

10 (1) violates AS 11.46.430; and

11 (2) within the preceding 10 years, has been convicted of violating
12 AS 11.46.400 - 11.46.430 or AS 41.15.150 or a law or ordinance of this or another
13 jurisdiction with elements similar to those offenses.

14 (b) Criminally negligent burning in the first degree is a class C felony.

15 * Sec. 11. AS 11.46.430 is amended to read:

16 **Sec. 11.46.430. Criminally negligent burning in the second degree.** (a) A
17 person commits the crime of criminally negligent burning in the second degree if
18 with criminal negligence the person damages property of another by fire or explosion.

19 (b) Criminally negligent burning in the second degree is a class A
20 misdemeanor.

21 * Sec. 12. AS 11.71.170(b) is amended by adding new paragraphs to read:

22 (30) carisprodol;

23 (31) zolpidem;

24 (32) zopiclone.

25 * Sec. 13. AS 12.35.010(a) is amended to read:

26 (a) A judicial officer may issue a search warrant upon a showing of probable
27 cause, supported by oath or affirmation, and particularly describing the place to be
28 searched and the thing to be seized. The court may issue a search warrant for a
29 place or property located either in the state or outside the state.

30 * Sec. 14. AS 12.35.015(a) is amended to read:

31 (a) A judicial officer may issue a search warrant upon the sworn oral

1 testimony of a person communicated by telephone or other appropriate means, or
2 sworn affidavit transmitted by facsimile machine [, IF THE JUDICIAL OFFICER
3 FINDS THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT

4 (1) THE PRESENTATION OF THE APPLICANT'S AFFIDAVIT OR
5 TESTIMONY PERSONALLY BEFORE THE JUDICIAL OFFICER WOULD
6 RESULT IN A DELAY IN OBTAINING OR EXECUTING A SEARCH
7 WARRANT; AND

8 (2) THE DELAY MIGHT RESULT IN LOSS OR DESTRUCTION
9 OF THE EVIDENCE SUBJECT TO SEIZURE OR MIGHT INTERFERE WITH AN
10 ONGOING INVESTIGATION].

11 * Sec. 15. AS 12.47.110(a) is amended to read:

12 (a) When the trial court determines by a preponderance of the evidence, in
13 accordance with AS 12.47.100, that a defendant is so incompetent that the defendant is
14 unable to understand the proceedings against the defendant or to assist in the
15 defendant's own defense, the court shall order the proceedings stayed, except as
16 provided in (d) of this section shall, [AND MAY] commit a [THE] defendant
17 charged with a felony and may commit a defendant charged with any other crime
18 to the custody of the commissioner of health and social services or the commissioner's
19 authorized representative for further evaluation and treatment until the defendant is
20 mentally competent to stand trial, or until the pending charges against the defendant
21 are disposed of according to law, but in no event longer than 90 days.

22 * Sec. 16. AS 12.47.110(b) is amended to read:

23 (b) On or before the expiration of the initial 90-day period of commitment, the
24 court shall conduct a hearing to determine whether or not the defendant remains
25 incompetent. If the court finds by a preponderance of the evidence that the defendant
26 remains incompetent, the court may recommit the defendant for a second period of 90
27 days. The court shall determine at the expiration of the second 90-day period whether
28 the defendant has become competent. If, at the expiration of the second 90-day period,
29 the court determines that the defendant continues to be incompetent to stand trial, the
30 charges against the defendant shall be dismissed without prejudice, and continued
31 commitment of the defendant shall be governed by the provisions relating to civil

1 commitments under AS 47.30.700 - 47.30.915 unless the defendant is charged with a
2 crime involving force against a person and the court finds that the defendant presents a
3 substantial danger of physical injury to other persons and that there is a substantial
4 probability that the defendant will regain competency within a reasonable period of
5 time, in which case the court may extend the period of commitment for an additional
6 six months. If the defendant remains incompetent at the expiration of the additional
7 six-month period, the charges shall be dismissed without prejudice, and continued
8 [EITHER CIVIL] commitment proceedings shall be governed by the provisions
9 relating to civil commitment under AS 47.30.700 - 47.30.915 [INSTITUTED OR
10 THE COURT SHALL ORDER THE RELEASE OF THE DEFENDANT]. If the
11 defendant remains incompetent for five years after the charges have been dismissed
12 under this subsection, the defendant may not be charged again for an offense arising
13 out of the facts alleged in the original charges, except if the original charge is a class A
14 felony or unclassified felony.

