

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 19, 2001
1:15 p.m.

MEMBERS PRESENT

Representative Norman Rokeberg, Chair
Representative Scott Ogan, Vice Chair
Representative Jeannette James
Representative John Coghill
Representative Kevin Meyer
Representative Ethan Berkowitz
Representative Albert Kookesh

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 97

"An Act relating to court approval of the purchase of structured settlements."

- HEARD AND HELD; ASSIGNED TO SUBCOMMITTEE

HOUSE BILL NO. 102

"An Act relating to the theft of propelled vehicles."

- HEARD AND HELD

PREVIOUS ACTION

BILL: HB 97

SHORT TITLE: PURCHASE OF STRUCTURED SETTLEMENTS

SPONSOR(S): REPRESENTATIVE(S) FOSTER

Jrn-Date	Jrn-Page		Action
01/31/01	0211	(H)	READ THE FIRST TIME - REFERRALS
01/31/01	0211	(H)	JUD
01/31/01	0211	(H)	REFERRED TO JUDICIARY
02/19/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 102

SHORT TITLE:THEFT OF PROPELLED VEHICLES
SPONSOR(S): REPRESENTATIVE(S)KOTT

Jrn-Date	Jrn-Page		Action
02/02/01	0225	(H)	READ THE FIRST TIME - REFERRALS
02/02/01	0225	(H)	JUD
02/02/01	0225	(H)	REFERRED TO JUDICIARY
02/19/01		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE RICHARD FOSTER
Alaska State Legislature
Capitol Building, Room 410
Juneau, Alaska 99801
POSITION STATEMENT: Sponsor of HB 97.

LARRY LaBOLLE, Staff
to Representative Richard Foster
Alaska State Legislature
Capitol Building, Room 410
Juneau, Alaska 99801
POSITION STATEMENT: Assisted with presentation of HB 97 and
answered questions.

WILLIAM G. AZAR, Attorney at Law
800 East Dimond Boulevard, Suite 3-440
Anchorage, Alaska 99515
POSITION STATEMENT: Testified in support of HB 97.

RANDY DYER, Executive Vice President
National Structured Settlement Association
(Address not provided)
Washington, D.C.
POSITION STATEMENT: Testified in support of HB 97.

AL TAMAGNI
(Address not provided)
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 97.

SHELDON E. WINTERS, Attorney at Law
Lessmeier & Winters
Lobbyist for State Farm Insurance Company
431 North Franklin Street, Suite 400

Juneau, Alaska 99801

POSITION STATEMENT: Testified in support of HB 97 and recommended an amendment.

JOHN L. GEORGE, Lobbyist
for American Council of Life Insurance (ACLI) and
National Association of Independent Insurers (NAII)
3328 Fritz Cove Road
Juneau, Alaska 99801

POSITION STATEMENT: Testified in support of HB 97.

JERRY LUCKHAUPT, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency
Alaska State Legislature
Terry Miller Building, Room 329
Juneau, Alaska 99801-1182

POSITION STATEMENT: Provided legal opinions and answered questions on HB 97 and HB 102.

ROGER WORTMAN, Staff
to Representative Pete Kott
Alaska State Legislature
Capitol Building, Room 204
Juneau, Alaska 99801

POSITION STATEMENT: Presented HB 102 on behalf of Representative Kott and answered questions.

ROBERT BUTTCANE, Legislative & Administrative Liaison
Division of Juvenile Justice
Department of Health & and Social Services
PO Box 110635
Juneau, Alaska 99811-0635

POSITION STATEMENT: Provided department's position on HB 102 and answered questions.

STEVE DUNNAGAN, Lieutenant
Division of Alaska State Troopers
Department of Public Safety
5700 East Tudor Road
Anchorage, Alaska 99507-1225

POSITION STATEMENT: Provided department's position on HB 102, answered questions, and recommended an amendment.

HEATHER M. NOBREGA, Staff

to Representative Norman Rokeberg
House Judiciary Standing Committee
Alaska State Legislature
Capitol Building, Room 118
Juneau, Alaska 99801
POSITION STATEMENT: Provided comments on HB 102.

ACTION NARRATIVE

TAPE 01-19, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 1:15 p.m. Representatives Rokeberg, Ogan, Coghill, Meyer, Berkowitz, and Kookesh were present at the call to order. Representative James arrived as the meeting was in progress.

