ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
April 23, 2001
1:15 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Scott Ogan, Vice Chair

COMMITTEE CALENDAR

SENATE BILL NO. 99
"An Act relating to the DNA identification registration system."

- MOVED SB 99 OUT OF COMMITTEE

CS FOR SENATE BILL NO. 172(FIN)
"An Act relating to an annual report by the court system to the public and the legislature."

- MOVED HCS CSSB 172(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 145
"An Act making a civil remedy available to the state or a municipality against persons who make false claims for, or certain misrepresentations regarding, state or municipal money or other property; and providing for an effective date."

- MOVED CSHB 145(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 228
"An Act relating to the offense of selling or giving tobacco to a minor, to the accounting of fees from business license endorsements for tobacco products, to the disclosure of certain confidential cigarette and tobacco product information, to notification regarding a cigarette manufacturer's noncompliance with the tobacco product Master Settlement Agreement, to business license endorsements for sale of tobacco products, to

citations and penalties for illegal sales of tobacco products; and providing for an effective date."

- MOVED CSHB 228(JUD) OUT OF COMMITTEE

PREVIOUS ACTION

BILL: SB 99
SHORT TITLE:DNA REGISTRATION OF BURGLARS
SPONSOR(S): SENATOR(S) HALFORD

Jrn-Date	Jrn-Page		Action
02/20/01	0431	(S)	READ THE FIRST TIME - REFERRALS
02/20/01	0431	(S)	JUD, FIN
02/28/01		(S)	JUD AT 1:30 PM BELTZ 211
02/28/01		(S)	Moved Out of Committee
02/28/01		(S)	MINUTE(JUD)
03/01/01	0555	(S)	JUD RPT 2DP 2NR
03/01/01	0555	(S)	DP: TAYLOR, DONLEY;
03/01/01	0555	(S)	NR: THERRIAULT, ELLIS
03/01/01	0555	(S)	FN1: INDETERMINATE(ADM)
03/01/01	0555	(S)	FN2: ZERO(DPS)
03/14/01	0655	(S)	FIN RPT 5DP 1DNP 2NR
03/14/01	0655	(S)	DP: DONLEY, KELLY, AUSTERMAN, WILKEN,
03/14/01	0655	(S)	LEMAN; DNP: HOFFMAN; NR: OLSON, WARD
03/14/01	0655	(S)	FN2: ZERO(DPS)
03/14/01	0655	(S)	FN3: INDETERMINATE(ADM)
03/14/01		(S)	FIN AT 9:00 AM SENATE FINANCE 532
03/19/01		(S)	RLS AT 10:45 AM FAHRENKAMP 203
03/19/01		(S)	MINUTE(RLS)
03/20/01		(S)	RLS AT 10:45 AM FAHRENKAMP 203
03/20/01		(S)	MINUTE(RLS)
04/06/01		(H)	MINUTE(JUD)
04/09/01	1012	(S)	RULES TO CALENDAR 2OR 4/9/01
04/09/01	1016	(S)	READ THE SECOND TIME
04/09/01	1016	(S)	ADVANCED TO THIRD READING UNAN CONSENT
04/09/01	1016	(S)	READ THE THIRD TIME SB 99
04/09/01	1016	(S)	COSPONSOR(S): TAYLOR, DONLEY, LEMAN,
04/09/01	1016	(S)	COWDERY

04/09/01	1016	(S)	PASSED Y14 N6
04/09/01	1016	(S)	DAVIS NOTICE OF RECONSIDERATION
04/09/01		(S)	RLS AT 10:45 AM FAHRENKAMP 203
04/10/01	1052	(S)	RECONSIDERATION NOT TAKEN UP
04/11/01	1071	(S)	RESCIND PREVIOUS ACTION UNAN CONSENT
04/11/01	1071	(S)	BILL BEFORE SENATE IN FINAL PASSAGE
04/11/01	1071	(S)	PASSED Y14 N4 A1 E1
04/11/01	1081	(S)	TRANSMITTED TO (H)
04/11/01	1081	(S)	VERSION: SB 99
04/12/01	0978	(H)	READ THE FIRST TIME - REFERRALS
04/12/01	0978	(H)	JUD, FIN
04/23/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: SB 172
SHORT TITLE:COURT SYSTEM ANNUAL REPORT
SPONSOR(S): FINANCE

Jrn-Date	Jrn-Page		Action
03/30/01	0880	(S)	READ THE FIRST TIME - REFERRALS
03/30/01	0880	(S)	FIN
04/06/01	0975	(S)	FIN RPT CS FORTHCOMING 6DP 3NR
04/06/01	0975	(S)	DP: DONLEY, KELLY, GREEN, AUSTERMAN,
04/06/01	0975	(S)	LEMAN, WARD; NR: HOFFMAN, OLSON, WILKEN
04/06/01	0975	(S)	FN1: ZERO(CRT)
04/06/01		(S)	FIN AT 9:00 AM SENATE FINANCE 532
04/06/01		(S)	Moved Out of Committee MINUTE(FIN)
04/09/01	1012	(S)	FIN CS RECEIVED SAME TITLE
04/11/01	1068	(S)	RULES TO CALENDAR 4/11/01
04/11/01	1072	(S)	READ THE SECOND TIME
04/11/01	1072	(S)	FIN CS ADOPTED UNAN CONSENT
04/11/01	1072	(S)	ADVANCED TO THIRD READING UNAN CONSENT
04/11/01	1072	(S)	READ THE THIRD TIME CSSB 172(FIN)
04/11/01	1072	(S)	PASSED Y18 N- E1 A1
04/11/01	1081	(S)	TRANSMITTED TO (H)