15 * Sec. 17. AS 12.47.110 is amended by adding a new subsection to read:

16 (e) A defendant charged with a felony and found to be incompetent to proceed
17 under this section is rebuttably presumed to be mentally ill and to present a likelihood
18 of serious harm to self or others in proceedings under AS 47.30.700 - 47.30.915. In
19 evaluating whether a defendant is likely to cause serious harm, the court may consider
20 as recent behavior the conduct with which the defendant was originally charged.

21 * Sec. 18. AS 12.55.090(a) is amended to read:

22 (a) Probation may be granted whether the offense under AS 11 or AS 16 or
23 the crime is punishable by fine or imprisonment or both. If an offense under AS 11
24 or AS 16 or a crime is punishable by both fine and imprisonment, the court may
25 impose a fine and place the defendant on probation as to imprisonment. Probation may
26 be limited to one or more counts or indictments, but, in the absence of express
27 limitation, shall extend to the entire sentence and judgment.

28 * Sec. 19. AS 12.55.155(c)(8) is amended to read:

29 (8) the defendant's prior criminal history includes conduct involving
30 aggravated assaultive behavior or repeated instances of assaultive behavior; in this
31 paragraph, "aggravated assaultive behavior" means assault that is a felony

1 under AS 11.41, or a similar provision in another jurisdiction;

2 * Sec. 20. AS 12.55.155(f) is amended to read:

3 (f) If the state seeks to establish a factor in aggravation at sentencing

4 (1) under (c)(7), (8), (12), (15), (18)(B), (19), (20), (21), or (31) of this
5 section, or if the defendant seeks to establish a factor in mitigation at sentencing,
6 written notice must be served on the opposing party and filed with the court not later
7 than 10 days before the date set for imposition of sentence; the factors in aggravation
8 listed in this paragraph and factors in mitigation must be established by clear and
9 convincing evidence before the court sitting without a jury; all findings must be set out
10 with specificity;

11 (2) other than one listed in (1) of this subsection, the factor shall be
12 presented to a trial jury under procedures set by the court, unless the defendant waives
13 trail by jury, stipulates to the existence of the factor, or consents to have the factor
14 proven under procedures set out in (1) of this subsection; a factor in aggravation
15 presented to a jury is established if proved beyond a reasonable doubt; written notice
16 of the intent to establish a factor in aggravation must be served on the defendant and
17 filed with the court

18 (A) 20 days before trial, or at another time specified by the
19 court;

20 (B) within 48 hours, or at a time specified by the court, if the
21 court instructs the jury about the option to return a verdict for a lesser included
22 offense; or

23 (C) five days before entering a plea that results in a finding of
24 guilt, or at another time specified by the court.

25 * Sec. 21. AS 12.70.280(2) is amended to read:

26 (2) "governor" includes

27 (A) a person performing the functions of governor by authority
28 of the law of this state; and

29 (B) the lieutenant governor or the head of a principal
30 department in the executive branch appointed by the governor to act on
31 behalf of the governor in performing extradition duties under this

1 **chapter; the appointment shall be in writing and filed with the lieutenant**
2 **governor;**

3 * Sec. 22. AS 12.72.020(a) is amended to read:

4 (a) A claim may not be brought under AS 12.72.010 or the Alaska Rules of
5 Criminal Procedure if

6 (1) the claim is based on the admission or exclusion of evidence at trial
7 or on the ground that the sentence is excessive;

8 (2) the claim was, or could have been but was not, raised in a direct
9 appeal from the proceeding that resulted in the conviction;

10 (3) the later of the following dates has passed, except that if the
11 applicant claims that the sentence was illegal there is no time limit on the claim:

12 (A) if the claim relates to a conviction, one year [TWO
13 YEARS] after the entry of the judgment of the conviction or, if the conviction
14 was appealed, one year after the court's decision is final under the Alaska
15 Rules of Appellate Procedure;

16 (B) if the claim relates to a court revocation of probation, one
17 year [TWO YEARS] after the entry of the court order revoking probation or, if
18 the order revoking probation was appealed, one year after the court's decision
19 is final under the Alaska Rules of Appellate Procedure;

20 (4) one year or more has elapsed from the final administrative decision
21 of the Board of Parole or the Department of Corrections that is being collaterally
22 attacked;

23 (5) the claim was decided on its merits or on procedural grounds in any
24 previous proceeding; or

25 (6) a previous application for post-conviction relief has been filed
26 under this chapter or under the Alaska Rules of Criminal Procedure.