HB 97 - PURCHASE OF STRUCTURED SETTLEMENTS

Number 0075

CHAIR ROKEBERG announced that the first order of business would be HOUSE BILL NO. 97, "An Act relating to court approval of the purchase of structured settlements."

REPRESENTATIVE RICHARD FOSTER, Alaska State Legislature, sponsor, said that his intention was to address a concern brought forward by some of the trial lawyers in the state. Apparently, firms have been contacting recipients of structured settlements and offering to buy those settlements for a small portion of their value. When a person living in a village is contacted, that person might not fully understand the implications of the purchase or realize what he or she is giving up in terms of long-term benefits versus a quick cash payoff. Passage of HB 97 would allow the reassignment of a structured settlement only after approval by a superior court. Additionally, HB 97 outlines the considerations that must be made before such a transfer is approved.

Number 0226

LARRY LaBOLLE, Staff to Representative Richard Foster, Alaska State Legislature, defined a structured settlement as a circumstance in which a court required that a given amount of money be paid out over a period of time. Often it is for

protection of a minor or when a person's competence to handle a large payment is in question. For example, if a minor child's parents were killed in a car accident, the insurance settlement could be paid to the child over a period of time in the form of a monthly or annual stipend. Other examples include payments for injuries or losses. Typically, the courts have some compelling reason for setting up this type of settlement instead of allowing for a lump-sum payment.

Number 0481

WILLIAM G. AZAR, Attorney at Law, testified via teleconference in favor of HB 97. He said he had been practicing personal injury law since May, 1973, and had seen an abuse primarily of Native people by companies that offered a cash settlement for a structured settlement. The person(s) involved had originally agreed to a structured settlement but then another company offered a lump sum in place of the monthly payments. He recalled four cases in which the new lump-sum payment agreement was not in the best interest of the payee. In those cases the payee was unable to properly manage finances and was now in dire financial straits. He believed that any prospective assignment should go before a court for scrutiny to ensure it is in the best interest of the payee.

MR. AZAR pointed out that the federal government has allowed some structured settlements to be tax-free, and in instances where the settlement is converted into a lump-sum payment, this benefit, as well as others, is lost. He believed that statistics prove most people cannot handle a lump-sum payment. He expressed the opinion that HB 97 was absolutely necessary for Alaska and fit the population with regard to the circumstances he has seen.

Number 0819

REPRESENTATIVE KOOKESH questioned how a structured settlement that belongs to a private individual could be brought under the jurisdiction of the state without a compelling state interest.

MR. AZAR said he had not researched that question and felt it would be better directed toward insurance companies that had experience creating structured settlements. To further his point that abuse is occurring, he described an incident in which an individual in his area, who had been caught making usurious loans, had asked [Mr. Azar] to reveal his list of structured

settlement clients. He said structured settlements were designed to be in the payee's best interest; any further agreement the payee enters into should also be in the payee's best interest. Mr. Azar presented anecdotal examples that affirmed his belief in the benefits of HB 97.

Number 1078

REPRESENTATIVE BERKOWITZ asked if HB 97 had been modeled on legislation enacted in other states, and if so, which states.

CHAIR ROKEBERG suggested deferring that question to Mr. Dyer, who would testify later.

MR. AZAR, at the request of Representative Berkowitz, stated that Gene Johnson (ph), of Johnson Investments, was someone who bought structured settlements at a discount. Mr. Azar did not have any other specific names but said that there were numerous companies that do this, including some that advertise on national television. He provided anecdotal examples of some of his own clients that had been approached by this type of company. He believed that the practice of buying structured settlements at a discount should be stopped because so many of his clients could not handle a lump-sum payment.

Number 1269

REPRESENTATIVE OGAN asked if Mr. Azar could advise his clients to set up their structured settlements in irrevocable trusts. Representative Ogan said he had the impression that the legislature was being asked to outlaw stupidity. He recognized that some people who receive large amounts of money don't spend it wisely, but questioned where the state should draw the line in terms of interfering with a person's financial judgment.