04/11/01	1081	(S)	VERSION: CSSB 172(FIN)
04/11/01		(S)	RLS AT 10:30 AM FAHRENKAMP 203
04/11/01		(S)	MINUTE(RLS)
04/12/01	0978	(H)	READ THE FIRST TIME - REFERRALS
04/12/01	0978	(H)	JUD, FIN
04/23/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 145
SHORT TITLE:FALSE CLAIMS AGAINST STATE OR MUNICIPALIT
SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
02/23/01	0416	(H)	READ THE FIRST TIME - REFERRALS
02/23/01	0416	(H)	CRA, JUD
02/23/01	0416	(H)	FN1: ZERO(LAW)
02/23/01	0416	(H)	GOVERNOR'S TRANSMITTAL LETTER
03/15/01		(H)	CRA AT 8:00 AM CAPITOL 124
03/15/01		(H)	Scheduled But Not Heard
03/20/01	0661	(H)	CRA RPT 1DP 5NR
03/20/01	0661	(H)	DP: KERTTULA; NR: GUESS, SCALZI,
03/20/01	0661	(H)	MURKOWSKI, MEYER, MORGAN
03/20/01	0661	(H)	FN1: ZERO(LAW)
03/20/01		(H)	CRA AT 8:00 AM CAPITOL 124
03/20/01		(H)	Moved Out of Committee
03/20/01		(H)	MINUTE(CRA)
04/23/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 228
SHORT TITLE:SALE OF TOBACCO PRODUCTS
SPONSOR(S): REPRESENTATIVE(S)HARRIS

Jrn-Date	Jrn-Page		Action
04/02/01	0809	(H)	READ THE FIRST TIME - REFERRALS
04/02/01	0809	(H)	L&C, JUD, FIN
04/03/01	0831	(H)	COSPONSOR(S): HUDSON, MURKOWSKI
04/17/01	1021	(H)	COSPONSOR(S): KERTTULA
04/18/01	1053	(H)	COSPONSOR(S): CRAWFORD
04/18/01		(H)	L&C AT 3:15 PM CAPITOL 17
04/18/01		(H)	Moved CSHB 228(L&C) Out of Committee
04/18/01		(H)	MINUTE(L&C)

04/20/01	1092	(H)	L&C RPT CS(L&C) NT 5DP 1AM
04/20/01	1093	(H)	DP: CRAWFORD, HAYES, MEYER,
04/20/01	1093	(H)	ROKEBERG, MURKOWSKI; AM: KOTT
04/20/01	1093	(H)	FN1: ZERO(REV)
04/20/01	1093	(H)	FN2: (LAW)
04/20/01	1093	(H)	FN3: (HSS)
04/20/01	1093	(H)	FN4: (CED)
04/21/01		(H)	JUD AT 11:00 AM CAPITOL 120
04/21/01		(H)	Heard & Held
			MINUTE(JUD)
04/23/01		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

SENATOR RICK HALFORD
Alaska State Legislature
Capitol Building, Room 111
Juneau, Alaska 99801
POSITION STATEMENT: Sponsor of SB 99.

JULI LUCKY, Staff
to Senator Rick Halford
Alaska State Legislature
Capitol Building, Room 111
Juneau, Alaska 99801
POSITION STATEMENT: On behalf of the sponsor, presented SB 99 and answered questions.

DEAN J. GUANELI, Chief Assistant Attorney General
Legal Services Section-Juneau
Criminal Division
Department of Law
PO Box 110300
Juneau, Alaska 99811-0300
POSITION STATEMENT: Presented the department's position on SB 99 and answered questions.

JENNIFER RUDINGER, Executive Director
Alaska Civil Liberties Union (AkCLU)
PO Box 201844
Anchorage, Alaska 99520-1844
POSITION STATEMENT: During discussion of SB 99, expressed concern that it does not stipulate that the DNA sample will be destroyed once the information is entered into the databank.

DEL SMITH, Deputy Commissioner
Office of the Commissioner

Department of Public Safety (DPS)
PO Box 111200
Juneau, Alaska 99811-1200
POSITION STATEMENT: During discussion of SB 99, answered questions related to statistical information.

GEORGE TAFT, Director
Scientific Crime Detection Laboratory
Department of Public Safety (DPS)
5500 East Tudor Road
Anchorage, Alaska 99507-1221
POSITION STATEMENT: During discussion of SB 99, answered questions regarding the storage of DNA samples.

SENATOR DAVE DONLEY
Alaska State Legislature
Capitol Building, Room 506
Juneau, Alaska 99801
POSITION STATEMENT: Presented SB 172 on behalf of the sponsor, the Senate Finance Committee.

CHRIS CHRISTENSEN, Deputy Administrative Director
Administrative Staff
Office of the Administrative Director
Alaska Court System (ACS)
820 West 4th Avenue
Anchorage, Alaska 99501-2005
POSITION STATEMENT: During discussion of HB 172, provided the ACS's position, answered questions, and suggested an amendment.

JAMES BALDWIN, Assistant Attorney General
Governmental Affairs Section
Civil Division (Juneau)
Department of Law (DOL)
PO Box 110300
Juneau, Alaska 99811-0300
POSITION STATEMENT: Presented HB 145 on behalf of the administration.

JOHN MANLY, Staff
to Representative John Harris
Alaska State Legislature
Capitol Building, Room 513
Juneau, Alaska 99801
POSITION STATEMENT: On behalf of the sponsor, Representative Harris, responded to questions on HB 228 and the proposed amendments.

ELMER LINDSTROM, Special Assistant
Office of the Commissioner
Department of Health & Social Services (DHSS)
PO Box 110601
Juneau, Alaska 99811-0601
POSITION STATEMENT: During discussion of HB 228 and proposed amendments, provided the department's position and answered questions.

EDWIN J. SASSER, Tobacco Enforcement Coordinator
Division of Public Health (DPH)
Department of Health & Social Services (DHSS)
PO Box 110616
Juneau, Alaska 99811-0616
POSITION STATEMENT: During discussion of HB 228 and proposed amendments, answered questions.

CATHERINE REARDON, Director
Central Office
Division of Occupational Licensing
Department of Community & Economic Development (DCED)
PO Box 110806
Juneau, Alaska 99811-0806
POSITION STATEMENT: During discussion of HB 228 and proposed amendments, responded to a question pertaining to fines.