27 * Sec. 23. AS 12.72.020(b) is amended to read:

28 (b) Notwithstanding (a)(3) and (4) of this section, a court may hear a claim

29 (1) if the applicant establishes due diligence in presenting the claim
30 and sets out facts supported by admissible evidence establishing that the applicant

31 (A) suffered from a physical disability or from a mental disease

1 or defect that precluded the timely assertion of the claim; or

2 (B) was physically prevented by an agent of the state from
3 filing a timely claim;

4 (2) based on newly discovered evidence if the applicant establishes due
5 diligence in presenting the claim and sets out facts supported by evidence that is
6 admissible and

7 (A) was not known within

8 (i) one year [TWO YEARS] after entry of the judgment
9 of conviction if the claim relates to a conviction;

10 (ii) one year [TWO YEARS] after entry of a court
11 order revoking probation if the claim relates to a court's revocation of
12 probation; or

13 (iii) one year after an administrative decision of the
14 Board of Parole or the Department of Corrections is final if the claim
15 relates to the administrative decision;

16 (B) is not cumulative to the evidence presented at trial;

17 (C) is not impeachment evidence; and

18 (D) establishes by clear and convincing evidence that the
19 applicant is innocent.

20 * Sec. 24. AS 12.72.020 is amended by adding a new subsection to read:

21 (d) The court may not consider a substantive claim in an application brought
22 under AS 12.72.010 or the Alaska Rules of Criminal Procedure until the court has first
23 determined that

24 (1) the application is timely; and

25 (2) except for an application described in AS 12.72.025 or allowed
26 under (c) of this section, no previous application has been filed.

27 * Sec. 25. AS 16.05.925(b) is amended to read:

28 (b) In addition to a penalty imposed under (a) of this section or any other
29 penalty for violation of this title or a regulation adopted under this title, a person
30 who is convicted of unlawfully taking an animal listed in this subsection may be
31 ordered by the court to pay restitution to the state in the amount set out in this

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subsection for each animal unlawfully taken:

- (1) Bear, black \$ 600
- (2) Bear, brown or grizzly 1,300
- (3) Bison 1,300
- (4) Caribou 850
- (5) Deer 400
- (6) Elk 800
- (7) Goat 800
- (8) Moose 1,000
- (9) Musk oxen 3,000
- (10) Sheep 1,100
- (11) Wolf 500
- (12) Wolverine 500.

* Sec. 26. AS 28.15.191(a) is amended to read:

(a) A court that convicts a person of an offense under this title or a regulation adopted under this title, or another law or regulation of this state [,] or a municipal ordinance that regulates the driving of vehicles, or a violation of AS 04.16.050 shall forward a record of the conviction to the department within five working days. A conviction of a standing or parking offense need not be reported.

* Sec. 27. AS 28.35.028(a) is amended to read:

(a) Notwithstanding another provision of law, with the consent of the state and the defendant, the court may elect to proceed in a criminal case under AS 04.16.200(b) or (c), AS 28.35.030, or 28.35.032, including the case of a defendant charged with violating the terms of probation, under the procedure provided in this section and order the defendant to complete a court-ordered treatment program. The state may not consent to a referral under this subsection unless the state has consulted with the victim and explained the process and consequences of the referral to the victim. A court may not elect to proceed under this section if the defendant has previously participated in a court-ordered treatment program under this section two or more times.

* Sec. 28. AS 47.30.780 is amended to read:

1 **Sec. 47.30.780. Early discharge. Except as provided in (b) of this section,**
2 **the** [THE] professional person in charge shall at any time discharge a respondent on
3 the ground that the respondent is no longer gravely disabled or likely to cause serious
4 harm as a result of mental illness. A certificate to this effect shall be sent to the court,
5 which shall enter an order officially terminating the involuntary commitment.

6 * **Sec. 29.** AS 47.30.780 is amended to add a new subsection to read:

7 (b) The professional person in charge shall give the prosecuting authority 10
8 days' notice before discharging a respondent who was committed after having been
9 found incompetent to proceed under AS 12.47.110.