MR. AZAR responded that up until about 30 years ago, structured settlements did not exist; instead, clients were given a lump sum, which often disappeared quickly. He felt it was simplistic to say HB 97 would be interfering in people's lives. He did not see how HB 97 would harm the public; instead, it would deter certain types of companies from taking advantage of the public. He noted that while irrevocable trust-type structures could be set up for minors, it was very hard to have a structure remain irrevocable for an adult who was not incompetent. He also explained that some structured settlements are set up for individuals and their children, and when the adult accepts the

lump-sum payment, the children often lose out on the benefits of the structure. He believed that HB 97 was a much simpler way to ensure that the recipients of structured settlements were not taken advantage of.

Number 1556

REPRESENTATIVE KOOKESH said he believed the intentions behind HB 97 were good, but he still had legal questions that he wanted answered before HB 97 moved from committee. He went back to the point that a structured settlement was a property right of somebody. If the structured settlement did not include court oversight as part of it, he did not see how a state court would get jurisdiction.

CHAIR ROKEBERG asked Mr. Azar if attempting to set up [irrevocable] trusts for all structured settlements would be overdoing it.

MR. AZAR agreed with that point. He said he could only do it in cases where he foresaw a problem, which was not possible in all cases. He gave an example of an instance in which he had been told that the structured settlement was considered irrevocable, but the settlement was invaded anyway. He said that to try to set up irrevocable trusts in every case would be unreasonable but HB 97 would cover all situations. He expressed the belief that the state should intervene and pass HB 97.

MR. AZAR said he was unable to provide specific examples of how much a discount was typically offered during these types of transactions, but he believed it was much lower than the actual worth. He also said companies that created and funded structured settlements were opposed to having the settlements cashed in.

Number 1900

RANDY DYER, Executive Vice President, National Structured Settlement Association, testified via teleconference. He said that the issue brought forth in HB 97 was national in scope. Thus far, similar legislation had been enacted in 18 states, and was being considered in another dozen states. He proceeded with the following hypothetical case:

Let's assume, Mr. Chairman, that you had been injured,
and that as a result of your injuries, you were

receiving monthly payments to compensate you for lost wages. Just to use round numbers, let's assume you were receiving \$2,000 each month, tax-free.

Now, I'm the factoring company. ... I come to you, and my goal is to get your payments away from you and give you the least possible for those payments. Now, here's how I do it. First of all, I offer to buy from you \$500 of your \$2,000. Now, when you did your original structured settlement, you agreed, as is the case in all structured settlements, that you would not sell your payments. That is a requirement of all structured settlements, required by Congress when Congress created structured settlements back in 1983 and provided the tax benefits. So, you have agreed upfront that you would not sell your payments.

Number 1990

... I come to you and say here's how we're going to do it. Since the annuity company that's making the payments to you knows that you've made this agreement, we're going to fool them. You're going to send them a change-of-address form, and your change-of-address form is going to say, "Please send my payment to (this certain address,)" and it is an address that I control. So your check will come to me and, as part of the contract that you and I have signed, I'll take your \$2,000 check, I'll cash it, I'll take my \$500, and I'll send you your \$1,500. Now, for that, I will give you the best deal you'll ever get - because I know, if you're talking to me, you're probably talking to other factoring companies as well. And if I can determine that, I can get some idea of how much I can get from you.

But let's say I take the value of your payments and the present value of your future stream of payments, and I give you 75 percent of its worth. So I've given you, in terms of factoring deals, a pretty good deal - a 25 percent discount. Now, you're used to getting your check on the first of the month; now I'm getting it on the first of the month. I cash it and I send you the money, but maybe I don't send it to you 'til the fifth, maybe the tenth, maybe the fifteenth. With each delay, I'm putting economic pressure on you. You

have bills to pay, and I'm not sending you the money that you need to pay those bills.

Number 2040

Eventually, when the economic pressure gets high enough, I say to you, "Listen, let me buy another \$500 of your payments." Now, as part of the contract you've signed with me, I've taken the right of first refusal against you selling your payments to anyone else. Further, I control your check, and no other factoring company is going to do business with you as long as I control your check. So you have to do business with me.

Now, I buy the second \$500 a month in payments, only this time, I give you half what it's worth. I can give you whatever I want because you've got to sell to me. And with each turn of the wheel, I take more and more of your payments at a lower and lower rate.