ACTION NARRATIVE

TAPE 01-72, SIDE A
Number 0001

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

SB 99 - DNA REGISTRATION OF BURGLARS

[Contains mention that HB 143 and SB 99 are companion bills, and that SB 99 is similar to HB 132 with regard to attempting to commit a crime.]

Number 0047

CHAIR ROKEBERG announced that the first order of business would be SENATE BILL NO. 99, "An Act relating to the DNA identification registration system."

Number 0050

SENATOR RICK HALFORD, Alaska State Legislature, sponsor, said simply that SB 99 is a good bill.

Number 0059

JULI LUCKY, Staff to Senator Rick Halford, Alaska State Legislature, sponsor, added that SB 99 is the companion bill to HB 143, which was reported out of the House Judiciary Standing Committee on 4/6/01. She pointed out that the only difference between the two bills is that the language in SB 99 includes "**a person convicted of burglary or a felony attempt to commit burglary**", whereas HB 143 only had "a person convicted of **burglary**". She noted that the Department of Law (DOL) has indicated a preference for the language in SB 99.

Number 0134

DEAN J. GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law, noted that the language regarding an attempt to commit a burglary is similar to language in HB 132 (which pertains to attempts to send alcohol to dry communities) in that when someone has done everything possible to commit the crime but is prevented from doing so for some reason, the penalties are the same as if he/she had succeeded. The kind of danger represented by an attempt to commit burglary provides the nexus for taking the deoxyribonucleic acid (DNA) sample, he added.

REPRESENTATIVE COGHILL requested assurance that an "attempt to commit burglary" is an offense that can be proven.

MR. GUANELI pointed out that most crimes that are defined in Alaska law are punishable whether the crime is completed or simply attempted. He explained that the definition [in AS 11.31.100] of an "attempt" reads "with intent to commit a crime, the person engages in conduct which constitutes a substantial step toward the commission of that crime." He opined that in the case of burglary, that substantial step should be more than simply "casing the joint"; it should require that the person actually be on the premises and in the middle of breaking in, which would show that the person intended to carry out that

crime. To pursue any felony charge, he explained, there has to be a grand jury indictment, and the grand jury must find beyond a reasonable doubt that the charge is true. He also noted that attempting to commit burglary could result in a conviction separate from the charge of burglary.

Number 0477

JENNIFER RUDINGER, Executive Director, Alaska Civil Liberties Union (AkCLU), testified via teleconference and said:

> To sum up ... the position paper you have before you, the [AkCLU] simply asserts that every time the legislature looks at moving the line in allowing the FBI and law enforcement to collect DNA (or any kind of personal information about its citizens) it needs to ask itself whether it's justified to move the line in that case. ... Our position that is articulated in the position paper is simply that given that all the data we've seen only points to a 6 percent chance that burglars might - in Alaska - go on to commit violent crimes (and this is not like other states, but in Alaska, it looks like 94 percent do not), it doesn't make any sense to us to move the line. If it were 75 percent of burglars that were going on to commit violent crimes - so that having their DNA on file from the burglary would help you track them in the future - then it would be more reasonable, but 6 percent is not, in our opinion, a high enough correlation between means and ends.
>
> And one other thing that is not exactly spelled out in the position paper but I've begun to talk with some folks about, is that if [SB99] is going to move (or even if its not going to move - regardless of what happens with this bill), there is a real glaring problem with the current state of the law. And that is that nothing in federal law, and nothing in Alaska State law requires the destruction of the sample.... What happens is that the drop of saliva or the drop of blood (whatever the sample may be) -- public safety/the crime lab will draw a strand of DNA out of that, and they will take 13 specific points along that strand of DNA (13 genetic markers), and that is what gets entered into the FBI database (CODIS [Combined DNA Index System]) - those thirteen markers.

With today's technology, indeed, those 13 markers are like a fingerprint. Those 13 markers are called "junk DNA" by scientists because they are among huge sections of DNA that do not code for specific proteins. Tomorrow that could change; we may be able to tell personal information from those markers besides gender and identification, but today we cannot. So, if all we were looking at here was taking 13 markers that look like a bar code in the database, indeed we wouldn't have the privacy concerns today that I'm raising in my position paper, because what I'm talking about is the sample. And, once they get that bar code (for lack of a better term) entered in the database, and that is 99.9 percent accurate for purposes of identifying (much more accurate than fingerprints), that's law enforcement's legitimate need. That's the legitimate reason for getting the DNA.

Once that's in the database, they don't need to keep the saliva; they don't need to keep the blood. And regardless of what happens with [SB] 99, there is nothing in Alaska law or federal law that says they ever have to get rid the sample, and indeed they don't. ... If identification is the legitimate rational, they don't need to keep the sample. So the folks in Alaska, your constituents who contact us all the time about concerns about government needing private information and demanding private information (whether it's social security numbers or census forms or background checks or DNA and genetic information) -- something that could be done to alleviate those folk's concerns, and would go a long way toward protecting privacy, would be to destroy the sample once the testing is complete and the data is entered in the database.

Because, in the future, if this burglar is one of the 6 percent who goes on to commit a violent crime, law enforcement -- say they show up at the scene of the crime, and there's a drop of blood that doesn't match the victim, and they run that drop of blood, they pull the identifying markers out of that, put it in the database and [it] pops up: poof, "we've got a match." What they're comparing it to are the 13 loci - the

other information in the database; they're not going back to the previous drop of blood. It's all a matter of running it through the database, and so [we'd] really like to see Alaska pass some kind of law - and perhaps start with an amendment to this bill - that says, once they've finished their testing and get the data entered, "let's destroy the sample."

Number 0839

MS. RUDINGER, in response to questions, said that the 6 percent figure that she is using was gathered from the statistical information provided by Del Smith, Department of Public Safety, regarding burglars in Alaska that go on to commit violent crimes. She acknowledged that the legislature will have to weigh whether that 6 percent justifies moving the line, but she opined it is a very low correlation given the immense amount of information, which has nothing to do with law enforcement's ability to identify criminals, that can be gleaned from that drop of saliva. She said that she would feel better [about taking DNA samples from convicted burglars] if the correlation were higher, but at least if the drop of saliva is destroyed afterwards, so that the only information law enforcement had about the person is, in fact, identifying markers, that would make more sense.