10 * **Sec. 30.** The uncodified law of the State of Alaska enacted in sec. 36(c), ch. 24, SLA
11 2007, is amended to read:

12 (c) AS 12.72.025, enacted by sec. 25, **ch. 24, SLA 2007** [OF THIS ACT],
13 applies to offenses committed before, on, or after the effective date of sec. 25, **ch. 24,**
14 **SLA 2007** [OF THIS ACT]. A person whose application for post-conviction relief was
15 denied before the effective date of sec. 25, **ch. 24, SLA 2007** [OF THIS ACT] has
16 until July 1, 2008, to file a claim described in AS 12.72.025. **This subsection does not**
17 **authorize filing a claim under AS 12.72 or the Alaska Rules of Criminal**
18 **Procedure that is not otherwise available under AS 12.72, the Alaska Rules of**
19 **Criminal Procedure, or other provision of law.**

20 * **Sec. 31.** AS 12.35.015(f) is repealed.

21 * **Sec. 32.** AS 11.71.310 and AS 12.20.010 are repealed.

22 * **Sec. 33.** The uncodified law of the State of Alaska is amended by adding a new section to
23 read:

24 DIRECT COURT RULE AMENDMENT. Rule 37(b), Alaska Rules of
25 Criminal Procedure, is amended to read:

26 (b) **Execution and Return with Inventory.** The warrant shall be executed
27 and returned within **30** [10] days after its date **of issuance**. However, upon sworn
28 application made before the expiration of the initial **30** [10] day period or any
29 subsequent extension, the court may for good cause extend the execution period for a
30 reasonable time not to exceed **30** [10] days. **Good cause includes protecting the**
31 **confidentiality of an ongoing investigation and protecting a person working with**

1 **law enforcement authorities on an investigation.** The officer taking property under
2 the warrant

3 (1) shall give to the person from whom or from whose premises the
4 property was taken, a copy of the warrant, a copy of the supporting affidavits, and
5 receipt for the property taken, or

6 (2) shall leave the copies and the receipt at the place from which the
7 property was taken.

8 The return shall be made promptly and shall be accompanied by a
9 written inventory of any property taken as a result of the search pursuant to or in
10 conjunction with the warrant. The inventory shall be made in the presence of the
11 applicant for the warrant and the person from whose possession or premises the
12 property was taken, if they are present, or in the presence of at least one credible
13 person other than the applicant for the warrant or the person from whose possession or
14 premises the property was taken, and shall be signed by the officer under the penalty
15 of perjury pursuant to AS 09.63.020 or sworn to in front of a magistrate or judge, or a
16 notary public. The magistrate or judge or the court to which the return is made shall
17 upon request deliver a copy of the inventory to the person from whom or from whose
18 premises the property was taken and to the applicant for the warrant.

19 * **Sec. 34.** The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 **INDIRECT COURT RULE AMENDMENT.** The provisions of AS 12.72.020(a) and
22 (b), as amended by secs. 22 and 23 of this Act, and the provisions of AS 12.72.020(d), as
23 added by sec. 24 of this Act, have the effect of amending Rule 35.1, Alaska Rule of Criminal
24 Procedure, by restricting the authority of a court to hear certain applications, claims, or
25 proceedings for post-conviction relief and by prescribing a procedure for a court to determine
26 if an application, claim, or proceeding may be considered.

27 * **Sec. 35.** The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 **APPLICABILITY.** (a) Sections 1 - 4, 9, 12, 18 - 20, 25 - 27, and 32 of this Act apply
30 to an offense occurring on or after the effective date of this section. References to previous
31 convictions in secs. 3 and 4 of this Act apply to convictions occurring before, on, or after the

1 effective date of those sections.

2 (b) Section 8 of this Act applies to an offense occurring before, on, or after the
3 effective date of this section.

4 (c) Sections 13, 14, 31, and 33 of this Act apply to search warrants applied for on or
5 after the effective date of this section, regardless of whether the offense occurred before, on,
6 or after the effective date of this section.

7 (d) Sections 15 - 17, 28, and 29 of this Act apply to procedures occurring after the
8 effective date of this section, regardless of whether the offense occurred before, on, or after
9 the effective date of this section.