Number 2090

MR. DYER said he had seen an instance of five discounts - five deals done, where the last discount was 87 percent; the person got 13 percent of the present value of the future stream of payments. He asserted that these situations were occurring all over the country. He referred to the January 1998 issue of U.S. News and World Report, and gave details about five cases listed in an article on this subject. He added that even though it was against the laws of all 50 states to buy a person's workers' compensation settlement, factoring companies do it anyway.

Number 2177

MR. DYER addressed the concern about property issues. He explained that in 1983 Congress established structured settlements by offering a tax incentive for people to accept their money over time. Congress saw an increase in large settlements during the 1960s and 1970s, and realized that though these settlements were intended to last people the rest of their lives, people were dissipating the money. In an attempt to encourage people to take structured settlements, Congress began treating every payment received as a capital payment, which would be tax-free. Further, Congress set up a series of tax treatments for casualty companies, annuity companies, and all

parties involved in the structured settlement, so that everyone received neutral tax treatment. However, to accomplish this, the liability for the payment had to be assigned to a third party, which owns the annuity. Thus the injured individual does not own the annuity; instead, that person own the right to receive each payment, and that is all.

MR. DYER further explained that if it were simply a case of the individual doing something foolish with the money after that person received it, then there would be no reason to interfere. But instead, the factoring companies are attempting to reach through the individual to the source of the payments. He said this was equivalent to a bank garnishing a person's wages to satisfy a standard mortgage loan.

Number 2289

MR. DYER referred back to his prior example and said:

At each stage along the way, Mr. Chairman, you have, always, an option. And the option is (remember that this whole thing hinges on you diverting the payments to me, the factoring company), at any point you could go back to the annuity company and say, "I want you to send the payments back to me." Now, you may fully intend to receive your \$2,000 payment and then - as we all do when we get our money, we sit down and we write a check to whomever we owe money to - ... you may fully intend to send me my \$500. But in my contract, I've covered myself for that eventuality, and should you divert the check back to you, I've got you. ... Now, each of the companies does this a little differently, but one of them - the largest of these - uses a confession of judgment. ... You've agreed in the contract that if anything goes wrong with this contract, you've confessed upfront that I can take judgment against you in my home court.

Number 2324

Now, let's assume my home court is Philadelphia. So you've diverted the payments back to yourself; I go into court in Philadelphia and take a judgment against you. Now, you're not going to fly from Alaska to Philadelphia to defend yourself, so you go unrepresented. I bring in the confession of judgment,

I represent that you've defaulted on a contract, and I take a judgment against you for the total undiscounted amount of the payments that I bought from you - each \$500 payment over 10 years Then I surface; I go to the annuity company, I say, "I have a judgment against this guy, and I want his whole \$2,000, every month, until my judgment is satisfied."

So, I've accelerated the amount of time it takes me to get my money back. Now, some of the companies do it a little differently. Some of them simply take the right to represent you in court, so they say, "if there's any dispute, I'll pay your lawyer." Well, then, all I do is go into my local court, bring a lawyer with me, and say he represents the payee ... and then he simply agrees with everything I say. The result is the same.

Number 2364

Now, confession of judgment is illegal in Alaska, it's illegal in all 50 states, it's illegal in Pennsylvania in consumer transactions, but not in commercial transactions. But as part of my contract, you and I have agreed that what we're doing is not a consumer transaction.

MR. DYER added that the factoring companies have become very slippery in how they do business. The factoring companies are increasingly using loans and charging incredible interest rates against people. He said these types of transactions are a problem of national scope.

Number 2397

REPRESENTATIVE BERKOWITZ noted that, touching as they are, the anecdotal stories were rejected by the [legislative] majority during the tort reform debate. He wanted to know how pervasive the problem was in Alaska, how many structured settlement cases there were in Alaska, and what percentage of those were considered by Mr. Dyer to be an abuse of the structured settlement.

MR. DYER clarified that the factoring transactions, not the structured settlements, were the abuse. He added that because factoring companies and transactions were unregulated, there was

not a way to determine how many transactions occurred. He said he would research how many structured settlements there were in Alaska and provide that information to the committee.