MS. RUDINGER explained that it's the drop of saliva (or blood) that contains information about up to 4,000 different genetic conditions and diseases, possibly about sexual orientation, possibly genetic information about the tendency towards substance abuse, all kinds of personal information about the source and everyone related to the source by blood, all of which has nothing to do with law enforcement's need for identifying future criminals that may have previously committed burglary. She opined that regardless of whether the legislature feels that 6 percent justifies obtaining DNA samples from burglars, the legislature should consider destroying the sample once law enforcement has completed its job [of entering the data].

Number 0982

DEL SMITH, Deputy Commissioner, Office of the Commissioner, Department of Public Safety (DPS), regarding the 6 percent figure used by Ms. Rudinger, explained that of the 3,000 or so people - since 1/1/96 - who have been obligated to provide a DNA sample under current law, roughly 6 percent have a previous burglary conviction. He added that he did not think this

automatically means that 94 percent of burglars don't go on to commit a [violent] crime. He confirmed that the 6 percent figure was arrived at retrospectively. He noted that he has not yet checked to see how many individuals convicted of burglary go on to commit a violent crime.

REPRESENTATIVE BERKOWITZ asked whether DNA evidence has ever been exculpatory.

MR. SMITH said yes; he recounted a case in which a person in Anchorage was arrested but the DNA sample proved that this individual was innocent of that crime.

REPRESENTATIVE COGHILL asked whether the "bar code" from a DNA sample is associated with the person's name or other identifier.

MR. SMITH said that according to his understanding, it is not; if the bar code is in the database it comes back as a series of numbers without being associated with a name.

Number 1199

GEORGE TAFT, Director, Scientific Crime Detection Laboratory, Department of Public Safety (DPS), testified via teleconference. With regard to whether to destroy DNA samples, he said that he has given the topic a great deal of thought but is not sure why the samples should be destroyed immediately in case [the DPS] needs to go back and reanalyze a sample for a particular case. He, also, said that there are no names attached to the data, and noted that there are a limited number of people in the laboratory that even have access to the data or to the sample.

REPRESENTATIVE JAMES questioned the need to reanalyze a sample; "Don't you have to double check that you got your code right?"

MR. TAFT replied, "yes." On the question of storing samples, he noted that there is a very minimal amount of sample storage [space], but to date there is no departmental policy regarding the destruction of the samples.

CHAIR ROKEBERG mentioned that the issue of developing a policy for destroying DNA samples could be pursued during the interim; he noted that Mr. Smith was nodding his head in agreement. Chair Rokeberg then closed the public hearing on SB 99.

Number 1340

REPRESENTATIVE JAMES moved to report SB 99 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, SB 99 was reported from the House Judiciary Standing Committee.

SB 172 - COURT SYSTEM ANNUAL REPORT

Number 1358

CHAIR ROKEBERG announced that the next order of business would be CS FOR SENATE BILL NO. 172(FIN), "An Act relating to an annual report by the court system to the public and the legislature."

Number 1382

SENATOR DAVE DONLEY, Alaska State Legislature, spoke on behalf of the Senate Finance Committee, sponsor of SB 172. He explained that SB 172 would establish in statute an annual report from the Alaska Court System (ACS). Currently the ACS does an annual report but does so voluntarily because there is no statutory requirement. Simply, SB 172 will set in statute that there will be a requirement to provide an annual report to the legislature; the ACS could have leeway under this bill to continue with the existing report, as long as it provides the legislature with the specific information detailed in SB 172. He noted that some of the information required by SB 172 is not currently included in the annual report that the ACS provides voluntarily. That information includes additional information regarding the time it's taking to provide final disposition on cases in Alaska; specific information about the [status of] salary warrants of judges (currently, if a judge doesn't produce a final opinion within six months, his/her salary is withheld); and a reporting of travel expenses and per diem for judges and justices, similar to what is required of legislators and members of the executive branch. He concluded by stating that SB 172 has a zero fiscal note.

SENATOR DONLEY, in response to questions, said that each year the administration and the legislature prepare reports on all the salaries, travel, and per diem for executive branch personnel and legislators, respectively. He also noted that the legislature [performs] an annual audit of state government, and that there is an annual budget report produced by the Legislative Finance Division. On the issue of withholding salary warrants, he explained that under existing law, "any appellant court where there's more than one member is exempt

from the time limit factor of the salary warrants." All the law requires is for an initial decision to be made; there is no time limit for any final decision being made.

REPRESENTATIVE KOOKESH questioned why this legislation is necessary given that the [ACS] has been voluntarily providing reports since 1961.

SENATOR DONLEY replied that it is because [the ACS] could just stop doing so at any time, and because he thinks it is really important that the public be guaranteed this information. He also noted that SB 172 requires information additional to what [the ACS] currently provides.

Number 1588

REPRESENTATIVE KOOKESH suggested that if the legislature simply asked it to do so, the [ACS] would continue providing the reports and include the additional information on a voluntary basis. He opined that this might be a situation in which legislation is not actually needed.

SENATOR DONLEY said, "Hopefully this is legislation that won't be needed in the future, but it is a safeguard to prevent that eventuality from ever happening." With regard to the warrant information, he noted that about three or four years ago, he had contacted the Alaska Judicial Council (AJC) and asked why the warrant information was not provided with the analysis for judge retention. [The AJC] explained that they had asked for the information but the ACS would not provide it to them, even though [the AJC] is the body that is constitutionally empowered to make assessments regarding the retention of judges. He added that subsequent to that conversation, he received the information from the ACS, whereupon he provided it to the AJC. Although currently the ACS is providing this information to the AJC, he said, this is just an example showing that the ACS could at anytime - without this legislation - decide not to provide certain information.