10 (e) Section 21 of this Act applies to applications for criminal extraditions submitted
11 on or after the effective date of this section, regardless of whether the offense occurred before,
12 on, or after the effective date of this section.

13 (f) Section 7 of this Act applies to offenses occurring and actions arising on or after
14 the effective date of this section.

15 (g) Sections 22 - 24 and 34 of this Act apply to applications submitted on or after the
16 effective date of this section.

17 * **Sec. 36.** The uncodified law of the State of Alaska is amended by adding a new section to
18 read:

19 **RETROACTIVITY.** Section 30 of this Act is retroactive to July 1, 2007.

20 * **Sec. 37.** Sections 30 and 36 of this Act take effect immediately under AS 01.10.070(c).

21 * **Sec. 38.** Except as provided in sec. 37 of this Act, this Act takes effect July 1, 2008.

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman

(907) 465-3004

Fax: (907) 465-2070

Representative_Jay_Ramras@legis.state.ak.us

1292 Sadler Way, Suite 324
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Committee Members:
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Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Fax

To: Jerry Luckhaupt
Leg. Legal

Fax #: 2029

Number of pages including cover: 1

From: Jane Pierson

Date: April 4, 2008

Re: Another draft of HB 323

Might you please draft me another CS for HB 323 (25-GH2038\K) to include amendment K.2. The bill is back up in committee on Sunday after the floor session.

Thank you!!!!

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 323(JUD), Draft Version "K"

1 Page 1, line 2, following "age;":

2 Insert "relating to shipping, sending, transporting, or bringing alcohol to a local
3 option area and providing alcohol to others in the local option area, including penalties
4 for violations; relating to reports of alcohol violations by minors;"

5

6 Page 2, following line 19:

7 Insert new bill sections to read:

8 **** Sec. 3. AS 04.16.200(e) is amended to read:**

9 (e) A person who sends, transports, or brings alcoholic beverages into a
10 municipality or established village in violation of AS 04.11.499(a) is, upon conviction,

11 (1) except as provided in (3) of this subsection, guilty of a class A
12 misdemeanor if the quantity of alcoholic beverages is less than 10 and one-half liters
13 of distilled spirits, 24 liters of wine, or 12 gallons of malt beverages; [OR]

14 (2) guilty of a class C felony if the quantity of alcoholic beverages is
15 10 and one-half liters or more of distilled spirits, 24 liters or more of wine, or 12
16 gallons or more of malt beverages; or

17 (3) guilty of a class C felony if the quantity of alcoholic beverages
18 is less than 10 and one-half liters of distilled spirits, 24 liters of wine, or 12 gallons
19 of malt beverages and the person has been previously convicted under this
20 subsection or (b) of this section two or more times within 10 years of the date of
21 the present offense.

22 * Sec. 4. AS 04.16.200 is amended by adding new subsections to read:

23 (g) Upon conviction of a class A misdemeanor under (e)(1) of this section, the

1 court

2 (1) shall impose a minimum sentence of imprisonment of

3 (A) not less than 72 consecutive hours and a fine of not less
4 than \$1,500 if the person has not been previously convicted;

5 (B) not less than 20 days and a fine of not less than \$3,000 if
6 the person has been previously convicted once;

7 (C) not less than 60 days and a fine of not less than \$4,000 if
8 the person has been previously convicted twice and is not subject to
9 punishment under (h) of this section;

10 (D) not less than 120 days and a fine of not less than \$5,000 if
11 the person has been previously convicted three times and is not subject to
12 punishment under (h) of this section;

13 (E) not less than 240 days and a fine of not less than \$6,000 if
14 the person has been previously convicted four times and is not subject to
15 punishment under (h) of this section;

16 (F) not less than 360 days and a fine of not less than \$7,000 if
17 the person has been previously convicted more than four times and is not
18 subject to punishment under (h) of this section;

19 (2) may not

20 (A) suspend execution of sentence or grant probation except on
21 the condition that the person

22 (i) serve the minimum imprisonment under (1) of this
23 subsection; and

24 (ii) pay the minimum fine required under (1) of this
25 subsection; or

26 (B) suspend imposition of sentence.