Number 2442

REPRESENTATIVE BERKOWITZ said that though he appreciated the intentions of HB 97, he believed it contained structural problems. He returned to the point raised by Representative Kookesh, that of the superior court's ability to participate in the situation. Representative Berkowitz used the analogy of a person who wanted to buy a car, but first wanted the court to ensure that it was a fair deal. He stressed that the courts can only address matters before them. He suggested that the committee take the intention of HB 97 and try to accommodate it outside of the committee process, perhaps through a subcommittee.

MR. DYER responded that the original legislation in Illinois which dated back to 1997, required court oversight as well. And though hundreds of cases have passed through the Illinois courts, those cases were dealt with quite easily. He added that Kentucky, Virginia, and Connecticut also had a great deal of experience [with these types of cases], and their courts had not had any problems dealing with [these types of cases]. He believed that the reason for a lack of problems was simple [Tape changed sides mid-sentence.]

TAPE 01-19, SIDE B
Number 2515

MR. DYER went on to say that the holder of a structured settlement could explain that he or she had a good reason for engaging in the transfer. The original attorney could look at the contract and advise the client against signing a contract that contained a confession of judgment or any other consumer tricks. The attorney could negotiate a fair contract for the client. Also, if the factoring company knew it had to bring the contract before a judge, the company would offer a fair contract.

REPRESENTATIVE BERKOWITZ wanted to know how the court retained jurisdiction. Once a settlement was done, the court's jurisdiction ended. He wanted to know if HB 97 was based on Illinois legislation, and if so, whether it is now Illinois statute.

MR. DYER responded that [the language] was not Illinois statute but an expansion of Illinois statute; [the language] came from the same model that was used for HB 97.

Number 2447

REPRESENTATIVE JAMES said it appeared to her that if Alaska had a law on the books whereby a structured settlement transfer was required to be approved in court, then a person wronged by an unapproved transfer could have a case in court to recover [the loss]. She wondered what required anybody to go through the court process if he or she did not want to; she recognized that just because a law is on the books, does not mean a person would abide by it.

MR. DYER answered that a factoring company would not conclude a transaction without going before a court if it were state law, because should the payee feel aggrieved later, the company would lose in court. He added that there are legitimate factoring companies that provide fair transactions, and they have spoken in favor of [this type of legislation]. In conclusion, he said that he would provide the committee with the most recent model of the legislation that HB 97 was based on.

Number 2312

AL TAMAGNI testified via teleconference. He said that he was a structured settlement broker and had settled approximately 350 structured settlement cases since 1984. He supported HB 97 as well as the model structured settlement Act created by the National Structured Settlement Trade Association. He viewed HB 97 as consumer protection. He said he had seen several cases similar to the examples given by Mr. Azar, and in a couple of those cases, Mr. Tamagni had used his professional expertise to break down what the numbers truly were. In those instances, once the clients saw how the cost factors related to the purchase price, they decided not to pursue the transaction. He made the point that it takes expertise to provide people with the information needed for an informed decision. He said he had represented clients on both sides of the issue and he thought that HB 97 was an excellent bill. He noted that the tort reform Act of 1997 did not address the structured settlement issue at the level of detail and complexity that HB 97 did. He said that the legislature should move forward on HB 97 because it was a consumer protection bill, not just for people in the Bush but

for people all over Alaska. Mr. Tamagni clarified for Chair Rokeberg that, as a structured settlement broker, he was an insurance broker.

Number 2205

REPRESENTATIVE BERKOWITZ agreed that HB 97 would be good consumer protection if it were done well. He expressed his concern that although he had heard mention of Illinois legislation and the National Structured Settlement Act, he still did not know what this particular piece of legislation was based on. He wanted to know where [HB 97] came from, who wrote it, and what had been the experience of other jurisdictions that had used it. He believed [HB 97] still contained unresolved questions.

CHAIR ROKEBERG asked that a copy of the national model Act be sent to the committee along with information about where it came from and who drafted it.

MR. TAMAGNI said he would fax a copy of the model Act to the committee.

Number 2130

MR. DYER added that the model Act was co-authored by the National Structured Settlement Association and the National Association of Settlement Purchasers, which is an association of factoring companies who are interested in creating a sound, protected consumer regime.