Number 1683

CHRIS CHRISTENSEN, Deputy Administrative Director, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), clarified that it was not the ACS that refused to provide this information to the AJC, it was the Department of Administration (DOA). The ACS has always considered this information a public record. He pointed out,

however, that the ACS receives the information from the DOA; once the information is in the ACS's possession, it is provided to anyone who makes a public records request. He explained that the [Alaska] Supreme Court produces an annual report and has done so since the very first year that the ACS has been in existence; the first annual report came out in 1960. After noting that the legislature received a copy of the "FY 2000 Annual Report" in January, he confirmed that the report is not produced because of a statutory mandate, but rather under the [Alaska] Supreme Court's constitutional authority to administer the judicial branch of government. In essence, this is the [Alaska] Supreme Court's annual message on judicial branch operations.

MR. CHRISTENSEN noted that as originally drafted, SB 172 instructed the ACS to produce an annual report and include some of the information that is already in the annual report that [the ACS] provides, and add other information that is not currently provided. He said that the legislature is the best judge of what information it would consider useful; the legislature has the authority to instruct the ACS to provide statistical or other information related to court operations. Whereupon [the ACS] will provide the information required by SB 172 in report form. He pointed out that the ACS has submitted a zero fiscal note. He mentioned that there are several other examples in statute of reports the legislature requires of the ACS, such as travel information for justices of the Alaska Supreme Court and for judges of the Alaska Court of Appeals.

MR. CHRISTENSEN noted, however, that the document that [the ACS] has identified for over 40 years as its annual report is the [Alaska] Supreme Court's message; this is akin to reports that "you" as individual legislators send to Alaskans describing "your" operations here in Juneau. And much as "you" are the final authority of what goes into "your" reports, he said, [the ACS] believes that the [Alaska] Supreme Court is the final authority for what goes into "this" particular document. The extra information that SB 172 would require [the ACS] to provide may very possibly be put into "this" report; in fact, Chief Justice Fabe assured Senator Donley several months ago that prior to the time the next annual report went into production, she would discuss with her colleagues including this extra information. Alternatively, the extra information that is required by SB 172 may be put in a separate report, which [the ACS] would publish and release as instructed per SB 172.

Number 1814

MR. CHRISTENSEN offered the following as a technical amendment: Remove "annual" from page 1, line 5. In response to questions, he explained that the term "annual report" is almost considered a term of art, and that the ACS already produces an "annual report" and has done so for over 40 years. And although [the ACS] will be happy to give the legislature whatever kind of reports it wants, he reiterated that [the ACS] currently produces its document under the [Alaska] Supreme Court's constitutional authority to administer the judicial branch, and would therefore prefer that any information requested by legislature not be called an "annual report". He said that the extra information requested may be included in the annual report that the ACS already produces, or it may come in the form of a separate report; the intention of his suggested amendment is to allow [the ACS] flexibility.

SENATOR DONLEY agreed that the intention of SB 172 is to leave the ACS with flexibility regarding terminology, and therefore he has no objection to Mr. Christensen's suggested amendment.

Number 1900

REPRESENTATIVE JAMES made a motion to adopt Amendment 1, which would remove "annual" from page 1, line 5. There being no objection, Amendment 1 was adopted.

Number 1929

REPRESENTATIVE JAMES moved to report CSSB 172(FIN), as amended, out of committee with individual recommendations [and the accompanying fiscal note].

Number 1939

REPRESENTATIVE BERKOWITZ objected for the purpose of discussion. He said that one point he is always leery about is separation of powers. He acknowledged that the [ACS] did not have any objections to the requirements imposed via SB 172, but he pointed out that:

> We're here telling the court to do something, something that they're already doing. ... I know that when the court tells us to do things, even simple innocuous things like maybe striking language from the budget or something, we find that very troubling. ...

I just think we ought to be a little bit sensitive to those poor five justices and all their minions.

REPRESENTATIVE JAMES noted that the legislature, via SB 172, is not telling [the ACS] how to make judicial decisions; rather, the legislature is only telling the ACS what kind of information to provide.

REPRESENTATIVE BERKOWITZ countered by saying, "Which is all they told us." He then withdrew his objection.

Number 1983

CHAIR ROKEBERG asked whether there were any further objections. There being none, HCS CSSB 172(JUD) was reported from the House Judiciary Standing Committee.

HB 145 - FALSE CLAIMS AGAINST STATE OR MUNICIPALIT

Number 2000

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 145, "An Act making a civil remedy available to the state or a municipality against persons who make false claims for, or certain misrepresentations regarding, state or municipal money or other property; and providing for an effective date."

Number 2014

JAMES BALDWIN, Assistant Attorney General, Governmental Affairs Section, Civil Division (Juneau), Department of Law (DOL), presented HB 145 on behalf of the administration. He noted that a similar bill was reported out of the House Judiciary Standing Committee during the last legislative session, and that the concept of HB 145 is the result of an ongoing claim against a rather large financial institution concerning unclaimed property. He explained that California found that its false claim statute was key in bringing a certain financial institution to the table to negotiate; California's false claim statute carries a treble damages clause. When [the DOL] looked at Alaska laws to see what its remedies might be, it found only a very skeletal form of a false claim statute, which is located in AS 37.10.090 and which basically says that the state can bring a claim on behalf of itself or on behalf of its municipalities if money has been illegally paid or diverted, but

there is no ability to enhance the amount of damages if the prosecution is successful.

MR. BALDWIN noted that [the DOL] has begun investigating a potential claim against that same financial institution, and although HB 145 may not assist the DOL in that particular instance, it could become useful in future litigation regarding unclaimed property or other situations in which a claim is brought against the state and is later proven false. He explained that HB 145 is modeled after California's unclaimed property law with the addition of a few changes that adapt it to Alaska law. A major difference between the California law and HB 145 revolves around some of the things that are excluded from coverage: Alaska would exclude any claims in an amount less than $500 because it would not be appropriate to subject those kinds of claims to the treble damages clause; and Alaska would exclude certain statutory systems (some of which are listed on pages 3-4) that already have well developed penalty provisions for submitting false claims, because they stand alone and do not need duplication.