27 (h) Upon conviction of a class C felony under (b) or (e)(2) or (3) of this
28 section, the court

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

31 (A) 120 days if the person has been previously convicted once;

1 (B) 240 days if the person has been previously convicted two
2 times;

3 (C) 360 days if the person has been previously convicted three
4 or more times;

5 (2) may not

6 (A) suspend execution of sentence or grant probation except on
7 the condition that the person

8 (i) serve the minimum imprisonment under (1) of this
9 subsection; and

10 (ii) pay the minimum fine required under (1) of this
11 subsection; or

12 (B) suspend imposition of sentence.

13 (i) In (g) of this section, "previously convicted" means having been convicted,
14 within the 10 years preceding the date of the present offense, of an offense under (b)
15 or (e) of this section or a law or ordinance of another jurisdiction having elements
16 similar to those offenses.

17 (j) In (h) of this section, "previously convicted" means having been convicted,
18 within the 10 years preceding the date of the present offense, of a felony offense under
19 (b) or (e) of this section or a law or ordinance of another jurisdiction having elements
20 similar to those felony offenses.

21 (k) The court shall consider the date of a previous conviction as occurring on
22 the date that sentence is imposed for the prior offense."

23

24 Renumber the following bill sections accordingly.

25

26 Page 10, following line 2:

27 Insert new bill sections to read:

28 **** Sec. 26.** AS 28.15.191(a) is amended to read:

29 (a) A court that convicts a person of an offense under this title or a regulation
30 adopted under this title, [OR] another law or regulation of this state, [OR] a municipal
31 ordinance that regulates the driving of vehicles, or a violation of AS 04.16.050 shall

1 forward a record of the conviction to the department within five working days. A
 2 conviction of a standing or parking offense need not be reported.

3 * **Sec. 27.** AS 28.35.028(a) is amended to read:

4 (a) Notwithstanding another provision of law, with the consent of the state and
 5 the defendant, the court may elect to proceed in a criminal case under **AS 04.16.200(b)**
 6 **or (e)**, AS 28.35.030, or 28.35.032, including the case of a defendant charged with
 7 violating the terms of probation, under the procedure provided in this section and
 8 order the defendant to complete a court-ordered treatment program. The state may not
 9 consent to a referral under this subsection unless the state has consulted with the
 10 victim and explained the process and consequences of the referral to the victim. A
 11 court may not elect to proceed under this section if the defendant has previously
 12 participated in a court-ordered treatment program under this section two or more
 13 times."
 14

15 Renumber the following bill sections accordingly.

16
 17 Page 11, line 25:

18 Delete "secs. 20 and 21"

19 Insert "secs. 22 and 23"

20
 21 Page 11, line 26:

22 Delete "sec. 22"

23 Insert "sec. 24"

24
 25 Page 12, line 1:

26 Delete "Sections 1, 2, 7, 10, 16 - 18, 23, and 28"

27 Insert "Sections 1- 4, 9, 12, 18 - 20, 25 - 27, and 32"

28
 29 Page 12, line 2, following " section.":

30 Insert "References to previous convictions in secs. 3 and 4 of this Act apply to
 31 convictions occurring before, on, or after the effective date of those sections."