Number 2067

MR. TAMAGNI, in response to questions from Representative Meyer, said that he was aware of approximately ten cases in which a payee of a structured settlement had transferred his settlement to an unscrupulous company. On another point, he said as far as he knew, there had not been a constitutional challenge to this type of legislation at either the state or federal level. He also said the abuse that occurred in the structured settlement arena paralleled the abuse that had occurred with the Permanent Fund Dividend. He noted that with the Permanent Fund Dividend, the abuse became so severe that it was stopped. He said he thought that society in general had an inherent right to ensure fair and open disclosure to people [receiving structured

settlements] from an unbiased third party in order that a rational decision regarding a transfer could be made.

REPRESENTATIVE COGHILL asked how many consumer protection laws were decided by a court before a law was broken.

MR. TAMAGNI responded that, to his understanding, there had to be a test case before constitutionality could be determined.

Number 1887

SHELDON E. WINTERS, Attorney at Law, Lessmeier & Winters, Lobbyist for State Farm Insurance Company ("State Farm"), said that generally State Farm supported HB 97 but had also asked him to present an amendment for consideration by the committee. He referred to the notice provision, currently written as 20 days, and asked that it be changed to 30 days. This request was for logistical reasons: typically, the notice had to get to the right person at the annuity issuer, files had to be pulled from storage, the decision whether to give a response had to be made, and if a response was required, then an attorney had to be retained to prepare and review the file.

REPRESENTATIVE BERKOWITZ asked if Mr. Winters had any objection to striking language from page 5, line 6, regarding the structured settlement obligor under the definition of interested parties.

MR. WINTER responded that his client would prefer to remain in the loop as an interested party.

Number 1709

JOHN L. GEORGE, Lobbyist for American Council of Life Insurance (ACLI) and National Association of Independent Insurers (NAII), said that both his clients supported HB 97. He added that HB 97 addressed a consumer protection issue. He mentioned that the selling of limited-entry permits was another area that needed oversight. He acknowledged that there were legitimate reasons why a person would want to change a stream of payments into a cash settlement. Nevertheless, he thought that it was appropriate to have a conversion supervised so that a lifetime asset would not be squandered for a short-term benefit.

REPRESENTATIVE JAMES, returning to a previous point, asked if there were any situations in which the original obligor of the

structured settlement made a larger cash payment at a discount if the funds were needed by the payee. If so, she thought that would be another reason to include the obligor in the notice provision.

MR. DYER answered that the reason the structured settlement obligor was included as an interested party was because, as the annuity company making the payments, the obligor ran a severe risk of being held liable for unscrupulous transactions. Including the structured settlement obligor in the notice provision language would allow the obligor the opportunity to contribute necessary information.

Number 1503

REPRESENTATIVE BERKOWITZ expressed the concern that listing both the annuity issuer and the structured settlement obligor under the notice provision was redundant.

MR. DYER clarified that one was an assignment company and the other was the issuer of the annuity.

MR. GEORGE concluded by stressing that factoring companies, not insurance companies, were the ones engaged in unscrupulous transactions.

Number 1424

JERRY LUCKHAUPT, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, Alaska State Legislature, explained that HB 97 was an amalgam of the Minnesota statute and the California statute. He had attempted to remove what he perceived to be problematic portions of each state's statute. California's version had the required notification process initiated by the factoring company that was buying the settlement. Minnesota's version followed the model legislation referred to earlier but did not conform to Alaska's statutory language style. While melding the two, he had also removed duplicative aspects. He noted that Illinois had taken a limited approach by using one sentence which required that assignments of structured settlements received court approval. This appeared to him to be just a simple approval process whereby all parties involved were informed of the details of the transfer.

Number 1311

MR. LUCKHAUPT said that the only potential constitutional problem he foresaw was if the courts had to find that the transfer was in the best interest of the payee and the payee's dependents. If a competent payee made the choice to give up money for 30 cents on the dollar, then [the courts] might not be able to prevent it. He added that as far as he could see [from his research of other states], when the courts did become involved, they did not pursue the concept of "best interest" very far; instead, the courts focused on making sure the payee had received independent financial advice and understood the ramifications of the transfer.