MR. BALDWIN also said that there is a fairly favorable standard of proof provided for the state to prove its case against a false claimant; it will be by a preponderance of the evidence. There is also a provision which says that if a particular individual is convicted of a crime involving misrepresentation, then that conviction can stand as prima facie proof; it can stand on its own as part of the main proof necessary to prove the civil claim under HB 145. He explained that HB 145 also has provisions for cooperation between municipal governments and state government if, in the investigation of a potential false claim, the attorney general determines that there is municipal property involved, there would be a process for either tendering the prosecution of that part of the case to a municipality, or retaining it and proceeding along with all the other aspects of the claim. He noted that these provisions are tailored to the Alaskan situation; the aforementioned case against the large financial institution involved both municipal property and state property, thus [the DOL and the municipalities] have had to find a way to work out how they would approach the case together, including how to share costs and share recovery.

Number 2270

REPRESENTATIVE MEYER asked whether HB 145 would pertain to permanent fund dividend (PFD) applications.

MR. BALDWIN said that HB 145 would not apply to the PFD; the PFD is paid under AS 43, and as such is listed as one of the exemptions on page 4.

REPRESENTATIVE BERKOWITZ, referring to Section 3, pointed out that subsection(c) estops - prevents - the defendant from again raising the defense if there is a guilty plea or a nolo contendere plea; if someone is estoped in a civil action after making a nolo contendere plea, the intent of the nolo contendere plea is circumvented. He asked why "we" would want to do that. He also pointed out that "this is different for the government than it is for an individual citizen."

MR. BALDWIN responded that to his understanding, for many purposes, a nolo contendere plea is the equivalent of a guilty plea.

REPRESENTATIVE BERKOWITZ clarified that nolo contendere - no contest - merely means that the person is not fighting the charge, not that he/she agrees with the elements. He explained that this is different than a guilty plea in which the defendant acknowledges committing the elements. For example, "If you ran into a light pole and knocked it over, no contest means that you're not fighting it, but your not admitting civil liability." He opined that the current language is saying that if a person pleads no contest, he/she is essentially admitting civil liability, which is not the same for a private individual. "If I ran into your car and was charged with assault, and [I] plead no contest, you'd still have to prove the case against me in a civil context."

MR. BALDWIN explained that this provision is based on the California law, which was used as model.

CHAIR ROKEBERG pointed out that many times people might choose nolo contendere to avoid the expense of litigation; if he/she is estoped from asserting a defense in a civil case, it destroys one of the advantages of pleading nolo contendere.

Number 2450

REPRESENTATIVE BERKOWITZ made a motion to adopt Amendment 1, which would strike "or nolo contendere" from page 4, lines 14-15.

MR. BALDWIN mentioned that line 18 also has reference to "nolo contendere".

REPRESENTATIVE COGHILL asked what affect Amendment 1 would have on the July 1, 2001, date referred to in the last sentence on lines 17-18 of page 4.

REPRESENTATIVE BERKOWITZ cautioned that there is some question about what is going on with no contest pleas. It is not always clear, he said, sometimes a nolo contendere plea can be an admission, but he could not recall what the parameters are.

TAPE 01-72, SIDE B
Number 2485

MR. BALDWIN, in response to Representative Coghill, explained that the last sentence in lines 17-18 of page 4 merely prevents subsection (c) from being applied retroactively.

CHAIR ROKEBERG pointed out that this language reads "a guilty verdict upon a plea of nolo contendere", and does not refer to anything else.

MR. BALDWIN, still referring to page 4, offered that if reference to "nolo contendere" is removed from lines 14-15, then the last sentence on lines 17-18 should also be removed.

Number 2383

CHAIR ROKEBERG asked whether there were any objections to Amendment 1. There being no objection, Amendment 1 was adopted.

Number 2365

REPRESENTATIVE COGHILL made a motion to adopt Amendment 2, which would remove the last sentence from subsection (c) on page 4, lines 17-18. There being no objection, Amendment 2 was adopted.

REPRESENTATIVE BERKOWITZ, referring to the provision on page 4 regarding limitation of actions, said that to his recollection, most civil actions are limited to within three years of discovery. Unless there is a very compelling reason to allow the state twice as long to pursue an action, he said, it seems inappropriate that the state has more time than a private litigant.

MR. BALDWIN noted that this provision is merely mirroring the California statute. He said that he is not so sure that three years is the overriding time limit; there is a six-year [statute

of limitations] applicable to some claims, for example. Given the complexity of some of the cases the state litigates, he opined, six years is not unreasonable.

REPRESENTATIVE BERKOWITZ said he agrees with that point, but he merely favors consistency.

CHAIR ROKEBERG mentioned that some of the cases faced by the state could involve unclaimed property.

MR. BALDWIN noted that this provision provides for a special limitation period for false claims.

REPRESENTATIVE BERKOWITZ, referring to Sections 1 and 2, opined that at first glance, "you could incur civil liability to the state if you, for example, asserted a claim that you were owed money and then it turned out not to be true, or ... made a denial after the state made a claim against you."

MR. BALDWIN explained that the language in Sections 1 and 2 is very similar to the false claim statute provisions in many other states and the federal government; this type of language is not unusual. If there is a problem of proof, he added, then that's the state's problem and it will have to prove by a preponderance of the evidence that there has been presentation of such a claim. He opined that it is unusual that a state such as Alaska doesn't already have the kinds of statutes as would be added via HB 145; HB 145 will allow the state to protect the public treasury from the assertion of false claims.

Number 2141

REPRESENTATIVE COGHILL recounted that during litigation between himself and his municipality, the municipality asserted that he had done something falsely, when, instead, he was merely unaware of the regulations regarding that particular action.