1

2 Page 12, line 3:

3 Delete "Section 6"

4 Insert "Section 8"

5

6 Page 12, line 5:

7 Delete "Sections 11, 12, 27, and 29"

8 Insert "Sections 13, 14, 31, and 33"

9

10 Page 12, line 8:

11 Delete "Sections 13 - 15, 24, and 25"

12 Insert "Sections 15 - 17, 28, and 29"

13

14 Page 12, line 11:

15 Delete "Section 19"

16 Insert "Section 21"

17

18 Page 12, line 14:

19 Delete "Section 5"

20 Insert "Section 7"

21

22 Page 12, line 16:

23 Delete "Sections 20 - 22 and 30"

24 Insert "Sections 22 - 24 and 34"

25

26 Page 12, line 20:

27 Delete "Section 26"

28 Insert "Section 30"

29

30 Page 12, line 21:

31 Delete "Sections 26 and 32"

1 Insert "Sections 30 and 36"

2

3 Page 12, line 22:

4 Delete "sec. 33"

5 Insert "sec. 37"

25-GH2038\K
Luckhaupt
4/2/08

CS FOR HOUSE BILL NO. 323(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to furnishing or delivering alcoholic beverages to persons under 21
2 years of age; relating to certain persons who lend money on secondhand articles;
3 relating to arson and criminally negligent burning; relating to defenses for the detention
4 of persons suspected of committing concealment of merchandise or theft; relating to
5 controlled substances; relating to the determination of time of a conviction; relating to
6 issuance of search warrants; relating to persons found incompetent to stand trial
7 concerning criminal conduct; relating to probation for certain offenses; relating to
8 restitution for fish and game violations; relating to aggravating factors at sentencing;
9 relating to post-conviction relief proceedings; relating to criminal extradition authority
10 of the governor; removing the statutory bar to prosecution of certain crimes; amending
11 Rule 37(b), Alaska Rules of Criminal Procedure, relating to execution of warrants, and
12 Rule 35.1, Alaska Rules of Criminal Procedure; and providing for an effective date."

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

2 * **Section 1.** AS 04.16.051(a) is amended to read:

3 (a) A person may not furnish or deliver an alcoholic beverage to a person
4 under the age of 21 years. This subsection does not apply to a licensee or an agent
5 or employee of a licensee while working on licensed premises.

6 * **Sec. 2.** AS 04.16.052 is amended to read:

7 **Sec. 04.16.052. Furnishing of alcoholic beverages to persons under the age**
8 **of 21 by licensees.** A licensee or an agent or employee of the licensee may not with
9 criminal negligence

10 (1) allow another person to sell, barter, or give an alcoholic beverage
11 to a person under the age of 21 years within licensed premises;

12 (2) allow a person under the age of 21 years to enter and remain within
13 licensed premises except as provided in AS 04.16.049;

14 (3) allow a person under the age of 21 years to consume an alcoholic
15 beverage within licensed premises;

16 (4) allow a person under the age of 21 years to sell or serve alcoholic
17 beverages;

18 (5) while working on licensed premises, furnish or deliver alcoholic
19 beverages to a person under the age of 21 years.

20 * **Sec. 3.** AS 08.76.010 is amended by adding a new subsection to read:

21 (b) A person who lends money on secondhand articles under (a) of this section
22 and is located in a municipality that has a population of over 5,000 shall also maintain
23 an electronic record that provides the information required by (a)(1) and (4) of this
24 section for the secondhand articles on which the person lends money. The person shall
25 submit the electronic record as required by the municipal law enforcement agency.

26 * **Sec. 4.** AS 08.76.020 is amended to read:

27 **Sec. 08.76.020. Manner of recording entry.** The entries in the book and the
28 electronic record required by AS 08.76.010 shall appear in chronological order and,
29 when made in a book, in ink or indelible pencil. Blank lines may not be left between
30 entries. Obliterations, alterations, or erasures may not be made. Corrections shall be
31 made by drawing a line [IN INK] through the entry without destroying its legibility,

1 and, when made in a book, the line shall be drawn in ink. The book shall be open
2 to the inspection of a peace officer at reasonable times.

3 * Sec. 5. AS 11.46.230(a) is amended to read:

4 (a) In a civil or criminal action upon the complaint of a person who has been
5 detained in or in the immediate vicinity of a commercial establishment for the purpose
6 of investigation or questioning as to the ownership of merchandise, it is a defense that

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

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

13 * Sec. 6. AS 11.46.295 is amended to read:

14 **Sec. 11.46.295. Prior convictions.** For purposes of considering prior
15 convictions in prosecuting a crime of theft under AS 11.46.130(a)(6) or
16 11.46.140(a)(3), or in prosecuting the crime of concealment of merchandise under
17 AS 11.46.220(c), a conviction for an offense under another law or ordinance with
18 similar elements is a conviction of an offense having elements similar to those of an
19 offense defined as such under Alaska law at the time the offense was committed. The
20 court shall consider the date of a prior conviction as occurring on the date that
21 sentence is imposed for the prior offense.

22 * Sec. 7. AS 11.46.410(a) is amended to read:

23 (a) A person commits the crime of arson in the second degree if the person
24 knowingly [INTENTIONALLY] damages a building by starting a fire or causing an
25 explosion.

26 * Sec. 8. AS 11.46 is amended by adding a new section to read:

27 **Sec. 11.46.427. Criminally negligent burning in the first degree.** (a) A
28 person commits the crime of criminally negligent burning in the first degree if the
29 person

30 (1) violates AS 11.46.430; and

31 (2) within the preceding 10 years, has been convicted of violating