MR. LUCKHAUPT went on to say that he had not yet seen the new model legislation that had been spoken of. On another point, he said that courts retained jurisdiction over their judgments and orders. If there was a problem with the enforcement of a court order or judgment, the plaintiff could go back to the original court because it still retained jurisdiction. He noted, however, that HB 97 included cases that could potentially have been filed in Alaska, and he felt that it was reasonable to say that the court could have jurisdiction over those cases even though they had not yet gone to court. The legislature could say that if the actions giving rise to the structured settlement could have been filed as a civil action in Alaska, then the courts did have jurisdiction to approve any agreement. In addition, if the payee is currently domiciled in Alaska, then the courts have personal jurisdiction of the payee. He said he could see a potential for disputes to arise between states if the structured settlement was entered into in another state but the payee resided in Alaska. He added that he had not, however, actually seen that sort of dispute while researching HB 97.

Number 0947

REPRESENTATIVE OGAN wanted to know what circumstances caused any particular settlement to become a structured settlement.

MR. LUCKHAUPT responded that it was primarily a decision negotiated between the insurance company and the plaintiff. Often the goal was to have the money retain some economic value. He said that usually a structured settlement only occurred when very large sums of money were involved.

REPRESENTATIVE KOOKESH raised the point that if a payee was competent, then the state could be told that it did not have any business interfering in the transaction.

MR. LUCKHAUPT agreed; when the payee is competent and there are not any dependents, the state could not interfere. He said the recourse for the state was to require that the payee become informed of the consequences of the transaction.

Number 0607

CHAIR ROKEBERG announced that HB 97 would be held over and assigned to a subcommittee. He expected to have HB 97 back before the committee in two weeks or sooner. He assigned Representatives Meyer, Berkowitz, and Coghill to the subcommittee. [HB 97 was held over.]

HB 102 - THEFT OF PROPELLED VEHICLES

Number 0522

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 102, "An Act relating to the theft of propelled vehicles."

Number 0488

ROGER WORTMAN, Staff to Representative Pete Kott, Alaska State Legislature, presented HB 102 on behalf of Representative Kott, Sponsor. He explained that HB 102 focused on the crime of vehicle theft, with equal penalties associated with the taking of a propelled vehicle. All-terrain vehicles (ATVs) and snow machines were used in many parts of the state of Alaska as the sole means of preferred transportation for some Alaskans, and, therefore, were more than merely recreational vehicles for those owners. Equal protection under the law demanded that the theft of such vehicles be accorded the same treatment as provided for the principal transportation vehicles [of] other Alaskans. He went on to say that HB 102 provided a new element in the commission [of the crime] of taking the propelled vehicle of another when the owner was deprived of the use of that vehicle for a specific period of time and had incurred expenses as a result of the loss of the vehicle. It amended the definition for "all-terrain vehicles" as well as the definition for "watercraft".

Number 0338

MR. WORTMAN specified for Chair Rokeberg that HB 102 was introduced because of a concern brought forth regarding the inequities between the [levels of crimes of] theft of an ATV, a snow machine, a water ski, and a personal water craft. A personal water craft is currently defined under "watercraft", and the theft of a watercraft is a class C felony. The theft of an ATV (if damage to it is under \$500 and it is not a police/emergency vehicle) is a class A misdemeanor. He felt HB 102 would provide equal protection under the law, regardless of the season, for people who relied on these types of vehicles as their sole means of transportation.

REPRESENTATIVE OGAN pointed out that some personal water craft, referred to in Section 3, were very expensive and he wondered why they were exempted.

Number 0188

ROBERT BUTTCANE, Legislative & Administrative Liaison, Division of Juvenile Justice, Department of Health & and Social Services, said that he came in support of HB 102. He said that HB 102 accomplishes two significant objectives of interest to the Division of Juvenile Justice, in particular. One, it gives deference to victims by addressing the disparity in the current vehicle theft statute. Some Alaskans depend on the use of their snow machines and ATVs in much the same way that urban Alaskans might depend on their truck or car as a primary means of transportation. Under the current statutes, theft of an ATV or snow machine constitutes a class A misdemeanor, while theft of a vehicle constitutes a class C felony. Yet the impact on victims in some cases is really quite the same. In HB 102, the threshold by which severity of impact could be determined is the provision regarding a seven-day loss of a vehicle. The theft of an ATV would not automatically be classified as a felony; [the theft] only did so after a certain period of impact and inconvenience. In a restorative justice system that strives to make victims whole, HB 102 gives deference to victims and recognizes the severity of that [criminal] behavior. Second, by classifying that [criminal] behavior as a felony, it assists the Division of Juvenile Justice in holding young offenders accountable for offenses that are viewed as serious with regard to impact on victims.