MR. BALDWIN, on the topic of penalties, explained that Section 2 of HB 145 provides for a $10,000 penalty for each act, and that there could then be interest and damages added to that. He noted that one of the main areas in which the statute was altered, via Section 1, is in the area of contract claims; if contractors who have done business with the state submit claims for additional costs and expenses for the work done, and the claims turn out to be false, Section 1 would provide a remedy in dealing with such contractors. He went on to explain that in the area of unclaimed property, if, for example, a financial

institution holds money that it should pay out, but is instead merely filing reports that this money is being properly paid out, these claims by the financial institution would fall under [HB 145] with regard to making a false claim. He also pointed out that before an individual can file a lawsuit against the state, he/she has to go through a claims process under AS 44.77; he/she has to submit an administrative claim against the state, and if that claim turns out to be false, HB 145 would provide the state with a remedy.

MR. BALDWIN, in response to questions, explained that under current statutory language, someone submitting a false contract claim must reimburse all sums paid on the claim, for all costs attributable to review of the claim, and for a civil penalty equal to the amount by which the claim is misrepresented. By contrast, under HB 145, a person submitting a false claim would be liable for to up to three times the amount of the claim, a civil penalty of up to $10,000 for each act for which liability is found, and attorney's fees and costs. He noted, however, that there are other provisions in HB 145 that say the court may reduce the amount of the damages to an amount not less than two times the amount of damages sustained and may waive entirely the civil penalties if the person committing any of the acts gives the officials of the state (or of the municipality) information known to that person about the violation within 30 days after the date in which the person first obtained the information. In essence this means that if the person cooperates with the state (or municipality), he/she gets the damages reduced; it becomes an incentive to help the state (or municipality).

MR. BALDWIN, in response to questions regarding his earlier reference to a certain financial institution under investigation, explained that this financial institution was acting as a fiscal paying agent, or trustee for various forms of general obligation debt, revenue bond debt, and special obligation debt, and was therefore responsible for making payments to bondholders. It was subsequently discovered that in a small percentage of cases, the bondholders of these instruments were not claiming their coupon payments, but the financial institution was keeping the money rather than returning it to the governmental entities that issued the debt service.

Number 1890

MR. BALDWIN noted that only one small element of HB 145 might have a bearing on the state's ongoing investigation of this

financial institution. He then referred to page 2, [paragraph] (8), which says, "is a beneficiary of an inadvertent submission of a false claim to the state or a municipality, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the state or the municipality within a reasonable time after discovery of the false claim." He pointed out that since statutes only work prospectively, [paragraphs] (1)-(7) would not apply to the financial institution currently under investigation, unless it knows it has a history of these kinds of activity and does not disclose this information to the state or municipality.

MR. BALDWIN, in response to questions about California's case against the financial institution, said that a settlement was reached in which California was paid $188 million in damages for unspecified purposes, and was paid $40 million as an unclaimed property settlement. He noted that in this example, the financial institution kept very poor records, and thus the parties had to resort to a statistical analysis of the records in order to establish damages and determine what amount should have been escheated to the state. Mr. Baldwin explained that [the DOL] was investigating this same financial institution under the theory that since it is the issuer of some of those debt obligations, it is entitled to some of that settlement, whereas the financial institution is working under the theory that since it is domiciled in California, the funds escheated belong to California. He mentioned that [the DOL] is hoping to successfully conclude its case regarding these funds.

REPRESENTATIVE BERKOWITZ, referring to the damages section on page 3, said that essentially treble damages are going to be awarded - that's three times the amount of actual damages - except if [subsection] (c) applies. Then the damages may be reduced to twice the amount of damages and the civil penalty may be waived. He pointed out, however, that this provision precludes the court from using a sliding scale with regard to damages and civil penalties. He noted that he did not like taking discretion away from the courts; the more discretion the courts have, he offered, the easier it can be to craft a solution for a given problem.

Number 1662

REPRESENTATIVE BERKOWITZ made a motion to adopt Amendment 3, which would delete "of this section to an amount not less than two times the amount of the damages sustained" from page 3, lines 7-8. The result would leave the courts with the

discretion of moving between treble damages and zero damages if all the conditions for such a waiver are met. He also noted that the language pertaining to these conditions is conjunctive; a person must meet all of them, not just one.

MR. BALDWIN said he did not have a problem with leaving the decision regarding the reduction of damages and civil penalties to the discretion of the court.

Number 1452

CHAIR ROKEBERG asked whether there were any objections to Amendment 3. There being no objection, Amendment 3 was adopted.

Number 1435

REPRESENTATIVE BERKOWITZ moved to report HB 145, as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 145(JUD) was reported from the House Judiciary Standing Committee.

HB 228 - SALE OF TOBACCO PRODUCTS

Number 1427

CHAIR ROKEBERG announced that the last order of business would be HOUSE BILL NO. 228, "An Act relating to the offense of selling or giving tobacco to a minor, to the accounting of fees from business license endorsements for tobacco products, to the disclosure of certain confidential cigarette and tobacco product information, to notification regarding a cigarette manufacturer's noncompliance with the tobacco product Master Settlement Agreement, to business license endorsements for sale of tobacco products, to citations and penalties for illegal sales of tobacco products; and providing for an effective date." [Before the committee was CSHB 228(L&C).]

Number 1371

CHAIR ROKEBERG made a motion to adopt Amendment 1, which read [original punctuation provided]:

Page 7, line 4:
Delete "The"
Insert "A peace officer, or an agent or employee of the"

Following "Department of Health and Social Services":
Insert "who is authorized by the commissioner of health and social services to enforce this section,"

Page 7, lines 6 - 7:
Delete "Each day a violation continues after a citation for the violation has been issued constitutes a separate violation."

Page 7, line 14:
Delete "the issuance of"
Insert "issuing to its agents or employees"

Page 7, line 18:
Delete "department shall deposit the"

Following "citation":
Insert "shall be deposited"

Page 7, line 21:
Delete "The department may not dispose of a"
Insert "A"

Page 7, line 22, following "issuance":
Insert "may not be disposed of"

Page 7, line 24, following "by":
Insert "an agent or employee of"

Page 7, line 25, following "copies of":
Insert "such"

Page 7, line 27, following "citation":
Insert "issued by its agent or employee"

Number 1347

JOHN MANLY, Staff to Representative John Harris, Alaska State Legislature, on behalf of Representative Harris, sponsor, explained that the Department of Health & Social Services (DHSS) prepared Amendment 1. At the previous hearing on HB 228, it was suggested that "sideboards" should be placed on the DHSS's authority to issue citations for selling tobacco to minors. He offered that Amendment 1 would provide those sideboards; it more

clearly defines who exactly would be authorized to issue these citations. The person has to be authorized by the commissioner of the DHSS. He also pointed out that the portion of Amendment 1 affecting line 6-7 deletes a provision that the committee considered unnecessary since it refers to citations issued under the criminal statute, Title 11.