TAPE 01-20, SIDE A

Number 0001

MR. BUTTCANE, in response to Representative Ogan, explained that the division did not anticipate any increased cost for incarceration. [The division] already received these cases as misdemeanors; the change proposed by HB 102 would reclassify some of the existing referrals as felonies, some of which would be petitioned into superior court at a slightly higher rate. He again offered the reasons he had listed earlier as significant motivation to change current statute. He added that although more young offenders might not be detained, HB 102 would give the division the ability to impose "additional intrusive responses" for felony offenses, such as additional hours of community work service, additional dollars of restitution, and additional periods of controlled supervision.

Number 0270

STEVE DUNNAGAN, Lieutenant, Division of Alaska State Troopers, Department of Public Safety, testified via teleconference in support of HB 102. He said equalized protection for vehicles of people who lived in rural Alaska was viewed as a good thing by the department. He added that the department did not anticipate any fiscal impact because current enforcement efforts would absorb the changes wrought by HB 102. He expressed, however, a concern about the language regarding personal water craft being excluded from the category of watercraft. He pointed out that statutory definitions of these items were infrequently placed, and [the department] did not want any terminology, or lack of definition, to carry from one statute to another. He pointed out that driving while intoxicated specifically covered operating a motor vehicle, aircraft, or watercraft while intoxicated. He warned that the exception in [HB 102] might allow a person, arrested for intoxication while operating a personal water craft, a loophole if he or she claimed it was not a watercraft by definition.

Number 0493

CHAIR ROKEBERG asked Mr. Dunagan if he believed [the theft of] a jet ski should be considered in the same realm of offense as [the theft of] an ATV or snow machine.

MR. DUNAGAN replied that he did not. Further, he believed the sponsor's intent was that a personal water craft would not necessarily be considered a primary source of transportation for

somebody living in rural Alaska. He said he thought [a jet ski] could be excluded from that principal type of vehicle or transportation. He suggested adding an amendment which specified that the definition regarding the personal water craft exception only applied to AS 11.46 and did not affect any other statute.

REPRESENTATIVE BERKOWITZ observed that all-terrain vehicle was defined in Section 2 but not mentioned at all in the text of Section 1.

Number 0618

HEATHER M. NOBREGA, Staff to Representative Norman Rokeberg, House Judiciary Standing Committee, Alaska State Legislature, clarified that [AS 11.81.900] already included ATV under the definition of a propelled vehicle. She agreed with Representative Berkowitz that perhaps the Revisor [of Statutes] should be notified so that the definition [in HB 102] could be moved to the definitional section of [AS 11.81].

Number 0680

JERRY LUCKHAUPT, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, Alaska State Legislature, explained that the intent of Section 2 was to further define an ATV for the purposes of HB 102 only, so that other types of propelled vehicles, such as "hummers" and 4-wheel-drive vehicles would not be included. He added that because the only place where that particular definition of all-terrain vehicle applied was in HB 102, the definition needed to be kept as Section 2 of HB 102. Everywhere else in Title 11, that specific definition of all-terrain vehicle was not relevant to the definition of propelled vehicle. The goal was to prevent the theft of such a vehicle from automatically becoming a felony, unless any of the provisions of Section 1, subsection (a), paragraph (2), applied.

Number 0847

CHAIR ROKEBERG noted that the concerns about the definition of "personal water craft" being separated from the term "watercraft" warranted another look at HB 102. He asked Mr. Wortman, Mr. Luckhaupt, and Ms. Nobrega to work on this issue and bring [a proposed CS] back to the committee.

Number 0927

MR. LUCKHAUPT commented that the language in HB 102 specified that the definition of watercraft only applied to that section; therefore, it did not apply to the definition in Title 28, which has its own definition under "operate a watercraft" [AS 28.35.030].

[HB 102 was held over.]

ADJOURNMENT

Number 1024

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:05 p.m.