Number 1199

ELMER LINDSTROM, Special Assistant, Office of the Commissioner, Department of Health & Social Services (DHSS), said that the DHSS has no objections to deleting that provision from page 7, lines 6-7. He added that the remainder of Amendment 1 is merely conforming language that changes the voice of the legislation from an active one to a passive one. With regard to the sideboard stipulating that aside from a peace officer, only an authorized agent or employee of the DHSS could issue citations, he noted that similar authority exists in other statutes, for example, those pertaining to park employees.

CHAIR ROKEBERG asked whether any special training would be required in order for a person to become a "tobacco cop."

Number 1154

EDWIN J. SASSER, Tobacco Enforcement Coordinator, Division of Public Health (DPH), Department of Health & Social Services (DHSS), mentioned that the provision being deleted via Amendment 1 dealt with the issue of vending machines being moved and cigarettes not being locked up. Regarding the sideboard pertaining to who will be authorized to issue citations, he explained that the language inserted in the first portion of Amendment 1 is patterned after language in AS 45.75.131 that gives authority to issue citations related to weights and measures violations. In none of the language already in statute relating to issuing citations, he added, is there any reference to training requirements. He suggested, however, that the language stipulating that the commissioner of the DHSS must authorize the agent or employee does imply training requirements and standards. He offered that it would not be hard to expand any Memorandum of [Understanding] (MOU) that the DHSS has with the Department of Public Safety (DPS) to include specific standards for any agent or employee selected to issue citations.

Number 1045

CHAIR ROKEBERG asked whether there were any objections to Amendment 1. There being no objection, Amendment 1 was adopted.

CHAIR ROKEBERG mentioned a concern regarding the potential for a disgruntled employee to subject the endorsement holder to cumulative fines and penalties simply by continuing to sell tobacco products to minors.

MR. MANLY said that he did not know whether any of the cases that have been prosecuted thus far have included such circumstances. Most of the time the sale is inadvertent or done in ignorance.

REPRESENTATIVE MEYER opined that it would be hard for such a situation to occur; the employee would have to know in advance that he/she was selling to an undercover minor in a sting operation.

MR. SASSER said that he is not aware of any such situations occurring, nor was he aware of any state that has adopted language that would allow such a situation to be an affirmative defense.

MR. LINDSTROM, on the issue of penalties to the endorsement holder, noted that current statute stipulates that the endorsement may be suspended up to 45 days for a first offense and up to 90 days for a subsequent offense occurring within a 24-month period. On the issue of compliance, he remarked that surveys done last September indicate that on a statewide basis, minors were able to purchase tobacco up to 34 percent of the time notwithstanding all the preventative measures that have been taken to date. He added that this noncompliance rate is unacceptably high.

REPRESENTATIVE COGHILL pondered whether the high noncompliance rate is "a vendor responsibility."

CHAIR ROKEBERG said he has received a letter from Costa Alton of C.J. Enterprises, expressing the concern that Section 8(l) is unfair to the owner of vending machines. Chair Rokeberg offered the point that if there is a problem with one machine, the people at that location who are responsible for supervising the vending machine should be subject to the penalties, rather than the vending company. Section8(l) stipulates "if an endorsement ... for the sale of tobacco products through vending machines is suspended or revoked, the person may not sell ... tobacco ... products through any of the person's other vending machines".

He suggested that this provision should be altered to apply to the owner of the establishment where the vending machine is located.

MR. SASSER clarified that this provision does apply to the endorsement holder of the establishment in which the machine is placed. He said that the only time the endorsement of the vending company can be suspended is if the company negligently places the machine in an unsuitable location.

CHAIR ROKEBERG called an at-ease from 2:46 p.m. to 2:55 p.m.

Number 0382

CHAIR ROKEBERG made a motion to adopt Conceptual Amendment 2:

> Section 8, subsection (l) should conform ... to the concept that the vending machine company's tobacco business license/endorsement can not be suspended for one violation. However, the machine on the premises could be removed or immobilized; the operator would be prohibited from operating it at the particular location, not all of his locations.

CHAIR ROKEBERG explained that with the adoption of Conceptual Amendment 2, a violation would result in the machine operator being suspended from operating that particular machine at that location, and penalties would also be imposed on the owner of the establishment for a lack of supervision at that location.

REPRESENTATIVE COGHILL remarked that anyone who has an endorsement, whether vending company or establishment owner, should be aware of the laws regarding sale to minors and the possible penalties for violations.

MR. MANLY noted that there is a provision in HB 228 requiring that vendor education materials accompany the endorsement when it is sent out.

TAPE 01-73, SIDE A
Number 0001

CHAIR ROKEBERG asked whether "they" would be subject to a monetary fine in addition to having his/her endorsement suspended for having a vending machine in an inappropriate location.

Number 0089

CATHERINE REARDON, Director, Central Office, Division of Occupational Licensing, Department of Community & Economic Development (DCED), explained that having a vending machine in an inappropriate location is a crime under AS 11.76, and would therefore be punishable.

MR. SASSER added that AS 11.76.100(d) provides that a vending machine operator who negligently places a vending machine will be subject to a $300 fine. He noted that this fine does not increase for multiple violations.

Number 0177

CHAIR ROKEBERG asked whether there were any objections to Conceptual Amendment 2. There being no objection, Conceptual Amendment 2 was adopted.

Number 0234

REPRESENTATIVE MEYER moved to report CSHB 228(L&C), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 228(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

Number 0270

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:03 p.m.